

RECEIVED

By james.leonard at 4:15 pm, Jun 16, 2021

MEMORANDUM

TO: James Leonard, Records Commissioner
FROM: Sonny Popowsky, Chair, Philadelphia Water, Sewer and Storm Water Rate Board *SP*
DATE: June 16, 2021
RE: Determination of Water Department General Rates and Charges Beginning 9/1/2021

Pursuant to Section 5-801 of the Philadelphia Home Rule Charter, Section 13-101 of the Philadelphia Code, and the Rate Board's Regulations, and at the direction of the Rate Board in its public meeting of June 16, 2021, I am forwarding herewith for filing the Rate Determination of the Philadelphia Water, Sewer and Storm Water Rate Board on the 2021 General Rate Proceeding, which constitutes the Rate Report and Rate Determination of the Rate Board, along with a memorandum of approval from the Law Department. The Rate Board has approved changes in rates and charges to take effect on September 1, 2021 and on September 1, 2022.

On February 16, 2021, the Water Department filed a Formal Notice of Proposed Changes in Water, Sewer and Stormwater Rates and Related Charges (FY 2022 and FY 2023) to revise water, sewer and fire service charges effective September 1, 2021 and September 1, 2022. The Water Department had filed Advance Notice of these proposed changes with City Council and the Philadelphia Water, Sewer and Storm Water Rate Board on January 15, 2021.

In accordance with the Charter, Code, and Regulations noted above, the Rate Board's Hearing Officer held a procedural conference and supervised discovery among the five entities and seven individuals registered as participants in the rate proceeding. Four public hearings on this matter were held in March of 2021, at which the Board received about 30 comments. The Board received more than 100 public comments outside of the hearings before the record was closed. A technical hearing was held on April 30, 2021. The Public Advocate and the Water Department reached a proposed partial settlement, which was opposed by two individual participants and fully briefed. The settlement would require a special rate proceeding that could lower but not increase the September 2022 rates if the Water Department receives more than \$2 million in certain federal stimulus funding or increases its reserves more than a threshold amount.

In May 2021, the Hearing Officer filed her Report, recommending approval of the proposed settlement and resolution of the remaining contested issues. Four participants filed exceptions or reply exceptions. The Rate Board then deliberated the issues in the case in its monthly public meeting on June 9, 2021, and adopted this Rate Determination at a special public meeting on June 16, 2021. All meetings and hearings were duly noticed.

We expect that the Water Department will timely file Rates and Charges in conformance with the Rate Determination.

RECEIVED

By james.leonard at 4:16 pm, Jun 16, 2021

**The City of Philadelphia
Law Department**

Diana P. Cortes, City Solicitor

MEMORANDUM

TO: Sonny Popowsky, Chair, Philadelphia Water, Sewer and Storm Water Rate Board
FROM: Daniel W. Cantú-Hertzler, Senior Attorney *DWCH*
DATE: June 16, 2021
RE: Determination of Water Department General Rates and Charges Beginning 9/1/2021

I have reviewed the attached Rate Determination of the Philadelphia Water, Sewer and Storm Water Rate Board, which the Rate Board adopted on June 16, 2021 to conclude the General Rate Proceeding commenced by the Water Department by its filing of a Formal Notice on February 16, 2021 following its Advance Notice of January 15, 2021. The Rate Board is the independent rate-making body established by ordinance of City Council pursuant to Section 5-801 of the Philadelphia Home Rule Charter to fix and regulate rates and charges for water and sewer services. The attached document is the Rate Board's Rate Report under Section 13-101(8) of the Philadelphia Code, and is the Rate Board's Rate Determination pursuant to Sections I(o) and II.A.3 of the Rate Board Regulations. I find the attached Rate Determination to be legal and in proper form.

In accordance with Section 13-101(8) of the Philadelphia Code and Section II.A.3(c) of the Rate Board Regulations, you may forward the Rate Determination to the Department of Records for filing. As stated in the Rate Determination and consistent with Section 13-101(3)(e) of the Code and Section II.A.3(d) of the Rate Board Regulations, the effective date of the initial changes in the rates and charges will be September 1, 2021 if the Water Department files its conforming Rates and Charges at least ten days prior to that date.

Attachment

cc (w/att): All Rate Board Members (via E-mail)

RECEIVED

By james.leonard at 4:16 pm, Jun 16, 2021

CITY OF PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD

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

RATE DETERMINATION

Water, Sewer and Storm Water Rate Board
Irwin "Sonny" Popowsky, Chair
Tony Ewing
Rasheia R. Johnson
Abby L. Pozefsky

June 16, 2021

TABLE OF CONTENTS

I.	OVERVIEW.....	1
II.	PROCEDURAL HISTORY	2
III.	RATE DETERMINATION STANDARDS	11
IV.	JOINT PETITION FOR PARTIAL SETTLEMENT	14
A.	Terms and Conditions of the Joint Petition for Partial Settlement	14
B.	May 18, 2021 Hearing Officer Report.....	16
C.	Exceptions and Reply Exceptions.....	17
1.	Mr. Haver’s Exceptions.....	17
a)	Adequacy of Notice and Public Participation.....	18
b)	Adequacy of the Public Advocate.....	19
c)	Adequacy of Special Rate Reconciliation Proceeding.....	24
d)	Adequacy of Hearing Officer.....	27
e)	Adequacy of Settlement Terms.....	29
2.	Mr. Skiendzielewski’s Exceptions and Reply Exceptions	29
a)	Motion in Limine/Discovery Objections	31
b)	Recusal of Counsel	32
c)	Settlement Negotiations	33
D.	Joint Petition for Partial Settlement: Discussion and Disposition	33
1.	Revenue Requirement and Proposed Rates	33
2.	Special Rate Reconciliation Proceeding.....	40
3.	Other Terms	45
a)	Storm Water Cost of Service and Benefit Allocation Issues	46
b)	Customer Service and Policy Issues	46

c) COVID-19 Protections.....	46
V. TAP ARREARAGE FORGIVENESS	47
VI. OTHER ISSUES	52
VII. CONCLUSION	53
APPENDIX A: TABLES	
APPENDIX B: HEARING OFFICER REPORT	

I. OVERVIEW

Before the Philadelphia Water, Sewer, and Storm Water Rate Board (Rate Board or Board) for consideration and disposition is the rate filing made by the Philadelphia Water Department (PWD or the Department¹) for approval to increase water, sewer and storm water rates and related charges in Fiscal Years (FY) 2022 and 2023, with these proposed rates to become effective for service provided on and after September 1, 2021, and September 1, 2022, respectively. After a thorough review of the filing, including extensive discovery, four public hearings, one technical hearing and substantial public comment, PWD and the Public Advocate² submitted a [Joint Petition for Partial Settlement](#)³ (Joint Petition or Proposed Partial Settlement) dated May 5, 2021. This Joint Petition was opposed by two individual participants (Lance Haver, Michael Skiendzielewski) and not opposed by the Philadelphia Large Users Group. PECO Energy Company took no position.

On May 18, 2021, Hearing Officer Marlane R. Chestnut issued her [Hearing Officer Report](#)⁴ (May 18, 2021 Hearing Officer Report) in which she recommended (a) approval of the proposed settlement rates and (b) the use of the reconciliation/adjustment process as described in the Joint Petition to ensure that customers receive the benefit in the event federal funds are received by the Department or when the Department's reserve funds exceed a threshold balance. She also addressed two unsettled issues relating to TAP arrearage forgiveness.⁵ Pursuant to the schedule established, separate Exceptions to the Hearing Officer Report were filed by PWD, Mr. Haver and Mr. Skiendzielewski on May 25, 2021; Reply Exceptions were filed on May 28, 2021, by PWD, the Public Advocate and Mr. Skiendzielewski.

¹ PWD is a City department, with responsibility for provision of water, sewer and storm water services in the City of Philadelphia. To the extent required by the context, PWD includes the Water Revenue Bureau (WRB), which as part of the City's Department of Revenue, provides all billing and collection functions for charges by the Department.

² We contracted with Community Legal Services (CLS) to act as Public Advocate to represent the concerns of residential consumers and other small commercial users in this rate proceeding, pursuant to our [regulations](#) at II.B.2.

³ <https://www.phila.gov/media/20210505154832/Joint-Petition-for-Partial-Settlement.pdf>

⁴ <https://www.phila.gov/media/20210524104346/2021-Hearing-Report-May-18-final.pdf>

⁵ TAP (Tiered Assistance Program) is a customer assistance program that allows low-income customers to pay reduced bills based upon a percentage of their household income.

As discussed in more detail below, we hereby adopt and incorporate the May 18, 2021 Hearing Officer Report regarding the settled and unsettled issues except as otherwise indicated. Additionally, we grant or deny the Exceptions and Reply Exceptions, consistent with this Opinion and Order.⁶

We therefore (1) find that the proposed partial settlement rates and charges are supported by the record, are in compliance with the Rate Ordinance and other applicable requirements and covenants and therefore should be permitted to be placed in effect for service rendered on and after September 1, 2021, and September 1, 2022, respectively, consistent with the terms and conditions contained in the Joint Petition for Partial Settlement; (2) accept the proposal to utilize a special rate reconciliation proceeding consistent with the terms and conditions contained in the Joint Petition for Partial Settlement, including if necessary, amendment or clarification of our [regulations](#)⁷ at Section II.D concerning use of special rate proceedings; (3) direct PWD to report monthly on (i) the amount and type of arrearage forgiveness that it is providing to TAP customers, (ii) the results of its efforts to determine what legal and/or operational barriers must be overcome to implement ratable forgiveness for each month the TAP participant pays the TAP bill, and (iii) the efforts PWD is taking to reduce TAP denials and TAP churn; (4) reject the proposal of the Philadelphia Water Department to recover through the TAP-R surcharge rider costs associated with arrearage forgiveness earned by TAP program participants; and (5) will permit PWD to place into effect the uncontested tariff changes and changes in miscellaneous rates and charges.

II. PROCEDURAL HISTORY

The Department filed its [Advance Notice](#)⁸ with the Philadelphia City Council and the Rate Board on January 15, 2021, and its [Final Notice](#)⁹ with the Records Department on February 16, 2021, containing proposed changes to the rates and related charges for water, sewer

⁶ All exceptions and arguments in the record were duly considered. Any exception or argument that is not specifically addressed shall be deemed to have been duly considered and denied without further discussion.

⁷ <https://www.phila.gov/media/20190220105611/RegulationsAmended01092019withDocumentation.pdf>

⁸ <https://www.phila.gov/media/20210115161627/PWD-Exhibit-1-Notification-of-Rate-Filing.pdf>

⁹ <https://www.phila.gov/media/20210216163232/FormalNoticeOfPWDPProposedChangesToRatesAndChargesFY2022-23.pdf>

and storm water service effective September 1, 2021, and September 1, 2022, along with supporting statements and exhibits. These increases were intended to generate additional annual revenues of about \$48.864 million in FY 2022 and a total of \$92.096 million in FY 2023 (the FY 2023 amount includes the effects of the proposed increase in FY 2022). As proposed, the overall increase in revenues for all customers were projected to be 8.7% and 5.1% in FY 2022 and FY 2023, respectively. The impact would have been to increase the monthly bill of a typical residential customer who uses 500 cubic feet of water per month by 11.6% on September 1, 2021, and by another 5.3% on September 1, 2022.

In compliance with our mandate for an open and transparent examination of the Department's proposed rates and charges, our regulations require the submission of certain technical information, including (1) all financial, engineering and other data upon which the proposed rates and changes are based; (2) evidence demonstrating that the proposed rates were developed in accordance with sound utility rate making practices and consistent with the current industry standards for water, wastewater and storm water rates; and (3) material required by order of the Board in the last rate case.¹⁰ To support its proposed rates and charges, PWD presented the direct testimony, schedules and exhibits of a number of witnesses (PWD Sts. 1-7B).

Consistent with our [regulations](#), Sections II.B.1-.3, we contracted with Community Legal Services (CLS) to act as Public Advocate to represent the concerns of residential consumers and other small users in the rate proceeding; with Amawalk Consulting Group LLC to serve as an expert technical consultant; and with Marlane R. Chestnut to serve as the Hearing Officer.

In addition to the Department and the Public Advocate, participants included the Water Revenue Bureau (WRB), PECO Energy Company (PECO), the Philadelphia Large Users

¹⁰ These filings as well as discovery (and responses), public comments, correspondence, orders and other relevant documents are posted in the section labeled "[2021 Rate Proceeding](https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/)" on the Rate Board's website (<https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/>).

Group (Large Users Group),¹¹ and individual customers Michael Blowney, Lance Haver, Kesrick Jones, Jr., Sharon Keselman, Juliana Martell, Joseph Sherick and Michael Skiendzielewski.

After proper notice, an on-the-record prehearing conference to address preliminary procedural issues was held via teleconferencing software Zoom in this proceeding on February 24, 2021. At that prehearing conference, a schedule was adopted, and directives were issued regarding discovery and the holding of hearings. These determinations were memorialized in a [Prehearing Conference Order](#)¹² dated February 24, 2021.

Four public hearings were conducted. Due to the COVID-19 pandemic, all hearings were conducted remotely, with the option to participate via Zoom online or telephonically. Outreach and notice were used to provide awareness of the scheduled hearings to the public. In addition to notices and guidelines about participation posted on the various websites (Rate Board, PWD and CLS/Public Advocate) and social media, there were flyers, newspaper notices, blast emails to various groups of customers and interested parties such as community energy agencies and the offices of elected officials. These hearings were held (virtually) in the afternoons (1:00 p.m.) and evenings (6:00 p.m.) of March 16 and March 18, 2021. Approximately [30 people testified](#)¹³ at these hearings; and more than [120 comments](#)¹⁴ were submitted to the Rate Board website. The testimony presented at these hearings, as well as the comments we received directly, are discussed in the [May 18, 2021 Hearing Officer Report](#) at Section IV.

¹¹ The Large Users Group is an ad hoc group of large volume customers receiving water, sewer, and storm water service from the Department under the Industrial and Hospital/University Rate Schedules. PLUG St. 1 at 1.

¹² <https://www.phila.gov/media/20210322155516/PHC-feb-24-2021-order.pdf>

¹³ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#public-hearings>.

¹⁴ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#public-input>

Pursuant to the schedule adopted, on March 22, 2021, direct testimony was filed by Mr. Haver ([Haver St. 1](#))¹⁵ and the Public Advocate (Public Advocate Sts. [1](#),¹⁶ [2](#)¹⁷ and [3](#)¹⁸). Rebuttal testimony was submitted by PWD (PWD Rebuttal Sts. [1](#),¹⁹ [2](#),²⁰ [3](#)²¹ and [4](#)²²) and the Large Users Group ([PLUG St. 1](#)).²³

On March 15, 2021, we received a [letter](#)²⁴ signed by all members of the Philadelphia City Council (along with prior correspondence²⁵) from Philadelphia City Councilmember Maria D. Quiñones Sánchez, requesting that the Rate Board deny the rate increase request and instead direct PWD to leverage existing and anticipated federal funds to offset its need for rate relief. In response to PWD's request for guidance from the City regarding the potential availability of federal funds to assist the Department, City Finance Director Rob Dubow, by [letter](#)²⁶ dated March 26, 2021, informed PWD Deputy Water Commissioner Melissa LaBuda of the City's anticipated use of the funds expected to be provided through the recently enacted American Rescue Plan (ARP), and identified a series of actions that the City would undertake for the benefit of the Water Fund, most notably the possibility that the City would reduce the annual amount the Water Fund contributes to the Pension Fund by more than \$25 million. Water Commissioner Hayman,

¹⁵ <https://www.phila.gov/media/20210322155522/Lance-Haver-PWD-testimony.pdf>

¹⁶ <https://www.phila.gov/media/20210324163527/PA-St-1Morgan.pdf>

¹⁷ <https://www.phila.gov/media/20210324163526/PA-St-2-Mierzwa.pdf>

¹⁸ <https://www.phila.gov/media/20210324163618/PA-St-3-Colton.pdf>

¹⁹ <https://www.phila.gov/media/20210409165047/pwd-rebuttal-statement-1-rebuttal-testimony-to-public-advocate-witness-lafayette-morgan-l0997114xa35ae.pdf>

²⁰ <https://www.phila.gov/media/20210409165046/pwd-rebuttal-statement-2-rebuttal-testimony-to-public-advocate-witness-jerome-mierzwa.pdf>

²¹ <https://www.phila.gov/media/20210409165059/pwd-rebuttal-statement-3-rebuttal-testimony-to-public-advocate-witness-roger-colton-l0997147xa35ae.pdf>

²² <https://www.phila.gov/media/20210409165015/pwd-rebuttal-statement-4-rebuttal-testimony-to-lance-haver.pdf>

²³ <https://www.phila.gov/media/20210409164848/BSL-Rebuttal-TE.pdf>

²⁴ <https://www.phila.gov/media/20210322155453/03.18.21-City-Council-to-Water-Rate-Board-re-Rate-Increase.docx.pdf>

²⁵ See [Feb. 18, 2021 letter of Councilmember Quiñones Sánchez](#) (<https://www.phila.gov/media/20210324163459/02.18.21-MQS-to-Hayman-re-Rate-Increase.pdf.pdf>) to Water Commissioner Hayman and [Commissioner Hayman's reply of February 24, 2021](#) (<https://www.phila.gov/media/20210324163458/02.24.21-Hayman-to-MQS-re-Rate-Increase.pdf.pdf>)

²⁶ <https://www.phila.gov/media/20210405171512/Water-memo-3.30.21.pdf>

on March 30, 2021, sent a [letter](#)²⁷ to Philadelphia City Council President Darrell Clarke recognizing the support offered by the Administration, offering to “continue promotion” of customer assistance programs and requesting Administration support “in ensuring every eligible customer applies for both existing assistance and any new help that may become available through COVID-19 recovery legislation.”

On March 15, 2021, Mr. Haver filed a [Motion](#)²⁸ requesting that the current proceeding be postponed “. . . until such time as it is known how much of the money set aside under the American Rescue Plan Act of 2021 will be allocated to the Philadelphia Water Department and how those funds can be used.” By [email](#)²⁹ dated March 21, 2021, Hearing Officer Chestnut held the Motion in abeyance, finding that although the issue of possible federal funds would be a material factor for us to consider, it was not clear that it was not possible to proceed. She directed the Department to provide substantive information on this issue on the record as soon as possible and to update it as further information becomes available.

On April 5, 2021, Mr. Haver filed a “[Direct Appeal](#)”³⁰ of Hearing Officer Chestnut’s March 21, 2021 decision holding in abeyance his March 15, 2021 Motion for Continuance. Responses to the Direct Appeal were filed by PWD ([Answer](#))³¹ and the Public Advocate ([Memorandum in Lieu of an Answer](#))³² on April 9, 2021. At our regular April 14, 2021 meeting, the Department and the Public Advocate announced that settlement discussions were ongoing, and that all participants would be able to join in those discussions. In light of that representation, Mr. Haver withdrew his appeal without prejudice.³³

²⁷ <https://www.phila.gov/media/20210405171316/Hayman-Clarke-letter-response.pdf>

²⁸ <https://www.phila.gov/media/20210318160110/Lance-Haver-PWD-Continuance-Motion-1st.pdf>

²⁹ <https://www.phila.gov/media/20210325171439/Hearing-Officer-Decision-on-Haver-Motion.pdf>

³⁰ <https://www.phila.gov/media/20210409165058/Appeal-to-Rate-Board.pdf>

³¹ <https://www.phila.gov/media/20210414161418/PWD-2021-ANSWER-TO-HAVER-APPEAL-FINAL.pdf>

³² https://www.phila.gov/media/20210414161543/PA-Memo-In-Response-to-Haver-April-5-Filing_FINAL.pdf

³³ See [Minutes of April 14, 2021](#), ¶ 5 (<https://www.phila.gov/media/20210507153046/4.14.2021-Meeting-Minutes-Updated-Draft-DWCH-20210504.pdf>)

By [Order](#)³⁴ dated April 16, 2021, Hearing Officer Chestnut granted PWD’s April 8, 2021 [Motion in Limine](#)³⁵ (and related objections to discovery) addressed to issues raised by participant Michael Skiendzielewski, finding that “The Rate Board does not have the authority to investigate, administer or enforce public integrity laws or ethical codes. Therefore, discovery or testimony intended to address allegations of misconduct in connection with administration of the HELP loan program will be excluded from the scope of this rate proceeding.”

PWD filed two other Motions in Limine. The [first](#),³⁶ addressed to portions of the testimony of Public Advocate witness Roger Colton (Public Advocate St. 3), was withdrawn by PWD as the result of the proposed partial settlement. The second [Motion in Limine](#)³⁷ was directed at legal arguments contained in Haver St. 1, the direct testimony of intervenor Lance Haver. By [Order](#)³⁸ dated April 7, 2021, Hearing Officer Chestnut denied the Motion, finding that although the legal analysis and conclusions contained in Mr. Haver’s statement were not the appropriate subject of testimony (but may be raised in appropriate motions or briefs), there was no apparent harm to any of the participants by denying the Motion and allowing the testimony.

A virtual [technical hearing](#)³⁹ was held on April 30, 2021. This hearing was open to the public and advertised consistent with Rate Board regulations, and a written transcript was produced. Pro se participant Haver conducted cross-examination of PWD witness LaBuda, Black and Veatch witnesses Bui, Merritt and Jagt, and Public Advocate witness Morgan. PWD Hearing Exhs. 1 and 2 were admitted into the record; the record was closed, recognizing that a number of items (the transcript of the April 30, 2021, technical hearing, documents relating to the proposed joint partial settlement, the hearing officer’s report, briefs and other submissions to the hearing officer and the Rate Board, responses to transcript requests and other outstanding discovery

³⁴ <https://www.phila.gov/media/20210503164501/Order-Limine-Skiendzielewski-april-15-1-acjs.pdf>

³⁵ <https://www.phila.gov/media/20210414161420/pwd-motion-in-limine-2021-skiendzielewski-10996772xa35ae-2.pdf>

³⁶ <https://www.phila.gov/media/20210409165023/PWD-MOTION-IN-LIMINE-COLTON-TESTIMONY-4.5.21.pdf>

³⁷ <https://www.phila.gov/media/20210409165053/PWD-Motion-in-Limine-Haver-4.5.211.pdf>

³⁸ <https://www.phila.gov/media/20210409164846/Order-Motion-Limine-Haver-ACJS.pdf>

³⁹ <https://www.phila.gov/media/20210504170434/2021-General-Rate-Proceeding-Philadelphia-Water-Department-.pdf>

responses) were not yet available but would be included in the record (and posted on the Rate Board's Rate website) without further order. These procedural actions were memorialized in Hearing Officer Chestnut's [Further Procedural Order](#)⁴⁰ dated April 30, 2021.

On May 3, 2021, intervenor Haver filed a [Motion to Compel](#),⁴¹ requesting that the Public Advocate be directed "to put on the record the name, email address, physical address, and phone number of every civic group, community group, labor union, elected official and individual it contacted regarding the proposed water rate increase" so that "concerned members of the Public can contact them and tell them of the settlement that the Public Advocate secretly negotiated." On May 4, 2021, the Public Advocate filed an [Answer](#)⁴² in which it specifically denied the material allegations of the Motion, requested that it be denied as untimely and improper and listed "direct outreach contacts" that it had made prior to the public hearings. By [Order](#)⁴³ dated May 5, 2021, Hearing Officer Chestnut denied the Motion, noting that it had been rendered moot by the outreach list the Public Advocate had provided, as well as the fact that a [Settlement Term Sheet](#)⁴⁴ had been posted on websites of the Rate Board, PWD and the Public Advocate (as well as the Advocate's social media channels).

On May 5, 2021, the Joint Petitioners (signatories PWD and the Public Advocate) filed a [Joint Petition for Partial Settlement](#)⁴⁵, along with separate Statements in Support from each signatory. The Joint Petition set out a brief history of the proceeding, and described the agreement, including several tables to demonstrate the prospective projected revenue and revenue impact of the proposed rates, and comparisons of existing and proposed rates on PWD's residential and nonresidential customers. The Joint Petitioners noted that the proposed settlement agreement was not opposed by the Large Users Group, that PECO took no position, that individual participants Haver and Skiendzielewski opposed it and that the other participants had not expressed an opinion.

⁴⁰ <https://www.phila.gov/media/20210504170435/further-procedural-order-april-30-2021.pdf>

⁴¹ <https://www.phila.gov/media/20210505154833/Motion-to-Compel-the-Public-Advocate-to-Put-on-the.pdf>

⁴² <https://www.phila.gov/media/20210505154834/PA-Answer-to-LH-Motion-to-Compel.pdf>

⁴³ <https://www.phila.gov/media/20210505154834/Order-Haver-Motion-to-Compel.pdf>

⁴⁴ <https://www.phila.gov/media/20210430162106/Settlement-Term-Sheet.pdf>

⁴⁵ <https://www.phila.gov/media/20210505154832/Joint-Petition-for-Partial-Settlement.pdf>

Both [PWD](#)⁴⁶ and the [Public Advocate](#)⁴⁷ filed Main Briefs supporting the Joint Partial Settlement Agreement and addressing the issues that were not settled, as well as the objections of Mr. Haver and Mr. Skiendzielewski.

On May 10, 2021, Mr. Haver filed [Objections](#)⁴⁸ to Both the Process and Terms of the Proposed Settlement (Objections or Haver Objections) asserting that the hearing and settlement process used in this proceeding violate “well-established principles of due process,” that the Public Advocate acted improperly by not seeking public input before agreeing to the settlement terms, that the Proposed Settlement is not in the public interest or supported by the record and is not reasonable. These objections were considered and discussed in the [May 18, 2021 Hearing Officer Report](#).

Also on May 10, 2021, Mr. Haver filed a [Motion to Remove Fraudulent Exhibits](#)⁴⁹ (which Hearing Officer Chestnut treated as a Motion to Strike Exhibit), claiming that the March 26, 2021 [letter](#)⁵⁰ sent from City Finance Director Dubow to Deputy Water Commissioner LaBuda⁵¹ was “fraudulent” because it contained statements concerning the allocation of the federal stimulus funds expected to be received by the City before the budget had been acted on by the Philadelphia City Council. PWD responded with a [Memorandum in Opposition](#)⁵² on May 12, 2021. Hearing Officer Chestnut denied the Motion by [Order](#)⁵³ dated May 14, 2021, finding that there was nothing incorrect or misleading about the exhibit, much less fraudulent.

Also on May 10, 2021, participant Michael Skiendzielewski by [email](#)⁵⁴ requested “recusal of counsel to the Water Rate Board due to the relevant decision-making, conflicts”,

⁴⁶ <https://www.phila.gov/media/20210513093206/Brief-May-11-2021.pdf>

⁴⁷ <https://www.phila.gov/media/20200129125221/Public-Advocate-Main-Brief.pdf>

⁴⁸ <https://www.phila.gov/media/20210510161803/oppose-the-settlement.pdf>

⁴⁹ <https://www.phila.gov/media/20210510161805/withdraw-fraudulent-testimony.pdf>

⁵⁰ <https://www.phila.gov/media/20210405171512/Water-memo-3.30.21.pdf>

⁵¹ This letter was included in the record as Sch. ML-10, attached to the rebuttal testimony of Deputy Water Commissioner LaBuda, PWD Rebuttal St. 1.

⁵² <https://www.phila.gov/media/20210518083646/pwd-response-to-haver-motion-for-removal-may-12.pdf>

⁵³ <https://www.phila.gov/media/20210513174112/Order-Haver-motion-to-strike-may-14-final-Copy.pdf>

⁵⁴ <https://www.phila.gov/media/20210513093207/Michael-Motion.pdf>

claiming that “WRB has a basic and primary professional responsibility to ensure and safeguard the processes, reports and deliberations that occur and are produced from such deleterious effects such as conflicts of interest, unprofessional conduct, unethical decision making, etc. as evidenced on the record by counsel to the Water Rate Board.” He attached as support a letter, dated May 18, 2017, from this counsel. Hearing Officer Chestnut treated the email as a petition (or motion) and by [Order](#)⁵⁵ dated May 11, 2021, denied it.

Hearing Officer Chestnut on May 18, 2021, issued her [Hearing Officer Report](#) in which she discussed the Joint Petition for Partial Settlement, as well as objections thereto. Based on the record adduced in this proceeding, she recommended that the Rate Board allow PWD to implement the proposed settlement rates and the use of the reconciliation/adjustment process as proposed to ensure that customers receive the full benefit in the event federal funds are received by the Department or when the Department’s reserve funds exceed a threshold balance and addressed two unsettled issues relating to TAP arrearage forgiveness. She also described the non-rate elements contained in the Joint Petition, which the Public Advocate in its Statement in Support at 3 explained included PWD commitments relating to “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.”

Exceptions to the [May 18, 2021 Hearing Officer Report](#) were filed on May 25, 2021, by [PWD](#),⁵⁶ [Mr. Haver](#)⁵⁷ and [Mr. Skiendzielewski](#)⁵⁸. The Public Advocate by email dated May 25, 2021, stated that it would not be filing exceptions. Reply Exceptions were filed on May 28, 2021, by [PWD](#),⁵⁹ the [Public Advocate](#)⁶⁰ and [Mr. Skiendzielewski](#).⁶¹ These Exceptions and Reply Exceptions are considered and discussed below.

⁵⁵ <https://www.phila.gov/media/20210513093208/Order-Skiendzielewski-recusal-may-11-2021-final.pdf>

⁵⁶ <https://www.phila.gov/media/20210525162811/PWD-2021-RATES-PWD-EXCEPTIONS-FINAL1.pdf>

⁵⁷ <https://www.phila.gov/media/20210526131220/exceptions-to-hearing-examiner-report.pdf>

⁵⁸ <https://www.phila.gov/media/20210526131221/Skiendzielewski-Exceptions.pdf>

⁵⁹ <https://www.phila.gov/media/20210528144831/PWD-2021-RATES-PWD-REPLY-EXCEPTIONS-FINAL1.pdf>

⁶⁰ <https://www.phila.gov/media/20210602104612/PA-Reply-Exceptions-FINAL.pdf>

⁶¹ <https://www.phila.gov/media/20210601121132/PWDreplymay28.pdf>

III. RATE DETERMINATION STANDARDS

As correctly noted in the [May 18, 2021 Hearing Officer Report](#), the revenue impact of the proposed settlement rates and charges must be evaluated to ensure compliance with the rate standards contained in the Rate Ordinance that established the Rate Board, as well as any other applicable requirements or covenants. While the proposed settlement is presented as a “black box” settlement, in which the individual adjustments to the proposed rates and revenue are not specifically identified, the rates and the revenue they produce must be in compliance and supported by the record.

As explained above, the Rate Board was established to determine whether the rates and charges for water, sewer and storm water service proposed by the Water Department should be accepted, rejected or modified, after an open and transparent review process. The Rate Ordinance that established the Rate Board contains standards that the Board must consider in making its rate determinations, See, [Philadelphia Code § 13-101\(4\)](#),⁶² which provides that:

(4) Standards for Rates and Charges.

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

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

⁶² https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-203161#JD_Chapter13-100

may provide for sufficient revenue to stabilize them over a reasonable number of years.

(.1) In fixing rates and charges the Board shall recognize the importance of financial stability to customers and fully consider the Water Department's Financial Stability Plan. In addition, the Board shall determine the extent to which current revenues should fund capital expenditures and minimum levels of reserves to be maintained during the rate period. When determining such levels of current funding of capital expenditures and minimum levels of reserves, the Board shall consider all relevant information presented including, but not limited to, peer utility practices, best management practices and projected impacts on customer rates. ...

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

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

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

In addition, the Rate Ordinance provides for other types of special rates and charges, including those for service provided to charitable institutions, places of worship, public and private schools, public housing and the determination of various sewer charges. See, [Philadelphia Code §§13-101\(4\) – \(6\)](#).⁶³

Further, [§ 13-101\(2\)](#) of the Rate Ordinance provides that the Water Department:

... shall develop a comprehensive plan ("Financial Stability Plan") which shall forecast capital and operating costs and expenses and corresponding revenue requirements. It shall identify the strengths and challenges to the Water Department's overall financial status including the Water Fund's credit ratings, planned and actual debt service coverage, capital and operating reserves and utility service benchmarks. It shall compare the Water Department to similar agencies in

⁶³ The full text of the relevant ordinances and regulations are posted on the Rate Board's website, at the section of the "About" page entitled "[Regulations & Relevant Legal Authority](https://www.phila.gov/departments/water-sewer-storm-water-rate-board/about/)." (<https://www.phila.gov/departments/water-sewer-storm-water-rate-board/about/>)

peer cities in the United States. A Financial Stability Plan shall be submitted to Council every four (4) years and updated prior to proposing revisions in rates and charge.

As described above, PWD's rates must also be set at a level that produces sufficient revenue to ensure compliance with its rate covenants, which are described in the [direct testimony](#)⁶⁴ of PWD Deputy Water Commissioner for Finance LaBuda (PWD St. 2 at 23-24):

In the 1989 General Bond Ordinance, the City covenanted with the bondholders that it will impose, charge and collect rates and charges in each fiscal year sufficient to produce annual net revenues which are at least 1.20 times the debt service requirements, excluding the amounts required for subordinated bonds (as defined in the 1989 General Bond Ordinance). In addition, the City's covenants to its bondholders require that net revenues in each fiscal year must be equal to 1.00 times (A) annual debt service requirements for such fiscal year, including the amounts required for subordinated bonds, (B) annual amounts required to be deposited in the debt reserve account, (C) the annual principal or redemption price of interest on General Obligation Bonds payable, (D) the annual debt service requirements on interim debt, and (E) the annual amount of the deposit to the Capital Account (less amounts transferred from the Residual Fund to the Capital Account).

Further, pursuant to the 1989 General Bond Ordinance, the City will, at a minimum, impose, charge and collect in each fiscal year such water and wastewater rents, rates, fees and charges and shall yield Net Revenues (defined for purposes of this covenant particularly, calculated to exclude any amounts transferred from the Rate Stabilization Fund to the Revenue Fund in, or as of the end of, such fiscal year) which will be equal to at least 0.90 times Debt Service Requirements for such fiscal year (excluding principal and interest payments in respect of Subordinated Bonds and transfers from the Rate Stabilization Fund). In this testimony, the above covenants are referred to collectively as the "Rate Covenants."

In the 2018 general rate proceeding, the Rate Board set forth targets for several financial metrics to be considered by the Department in its future operations and by us in future rate decisions. These targets included a 1.3x senior debt service coverage ratio; a \$150 million combined reserve balance in the Department's Rate Stabilization Fund and Residual Fund; and

⁶⁴ <https://www.phila.gov/media/20210216165014/PWD-Statement-2-%E2%80%93-Direct-Testimony-And-Schedules-Of-Melissa-La.-Buda-Supplemented-As-Of-Formal-Filing.pdf>

20% cash financing for capital expenditures. See, [2018 Rate Determination](#)⁶⁵ at 18-33.⁶⁶ The reasons for setting such targets for the 2018 rate proceeding included the need to support the credit ratings for the Department's bonds; higher credit ratings make it easier and less expensive to borrow money, providing interest savings for all customers for many years to come. PWD indicates that it must borrow substantial amounts of money over the next five years to fund federally mandated improvements plus routine capital improvements to maintain a state-of-good-repair. Being able to borrow money at reasonable rates of interest is critical for both making the capital improvements and keeping the cost of service as reason as possible.

IV. JOINT PETITION FOR PARTIAL SETTLEMENT

A. Terms and Conditions of the Joint Petition for Partial Settlement

The [Joint Petition](#) represents a Partial Settlement of all the substantive issues raised in this proceeding, except for two contested issues addressed below. It contains a number of terms and conditions. Those relating to the proposed rates (including the reconciliation/adjustment procedure) and their impact on the customers can be found in Section II, Sections A-B at 3-7. In addition, the proposed agreement at Sections C and D (at 7-10) contains certain commitments, addressed to (1) convening stakeholders to discuss possible ways of allocating certain costs of service, including non-residential storm water overflow remediation projects, residential rate structure relating to storm water, and rate design, revenue allocation, cost of service; (2) customer service and policy issues (TAP recertification and outreach, language access, termination moratorium); and (3) COVID-19 protections (payment agreements, tenant issues), with PWD agreeing to provide quarterly reports to the Rate Board with regard to these issues.⁶⁷ Attached to the Joint Petition were Table C-1A (projected revenue and revenue requirements, base rates excluding TAP-R surcharge); Table C-4 (combined system: comparison of typical bill for

⁶⁵ <https://www.phila.gov/media/20180713144736/2018-RATE-DETERMINATION-TIMESTAMPED.pdf>

⁶⁶ The Rate Board noted that those financial targets “are not mandated requirements and should not be considered to be either strict ceilings or floors.” 2018 Rate Determination at 23.

⁶⁷ It should be noted that the Rate Board has no jurisdiction over non-rate items, and they are recognized here only for the purpose of discussing the proposed agreement. See, 2018 Rate Determination at 38, discussion of the conclusion of the City’s Law Department that “the Rate Board’s rate-setting authority does not include the right to require the Water Department to undertake any particular program, other than implementation of rates and charges.”

residential customers under existing and proposed rates); and Table C-5 (combined system: comparison of example bills for non-residential customers under existing and proposed rates).

The signatory participants (PWD and the Public Advocate) explained that this is a “black box” settlement, in which specific adjustments to projected expenses and revenues are not made. This agreement is designed to become effective for FY 2022 based on an increase in rates to become effective on September 1, 2021, and additional revenue of \$47.011 million for FY 2023 based on an increase in rates to become effective September 1, 2022, together with the full-year effect of the increase that became effective on September 1, 2021, for a total revenue increase of \$57.422 million over the two-year period of FY 2022 and FY 2023: A portion of the FY 2023 incremental revenue increase (\$34.110 million, referred to in the agreement as the FY 2023 Base Rate Incremental Increase) is subject to potential reduction if certain conditions occur.

As explained in the [Joint Petition](#) at 4-7, the signatories have proposed that this \$34.011 million FY 2023 Base Rate Incremental Increase is subject to two potential adjustments relating to (1) receipt of federal stimulus funding and (2) changes in FY 2021 financial performance, both to be addressed in a Special Rate Reconciliation Proceeding prior to the implementation of the FY 2023 rates on September 1, 2022. Reduced to its essentials, the proposed FY 2023 Base Rate Incremental Increase is subject to reduction on a dollar-for-dollar basis should the Department receive certain federal stimulus funding (as defined in the Joint Petition) above the threshold amount of \$2 million. In addition, a similar process will be employed to determine if the FY 2023 Rate Base Incremental Increase should be reduced if the level of reserves contained in the Rate Stabilization Fund as of the end of FY 2021 is above a threshold amount to be determined. In both cases, this reconciliation/adjustment cannot lower the FY 2023 Base Rate Incremental Increase below zero dollars.

PWD and the Public Advocate stated in the Joint Petition that they arrived at the proposed settlement terms “after review of: (i) the rate filing for 2021 general rate proceeding submitted by the Department, (ii) extensive discovery responses, (iii) the direct and rebuttal testimony and related exhibits proffered by the participants; and following (iv) settlement negotiations. The terms and conditions of the Partial Settlement constitute a carefully negotiated

package representing reasonable compromises as to the majority of issues presented in the rate case.” [Joint Petition, ¶13\(e\)](#).

The Joint Petition in Section IV contains the standard terms and conditions stating that the agreement is made without prejudice to any position taken by either of the Joint Petitioners in this or future proceedings, that any proposal not specifically addressed in the Joint Petition continues as proposed by the Department, that it is conditioned upon the Rate Board’s approval of the agreement without modification, that if the Rate Board fails to grant approval of the Settlement Petition or modifies any material term or condition of the Settlement, any Joint Petitioner may elect to withdraw, in whole or in part, from the Settlement upon written notice to the Rate Board and the other participants within three business days of the entry of the Rate Board’s final order, and in that case, the settlement will be of no force and effect and each participant reserves its right to fully litigate⁶⁸ the case, and that the settling participants will support the settlement and make reasonable good faith efforts to obtain approval of the settlement by the Rate Board, and that Joint Petitioners reserve the right to file exceptions in the event of (a) any modification of the terms of the proposed settlement; (b) any additional matter proposed by the Hearing Officer; or (c) to correct errors or misstatements in the Hearing Officer Report.

Finally, both [PWD](#) and the [Public Advocate](#) submitted individual Statements in Support of the Joint Petition. They each explained that the proposed Partial Settlement is in the best interest of the Department and its customers, that the proposed Partial Settlement is in the public interest, and that the proposed Partial Settlement should be approved without modification.

B. May 18, 2021 Hearing Officer Report

In her [May 18, 2021 Hearing Officer Report](#), Hearing Officer Chestnut discussed the history of the proceeding as well as the rate standards that must be used to evaluate any requested change in rates and charges. Based on the record adduced in this proceeding, (including the extensive input provided by PWD’s customers), she recommended that the Rate Board permit the rates and charges to go into effect as set forth in the Joint Petition for Partial Settlement, and

⁶⁸ That is the settling participants’ term but rate-setting by the Rate Board is not done by “litigation.”

employ the reconciliation/adjustment process as proposed to ensure that customers receive the benefit in the event federal funds are received by the Department or when the Department's reserve funds exceed a threshold balance, including the amendment of the Rate Board's regulations if necessary. With respect to the outstanding unsettled issues, she recommended that the Rate Board accept the Public Advocate's proposal that PWD be required to report monthly (i) on the performance of its arrearage forgiveness policies and any obstacles prohibiting PWD from operating an arrearage forgiveness program that allows TAP customers to earn and realize arrearage forgiveness immediately with each monthly TAP payment, (ii) on its efforts to reduce TAP denials and TAP churn. Further, she recommended that the Rate Board deny PWD's request to modify its TAP-R rider so as to recover a portion of the costs associated with TAP arrearage forgiveness through the annual reconciliation process as proposed and that the Rate Board approve the uncontested tariff changes, and changes to the miscellaneous rates and charges.

Hearing Officer Chestnut described the non-rate elements contained in the Joint Petition, which the Public Advocate in its Statement in Support at 3 explained included PWD commitments relating to "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." She addressed the Objections that were made by Mr. Haver and Mr. Skiendzielewski to the proposed partial settlement agreement but determined that these objections did not provide reason to reject the Joint Petition, which she found "contains proposed rates and charges that were based on a substantial record and are in compliance with the applicable rate standards and covenants."

C. Exceptions and Reply Exceptions

1. Mr. Haver's Exceptions

Mr. Haver filed extensive [Exceptions](#) to the [May 18, 2021 Hearing Officer Report](#). For clarity and ease of reference, these have been grouped for discussion as appropriate. After careful consideration, we find that Mr. Haver has presented no reason why, on the record that has been produced, the Rate Board should not accept the proposed partial settlement. Both the process used to address PWD's filing and to develop the Joint Petition were open and transparent, and fully

in compliance with our regulatory requirements. Further, the terms of the proposed agreement, including the rates themselves, are reasonable and appropriate and are in compliance with the applicable rate standards and covenants.

First, Mr. Haver claims that the lack of notice and opportunity for the public to comment on the proposed partial settlement renders the process “faulty.” Second, a number of Mr. Haver’s specific allegations concern the role and performance of the Public Advocate,⁶⁹ which he claims does not represent the public, accepted as a “quid pro quo” a proposed settlement “where in exchange for agreeing to give PWD every penny it sought in the settlement agreement the entity is given continual work,” and failed to seek public input on the proposed settlement. Third, Mr. Haver criticizes the proposed special rate reconciliation/reduction proceeding, including the definition of federal stimulus funding and the provision requiring PWD to use its best efforts to secure stimulus funding. Fourth, he criticized the Hearing Officer and her conduct of the proceeding, and recommendations made in the Hearing Officer Report. Finally, Mr. Haver claims various settlement terms are inadequate. Each of these Exceptions will be examined and addressed below.

a) Adequacy of Notice and Public Participation

Mr. Haver’s first point, concerning the alleged lack of notice and opportunity for public input on the proposed settlement, is expressed in the introduction (Haver Exception, at unnumbered page 4): “The Hearing Examiner, counsel for PWD and the entity paid by the PWD to represent the public, refused to inform the public of the terms of the settlement in similar ways which they used to notified the public of the hearings on the proposed rate increase; and refused to support hearings so that members of the public could testify in support or opposition to the settlement.”

We must reject this contention, which is contradicted by the facts. The public indeed was informed of the terms of the proposed partial settlement and had substantial

⁶⁹ We note that Mr. Haver refuses to use the term “Public Advocate” (or CLS) and refers to the Public Advocate as “the entity” throughout his Exceptions.

opportunity to comment on the proposed partial settlement as well as on the original rate filing. The term sheet of the agreement was widely disseminated and posted on numerous websites even before the Joint Petition was finalized. As the Public Advocate explained in its Reply Exceptions at 19: “Mr. Haver fails to recognize that the Public Advocate utilized multiple social media platforms (Facebook, Twitter and CLS Rate websites) to disseminate the settlement term sheet immediately after it was finalized. Likewise, PWD distributed the term sheet directly via email to its customers. Contrary to Mr. Haver’s contention, the details of the proposed settlement were not only accessible on the Rate Board’s Rate website but were actively distributed via multiple platforms.” Similarly, PWD explained in its Reply Exceptions at 8-9 that it had posted the Partial Settlement and a plain-English explanation of its terms and conditions at its website and requested public comment via its email and social media ([Twitter](#),⁷⁰ LinkedIn, Facebook, Instagram) contacts: “The Department communicated the negotiation of the Partial Settlement in a variety of ways using its website, social media, email, SMS text message alerts⁷¹ and print media (Inquirer article on May 3, 2021).” The fact remains that over 30 people testified at the four public hearings that were held and over 120 people submitted comments directly to the Rate Board’s website.⁷² Equally obvious is the fact that both PWD and the Public Advocate took to heart the comments made by customers, and the difficulties they’ve faced especially in the last year in crafting the proposed settlement. Clearly, the process to ensure an open and transparent proceeding worked here.

b) Adequacy of the Public Advocate

Mr. Haver’s second set of Exceptions goes to his dissatisfaction with the Public Advocate, which he claims does not represent the public because (1) it is not independently

⁷⁰ <https://twitter.com/PhillyH2O/status/1389970288209797120>

⁷¹ Alert delivered to 17,600 email/SMS subscribers: subscribers included Alerts and Notification as well as Customer Assistance and PWD Partners, which includes 150+ local community organizations. <https://phillyh2o.info/2021-rates-proposal>

⁷² It is correct that the four public input hearings occurred prior to the filing of the Joint Petition, so that the participants could incorporate the comments, concerns and suggestions that arise from such hearings. Indeed, it is clear that both PWD and the Public Advocate took into account the compelling testimony presented in arriving at the proposed partial settlement, which attempted to balance PWD’s need for rate relief with mitigating the impact on the Department’s customers.

appointed; (2) it accepted as a “quid pro quo” a proposed settlement “where in exchange for agreeing to give PWD every penny it sought in the settlement agreement the entity is given continual work,” and (3) it failed to seek public input on the proposed settlement. Or, as he states in his Conclusion #2, “The Rate Board should find the actions and choices the entity it hired made that the entity serve in the role the PUC’s bifurcated trial staff serves, with no one other than the rate making body hiring and confirming it not a public advocate that informs and includes the Public.” We find no support for any of these contentions.

First, he has challenged the role of the Public Advocate by claiming that because those services are performed pursuant to contract with the Rate Board it does not represent the public: “The entity, the Hearing Examiner mistakenly calls “the Public Advocate” is not hired by an independent person or body, not confirmed by an elected body and can only be removed by the rate making body. The entity to which the Hearing Examiner refers to as the “Public Advocate, is in reality acting as the PUC’s bifurcated trial staff acts. The entity, like the PUC’s trial staff is hired by the rate making body, serving the rate making body, not appointed by an independent person and/or elected official and not confirmed by any elected representative of the people of Philadelphia.” Haver Exceptions, at unnumbered page 2. Further, “As described above, the hiring of counsel by the adjudicatory body is model the PA PUC uses when it hires its trial staff. The PUC’s trial staff does not represent the public as the Hearing Examiner is well aware based on the number of years she served as Administrative Law Judge for the Public Utility Commission.” Haver Exceptions, at 4(B).

Preliminarily, it needs to be recognized that there is no basis to compare the Public Advocate’s role with that of the Public Utility Commission’s prosecutorial staff (whether as Trial Staff in years past, or the current iteration as the [Bureau of Investigation and Enforcement](https://www.puc.pa.gov/about-the-puc/offices-and-staff-directory/),⁷³) as bifurcation is simply not relevant here. The Commission’s jurisdiction encompasses potential violations of the Public Utility Code by jurisdictional utilities; in contrast, the Rate Board has no

⁷³ <https://www.puc.pa.gov/about-the-puc/offices-and-staff-directory/>

jurisdiction to examine service inadequacies and therefore exercises no prosecutorial function. Therefore, ad hoc or structural bifurcation is irrelevant.

It is correct that the Public Advocate – whose services in this proceeding are provided by Community Legal Services (CLS) under contract with the City of Philadelphia following a competitive, publicly noticed Request For Proposals⁷⁴ – is not an independently appointed, legislatively approved permanent position like the Consumer Advocate of Pennsylvania. As explained in the Public Advocate’s Reply Exceptions at 14-15, “CLS serves pursuant to a contract with the Rate Board describing the services the Public Advocate provides (including outreach and information to encourage participation in public input hearings) in order to advance the collective interests of small user customers of PWD as a group. CLS’s contract to provide services as Public Advocate is a General Consulting Services contract, which does not entail the provision of legal services in a representative capacity to any individual or group . . .” But it is the Rate Board, not the Water Department, that oversees the letting of the competitively bid contract for these services, which are designed to ensure that the small user class is informed and able to have its interests represented in proceedings before us.

In that connection, we will address Mr. Haver’s contentions concerning the alleged quid pro quo. His first exception, [identified as #2](#), states that, “The Settlement is or has the appearance of a “Quid Pro Quo” Deal Between the entity which the PWD pays to be the Public Advocate and the Philadelphia Water Department, where the PWD gets an unwarranted rate increase, and the entity receives continual employment.” As support, he cited the provision in the Joint Petition that, “By approving the Settlement, the Rate Board is agreeing (in advance) to the use of the Special Rate Reconciliation Proceeding. Both the Department and the Public Advocate will be deemed to be Participants in the Special Rate Reconciliation Proceeding without notification to the Rate Board.”

It is the view of the Board that this provision in the Settlement ensures that the interests of PWD customers will be recognized from the commencement of any reconciliation

⁷⁴ See <https://philawx.phila.gov/econtract/>, New Contract Opportunities, opportunity 21191003133729.

proceeding and that a Public Advocate will be able to provide that service. Under the Board's [Regulations](#), the hiring of a Public Advocate⁷⁵ is required in all General Rate Proceedings, but in TAP-R and Special Rate Proceedings, such a Board decision is discretionary. Compare Section IIB2 ("Public Advocate shall be appointed by the Board") with Sections IIC2 ("Board shall have flexibility . . . to retain or consider appropriate alternatives to the appointment of a . . . Public Advocate") and IID2 ("Board shall have further flexibility in Special Rate Proceedings within the general parameters of Sections II.C.2-3"). As stated by the Public Advocate in its [Reply Exceptions](#) (page 17): "[T]he Public Advocate notes that its involvement in the Special Rate Reconciliation Proceeding is in the public interest to ensure that PWD's proposals, and any action the Board takes on them, are subject to rigorous, on-the-record review. The Public Advocate is uniquely situated to conduct that review, since the genesis of the proposal for a FY 2023 rate reconciliation is Mr. Morgan's testimony, which is based upon his experience in multi-year rate proceedings in Rhode Island."

Mr. Haver is further mistaken when he states "If, as most would expect, the entity demanded it be retained and if as most would expect the entity expects to be compensated for its time, than the proposed agreement does not just have the appearance of a "quid pro quo" agreement but is, in reality a quid pro quo agreement where in exchange for future work the entity paid by the Water Department to represent the Public has agreed to use the Public's money to guarantee the PWD a large rate increase."

Even apart from Mr. Haver's mistaken belief that the Water Department controls payment of the Public Advocate,⁷⁶ any reasonable reading of the terms of the proposed partial settlement makes it clear that in fact the Public Advocate zealously – and successfully – advanced the interests of the small user customers in achieving a proposed partial settlement agreement that significantly reduces the amount of the overall rate increase with a modest increase in FY 2022.

⁷⁵ The Rate Board's current contract with Community Legal Services expires December 1, 2021. The Board has the right but not the obligation to renew the contract for another year at a time, as it did last December.

⁷⁶ The Rate Board is an "independent rate-making body" under Section 13-101(3) of the Philadelphia Code and Section 5-801 of the Home Rule Charter. While the Rate Board's budget comes from the Water Fund, supported by customer rates, the Rate Board pays the Public Advocate out of City Council's appropriations directly to the Rate Board, over which the Water Department has no control. The Water Department also has no control over the Board's contracts.

It also establishes an innovative mechanism that could potentially result in a decrease in the proposed increase in FY 2023 in the event certain federal funds are received by the Department or if the Department's reserve funds exceed a threshold balance and it includes substantial commitments to protect customers during the pandemic (and beyond).

Mr. Haver's third criticism of the Public Advocate in this proceeding is his allegation (at [4\(E\)](#)) that it failed to seek public input on the proposed partial settlement, comparing it to the Pennsylvania Office of Consumer Advocate: "The entity paid for by the Water Department to represent the Public failed to take any of the steps outlined by the State Consumer Advocate before agreeing to the settlement that, if accepted, guarantees it more employment. . . . The Hearing Examiner knows full well that the entity hired did not inform consumers about the proposed settlement, did not hold a single "round table discussion" with consumers explaining the terms of the proposed settlement so it could seek input and guidance. Instead the entity paid by PWD was allowed to ignore all requests to inform the public of the proposed settlement before it signed the agreement and after it signed the agreement with the apparent Quid Pro Quo terms."⁷⁷

This allegation is not only without support, but also contradicted by the facts. First, as noted above, the Public Advocate (as well as the Rate Board and PWD) took extensive steps to publicize the settlement term sheet even before the proposed settlement agreement was finalized and filed. Second, there is no support for Mr. Haver's suppositions about what the Pennsylvania Consumer Advocate would have done in this proceeding.

As the Public Advocate explained in its [Reply Exceptions](#) at 19, "Mr. Haver submits, without any support, that the OCA would have conducted outreach to civic and community groups, contacted individuals who testified at public input hearings, and/or conducted a "round table" discussion to obtain input prior to entering into a proposed settlement."⁷⁸ Mr. Haver provides no evidence or support for the suggestion that OCA engages in such efforts and, in fact, OCA does not do so. In Philadelphia Gas Works' most recent base rate increase proceeding, public

⁷⁷ Haver Exceptions at unnumbered p. 9.

⁷⁸ Haver Exceptions at unnumbered p. 9. [This note and following two notes in Public Advocate's original.]

hearings were held on June 2, 2020 and June 3, 2020.⁷⁹ OCA and others successfully negotiated a partial settlement, filing a Joint Petition on August 26, 2020.⁸⁰ The OCA did not elicit input from members of the public, civic or community groups in its negotiations, nor to the Public Advocate's knowledge, did OCA or any participant endeavor to disseminate information publicly about that Joint Petition prior to its approval by the PUC."

Mr. Haver's criticisms of how Community Legal Services has fulfilled its contractual responsibilities as Public Advocate are either misguided or unsupported by the record. In any event, they provide no reason for us to find that the process used to develop the Joint Petition for Partial Settlement was flawed or inadequate.

c) Adequacy of Special Rate Reconciliation Proceeding

Mr. Haver criticizes the provisions regarding the proposed special rate reconciliation/reduction proceeding, including the definition of federal stimulus funding, and the requirement that PWD use its "best efforts" to obtain additional funding. As stated by Mr. Haver: "The proposed settlement is not in the Public Interest. It does not require the Philadelphia Water Department to seek Federal, State or City Funds, does not require it to compete with other utilities for funds set aside to assist families who find themselves behind in their bills. And the Hearing Examiner's report fails to consider the myriad of revenue sources that the settlement excludes when saying a "true up" provision will protect the public from PWD double dipping." Haver Exceptions at unnumbered page 5.

As set forth in the Joint Petition, the signatory parties' Statements in Support and the Hearing Officer Report, one of the central elements of the proposed partial settlement is the proposal that a reconciliation/adjustment process be provided to ensure that customers receive the benefit in the event certain federal funds are received by the Department or if the Department's reserve funds exceed a threshold balance. The [Joint Petition](#) at ¶ 7 contains the definition of

⁷⁹ See, e.g., <https://www.pgworks.com/customer-care/base-rate>.

⁸⁰ Pa. PUC v. PGW, Docket No. R-2020-3017206, Joint Petition for Partial Settlement, August 26, 2020, available at <https://www.puc.pa.gov/pdocs/1674964.pdf>.

“Stimulus Funding” as: “Except as excluded by the footnote below, amounts from (a) the U.S. Department of Health and Human Services (HHS) or Philadelphia Housing Development Corporation (PHDC) under the Consolidated Appropriations Act of 2021, enacted on December 27, 2020 (CARES Act) and (b) the American Rescue Plan Act, enacted on March 11, 2021 (ARPA) (collectively, the federal legislation), that are allocated by City Council to PWD in the FY 2022 budget and/or received directly by PWD, during the Receipt Period, in either case, that can be used to reduce operating expenses that would otherwise be paid by ratepayers.”

The cited footnote provides:

For this purpose, “Stimulus Funding” excludes: (i) any amounts received directly by PWD from the City, HHS, PHDC or other state or local agencies administering federal funds for infrastructure or capital projects; (ii) any amounts allocated and/or received directly by PWD customers under the federal legislation, or other state or federal action, to alleviate potential or actual financial hardship of PWD’s customers; (iii) any amounts allocated and/or received directly by PWD from Utility Emergency Services Fund (“UESF”) in connection with UESF’s locally funded programs including the Utility Grant Program, Water Conservation Housing Stabilization Program, and the Customer Assistance Program for Water; and (iv) any amounts adopted by City Council through the budget process and/or received directly by PWD, beyond the Receipt Period.

Mr. Haver’s explanation for his exception to this provision is as follows: “The Hearing Examiner refused to consider the drastic limitations outlined in a small print footnote in the Settlement agreement, of what revenues will be considered in the “True Up” process and the majority that will be excluded. By not calling attention to the exclusions, the Hearing Examiner fails the members of the Public and the Members of the Rate Board. Such exclusions are real, overwhelming, meaningful and show, beyond the preponderance of evidence that the “True Up” is unenforceable . . . exclusions in the “true up” agreement provide a way for the PWD to collect more funds, but not have them counted as additional revenues for the “True Up” process thus depriving PWD consumers the benefits of the Federal, State and Local stimuli packages.” Haver Exceptions, at 6 and 6(C).

This assertion is without merit. First, the excluded categories are designed to remove funding that may be received beyond the rate period at issue here (such as infrastructure or capital funding) or which are received directly by PWD’s customers. As further explained in

the Public Advocate’s [Main Brief](#) at 26-27, “Accordingly, to the extent stimulus funding could benefit ratepayers, the funds would have to be received directly by PWD for operating purposes. There are three realistic ways in which this could occur: via the Emergency Rental Assistance Program operated by Philadelphia Housing Development Corporation; via CARES Act reimbursements; and via the City’s budget process. All three are specifically addressed in the proposed settlement.”

Mr. Haver’s contention that the proposed settlement should be rejected because it “does not require or even expect PWD to seek and received stimulus dollars. Every penny PWD needs is collected by the rate increase. The only provision in the proposed agreement is that PWD will “make good faith efforts” to seek those funds.” Haver Exceptions, at 3. Mr. Haver says this is inadequate because of “a culture” at “the PWD which first seeks fund from rate payers and then seeks funds from elsewhere. Requiring it to make a good faith effort allows that culture of consumers money first and every other source later to continue as the settlement assumes nothing will be received.” Haver Exceptions, at 3(B).

First, this is an incorrect description of the [Joint Petition](#), which requires that “PWD will utilize its best efforts to secure Stimulus Funding.” A requirement to use “best efforts” is a high commercial standard of performance. Given the correspondence already made part of the record,⁸¹ it appears that PWD is indeed making its best efforts to obtain available stimulus funding.

Mr. Haver further asserts that the provision regarding the special rate reconciliation/reduction is “unenforceable” because the City Council does not have line-item authority over the Water Department’s budget, and as a result “the Water Department, through the City Administration could unilaterally allocate money in whichever line items it desires,” and could therefore allow PWD “to collect more funds, but not have them counted as additional revenues for the “True Up” process thus depriving PWD consumers the benefits of the Federal, State and Local stimuli packages.” [Haver Exceptions, at 6\(B\) and \(C\)](#). This concern is unfounded, as explained by the Public Advocate in its [Reply Exceptions](#) at 21, since it does not matter how

⁸¹ See, the March 30, 2021 [letter](#) sent by Water Commissioner Hayman to City Council President Clarke.

PWD reflects any such funds in its budget: “To the contrary, the provisions of the Joint Petition do not turn on how stimulus funds may be reflected in PWD’s operating budget, but require adjustments based upon whether stimulus funds are received or, in the case of a City Council budget appropriation, allocated to PWD in the FY 2022 budget. If stimulus funds are allocated or received between July 1, 2021, and December 31, 2021, they will be included in the “true up” to the extent they exceed the applicable threshold.” See, [Joint Petition](#) at ¶ 11.A.2(a)(i).

d) Adequacy of Hearing Officer

Mr. Haver makes numerous criticisms of the Hearing Officer, ranging from her alleged failure to allow public comment on the [Joint Petition for Partial Settlement](#) (“The Hearing Examiner chose not to allow the Public to be informed about the proposed settlement and therefore gave the Public no opportunity to make their voices heard, despite her on the record statements that hearing from the Public is critical”, Haver Exception at 4(J)) that she “at times made decisions based on things not on the record and/or prejudged the case,” (Haver Exception at 4(L)(5)) and that she “Relies Upon “Straw Man” arguments and ad homonym attacks rather than facts and logic in her attempt to discredit opposition to the settlement by parties” (Haver Exception at 4(L)(7)).

We reject these allegations; based on the record before us, it is clear that Hearing Officer Chestnut conducted the proceeding fairly and impartially and produced a Hearing Officer Report that is properly based on the record. We have already addressed Mr. Haver’s contention that there was insufficient public notice and opportunity to comment on the proposed settlement. Further, there is no evidence whatsoever that Hearing Officer Chestnut relied on any item or statement that was not made part of the record. Her statement at the public input hearings concerning the balancing of interests, cited by Mr. Haver, was not only appropriate but hopefully helpful in informing the public.⁸²

⁸² He specifically took issue with her statement in the [Hearing Officer Report](#) at 5 “At each public and technical hearing, I reminded the participants and customers that in my opinion, developed after many years of experience, that this does not have to be adversarial process, that both the Department and its customers want the same thing: rates that are sufficient to allow PWD the necessary resources to provide safe and adequate service but that are also affordable for customers so they can pay for this essential service without it being a hardship.”

Mr. Haver's allegations of bias are similarly without foundation. He states (at unnumbered page 5), "The Hearing Examiner ignores the, on record , fact that the PWD admitted its projections listed in the five year plan were faulty and could not be counted upon. Worse then ignoring the admitted failure, the Hearing Examiner inexplicably contravenes PWD's admitted statement of failure and claims, in direct opposition to an undisputed, on the record fact, that no such failure exists so there is no reason to question PWD's ability."⁸³ This statement of Mr. Haver's misapprehends the record, where PWD witnesses made it clear that the projections contained in the Five-Year Plan were in fact projections which are not directly used for ratemaking purposes. No witness, despite repeated questioning from Mr. Haver, agreed that the projections were "faulty"; they repeatedly noted that variations between projections and actual performance are to be expected, and they repeatedly noted that the Five-Year Plan projections are not used for rate-making purposes without adjustment. See, e.g. Tr. 71-72, 99-101, 135-36, 138 ([April 30, 2021 transcript](#)).

Finally, we must reject Mr. Haver's unsupported allegation that Hearing Officer Chestnut "Relies Upon "Straw Man" arguments and ad homonym attacks." Her statement reminding Mr. Haver that he was participating in an individual capacity is legally and factually correct; despite that, she did address his concerns on the part of "the public" concerning adequacy of the notice and opportunity for public input in this proceeding. She also demonstrated impartiality and lack of bias by denying PWD's Motion in Limine addressed to Mr. Haver's testimony and holding in abeyance – not denying – his Motion for Continuance. [Order Denying PWD Motion in Limine: Haver, Ruling, March 21, 2021](#). Her other order regarding Mr. Haver, [Order Denying Motion to Strike Exhibit](#), was well-based in law.

⁸³ Elsewhere in his Exceptions at 8(A): "The record is uncontroverted both by exhibits and through cross examination, the PWD admits and agrees that the projections in its 5 year plan have been wrong. For the Hearing Examiner to say differently goes beyond a misinterpretation. It raises questions as to how any independent hearing examiner, after reviewing the documents prepared the Water Department which show the incorrect projections and reviewing Haver's cross examination of PWD's witlessness, who stated on the record that the projections were faulty."

e) Adequacy of Settlement Terms

The final category of Mr. Haver's Exceptions are addressed to various specific settlement terms and items.⁸⁴ He asserts that the proposed partial settlement should be rejected because it does not do enough to ensure additional TAP enrollment (Conclusion #17) , or include his suggested "improvements," which he lists in Conclusion #19 as "operational improvements; fails to require procurement improvements, fails to require the marketing of services to businesses in an attempt to recruit businesses to Philadelphia to increase the number of living wage jobs; fails to require PWD to help local businesses bid on and win contracts; fails to prohibit PWD from outsourcing jobs out of state and out of the country stopping Philadelphia rate payers dollars from re circulating in our City; fails to create opportunities to utilize PWD's infrastructure for renewable energy projects; fails to create a pipeline from local schools and universities to employment at PWD; And fails to encourage technological advances that would lower operational costs."

As a general matter, our review is addressed to the terms of the [Joint Petition for Partial Settlement](#) before us. Mr. Haver was free to present his proposals when negotiating with PWD and the Public Advocate, as they were free to accept or reject them. We note that virtually all of these suggestions are outside the scope of the Rate Board's jurisdiction; we cannot order PWD to take any of these actions. Even if we could order PWD to do so, as noted in the Hearing Officer Report at 30, there is no record evidence as to how to implement these broad suggestions, or the costs involved. Certainly, the fact that these suggestions were not included provides no reason to reject the proposed partial settlement.

2. Mr. Skiendzielewski's Exceptions and Reply Exceptions

The [Rate Ordinance](#) requires us to conduct "open and transparent" proceedings in our rate proceedings, and we welcome the opportunity for PWD customers to share their concerns and suggestions with us about the proposed rates, and the impact that those rates may have on them. Of course, these issues need to fall within the scope of the particular proceeding before us,

⁸⁴ We will address Mr. Haver's position that no rate relief should be provided in the Revenue Requirements and Proposed Rates section of this determination.

otherwise the result is to waste valuable resources having to address irrelevant or immaterial matters. While we do not doubt Mr. Skiendzielewski's sincerity, the fact remains that he has raised his concerns about PWD's administration of the HELP loan program previously in our proceedings, and it should have been clear that rate proceedings are not a proper venue to address these concerns.

Mr. Skiendzielewski states in his [Exceptions](#) his understanding of the scope of this proceeding:

“Refusal to recognize the scope of the proceeding before the Rate Board”.

No, I do recognize the scope of the proceeding now, I did last time and am looking forward to a third participation when the hearings begin anew next year. The WRB is charged with reviewing facts and information that impact water rates. Just because the Hearing Officer, the WRB, guided by city attorneys and management, decide that such an issue does not merit such a designation as “impacting water rates”, does not make it so. When, according to state law, the city has no liability for long lateral expenses and costs, and the records shared now in two WRB proceedings clearly demonstrate in at least one instance, the PWD paid off 55% or \$5500 of a customer's HELP loan expenses, such conduct does in fact “impact water rates”.

This statement shows that Mr. Skiendzielewski still fails to acknowledge the limits of our jurisdiction. We do not have subject-matter jurisdiction over the Department, in the manner that the Public Utility Commission has over the rates and service of jurisdictional utilities. It is not correct that the Rate Board “review[s] facts and information that impact water rates” without limitation. Our jurisdiction is limited to the authority to “fix and regulate rates” before us in proceedings to set rates prospectively. See, Philadelphia Code § 13-101(3). We welcome Mr. Skiendzielewski's participation in future rate proceedings; we reiterate, however, that we will not permit him to bring up issues that he has repeatedly been told are beyond our jurisdiction.

We will address his particular Exceptions:

a) Motion in Limine/Discovery Objections

Mr. Skiendzielewski's first [Exception](#) is addressed to Hearing Officer Chestnut's [April 16, 2021 Order](#) which granted PWD's Motion in Limine and sustained Objections to Discovery. At the outset, it is important to note that Mr. Skiendzielewski was not prohibited from filing testimony or conducting discovery on any relevant issue in this proceeding. Such written testimony was due on or before March 22, 2021; as a participant, Mr. Skiendzielewski was or should have been aware of the schedule, which was contained in the [Feb. 24, 2021 Prehearing Conference Order](#) provided directly to all participants as well as posted on the Rate Board Rate website. In fact, he appeared at the March 18, 2021 evening public hearing and made a statement addressed solely to his contentions about ethics and corruption in the administration of the HELP program, and wanted to know the name of the Water Revenue Board's integrity officer (which was later provided to him). See, March 18, 2021 transcript (evening), [Tr. 29-34](#).⁸⁵

Hearing Officer Chestnut's ruling is clearly correct, and we will adopt it. First, there can be no dispute that the Rate Board does not have the "authority to investigate, administer or enforce public integrity laws or ethical codes. Therefore, discovery or testimony intended to address allegations of misconduct in connection with administration of the HELP loan program will be excluded from the scope of this rate proceeding." Indeed, we note that Mr. Skiendzielewski made similar discovery requests in PWD's 2018 General Rate Proceeding, which were stricken by the Hearing Officer, and which were addressed by us in our [2018 Rate Determination](#)⁸⁶ at 9, where we stated, "they were not relevant to the Board's determination of the revenue requirement of the Department in this proceeding."

In his [Reply to Exceptions](#), Mr. Skiendzielewski stated that he did not "request" that the Rate Board "investigate, administer or enforce public integrity laws or ethical codes." This

⁸⁵ <https://www.phila.gov/media/20210407164324/Rate-Board-Public-Hearing-Philadelphia-Water-Sewer-and-Storm-Water-Vol.-6pm.pdf>

⁸⁶ <https://www.phila.gov/media/20200123162020/DeterminationDate-Stamped.060716.pdf>

statement is not supported by the record; it is clear from his own words that he is pursuing this issue because of his concerns about ethics in the discounting of HELP loans. In fact, this was his statement at the public hearing: “My issues is -- I'm speaking -- a cover of many, many people because it has to do with ethics and integrity.” Tr. 29.

In addition, as noted above, the Rate Board does not have jurisdiction to examine how PWD administers its HELP loan program, regardless of any allegations of improper discounting. The sole issues in this proceeding are the rates and charges proposed for FY 2022 and 2023 as contained in the Advance and Final Notices, and in the Proposed Partial Settlement Agreement. The Rate Board expressly recognized the limits of our jurisdiction to examine the operation of the Department’s programs in our [2018 Rate Determination](#) at 9: “As set forth more fully below, the Board recognizes its limitations with respect to service issues as opposed to rate issues.” The discovery propounded by Mr. Skiendzielewski – seeking 12 years of data relating to administration of the loan program - is not relevant to this proceeding, which is to set prospective rates for the 2022 and 2023 fiscal years.

Therefore, this Exception is denied.

b) Recusal of Counsel

The second [exception](#) is addressed to Hearing Officer Chestnut’s May 11, 2021 [Order](#) which denied Mr. Skiendzielewski’s email [motion](#) for “recusal of counsel to the WRB due to multiple conflicts of interests, unprofessional and unethical conduct and decision-making . . .” This ruling was correct. As stated by the Hearing Officer with reference to a letter from Counsel that had been attached to the Motion, “Not only did Mr. Skiendzielewski fail to present any credible evidence to support his request, but the letter also itself makes clear the probity, professionalism and integrity of the involved individual.” May 11, 2021 Order at 1. We agree that no credible evidence was presented to support the motion for recusal. Therefore, this Exception is denied.

c) Settlement Negotiations

The final [exception](#) has to do with settlement negotiations between Mr. Skiendzielewski and PWD. He asserts, “[T]he two worthless offers and proposals submitted by PWD in settlement negotiations were in fact ACCEPTED, but they were valueless and empty”, and requests that we “Direct the PWD, its management and counsel to return once again to settlement negotiations and discussions with this WRB participant in good-faith and open/honest participation and collaboration in order to have a reasonable, equitable and fair opportunity to resolve the issues in these matters.”

This request cannot be granted. There is no obligation for any party to negotiate with another, and the Rate Board has no authority to order such negotiation. If any offer is made, whether in good faith or not, the other party is free to reject it. We cannot direct PWD to adopt any position in any settlement negotiation. Settlement negotiations and discussions by their nature are confidential; parties must be free to advance positions knowing they will not be used against them in later proceedings.

In addition, this exception is not related to the subject matter of this proceeding, the prospective rates and charges for FYs 2022 and 2023. It will be denied.

D. Joint Petition for Partial Settlement: Discussion and Disposition

1. Revenue Requirement and Proposed Rates⁸⁷

With respect to the revenue requirement, this partial settlement agreement is a “black box” agreement between the signatories. This means that the Joint Petitioners were not able to agree on the specific elements of the revenue requirement calculation. While the Rate Board has not addressed this in prior rate proceedings, the Pennsylvania Public Utility Commission has recognized that “black box” settlements can serve an important purpose in reaching consensus in rate cases and encourages their use. As the Commission stated recently in *Pa. Pub. Util.*

⁸⁷ This discussion is taken from, and supplements the discussion contained in the May 18, 2021 Hearing Officer Report, Section V(B)(3).

Commission v. Philadelphia Gas Works, Docket No. R-2020-3017206, Commission Opinion and Order entered November 19, 2020, at 14: “We have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company’s revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company’s cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases.” In addition, such a settlement approach has no precedential value but serves to preserve each participant’s positions in future cases.

As explained in the [Joint Petition for Partial Settlement](#), the proposed settlement rates are designed to produce incremental revenue of \$10.411 million for FY 2022 (based on rates to become effective on September 1, 2021), and additional revenue of \$47.011 million for FY 2023 (based in rates to become effective on September 1, 2022) for a total revenue increase of \$57.422 million over the two-year period of FY 2022 and FY 2023. A portion of the FY 2023 incremental revenue increase (\$34.110 million, referred to in the agreement as the FY 2023 Base Rate Incremental Increase) is subject to potential reduction if certain conditions occur. This compares to PWD’s proposal in its Advance and Final Notices to increase rates so as to produce incremental revenue of \$48.864 million (FY 2022) and \$92.096 million (FY 2023) for a total requested revenue increase of \$140.960 million.

Table 1 – Proposed Increases

	PWD (as filed)	Proposed Partial Settlement
Sept. 1, 2021 (FY 2022)	\$48.864M	\$10.411M
Sept. 1, 2022 (FY 2023)	\$92.096M	\$12.901M \$34.110M ^(A)
TOTAL	\$140.960M	\$57.422M ^(B)

^(A) Subject to reduction

^(B) Of this total, \$34.110M is subject to reduction

There can be no question that this represents a substantial decrease - \$83.538 million, or approximately 60% - from the originally requested revenue increase. It is possible that had the Department and the Public Advocate not agreed on these terms, the Rate Board would have approved an increase in rates and charges to produce at least that amount of incremental revenue. Again, it must be remembered that this incremental revenue increase of \$57.422 million is a maximum – it may be reduced in FY 2023 after a special rate reconciliation proceeding.

As discussed above in Section III, the ratemaking standards established by City Council and applicable to this rate proceeding require the Rate Board to establish rates and charges sufficient to fund budgeted operating expense and annual debt service obligations from current revenues and to comply with rate covenants and the debt service reserve requirements. [Philadelphia Code §13-101\(4\)](#). The incremental revenue anticipated to be produced by the proposed settlement rates must be examined to ensure compliance with this mandate, irrespective of any “black box” settlement.

PWD Deputy Water Commissioner LaBuda discussed the factors that led to PWD’s decision to request permission to increase its rates and charges: “The need for rate relief in FY 2022 and 2023 is caused by the following main drivers: (1) changes in consumption patterns; (2) decline in collection rates; (3) higher costs related to supporting its CIP program, including the increased cost of infrastructure maintenance; and (4) unavoidable increases in workforce costs.

Another factor driving the need for rate relief includes increases in costs over various categories, such as chemicals used in the water treatment process, as previously mentioned.” [PWD St. 2](#) at 36.

The record establishes the need for some level of rate relief. Discussing the testimony and exhibits presented by Deputy Water Commissioner LaBuda (PWD St. 2), the Department explained in its [Statement in Support](#) at 2:

The Department’s financial condition has deteriorated, since the 2018 general rate proceeding. PWD Statement 2 at 4-5; Schedule ML-8. The Department experienced significant cost increases in FY 2020, and FY 2020 ended with expenses higher than projections. PWD Statement 2 at 6-7, 43; Schedule ML-2 at 8; Schedule ML-9. Revenues were not sufficient to pay all of the budgeted expenses in FY 2020, so the Department made a \$33 million withdrawal from cash reserves to meet obligations and debt service coverage for FY 2020. PWD Statement 2 at 3.

In 2020, the Department withdrew (without prejudice) its general rate proceeding that proposed increased rates and charges case for FY 2021, due to onset of the pandemic. PWD Statement 2 at 5; Schedule ML-9. This left rates and charges unchanged in FY 2021. Even with the austerity measures implemented by the Department, revenues will not pay all of the budgeted expenses in FY 2021. PWD Statement 2 at 4, 19. This means that the Department is projected to make another withdrawal from cash reserves to meet obligations and debt service coverage for FY 2021. PWD Statement 2 at 4, 8-9.

Expenses have continued to increase. PWD Statement 2 at 5, 11, 36-40. The Department cannot continue to absorb increased expenses without additional revenues, if the Department is going to maintain its financial status and current favorable bond ratings. PWD Statement 2 at 8-9, 18-20, 31. Continued reliance on withdrawals from cash reserves to meet obligations and debt service coverage is unsustainable. PWD Statement 2 at 8-11.

In FY 2022, without rate relief, the Department would barely meet the mandatory financial metrics and would be required to make another significant withdrawal from cash reserves to meet obligations and minimum debt service coverage requirements. PWD Statement 2 at 4. The depletion of cash reserves would leave the Department with few options on a going-forward basis to fulfill its mission of providing high-quality, reliable service to its customers. PWD Statement 2 at 4. Without rate relief, it is projected that the Department would fail to meet the rate covenant requirements in FY 2023. PWD Statement 2 at 4.

Indeed, even had PWD received the entire rate increase contained in its original filing, PWD stated that it would not have been able to meet the financial targets approved by the Rate Board in the 2018 Rate Determination of 1.3x senior debt coverage and a combined balance of \$150 million in the Residual Fund and the Rate Stabilization Fund, although it would have satisfied the metrics required by its bond insurance coverages. See, [PWD St. 2](#) (LaBuda) at 28-29 and related schedules.

Mr. Haver's position that the proposed settlement should be rejected since the agreement does not require PWD to make a firm commitment to obtain stimulus funding has already been addressed by us. There is no assurance that additional federal funding will be available during the period the rates at issue here will be in effect; if such funding does become available to cover PWD's expenses (or PWD's financial condition improves as indicated by the Rate Stabilization Fund balance), customers will benefit. In addition, there is no record evidence to indicate that PWD will not use its best efforts (not good faith efforts, as alleged by Mr. Haver, which is a different, somewhat less strict standard of performance) to obtain such funding.

In its [Reply Exceptions](#) at 10, PWD states, "Mr. Haver offers the *status quo* assuming that federal stimulus monies are on the way. The fact of the matter is that he has no confirmation that this is (or will be) true. The Partial Settlement was negotiated to provide for the possibility of receipt of such funding (as defined in its terms and conditions) while addressing the Department's immediate need for rate relief. Given the reconciliation mechanism included in the terms of settlement, both the utility and its ratepayers are reasonably protected." We agree that the innovative approach contained in the proposed settlement is in the public interest and should be adopted.

The proposed partial settlement recognizes the Department's need for rate relief but as importantly attempts to mitigate the effect on customers in several ways besides substantially reducing the incremental revenue requirement. First, while there will be increases in the rates and charges in each of the fiscal years at issue, the increase on September 1, 2021, will be much smaller than the proposed increase on September 1, 2022, recognizing that the City and its water customers are just beginning to experience a recovery from the coronavirus-related restrictions of the last 14 months. For residential customers, the effects of the increases are shown on Table C-4, attached

to the [Partial Settlement Petition](#); it shows the impacts on residential customers with varying billing characteristics, including those for the typical senior and typical residential customers with 5/8” meters who use 0.3 mcf and 0.5 mcf each month, respectively. Table C-5 shows similar comparisons of existing and proposed rates for non-residential customers; it shows the impacts on small business customers with varying billing characteristics, including those of a typical small business customer with a 5/8” meter, monthly usage of 0.6 mcf, and an impervious area (4,000 square feet) 85% of the gross area of 5,500 square feet. The monthly bill impact from the proposed settlement rates on the typical customers shown in Tables C-4 and C-5 (including the effects of TAP-R) are summarized below.

Table 2 – Impact on Residential and Small Business Customers

Customer Class	Typical Monthly Bill	FY 2022 Sept 1, 2021		FY 2023 Sept 1, 2022	
		Proposed Rates	Difference from Existing	Proposed Rates	Difference from FY 2022
Residential	\$66.73	\$69.15	\$2.42 3.6%	\$73.58	\$4.43 6.4%
Senior	\$51.24	\$53.07	\$1.83 3.6%	\$56.43	\$3.36 6.3%
Small Business	\$112.13	\$111.58	(\$0.55) (0.5%)	\$119.27	\$7.69 6.9%

It should be noted that these comparisons assume that the entire FY 2023 incremental revenue increase is passed through and recovered from rates. A substantial portion (\$34.011 million) of the \$47.011 million incremental FY 2023 increase is subject to reduction, thus potentially reducing the rates to be implemented for September 1, 2022. It is also noted that charges for TAP customers can be substantially lower than the charge for typical residential customers.

There are several provisions contained in the [Joint Petition for Partial Settlement](#) designed to mitigate the increased rates and charges. The Joint Petitioners have the ability to utilize a special proceeding to examine a potential reduction of the September 1, 2022, increase

due to the receipt of federal stimulus funding and improvement in PWD's financial condition, as well as the substantial commitments to improvements in customer service and policy agreements to protect customers during (and after) the pandemic such as access to the Tiered Assistance Program (TAP),⁸⁸ as well as to promote language access rights and tenant bill access.

Hearing Officer Chestnut recommended that, based on the record adduced in this proceeding, we find that the proposed rates and charges are supported by the record, are in compliance with the Rate Ordinance and other applicable requirements and therefore should be permitted to be placed in effect for service rendered on and after September 1, 2021, and September 1, 2022, consistent with the terms and conditions contained in the Joint Petition for Partial Settlement. We agree with the Hearing Officer's well-reasoned recommendation. The terms indicate that the Water Department and the Public Advocate listened to the concerns of the many public comments on the Department's original proposal during the Board's open and transparent process. Almost all of the comments, excerpted and discussed in the Hearing Officer Report, asked that we limit rates as much as possible in light of the severe hardships caused by the COVID-19 pandemic.

The proposed settlement offers an innovative approach that could reduce projected rate increases in the event that the Water Department receives certain federal funds or if its financial reserves improve as a result of federal relief or for any other reason. Even if the full potential settlement rate increases go into effect, the rate increases over two years will be reduced from \$140.96 million to \$57.42 million, or by 60% from the Department's original request. We conclude that the rates set forth in the proposed settlement are just and reasonable and that the proposed settlement between the Philadelphia Water Department and the Public Advocate is certainly in the public interest.

Attached to this Rate Determination as Appendix A are several tables showing the impact of the settlement revenue increase for FY 2022 and FY 2023. Table C-1 shows the

⁸⁸ TAP is a customer assistance program that allows low-income customers to pay reduced bills based upon a percentage of their household income. The lost revenue is recovered through the TAP-R surcharge on customers not eligible for the discount.

combined system projected revenue and revenue requirements on base rates (including TAP-R surcharge); Table C-1A, shows the combined system projected revenue and revenue requirements on base rates (excluding TAP-R surcharge); Table C-1B shows the effect on TAP-R surcharge revenue; Table C-2 displays the projected impact of the settlement rates (combined system, base and TAP-R surcharge) on the Rate Stabilization Fund and the covenant metrics; Table C-4 shows the combined system comparison of typical bills for residential customers under existing and proposed rates) and Table C-5 shows the combined system comparison of example bills for non-residential customers under existing and proposed rates. As shown on Table C-2, the proposed settlement rates are projected to result in satisfaction of the applicable metrics in each of the fiscal years at issue.

2. Special Rate Reconciliation Proceeding

As discussed above, an important element of the [Joint Petition for Partial Settlement](#) is the proposal to utilize a special rate reconciliation proceeding in the event certain triggering conditions are met to ensure that the Department's customers receive the benefit of additional federal stimulus funds if they are made available, or if the balance in the Rate Stabilization Fund reaches a certain level. No participant other than Mr. Haver has excepted to this provision of the proposed settlement; his concerns are discussed above, where we reject his allegations that the "true-up" is unenforceable or meaningless. On the contrary, we believe that it represents an appropriate and workable method of balancing the interests of both the Department and its customers by providing a method of recognizing events that may occur within the rate period.

We note here that Mr. Haver's criticism of the proposed reconciliation procedure is addressed solely to the section that has to do with the potential receipt of federal stimulus finding. But the Special Rate Reconciliation Proceeding has another component: it is designed to reconcile FY 2023 rates based on PWD's actual financial performance in FY 2021, without any threshold limitations, and based purely on the extent to which PWD may outperform projections. As explained by the Public Advocate in its Reply Exceptions at 22: "Importantly, this very broad adjustment will allow the Board to provide additional rate relief to PWD customers in FY 2023 based on improved collections, additional stimulus dollars received by PWD customers, unexpected operating efficiencies and savings, or other factors."

This proposed Special Rate Reconciliation Proceeding was thoroughly addressed by the Hearing Officer in her [May 18, 2021 Hearing Officer Report](#); we will adopt and supplement the discussion contained in Section V(B)(4) of the hearing report.

It is obvious that both PWD and the Public Advocate took into consideration the concerns of the customers as to affordability of their rates in agreeing to both the amount and timing of the proposed incremental revenue increase. In addition, many people (directly and through their elected official representatives) suggested that any need for rate relief could be ameliorated by the federal stimulus funds the City was expected to receive through recently enacted legislation. The Joint Petition for Partial Settlement does that by ensuring that if such funding is made available to the Department to reduce operating expenses, rates will be reduced or adjusted in FY 2023 subject to certain conditions. In addition, the FY 2023 rates may be reduced if the level of reserves contained in the Rate Stabilization Fund as of the end of FY 2021 is above a threshold amount to be determined. It is proposed that both determinations be made through use of a special rate reconciliation proceeding, which would be initiated by PWD and, subject to Rate Board approval, be implemented on September 1, 2022.

These conditions are defined and discussed in the [Settlement Petition](#) at 4-7. Specifically, the Petition states that:

(2) Reconciliation Adjustments to FY 2023.

*

*

*

(i) Reconciliation Framework (Federal Stimulus).

Subject to Paragraph 11.A.(2)(a) and this subparagraph (i), the FY 2023 approved rate increase is subject to reduction on a dollar-for-dollar basis via the Special Rate Reconciliation Proceeding to reflect the impact of “Stimulus Funding” (defined below) received by PWD during the “Receipt Period” (from July 1, 2021 to December 31, 2021).

• **Definition:** “Stimulus Funding” is defined as:

° Except as excluded by the footnote below,⁸⁹ amounts from (a) the U.S. Department of Health and Human Services (HHS) or Philadelphia Housing

⁸⁹ For this purpose, “Stimulus Funding” excludes: (i) any amounts received directly by PWD from the City, HHS, PHDC or other state or local agencies administering federal funds for infrastructure or capital projects; (ii) any amounts allocated and/or received directly by PWD customers under the federal legislation, or other state or federal

Development Corporation (PHDC) under the Consolidated Appropriations Act of 2021, enacted on December 27, 2020 (“CARES Act”) and (b) the American Rescue Plan Act, enacted on March 11, 2021 (“ARPA”) (collectively, the “federal legislation”), that are allocated by City Council to PWD in the FY 2022 budget and/or received directly by PWD, during the Receipt Period, in either case, that can be used to reduce operating expenses that would otherwise be paid by ratepayers.

° During the Receipt Period, any amounts received directly by PWD for reimbursement of PWD operating expenses submitted under the CARES Act.

- **Best Efforts:** PWD will utilize its best efforts to secure Stimulus Funding.

- **Threshold Bucket:** Downward adjustment will occur, if PWD receives \$2 million or more in Stimulus Funding (“Minimum Threshold”). No adjustment will be made if less than the above Minimum Threshold is reached.

- **Adjustment, Mechanics:** Provided the Minimum Threshold is met, an across-the-board reduction to the FY 2023 Base Rate Incremental Increase will be made in an amount equal to the Stimulus Funding received.

- **Maximum Adjustment:** Reconciliation under this adjustment, separately or in combination with other adjustments, cannot lower the FY 2023 Base Rate Incremental Increase below zero dollars.

(ii) Reconciliation Framework (Changes in FY 2021 Performance).

Subject to Paragraph 11.A.(2)(a)(i) and this subparagraph (ii), the FY 2023 Base Rate Incremental Increase is subject to reduction on a dollar-for-dollar basis via the Special Rate Reconciliation Proceeding and within the parameters described below.

- **Adjustment, Mechanics:** The Department shall file a reconciliation request for FY 2023, setting forth the amount by which it requests the Rate Board reduce the FY 2023 Base Rate Incremental Increase to share with customers the benefit of FY 2021 amounts above a minimum threshold in the Rate Stabilization Fund. The Department shall include the City’s annual financial report for such fiscal year and a statement explaining the basis for the Department’s requested reduction (which may be any amount, including zero, up to \$34.110 million).

action, to alleviate potential or actual financial hardship of PWD’s customers; (iii) any amounts allocated and/or received directly by PWD from Utility Emergency Services Fund (“UESF”) in connection with UESF’s locally funded programs including the Utility Grant Program, Water Conservation Housing Stabilization Program, and the Customer Assistance Program for Water; and (iv) any amounts adopted by City Council through the budget process and/or received directly by PWD, beyond the Receipt Period.

- **Maximum Adjustment:** Reconciliation under this adjustment, separately or in combination with other adjustments, cannot lower the FY 2023 Base Rate Incremental Increase below zero dollars.

The special rate reconciliation proceeding by which the potential reductions to the FY 2023 Base Rate Incremental Increase will be examined is set out in the [Joint Petition](#) at 4-5. There, it is described as “simple,” limited to the two potential adjustments, analogous to the annual reconciliations of the Department’s TAP-R surcharge.⁹⁰

As further set out in the [Joint Petition](#) at 5:

The Special Rate Reconciliation Proceeding is intended to be simple, limited to the two adjustments defined in Paragraph 11.A.(2) (a), and analogous to the TAP-R Reconciliation Proceeding. By approving the Settlement, the Rate Board is agreeing (in advance) to the use of the Special Rate Reconciliation Proceeding. Both the Department and the Public Advocate will be deemed to be Participants in the Special Rate Reconciliation Proceeding without notification to the Rate Board.

The Department shall initiate the Special Rate Reconciliation Proceeding. Any adjustment or reconciliation will be implemented effective September 1, 2022. It is anticipated that the Department will commence the above-described Special Rate Reconciliation Proceeding by filing an Advance Notice on or before March 1, 2022. In the Department’s sole discretion, the Special Rate Reconciliation Proceeding may or may not be presented as part of the annual TAP-R Reconciliation Proceeding. In any event, the Public Advocate and other stakeholders shall be afforded a reasonable period of time to review and conduct discovery in order to evaluate the Department’s reconciliation adjustments and may submit testimony and briefs supporting the Department’s requested reduction or a different reduction to the FY 2023 Base Rate Incremental Increase.

Although it agreed to use of a special rate proceeding as described here, PWD in its [Main Brief](#) at 60 takes the position that this use of a special rate proceeding is not permitted under the Rate Board’s current regulations: “The Rate Board’s regulations anticipate three types of rate proceedings: a general rate proceeding, a TAP-R reconciliation proceeding and a special rate proceeding. The proposed Special Rate Reconciliation Proceeding is not (1) a general rate proceeding, since the proposed proceeding has limited issues; (2) a TAP-R reconciliation

⁹⁰ The TAP-R rider tracks revenue losses resulting from application of the TAP discount, to permit annual reconciliation if they are greater or less than projected.

proceeding because the proposed proceeding does not impact TAP-R; (3) a special rate proceeding (as currently defined), since the proposed proceeding may or may not have a “de minimis impact on residential customer bills.” It recommended several ways in which the regulations could be amended.

We will examine whether our regulations need to be amended as suggested by the Department. As noted by the Hearing Officer, the clear intent of the availability of special rate proceedings under Section II.D of the Board’s [Regulations](#), and the limitation that it involves no more than “a de minimis impact on residential customer bills,” appears designed to ensure that customers do not face more than minor increases in their rates without adequate notice and an opportunity to thoroughly investigate proposed rates. [Hearing Report](#) at 41. Here, while the impact may be more than de minimis, the only way that rates will potentially be adjusted is to reduce them. Or, to put it another way, there is no way pursuant to the proposed settlement that any customer bills will be increased. We might decide that, since this would be a limited issue proceeding where the only result is a potential rate reduction, the existing Regulations already permit such a proceeding since customers are protected. We recognize that the current regulations at Section II.D do recognize the use of a special rate proceeding to allow the Board “further flexibility.”

The mechanism contained in the [Joint Petition](#) is a reasonable method of ensuring that the benefit of federal funding or improved financial performance above threshold levels will be used to directly benefit customers by potentially reducing the incremental revenue requirement (and thus rates) for FY 2023. Therefore, we accept the Hearing Officer’s recommendation to utilize a special rate reduction proceeding consistent with the terms and conditions contained in the Joint Petition for Partial Settlement. We further accept the recommendation that we make a determination as to whether our regulations concerning use of special rate proceedings should be amended to clarify the appropriate use of such a limited, non-general rate proceeding for the

purposes of a rate reduction and will deliberate this issue during the period between the issuance of this Rate Determination and the commencement of the proposed reconciliation proceeding.⁹¹

3. Other Terms

As explained above, the proposed [Partial Settlement Agreement](#) at Sections C and D (Proposed Partial Settlement Petition at 7-10) contains numerous non-rate commitments on the part of PWD. While the Rate Board has no jurisdiction with respect to these other terms, we recognize that they represent potential significant protections and improvements for PWD's customers (and thus ultimately also benefit the Department). Mr. Haver has excepted to these, claiming that Rate Board should reject the Joint Petition for Partial Settlement because they don't go far enough (for example, by requiring PWD to enroll more customers into its TAP program) or contain other commitments that he has suggested (various other operational or socially desirable improvements). We have discussed these concerns above in Section IV(C)(1)(e) and explained there that even if we could order PWD to undertake these actions, there is no record evidence as to how to implement these broad suggestions, or the costs involved. Certainly, the fact that these suggestions were not included provides no reason to reject the proposed partial settlement.

This section of the [Joint Petition for Partial Settlement](#) was thoroughly discussed by Hearing Officer Chestnut in the [May 18, 2021 Hearing Officer Report](#) at Section V(B)(5); we will adopt and supplement that discussion here.

The [Joint Petition](#) provides that PWD will provide quarterly reports to the Rate Board with respect to the customer service and policy issues; these are for informational purposes only. The non-rate issues⁹² include:

⁹¹ We would promulgate any needed Regulations under the open and transparent process set forth in [Section 8-407](#) of the Philadelphia Home Rule Charter, https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-183592.

⁹² The Proposed Partial Settlement Petition described these issues as "non-rate" items; it may well be that the Rate Board in fact has jurisdiction over cost-of-service issues in proceedings before it.

a) Storm Water Cost of Service and Benefit Allocation Issues

The Department agreed to undertake further evaluation and develop further proposals (following or in connection with stakeholder meetings) to share the cost/benefits of ratepayer funded non-residential storm water overflow remediation projects, and to develop a proposal to evaluate tiered residential rate structures to reflect the range of residential property sizes;

b) Customer Service and Policy Issues

(1) TAP recertification: for the short term, PWD will continue to waive program recertification during the pandemic, and will consider the merits of establishing a longer period of TAP recertification for certain groups such as pensioners, SSI and LIHEAP recipients;

(2) TAP outreach/participation: PWD will evaluate new approaches to inform customers of this and other assistance programs, including organizing and participating in community meetings, summits or other gatherings and meeting with Black community leaders and Black grassroots community members;

(3) Language access: PWD will consider changes in its language access plans, in consultation with the Mayor's Office of Immigrant Affairs, including interacting with community stakeholders and translating customer-service related forms and applications into additional languages and making them available; and

(4) Moratorium on shut-offs: PWD will continue to review and evaluate the need to extend the current moratorium, and, prior to lifting the current moratorium, will consult with stakeholders to evaluate the feasibility of extending the moratorium considering public health guidance and economic conditions; and

c) COVID-19 Protections

(1) Payment agreements: PWD will provide more flexible terms for payment arrangements to help PWD customers make their accounts current, and will continue to extend

payment arrangements for up to five years and income-based payment agreements for up to 15 years, will evaluate the Public Advocate’s proposals to proactively extend payment arrangements to assist customers who have fallen behind during the pandemic and will conduct outreach with community organizations to “enroll” customers with past due balances in “suitable payment arrangements with longer repayment terms;” and

(2) Tenant issues: to address certain tenant issues (establishing tenant accounts, proof of residency), PWD will review its business practices, website disclosures and regulations and its internal policies, website language and regulations regarding establishing a tenant account and in conjunction with the Law Department will review its policies to facilitate tenants opting to request transfer pre-existing arrearages into his/her account.

Again, we recognize that the unprecedented conditions – in terms of both human and economic suffering – caused by the COVID-19 pandemic make it difficult to accept the idea of any increase in rates and charges at this time. However, these undertakings represent a substantial commitment on the part of PWD to protect customers during the pandemic (and beyond). It is unlikely that these protections would have been possible without both PWD and the Public Advocate working together to address the concerns raised by the Water Department customers throughout this proceeding. While the Rate Board has no jurisdiction with respect to these customer service and policy issues, they represent potential significant protections and improvements for PWD’s customers, and the reporting requirement ensures that focus will continue to be provided.

V. TAP ARREARAGE FORGIVENESS

There were two issues that were not included in the [Joint Petition for Partial Settlement](#); both relate to arrearage forgiveness, which is a component of the Department’s customer assistance program, TAP (Tiered Assistance Program).⁹³ TAP allows low-income customers to pay reduced bills based upon a percentage of their household income. The TAP-R

⁹³ TAP replaced a previous program, the Income-based Water Rate Assistance Program, which was established in the [Philadelphia Code](#), § 19-1605, Limitation on Action to Enforce Collection; Income-Based Water Rate Assistance Program. Arrearage forgiveness was made an express component of the program, § 19-1605(3)(h.2).

rider tracks revenue losses resulting from application of the TAP discount, in order to permit annual reconciliation if they are greater or less than projected. The TAP-R surcharge is charged to customers who do not receive the discount. Pursuant to the Philadelphia Code § 19-1605(3)(h.2) and current Water Department regulations (Section 206.7(a)), earned forgiveness of arrearages accumulated prior to entry into the TAP program is available under certain circumstances. Two issues, implementation of this arrearage forgiveness and recovery of it through rates, are addressed by PWD in its [Main Brief](#) at 50-57, and by the Public Advocate in its [Main Brief](#) at 9-23.

As discussed in the [May 18, 2021 Hearing Officer Report](#) at 49, Hearing Officer Chestnut found that the Rate Board may lack jurisdiction to directly approve various adjustments suggested by the Public Advocate to improve PWD's implementation of this earned arrearage forgiveness policy; she found, however, that the Public Advocate had raised serious questions about the manner in which PWD discharges its responsibility to provide arrearage forgiveness, and recommended that the Rate Board accept the Public Advocate's proposal that we require PWD to report monthly on the performance of its arrearage forgiveness policies and any obstacles prohibiting PWD from operating an arrearage forgiveness program that allows TAP customers to earn and realize arrearage forgiveness immediately with each monthly TAP payment. She further recommended that we should require PWD to report monthly on its efforts to reduce TAP denials and TAP churn, which limit the availability of pre-TAP arrearage forgiveness to low-income customers. PWD did not except to this recommendation; we agree with the merits of Hearing Officer Chestnut's recommendation and therefore will direct PWD to provide the monthly reports as indicated.

The second issue related to TAP arrearage forgiveness concerns PWD's proposal to modify the TAP Rider to include a mechanism (the Arrearage Forgiveness or AF factor) to recover from non-TAP customers a percentage of the amount of pre-TAP arrears forgiven beginning in FY 2023. Hearing Officer Chestnut found that while in concept this is reasonable, PWD had failed to rebut the Public Advocate's showing that the Department had already included the cost of foregone TAP arrearages in its calculation of the collectability factors (used to develop base rates), thus allowing the possibility of overcharging PWD's non-TAP customers. She therefore recommended that Rate Board deny PWD's proposal.

As explained in the [May 18, 2021 Hearing Officer Report](#) at 50, the basic premise of the TAP-R rider is relatively straightforward: The Department projects its revenues based on billing all customers according to its general rate schedule; when it offers discounted charges to qualifying TAP customers, those lost revenues must be made up and the make-up is accomplished through the TAP-R surcharge whereby an additional charge is placed on all non-TAP customers. The reconciliation of projected lost revenues and actual losses is also relatively straightforward and is intended to ensure there is no substantial over-recovery or under-recovery of such revenues. [PWD St. 7B](#)⁹⁴ at 10-14.

The TAP Rate Rider, as defined in Section 10.0 of the Water Department's Rates and Charges, provides for the separate recovery of that lost revenue recovered through the TAP-R surcharge rates, which are added to the water, fire service and sewer quantity charge rate schedules. The purpose of the rider is to provide a mechanism to "reconcile, in a timely fashion, actual TAP costs with estimated TAP-R revenues as well as update projected TAP costs for the Next Rate Period. The TAP Rate Rider provides a process to align the timing of the revenue and cost reconciliation more closely with cost incurrence." [PWD St. 7B](#) at 4, 10-14.

As PWD described the development of the arrearage forgiveness policy in its [Rebuttal St. 3](#) at 20: "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 allow 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) allow for TAP customers to receive forgiveness of outstanding pre-TAP arrears after twenty-four (24) monthly payments. The addition of Section 206.7(d)

⁹⁴ <https://www.phila.gov/media/20210115162104/PWD-Statement-No.-7B-Direct-Testimony-and-Schedules-of-Black-and-Veatch.pdf>

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.”

The issue here is PWD’s proposal to modify the TAP-R rider to include a mechanism to recover from non-TAP customers a percentage of the amount of pre-TAP arrears forgiven beginning in FY 2023.⁹⁵

Hearing Officer Chestnut, however, agreed with the Public Advocate that as the cost of non-recovery of these arrears are already included in the factors used to develop the Department’s revenue requirement, the possibility exists for over recovery from the non-TAP customers without some further adjustment of those factors.

In its [Exceptions](#) at 2, PWD’s position is that the Hearing Officer ignored or misunderstood the development of its proposed arrearage forgiveness factor. “The Report substantially ignores the Department’s development of a cost recovery approach that is specifically designed to avoid over-recovery of AF credits. The development of the AF Factor (to be included in TAP Rate Rider formula to recover arrearages forgiven) is fully documented in Schedule BV-S1. This Schedule also describes the data collected from the Department’s customers (payment pattern data) and its application in the proposal to update the TAP Rider formula to include an AF Factor. Because it appears that Schedule BV-S1 was overlooked in the Report, erroneous findings/conclusions were reached . . .” (emphasis in original)

We agree with the Public Advocate that PWD has not demonstrated that the development of the AF Factor is “specifically designed to avoid over recovery of AF credits.” As noted by the Public Advocate at page 6 of its Reply Exceptions, PWD’s own exhibit, upon which its exception is based, shows that the non-collection of pre-TAP arrears is reflected in the calculation of the collection factors used to develop the cost of service (and the revenue

⁹⁵ The development of this AF factor is set out in a “White Paper” prepared by PWD consultants Black & Veitch, which is included in the record as PWD ST. 7B, Sch. BV-S1.

requirement) upon which rates are based, and this factor was not adjusted. As stated in [PWD St. No. 7B](#), Schedule BV-S1:

For the current proceeding, Black & Veatch used data reflecting billings and receipts from FY 2012 to FY 2020 . . . The current collection factor reports generated by Raftelis include billings associated with the current Pre-Program TAP Arrears. Per TAP policies, the Water Department is no longer pursuing collections on these outstanding bills (i.e., these arrears are “frozen” or “roped-off”). Therefore, it is reasonable to assume that the Water Department will not collect on any of these outstanding amounts. Moreover, it is also reasonable to assume that the Water Department will not recognize any further revenues from TAP customers to satisfy these outstanding arrears.

The necessary implication is that as the Department does not (and, indeed, cannot) pursue collection of these amounts, that fact is already reflected in the cost of service in base rates. In other words, as further explained by the Public Advocate in its Reply Exceptions, “As is clear on the record, pre-TAP arrears are included in the denominator in the calculations utilized to determine collection factors, which factors apply to increase the base rates for non-TAP customers to compensate for delay or lack of payment.”⁹⁶ PWD did not increase the collection factor (lowering the revenue requirements for base rates) by removing pre-TAP arrears from the denominator in each of the three periods for which Raftelis calculated the percentage of billed revenues that would be collected.

Turning to PWD’s other exceptions, we do not agree that denial of this proposal will put PWD on an “unsustainable path” with a “reckoning in the future.” [PWD Exceptions](#) at 11. This is especially true when it is remembered that the rate period at issue here is FYs 2022 and 2023, not an indefinite period into the future. In addition, as noted, while these amounts not subject to collection may not be recovered in the TAP Rider, the impact of PWD’s inability to collect them is reflected in the cost of service and thus its revenue requirement.

We recognize that the TAP program is an essential part of the service provided by the Water Department, especially in the economic climate that exists now. We appreciate PWD’s

⁹⁶ See, e.g., PA MB at 21 (citing Schedule RFC-6 to PWD St. No. 6); see also PWD St. 7B, Sch. BV-S1 at 2.

acknowledgment of this, as shown by the outreach and other commitments it made in the Joint Petition and its decision to accept the recommendation contained in the May 18, 2021 Hearing Officer Report concerning implementation of the arrearage forgiveness policy. While we don't believe that our decision here to reject the specific proposal regarding the arrearage factor will imperil PWD's financial condition, we are mindful that perhaps this issue should be examined in a future proceeding. We reject the position presented in PWD's Exceptions, however, that this issue can be addressed in the context of the Special Rate Reconciliation Proceeding contemplated by the Joint Petition, especially under our current regulations regarding special rate proceedings. The inclusion of this issue in the Special Rate Reconciliation proceeding would alter the nature of that proceeding and could even result in a rate increase, which would be contrary to the rationale for permitting the use of a special rate proceeding as set forth in Section IV.D.2 of this Order above. The time to address this issue will be in a future rate proceeding in which the Department can clearly demonstrate that it is seeking to recover these costs either through base rates or the TAP Rider, but not both.

VI. OTHER ISSUES

The [May 18, 2021 Hearing Officer Report](#) at 53 notes that there were other miscellaneous issues that were not contested and which Hearing Officer Chestnut therefore recommended that we approve. First, twelve categories of style, clarification and conforming changes were proposed by the Department to revise language in the Department's regulations. These housekeeping changes to its regulations should be adopted, since they appear to be reasonable and were not contested by any active participant.

Second, the Department proposed to raise miscellaneous rates and charges, as set out in [PWD St. 7A](#)⁹⁷ at 46, Exh. BV-4 (Tables M-1, regular hours and M-2, overtime hours) and [PWD Exh. 3](#),⁹⁸ Section 6 (miscellaneous water charges). These proposed rates and charges should

⁹⁷ <https://www.phila.gov/media/20210216172716/PWD-Statement-No.-7A-Direct-Testimony-And-Schedules-of-Black-and-Veatch-Supplemented-as-of-Formal-Filing.pdf>

⁹⁸ <https://www.phila.gov/media/20210115161614/PWD-Exhibit-3A-FY-2022-Proposed-Rates-and-Charges.pdf>

be permitted to go into effect, as they appear to be reasonable and (once the issues raised by the Public Advocate were resolved) not contested.

VII. CONCLUSION

Based on the record produced in this proceeding and in accordance with the discussions, findings and resolutions discussed above, we therefore:

(1) deny the Exceptions filed by the Philadelphia Water Department on May 25, 2021, consistent with this Rate Determination;

(2) deny the Exceptions filed by Lance Haver on May 25, 2021, consistent with this Rate Determination;

(3) deny the Exceptions and Reply Exceptions filed by Michael Skiendelewski on May 25, 2021, and May 28, 2021, consistent with this Rate Determination;

(4) adopt the Hearing Officer Report issued by Hearing Officer Chestnut on May 18, 2021, consistent with this Rate Determination;

(5) approve without modification the Joint Petition for Partial Settlement;

(6) find that the proposed rates and charges set forth in the attached schedules are supported by the record, are in compliance with the Rate Ordinance and other applicable requirements and therefore should be permitted to be placed in effect for service rendered on and after September 1, 2021, and September 1, 2022, consistent with the terms and conditions contained in the Joint Petition for Partial Settlement;

(7) accept the proposal to utilize a special rate reduction proceeding be approved by the Rate Board consistent with the terms and conditions contained in the Joint Petition for Partial Settlement and that the Rate Board amend its regulations concerning use of special rate proceedings to clarify the appropriate use of such limited, non-general rate proceedings if necessary;

(8) require the Philadelphia Water Department to report monthly on the amount and type of arrearage forgiveness that PWD is providing to TAP customers, the result of its efforts to determine what legal and/or operational barriers must be overcome to implement ratable forgiveness for each month the TAP participant pays the TAP bill; and the efforts PWD is taking to reduce TAP denials and TAP churn;

(9) reject the proposal of the Philadelphia Water Department to recover through the TAP-R surcharge rider costs associated with arrearage forgiveness earned by TAP program participants;

(10) permit the Philadelphia Water Department to place into effect the uncontested tariff changes and changes in miscellaneous rates and charges; and

(11) reject any remaining issues, proposals, modifications and/or adjustments by the other participants that are not contained in the Partial Settlement except as otherwise directed.

Irwin “Sonny” Popowsky, Chair
Tony Ewing
Rasheia R. Johnson
Abby L. Pozefsky

APPENDIX A: TABLES

TABLE C-1: PROJECTED REVENUE AND REVENUE REQUIREMENTS
Base and TAP-R Surcharge Rates
(in thousands of dollars)

Line No.	Description	2022	2023
OPERATING REVENUE			
1	Water Service - Existing Rates	266,656	269,813
2	Wastewater Service - Existing Rates	427,613	433,417
3	Total Service Revenue - Existing Rates	694,269	703,229
Additional Service Revenue Required			
	Percent Increase	Months Effective	
4	FY 2021 0.00%	10	-
5	FY 2022 1.83%	10	10,411
6	FY 2023 5.83%	10	34,110
7	FY 2024	10	
8	FY 2025	10	
9	FY 2026	10	
10	Total Additional Service Revenue Required	10,411	47,011
11	Total Water & Wastewater Service Revenue	704,679	750,241
Other Income (a)			
12	Other Operating Revenue	21,719	21,638
13	Debt Reserve Fund Interest Income	-	-
14	Operating Fund Interest Income	1,230	1,249
15	Rate Stabilization Interest Income	1,088	982
16	Total Revenues	728,716	774,110
OPERATING EXPENSES			
17	Total Operating Expenses	(517,470)	(533,064)
NET REVENUES			
18	Transfer From/(To) Rate Stabilization Fund (b)	10,131	11,554
19	NET REVENUES AFTER OPERATIONS	221,376	252,600
DEBT SERVICE			
Senior Debt Service			
Revenue Bonds			
20	Outstanding Bonds	(163,516)	(164,558)
21	Pennvest Parity Bonds	(10,885)	(11,067)
22	Projected Future Bonds	(8,000)	(30,798)
23	Commercial Paper	(2,000)	(4,000)
24	Total Senior Debt Service	(184,401)	(210,423)
25	TOTAL SENIOR DEBT SERVICE COVERAGE (L19/L24) (c)	1.20 x	1.20 x
26	Subordinate Debt Service	-	-
27	Transfer to Escrow	-	-
28	Total Debt Service on Bonds	(184,401)	(210,423)
29	CAPITAL ACCOUNT DEPOSIT	(29,447)	(31,155)
30	TOTAL COVERAGE (L19/(L24+L26+L29)) (c)	1.03 x	1.04 x

RESIDUAL FUND			
31	Beginning of Year Balance	15,042	15,020
32	Interest Income	150	150
	Plus:		
33	End of Year Revenue Fund Balance	7,529	11,022
34	Deposit for Transfer to City General Fund (d)	1,839	2,037
	Less:		
35	Transfer to Construction Fund	(7,700)	(11,100)
36	Transfer to City General Fund	(1,839)	(2,037)
37	Transfer to Debt Service Reserve Fund	-	-
38	End of Year Balance	15,020	15,092
RATE STABILIZATION FUND			
39	Beginning of Year Balance (e)	113,988	103,857
40	Deposit From/(To) Revenue Fund	(10,131)	(11,554)
41	End of Year Balance	103,857	92,303

(a) Includes other operating and nonoperating income, including interest income on funds and accounts transferable to the Revenue Fund and reflects projected contra revenue credits for Affordability Program Discounts (TAP Costs).

(b) Pursuant to the General Ordinance, as of June 30 of each Fiscal Year, the City may transfer (i) from the Rate Stabilization Fund to the Revenue Fund or (ii) from the Revenue Fund to the Rate Stabilization Fund, the amount determined. The amounts presented are subject to actual results.

(c) Projected estimates are subject to actual financial results and final transfers to/from Rate Stabilization (see note (b)). The amounts presented are subject to actual results.

(d) Transfer of interest earnings from the Bond Reserve Account to the Residual Fund as shown in Line 34 to satisfy the requirements for the transfer to the City General Fund shown on Line 36.

(e) Beginning balance is estimated based on projected financial results. The amounts presented are subject to actual results.

TABLE C-1A: PROJECTED REVENUE AND REVENUE REQUIREMENTS
Base Rates Excluding TAP-R Surcharge
(in thousands of dollars)

Line No.	Description	2022	2023
OPERATING REVENUE			
1	Water Service - Existing Rates	263,593	266,743
2	Wastewater Service - Existing Rates	423,433	429,267
3	Total Service Revenue - Existing Rates	687,026	696,010
Additional Service Revenue Required			
	Percent Months		
	Year Increase Effective		
4	FY 2021 0.00% 10	-	-
5	FY 2022 1.85% 10	10,411	12,901
6	FY 2023 5.89% 10		34,110
7	FY 2024 10		
8	FY 2025 10		
9	FY 2026 10		
10	Total Additional Service Revenue Required	10,411	47,011
11	Total Water & Wastewater Service Revenue	697,437	743,022
Other Income (a)			
12	Other Operating Revenue	29,192	29,111
13	Debt Reserve Fund Interest Income	-	-
14	Operating Fund Interest Income	1,230	1,249
15	Rate Stabilization Interest Income	1,088	982
16	Total Revenues	728,947	774,364
OPERATING EXPENSES			
17	Total Operating Expenses	(517,470)	(533,064)
NET REVENUES			
18	Transfer From/(To) Rate Stabilization Fund (b)	9,900	11,300
19	NET REVENUES AFTER OPERATIONS	221,376	252,600
DEBT SERVICE			
Senior Debt Service			
Revenue Bonds			
20	Outstanding Bonds	(163,516)	(164,558)
21	Pennvest Parity Bonds	(10,885)	(11,067)
22	Projected Future Bonds	(8,000)	(30,798)
23	Commercial Paper	(2,000)	(4,000)
24	Total Senior Debt Service	(184,401)	(210,423)
25	TOTAL SENIOR DEBT SERVICE COVERAGE (L19/L24) (c)	1.20 x	1.20 x
26	Subordinate Debt Service	-	-
27	Transfer to Escrow	-	-
28	Total Debt Service on Bonds	(184,401)	(210,423)
29	CAPITAL ACCOUNT DEPOSIT	(29,447)	(31,155)
30	TOTAL COVERAGE (L19/(L24+L26+L29)) (c)	1.03 x	1.04 x
31	End of Year Revenue Fund Balance	7,529	11,022

(a) Includes other operating and nonoperating income, including interest income on funds and accounts transferable to the Revenue Fund.

(b) Pursuant to the General Ordinance, as of June 30 of each Fiscal Year, the City may transfer (i) from the Rate Stabilization Fund to the Revenue Fund or

(ii) from the Revenue Fund to the Rate Stabilization Fund, the amount determined. The amounts presented are subject to actual results.

(c) Projected estimates are subject to actual financial results and final transfers to/from Rate Stabilization (see note (b)). The amounts presented are subject to actual results.

TABLE C-1B: PROJECTED REVENUE AND REVENUE REQUIREMENTS
TAP-R Surcharge Rates Excluding Base Rates
(in thousands of dollars)

Line No.	Description	2022	2023
OPERATING REVENUE			
1	Water Service - Existing Rates	3,063	3,069
2	Wastewater Service - Existing Rates	4,179	4,150
3	Total Service Revenue - Existing Rates	7,242	7,219
Additional Service Revenue Required			
	Year	Percent Increase	Months Effective
4	FY 2021	0.00%	10
5	FY 2022	0.00%	10
6	FY 2023	0.00%	10
7	FY 2024		10
8	FY 2025		10
9	FY 2026		10
10	Total Additional Service Revenue Required	-	-
11	Total Water & Wastewater Service Revenue	7,242	7,219
Other Income			
12	Other Operating Revenue (a)	(7,473)	(7,473)
13	Debt Reserve Fund Interest Income	-	-
14	Operating Fund Interest Income	-	-
15	Rate Stabilization Interest Income	-	-
16	Total Revenues	(231)	(254)
OPERATING EXPENSES			
17	Total Operating Expenses	-	-
NET REVENUES			
18	Transfer From/(To) Rate Stabilization Fund (b)	231	254
19	NET REVENUES AFTER OPERATIONS	-	-
DEBT SERVICE			
Senior Debt Service			
Revenue Bonds			
20	Outstanding Bonds	-	-
21	Pennvest Parity Bonds	-	-
22	Projected Future Bonds	-	-
23	Commercial Paper	-	-
24	Total Senior Debt Service	-	-
25	TOTAL SENIOR DEBT SERVICE COVERAGE (L19/L24)	NA	NA
26	Subordinate Debt Service	-	-
27	Transfer to Escrow	-	-
28	Total Debt Service on Bonds	-	-
29	CAPITAL ACCOUNT DEPOSIT	-	-
30	TOTAL COVERAGE (L19/(L24+L26+L29))	NA	NA
31	End of Year Revenue Fund Balance	-	-

(a) Reflects net recoverable costs for TAP-R based on the 2020 Annual Adjustment Proceeding.

(b) Rate Stabilization Fund transfers necessary to meet over or under recovery of TAP costs until recovery is reconciled via TAP-R reconciliation.

TABLE C-2
Base and TAP-R Surcharge Rates
COMBINED SYSTEM: PROJECTED RATE STABILIZATION FUND
AND COVENANTS METRICS PERFORMANCE

Line #	Description	2022	2023
RATE STABILIZATION FUND			
1	Beginning Balance: Rate Stabilization Fund (a)	113,988	103,857
2	Transfers From (To) Revenue Fund (b)	(10,131)	(11,554)
3	Year-End Rate Stabilization Fund Balance (Line 1 + Line 2)	103,857	92,303
General Bond Ordinance Covenants			
4	Senior Debt Coverage (c)	1.20	1.20
5	Total Debt Coverage (d)	1.03	1.04
6	90% Test - Senior Debt Coverage from Current Revenues (e)	1.14	1.14
O&M Actual to Budget Ratio			
7	Projected O&M Budget (f)	595,439	612,858
8	O&M Actual to Budget Ratio	86.9%	87.0%
Rate Ordinance Requirements			
9	Projected Total Revenues	728,716	774,110
10	Projected Total Appropriations (g)	816,815	865,458
11	Rate Ordinance Requirement Compliance (h)	Yes	Yes
Cash Funding			
12	Cash Funded Capital (i)	37,147	42,255
13	Capital Improvement Program annual expenses	345,303	426,730
14	Cash Funded Capital Ratio (j)	10.8%	9.9%

(a) Estimated based on projected financial results. The amounts presented are subject to actual results.

(b) See Line 18 in Table C-1 and related footnote (b).

(c) Senior Debt Coverage = (Total Revenues - Operating Expenses + Transfer From (to) Rate Stabilization) divided by Senior Debt. The General Bond Ordinance requires the minimum Senior Debt Service Coverage of 1.20. The amounts presented are subject to actual results.

(d) Total Debt Coverage = (Total Revenues - Operating Expenses + Rate Stabilization Transfer) divided by (Senior Debt + Subordinate Debt + Capital Account Deposit). The General Bond Ordinance requires the minimum Total Debt Service Coverage of 1.00. The amounts presented are subject to actual results.

(e) Senior Debt Coverage from Current Revenues = (Total Revenues - Operating Expenses - Transfer to Rate Stabilization Fund) divided by Senior Debt. Transfers from Rate Stabilization are excluded from the Total Revenues. The General Bond Ordinance requires a minimum Senior Debt Service Coverage of 0.90 from Current Revenues. The amounts presented are subject to actual results.

(f) FY 2022 and FY 2023 reflect projected budget based on annual cost escalation factors.

(g) Total Appropriation = Total O&M Budget + Senior Debt + Subordinate Debt + Transfer to Escrow + Capital Account Deposit + Transfer to Rate Stabilization Fund + Transfer to Residual Fund. Costs to service the City included as required by the General Bond Ordinance rate covenants.

(h) Rate Ordinance requires that Total Revenues not exceed Total Appropriations.

(i) Cash Funded Capital = Capital Account Deposit + Residual Transfer to Construction Fund

(j) Cash Funded Capital Ratio = Cash Funded Capital divided by Capital Improvement Program annual expenses.

TABLE C-4
COMBINED SYSTEM: COMPARISON OF TYPICAL
BILL FOR RESIDENTIAL CUSTOMERS
UNDER EXISTING AND PROPOSED RATES

(1)	(2)	(3)	(4)	(5)	(6)	(7)	
		FY 2021	FY 2022		FY 2023		
Meter Size	Monthly Use	Existing Rates	Proposed Rates	% Proposed of Existing	Proposed Rates	% Proposed of FY 2022	
Inches	Mcf	\$	\$	%	\$	%	
5/8	0.0	28.02	28.96	3.4	30.70	6.0	
5/8	0.2	43.50	45.04	3.5	47.85	6.2	
5/8	0.3	51.24	53.07	3.6	56.43	6.3	Typical Senior
5/8	0.4	58.98	61.11	3.6	65.01	6.4	
5/8	0.5	66.73	69.15	3.6	73.58	6.4	Typical Residential
5/8	0.6	74.46	77.18	3.7	82.15	6.4	
5/8	0.7	82.20	85.22	3.7	90.73	6.5	
5/8	0.8	89.94	93.25	3.7	99.31	6.5	
5/8	1.7	159.60	165.59	3.8	176.49	6.6	
5/8	2.7	232.63	243.40	4.6	259.46	6.6	
5/8	3.3	275.33	289.42	5.1	308.52	6.6	

Notes:

The FY 2021 figures reflect the existing base and current TAP-R rates, of \$0.57/MCF for water and \$0.78/MCF for sewer.

The FY 2022 figures reflect:

- (1) the proposed TAP-R rates, of \$0.70/MCF for water and \$1.07/MCF for sewer; and
- (2) the proposed FY 2022 base rates in accordance with the Settlement Agreement.

The FY 2023 figures reflect:

- (1) the proposed FY 2023 TAP-R rates, of \$0.70/MCF for water and \$1.07/MCF for sewer; and
- (2) the proposed FY 2023 base rates in accordance with the Settlement Agreement.

These rates are subject to reconciliation prior to implementation.

The TAP-R rates are subject to annual reconciliation.

Typical Senior Citizen is presented prior to discount. Eligible Senior Citizen's receive a 25% discount on their total bill. The associated FY 2021, FY 2022, and FY 2023 bills would be \$38.43, \$39.80 and \$42.32, respectively.

Mcf - Thousand cubic feet

TABLE C-5
COMBINED SYSTEM: COMPARISON OF EXAMPLE BILLS
FOR NON-RESIDENTIAL CUSTOMERS
UNDER EXISTING AND PROPOSED RATES

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
				FY 2021	FY 2022		FY 2023	
Meter Size	Monthly Use	Impervious Area	Gross Area	Existing Rates	Proposed Rates	% Proposed of Existing	Proposed Rates	% Proposed of FY 2022
Inches	Mcf	sf	sf	\$	\$	%	\$	%
5/8	0.0	1,794	2,110	39.75	38.55	(3.0)	41.01	6.4
5/8	0.2	1,794	2,110	55.23	54.63	(1.1)	58.16	6.5
5/8	0.3	1,794	2,110	62.97	62.66	(0.5)	66.74	6.5
5/8	0.4	1,794	2,110	70.71	70.70	(0.0)	75.32	6.5
5/8	0.5	1,794	2,110	78.46	78.74	0.4	83.89	6.5
5/8	0.6	4,000	5,500	112.13	111.58	(0.5)	119.27	6.9
5/8	0.7	4,000	5,500	119.87	119.62	(0.2)	127.85	6.9
5/8	0.8	26,000	38,000	412.25	399.86	(3.0)	430.54	7.7
5/8	1.7	26,000	38,000	481.91	472.20	(2.0)	507.72	7.5
5/8	2.7	4,000	5,500	270.30	277.80	2.8	296.58	6.8
5/8	3.3	4,000	5,500	313.00	323.82	3.5	345.64	6.7
5/8	11.0	7,000	11,000	901.27	953.16	5.8	1,017.05	6.7
1	1.7	7,700	7,900	251.68	252.31	0.2	269.95	7.0
1	5.0	22,500	24,000	668.22	678.11	1.5	726.33	7.1
1	8.0	7,700	7,900	701.86	736.68	5.0	786.30	6.7
1	17.0	22,500	24,000	1,522.14	1,598.63	5.0	1,707.57	6.8
2	7.6	1,063	1,250	621.72	658.68	5.9	701.88	6.6
2	16.0	22,500	24,000	1,478.95	1,550.54	4.8	1,656.12	6.8
2	33.0	66,500	80,000	3,245.05	3,385.99	4.3	3,620.31	6.9
2	100.0	7,700	7,900	7,276.55	7,822.62	7.5	8,339.46	6.6
4	30.0	7,700	7,900	2,391.49	2,550.83	6.7	2,718.89	6.6
4	170.0	10,500	12,000	11,779.08	12,657.30	7.5	13,487.99	6.6
4	330.0	26,000	38,000	21,980.87	23,608.78	7.4	25,154.47	6.5
4	500.0	140,000	160,000	34,010.90	36,379.51	7.0	38,775.99	6.6
6	150.0	10,500	12,000	10,665.70	11,451.84	7.4	12,202.99	6.6
6	500.0	41,750	45,500	32,922.57	35,349.72	7.4	37,660.16	6.5
6	1,000.0	26,000	38,000	63,978.69	68,785.12	7.5	73,266.57	6.5
6	1,500.0	140,000	160,000	96,627.12	103,738.45	7.4	110,512.79	6.5
8	750.0	10,500	12,000	48,312.53	51,946.12	7.5	55,328.63	6.5
8	1,500.0	66,500	80,000	95,875.96	103,032.69	7.5	109,746.67	6.5
8	2,000.0	26,000	38,000	126,617.52	136,167.40	7.5	145,028.21	6.5
8	3,000.0	140,000	160,000	189,685.95	203,830.73	7.5	217,109.43	6.5
10	600.0	22,500	24,000	39,284.40	42,203.78	7.4	44,953.17	6.5
10	1,700.0	41,750	45,500	108,254.22	116,376.47	7.5	123,951.40	6.5
10	3,300.0	26,000	38,000	206,972.34	222,583.87	7.5	237,058.81	6.5
10	6,000.0	140,000	160,000	374,862.77	402,991.20	7.5	429,211.03	6.5

Typical Small Business

(a) Examples with gross area less than 5,000 square feet reflect an impervious area of 85% of the gross area consistent with PWD Regulations section 304.3.

(b) FY 2021 figures reflect existing base and current TAP-R rates, of \$0.57/MCF for water and \$0.78/MCF for sewer.

(c) FY 2022 figures reflect:

(1) the proposed TAP-R rates, of \$0.70/MCF for water and \$1.07/MCF for sewer; and

(2) the proposed FY 2022 base rates in accordance with the Settlement Agreement.

(d) The FY 2023 figures reflect:

(1) the proposed FY 2022 TAP-R rates, of \$0.70/MCF for water and \$1.07/MCF for sewer; and

(2) the proposed FY 2023 base rates in accordance with the Settlement Agreement. These rates are subject to reconciliation prior to implementation.

The TAP-R rates are subject to annual reconciliation.

Mcf - Thousand cubic feet

sf - square feet

APPENDIX B: HEARING OFFICER REPORT

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

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

HEARING OFFICER REPORT

Marlane R. Chestnut
Hearing Officer

May 18, 2021

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	PROCEDURAL HISTORY.....	6
III.	RATE DETERMINATION STANDARDS	18
IV.	PUBLIC INPUT	21
V.	PROPOSED PARTIAL SETTLEMENT.....	25
A.	Proposed Partial Settlement Terms and Conditions.....	25
B.	Discussion.....	27
1.	Opposing Participant Position – Lance Haver.....	27
2.	Opposing Participant Position – Michael Skiendzielewski.....	31
3.	Revenue Requirement and Proposed Rates	32
4.	Special Rate Reconciliation Proceeding.....	38
5.	Non-Rate Terms	42
a)	Storm Water Cost of Service and Benefit Allocation Issues	42
b)	Customer Service and Policy Issues	43
c)	COVID-19 Protections.....	43
VI.	CONTESTED ISSUES	44
A.	TAP Arrearage Forgiveness.....	44
1.	Arrearage Forgiveness: Implementation	45
2.	Arrearage Forgiveness: Cost Recovery	50
VII.	OTHER ISSUES	53
VIII.	CONCLUSION	53
APPENDIX: TABLES		

I. INTRODUCTION

This report addresses the rate filing made by the Philadelphia Water Department (PWD or the Department¹) with the Philadelphia Water, Sewer and Storm Water Rate Board (Rate Board or Board) for approval to increase rates and charges for water, sewer and storm water service effective Fiscal Years (FY) 2022 and 2023, September 1, 2021, and September 1, 2022. PWD is a City department, with responsibility for provision of water, sewer and storm water services in the City of Philadelphia.²

In November 2012, Philadelphia voters approved an amendment to [Section 5-801 of the Philadelphia Home Rule Charter](#)³ to allow City Council to establish, by ordinance, an independent rate-making body responsible for fixing and regulating rates and charges for water and sewer services. Under the Rate Ordinance (effective January 20, 2014), [Chapter 13-100 of the Philadelphia Code](#),⁴ Council replaced PWD with the Rate Board as the entity responsible for setting these rates, and Council established standards for the Board to consider and establish rates. In order to fulfill the mandate in the ordinance, that an “open and transparent process” be used in setting the rates and charges, the Rate Board promulgated regulations in 2015 regarding both substantive and procedural requirements. These regulations were revised in 2017, after the initial rate filing was made utilizing the new procedure, and again in 2019.

The [current rates](#)⁵ (established for a two-year rate period, rather than the three years requested by the Department) became effective on September 1, 2018 (for FY 2019), and September 1, 2019 (for FY 2020), pursuant to the Board’s [2018 Rate Determination](#)⁶ dated July 12, 2018. Those rates, as well as associated other issues, are currently before the Pennsylvania Commonwealth Court pursuant to an appeal by the Public Advocate, appointed by the Board to

¹ PWD includes the Philadelphia Water Revenue Bureau (WRB), to the extent required by the context.

² The Department also makes wholesale water sales to neighboring communities. The rates for such off-system sales were not part of this filing, as the Rate Board does not determine rates for such off-system sales.

³ https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-182806

⁴ https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-203161

⁵ https://www.phila.gov/media/20200131132309/RatesCharges_September-1-2019.pdf

⁶ <https://www.phila.gov/media/20180713144736/2018-RATE-DETERMINATION-TIMESTAMPED.pdf>

represent the interests of the city's residential and small commercial customers, *Public Advocate v. Philadelphia Water, Sewer and Stormwater Board*, Case No. 1070 C.D. 2019.

On February 11, 2020, the Department filed an [Advance Notice](#)⁷ with City Council and the Rate Board of its intent to propose an increase in water, sewer, and storm water rates for FY 2021 - 2022, effective September 1, 2020 and September 1, 2021; the [Formal Notice](#)⁸ was filed with the Records Department on March 12, 2020 (the [2020 Rate Proceeding](#)⁹). Both Notices contained statements and exhibits to support the proposed rates. Following requests for competitive proposals, the Rate Board contracted with Community Legal Services (CLS) to act as Public Advocate to represent the concerns of residential consumers and other small users in the rate proceeding; with Amawalk Consulting Group LLC to serve as an expert technical consultant; and with me to serve as the Hearing Officer.¹⁰

A schedule was adopted, and discovery undertaken. However, the proceeding was suspended at the request of PWD due to the public health emergency caused by the ongoing COVID-19 pandemic and subsequent emergency measures imposed by both the city and state. See, Suspension Orders dated [March 20, 2020](#)¹¹ and [April 22, 2020](#).¹² By [Order](#)¹³ dated June 10, 2020, the Rate Board granted the request of the City of Philadelphia Water Department to withdraw its this general rate increase filing for FY 2021-2022 and closed the proceeding without prejudice.

In this proceeding (the 2021 Rate Proceeding), the Department filed its Advance Notice with the Philadelphia City Council and the Rate Board on January 15, 2021, and its Formal Notice with the Records Department on February 16, 2021, containing proposed changes to the rates and related charges for water, sewer and storm water service effective September 1, 2021 and

⁷ <https://www.phila.gov/media/20200211163555/PWDEXhibit1AdvanceNotice.pdf>

⁸ <https://www.phila.gov/media/20200313151143/Formal-Notice.pdf>

⁹ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2020-rate-proceeding/>

¹⁰ I had served as a Pennsylvania Public Utility Commission administrative law judge for 25 years before my retirement in 2012.

¹¹ <https://www.phila.gov/media/20200320152339/suspension-order-2020-march-20-final.pdf>

¹² <https://www.phila.gov/media/20200424143259/suspension-order-2020-April-21.pdf>

¹³ <https://www.phila.gov/media/20200612091750/Rate-Board-Order-to-permit-withdrawal-2020.pdf>

September 1, 2022, along with supporting statements and exhibits. These increases are intended to generate additional annual revenues of about \$48.864 million in FY 2022 and a total of \$92.096 million in FY 2023 (the FY 2023 amount includes the effects of the proposed increase in FY 2022). As proposed, the overall increase in revenues for all customers would be 8.7% and 5.1% in FY 2022 and FY 2023, respectively. The impact would be to increase the monthly bill of a typical residential customer who uses 500 cubic feet of water per month by 11.6% on September 1, 2021 and by 5.3% on September 1, 2022.

The Rate Board renewed its contracts with Community Legal Services, Amawalk Consulting and me.

As discussed in more detail below, after an extensive, open and transparent examination of PWD's filing which included substantial discovery, four public hearings, one technical hearing and the receipt of numerous public comments, the Department and the Public Advocate were able to reach agreement on almost all of the issues raised, as set forth in first the Term Sheet included in the record on April 30, 2021, and then the Joint Petition for Partial Settlement (Joint Petition or Proposed Partial Settlement Agreement) submitted on May 5, 2021.

The Joint Petition for Partial Settlement was opposed by participant Lance Haver, who on May 10, 2021, filed Objections to Both the Process and Terms of the Settlement.¹⁴ As discussed in more detail below, Mr. Haver objected to both the process (continuing with the proceeding while it is "unknown how much, if any, funds the PWD will receive" from federal stimulus funding, the role and performance of the Public Advocate in this proceeding) and the terms of the proposed partial settlement ("provides PWD with every penny it wants without requiring PWD to see and receive any money from the Recovery Plan Act" and other alleged deficiencies). I do not find that these Objections provide a basis for rejecting the Proposed Partial

¹⁴ I am assuming that participant Michael Skiendzielewski also objected. He failed to file anything labeled as an objection, but rather sent a series of emails that in large part raised issues already determined by me to be outside the scope of this proceeding. In an excess of caution, I will respond to what I think are his objections to the proposed partial settlement agreement.

Settlement Petition and the rates and charges contained in it, as discussed *infra*.¹⁵ Rather, the record fully supports adoption by the Rate Board of the rates and charges proposed in the Proposed Partial Settlement Petition, as set forth below.

Upon consideration of the record produced in this proceeding, which includes the Proposed Partial Settlement Petition, statements in support or opposition, briefs, statements, exhibits, transcripts, discovery responses, orders and public comments, it is my recommendation that the Rate Board permit the rates and charges to go into effect as set forth in the Joint Petition for Partial Settlement, and employ the reconciliation/adjustment process as proposed to ensure that customers receive the full benefit in the event federal funds are received by the Department or when the Department's reserve funds exceed a threshold balance.¹⁶ With respect to the outstanding unsettled issues, I recommend that the Rate Board accept the Public Advocate's proposal that PWD be required to report monthly on the performance of its arrearage forgiveness policies and any obstacles prohibiting PWD from operating an arrearage forgiveness program that allows TAP customers to earn and realize arrearage forgiveness immediately with each monthly TAP payment, as well as report monthly on its efforts to reduce TAP denials and TAP churn. I recommend that the Rate Board deny PWD's request to modify its TAP-R rider so as to recover a portion of the costs associated with TAP arrearage forgiveness through the annual reconciliation process as proposed. I recommend that the Rate Board approve the uncontested tariff changes, and changes to the miscellaneous rates and charges.

I recognize that the unprecedented conditions – in terms of both human and economic suffering – caused by the COVID-19 pandemic make it difficult to entertain the idea of any increase in rates and charges at this time. The comments and statements offered by the Department's customers were compelling in making clear the challenges faced by many. The record, however, does establish the need for rate relief at some level, especially considering PWD's

¹⁵ I want to make it perfectly clear that I did not come to any decision about whether to recommend approval of the joint settlement agreement until I had read and thought about the objections.

¹⁶ I further recommend that the Rate Board amend its regulations if necessary to permit the type of special rate proceeding described in the Joint Petition for Partial Settlement.

decision to voluntarily withdraw its 2020 rate filing.¹⁷ As discussed in more detail below, City Council requires the Rate Board to set rates and charges sufficient for the Department to produce a level of revenue to cover its expenses and debt service and satisfy applicable financial metrics in order to access the capital market at reasonable rates (as well as other requirements and mandates¹⁸) in order to provide the safe and adequate service its customers are entitled to, while still ensuring that the rates and charges are just, reasonable and equitably apportioned.

After a thorough review of the record, I conclude that the proposed settlement rates do this. There is no question that PWD does require additional revenue. The proposed partial settlement significantly reduces the amount of the overall rate increase with a modest increase in FY 2022. It also establishes a mechanism that potentially may result in a decrease in the proposed increase in FY 2023 and includes substantial commitments to protect customers during the pandemic (and beyond). In the Petition at 7, the Joint Petitioners stated that the “proposed rates and charges should be approved as they are just and reasonable, comply with the ordinances governing the proceeding and provide a reasonable basis for recovery of revenues sufficient to meet the Department’s obligations.” I agree.

At each public and technical hearing, I reminded the participants and customers that in my opinion, developed after many years of experience, that this does not have to be an adversarial process, that both the Department and its customers want the same thing: rates that are sufficient to allow PWD the necessary resources to provide safe and adequate service but that are also affordable for customers so they can pay for this essential service without it being a hardship.¹⁹

I commend both the PWD and the Public Advocate for their hard work and willingness to work creatively to address not just the Department’s revenue requirement but other issues (such as those that arose during the pendency of this proceeding) that impact the Department and its customers, and appropriately balancing those interests. I especially want to recognize the

¹⁷ As a result of that withdrawal, there was no increase to rates in charges in FY 2021. In fact, there was a slight decrease in rates based on the TAP-R reconciliation. See, the Rate Board’s August 5, 2020 [Rate Determination](https://www.phila.gov/media/20200807152432/2020FinalRateFiledDetermination.pdf) at <https://www.phila.gov/media/20200807152432/2020FinalRateFiledDetermination.pdf>.

¹⁸ Phila. Code, § 13-101(4).

¹⁹ See, for example, the transcript of the March 16, 2021, 1:00 p.m. public hearing at Tr.18-20.

high degree of professionalism and integrity shown by counsel for these statutory participants (Andre Dasent, Esq., for PWD and Robert Ballenger, Esq., for the Public Advocate, and their respective associates). It is my hope they can continue in the future to advance the interests they respectively represent in a cooperative way that best serves them both. I also want to thank each of the dozens of customers who took the time to provide their thoughts on the proposed rate increase, either by attending the public hearings or by sending comments to the Rate Board (all of which I have read). These comments were thoughtful, sincere and helpful in putting a human face on the matters discussed, a reminder that decisions made in this proceeding directly impact the lives of real, individual people, not just “customers” as a group. It is obvious that both the Department and the Advocate took these comments to heart, and I urge the Rate Board to do the same.

II. PROCEDURAL HISTORY

As noted above, PWD made its [Advance Notice](#)²⁰ on January 15, 2021, and its [Final Notice](#)²¹ on February 16, 2021.²² In compliance with the Rate Board’s mandate for an open and transparent examination of the Department’s proposed rates and charges, the Board regulations require the submission of certain technical information, including (1) all financial, engineering and other data upon which the proposed rates and changes are based; (2) evidence demonstrating that the proposed rates were developed in accordance with sound utility rate making practices and consistent with the current industry standards for water, wastewater and storm water rates; and (3) material required by order of the Board in the last rate case.²³ To support its proposed rates and charges, PWD presented the direct testimony, schedules and exhibits of a number of witnesses:

²⁰ <https://www.phila.gov/media/20210115161627/PWD-Exhibit-1-Notification-of-Rate-Filing.pdf>

²¹ <https://www.phila.gov/media/20210216163232/FormalNoticeOfPWDProposedChangesToRatesAndChargesFY2022-23.pdf>

²² As of the date of this Report, the members of the Rate Board (nominated by the Mayor and approved by City Council) are Board Chair Sonny Popowsky, Tony Ewing, Rasheia R. Johnson, and Abby Pozefsky. Short biographies of each board member, as well as relevant legal authority and regulations, are available at the Rate Board’s [website](https://www.phila.gov/departments/water-sewer-storm-water-rate-board/about) (<https://www.phila.gov/departments/water-sewer-storm-water-rate-board/about>).

²³ These filings as well as discovery (and responses), public comments, correspondence, orders and other relevant documents are posted in the section labeled “2021 Rate Proceeding” on the Rate Board’s [website](https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/) (<https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/>).

- Randy E. Hayman (PWD Water Commissioner) ([PWD St. 1](#))²⁴;
- Melissa LaBuda (PWD Deputy Water Commissioner for Finance) ([PWD St. 2](#),²⁵ supplemented in [Formal Filing](#)²⁶);
- Stephen Furtak (PWD General Manager of Engineering and Construction) and Trisha Grace (PWD Projects Control Manager, Capital Program) ([PWD St. 3](#))²⁷;
- Donna Schwartz (PWD Deputy Commissioner and General Manager of the Operations Division), Ben Jewell (PWD Manager of the Collector System Unit), Brendan Reilly (PWD Water Conveyance Chief) and Mary Ellen Senss (PWD Wastewater Manager) ([PWD St. 4](#))²⁸;
- Susan Crosby (Deputy Revenue Commissioner, in charge of the WRB) and RaVonne A. Muhammad (Assistant to the Director of Finance, Water Revenue Assistance Division) ([PWD St. 5](#))²⁹;
- Department consultant Raftelis Financial Consultants (Jon Pilkenton Davis, Henrietta Locklear, and Jennifer (Fitts) Tavantzis) ([PWD St. 6](#))³⁰;
- Department consultant Black & Veatch Management Consulting LLC (Ann Bui, Dave Jagt, and Brian Merritt) (PWD Sts. [7A](#)³¹ and [7B](#)³², supplemented in [Formal Filing](#)³³); and

²⁴ <https://www.phila.gov/media/20210115161810/PWD-Statement-No.-1-Direct-Testimony-and-Schedules-of-Randy-E.-Hayman.pdf>

²⁵ <https://www.phila.gov/media/20210115161814/PWD-Statement-No.-2-Direct-Testimony-and-Schedules-of-Melissa-La-Buda.pdf>

²⁶ <https://www.phila.gov/media/20210216165014/PWD-Statement-2-%E2%80%93-Direct-Testimony-And-Schedules-Of-Melissa-La.-Buda-Supplemented-As-Of-Formal-Filing.pdf>

²⁷ <https://www.phila.gov/media/20210115161842/PWD-Statement-No.-3-Direct-Testimony-and-Schedules-of-Stephen-J.-Furtak-and-Trisha-Grace.pdf>

²⁸ <https://www.phila.gov/media/20210115161842/PWD-Statement-No.-4-Direct-Testimony-and-Schedules-of-Donna-Schwartz-Ben-Jewell-Brendan-Reilly-and-Mary-Ellen-Senss.pdf>

²⁹ <https://www.phila.gov/media/20210115161911/PWD-Statement-No.-5-Direct-Testimony-and-Schedules-of-Susan-M.-Crosby-and-Ravonne-A.-Muhammad.pdf>

³⁰ <https://www.phila.gov/media/20210115161930/PWD-Statement-No.-6-Direct-Testimony-and-Schedules-of-Raftelis.pdf>

³¹ <https://www.phila.gov/media/20210115162029/PWD-Statement-No.-7A-Direct-Testimony-and-Schedules-of-Black-and-Veatch.pdf>

³² <https://www.phila.gov/media/20210115162104/PWD-Statement-No.-7B-Direct-Testimony-and-Schedules-of-Black-and-Veatch.pdf>

³³ <https://www.phila.gov/media/20210216172716/PWD-Statement-No.-7A-Direct-Testimony-And-Schedules-of-Black-and-Veatch-Supplemented-as-of-Formal-Filing.pdf>

- Department consultants Dr. H. Gil Peach (H. Gil Peach & Associates LLC), Mark Thompson (Forefront Economics Inc.) and Yvonne Whitelaw (YJW Associates) ([PWD St. 8](#))³⁴.

Pursuant to the Rate Ordinance and its own regulations, the Rate Board again selected Community Legal Services to act as Public Advocate to represent the concerns of residential customers and small commercial users (generally those customers without individually assessed storm water charges) in this general rate proceeding. The Rate Board appointed me to act as the Hearing Officer and retained Amawalk Consulting to provide technical services.

The Rate Ordinance at Philadelphia Code § 13-101(4)(b)(.4) provides that the decision by the Board to approve, modify or reject the proposed rates and charges shall be made in a timely manner, but “no later than 120 days from the filing of notice of any proposed change in rates and charges.”³⁵ See also, the Rate Board’s regulations at Section IIA.(1.b): “Consistent with Section 13-101, the Rate Proceeding shall be conducted within 120 days of the filing of the Formal Notice and shall address only rates and charges and topics directly related thereto.” This deadline, together with other timing requirements specified in the Board regulations, necessitates the careful development of the deadlines for action within the Board’s overall time limit. To promote an efficient process, participants from the last rate case consulted together before the filing of the Advance Notice on anticipated scheduling issues. The Public Advocate propounded numerous Advance Data Requests to the Department before the filing of the Final Notice.³⁶ PWD, the Public Advocate and most other participants also cooperated throughout the proceeding with respect to scheduling, discovery and other procedural aspects.

³⁴ <https://www.phila.gov/media/20210115162059/PWD-Statement-No.-8-Direct-Testimony-and-Schedules-of-H.-Gil-Peach-Mark-Thompson-and-Yvonne-Whitelaw.pdf>

³⁵ “If the Board is unable to act on proposed rates and charges in the time required herein, the Water Department may establish emergency rates and charges on a temporary basis pending a final determination by the Board.” Phila. Code § 13-101(8).

³⁶ These data requests and PWD’s responses, as well as all other discovery, are also posted on the Board’s website.

In addition to the Department and the Public Advocate, participants included the Water Revenue Bureau (WRB),³⁷ PECO Energy Company (PECO), the Philadelphia Large Users Group (Large Users Group)³⁸ as well as a number of individual customers (Michael Skiendzielewski, Lance Haver, Sharon Keselman, Michael Blowney, Kesrick Jones, Jr., Joseph Sherick and Juliana Martell).

An on-the-record prehearing conference to address preliminary procedural issues was held via teleconferencing software Zoom in this proceeding on February 24, 2021. All participants to the rate filing were invited by e-mail to participate; in addition, the notice of the prehearing conference and the code to participate were posted on the Board's [website](https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/) at <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/>. Participating either pro se or through counsel were the Water Department, the Public Advocate, the Water Revenue Bureau, the Large Users Group, Michael Skiendzielewski and Lance Haver.³⁹ At that prehearing conference, a schedule was adopted and directives were issued regarding discovery and the holding of hearings. These determinations were memorialized in a [Prehearing Conference Order](#)⁴⁰ dated February 24, 2021.

Four public hearings were conducted. Due to the on-going COVID-19 pandemic, all hearings were conducted remotely, with the option to participate via Zoom online or telephonically. The Rate Board, the Department and the Public Advocate worked together to ensure that outreach and notice were provided to provide maximum awareness of the scheduled hearings was provided to the public. In addition to notices and guidelines about participation posted on the various websites (Rate Board, PWD and CLS/Public Advocate) and social media, there were flyers, newspaper notices, blast emails to various groups of customers and interested parties such as community energy agencies and political offices. These hearings were held

³⁷ The Water Revenue Bureau, which is part of the City's Department of Revenue, provides all billing and collection functions for charges by the Department.

³⁸ The Large Users Group is an ad hoc group of large volume customers receiving water, sewer, and stormwater service from the Department under the Industrial and Hospital/University Rate Schedules. PLUG Statement 1 at 1.

³⁹ Sharon Kesselman, who is participating in this proceeding, had indicated that she would attend the telephonic scheduling conference, but did not do so.

⁴⁰ <https://www.phila.gov/media/20210322155516/PHC-feb-24-2021-order.pdf>

(virtually) in the afternoons (1:00 p.m.) and evenings (6:00 p.m.) of March 16 and March 18, 2021. The testimony presented at these hearings, as well as submissions made by customers to the Rate Board through comments, is discussed below.⁴¹

On March 15, 2021, Mr. Haver filed a [Motion](#)⁴² requesting that the current proceeding be postponed “. . . until such time as it is known how much of the money set aside under the American Rescue Plan Act of 2021 will be allocated to the Philadelphia Water Department and how those funds can be used.” By [email](#)⁴³ dated March 21, 2021, I held the Motion in abeyance, finding that although the issue of possible federal funds would be a material factor for the Rate Board to consider, it was not clear that it was not possible to proceed. I recognized that the schedule may need to be modified and directed the Department to provide substantive information on this issue on the record as soon as possible and to update it as further information becomes available.

On March 15, 2021, a [letter](#)⁴⁴ signed by all members of the Philadelphia City Council (along with prior correspondence⁴⁵) was submitted to the Rate Board by Philadelphia City Councilmember Maria D. Quiñones Sánchez, requesting that the Rate Board deny the rate increase request and instead direct PWD to leverage existing and anticipated federal funds to offset its need for rate relief. In response to PWD’s request for guidance from the City, City Finance Director Rob Dubow, by [letter](#)⁴⁶ dated March 26, 2021, informed PWD Deputy Water Commissioner LaBuda of the City’s anticipated use of the funds expected to be provided through the recently enacted American Rescue Plan (ARP), and identified a series of actions that the City would undertake for the benefit of the Water Fund, most notably the possibility that the City would reduce

⁴¹ A comprehensive summary of these public hearings is contained in PWD’s Main Brief at Appendix C.

⁴² <https://www.phila.gov/media/20210318160110/Lance-Haver-PWD-Continuance-Motion-1st.pdf>

⁴³ <https://www.phila.gov/media/20210325171439/Hearing-Officer-Decision-on-Haver-Motion.pdf>

⁴⁴ <https://www.phila.gov/media/20210322155453/03.18.21-City-Council-to-Water-Rate-Board-re-Rate-Increase.docx.pdf>

⁴⁵ See [Feb. 18, 2021 letter of Councilmember Quiñones Sánchez](#) (<https://www.phila.gov/media/20210324163459/02.18.21-MQS-to-Hayman-re-Rate-Increase.pdf.pdf>) to Water Commissioner Hayman and [Commissioner Hayman’s reply of February 24, 2021](#) (<https://www.phila.gov/media/20210324163458/02.24.21-Hayman-to-MQS-re-Rate-Increase.pdf.pdf>)

⁴⁶ <https://www.phila.gov/media/20210405171512/Water-memo-3.30.21.pdf>

the annual amount the Water Fund contributes to the Pension Fund by more than \$25 million. Water Commissioner Hayman, on March 30, 2021, sent a [letter](#)⁴⁷ to Philadelphia City President Darrell Clarke recognizing the support offered by the Administration, offering to “continue promotion” of customer assistance programs and requesting Administration support “in ensuring every eligible customer applies for both existing assistance and any new help that may become available through COVID-19 recovery legislation.”

Pursuant to the schedule adopted, direct testimony was filed by Mr. Haver and the Public Advocate on March 22, 2021. Mr. Haver submitted his own direct statement ([Haver St. 1](#)⁴⁸). The Public Advocate submitted the direct testimony of Lafayette K. Morgan, Jr. (Exeter Associates, Inc., [Public Advocate St. 1](#)⁴⁹), Jerome D. Mierzwa (Exeter Associates, Inc., [Public Advocate St. 2](#)⁵⁰), and Roger D. Colton (Fisher Sheehan & Colton, [Public Advocate St. 3](#)⁵¹), each with accompanying schedules and/or exhibits.

On April 5, 2021, Mr. Haver filed a “[Direct Appeal](#)”⁵² with the Rate Board, requesting that the Rate Board continue the proceeding “until the actual numbers are set forth for meaningful and real public hearings.” I established a response period, with responses due on April 9, 2021, so that the Rate Board could consider them prior to its scheduled meeting on April 14, 2021. The Department filed an [Answer](#),⁵³ asserting inter alia that the appeal is moot, since the correspondence with the City established that PWD will not receive any of the anticipated federal funds (although individual customers may be eligible for assistance). The Public Advocate filed a [Memorandum in Lieu of Answer](#),⁵⁴ in which it claimed that Mr. Haver’s Direct Appeal should be considered as a request for interlocutory review of a material question, which the Public Advocate articulated as “Given the recognized certainty [citing Commission Hayman’s letter] that

⁴⁷ <https://www.phila.gov/media/20210405171316/Hayman-Clarke-letter-response.pdf>

⁴⁸ <https://www.phila.gov/media/20210322155522/Lance-Haver-PWD-testimony.pdf>

⁴⁹ <https://www.phila.gov/media/20210324163527/PA-St-1Morgan.pdf>

⁵⁰ <https://www.phila.gov/media/20210324163526/PA-St-2-Mierzwa.pdf>

⁵¹ <https://www.phila.gov/media/20210324163618/PA-St-3-Colton.pdf>

⁵² <https://www.phila.gov/media/20210409165058/Appeal-to-Rate-Board.pdf>

⁵³ <https://www.phila.gov/media/20210414161418/PWD-2021-ANSWER-TO-HAVER-APPEAL-FINAL.pdf>

⁵⁴ https://www.phila.gov/media/20210414161543/PA-Memo-In-Response-to-Haver-April-5-Filing_FINAL.pdf

PWD's projected revenue requirements from rates are overstated, based on the failure to (1) include reasonable estimates of stimulus funding, (2) take into account costs shifted to other departments, and (3) reflect significantly reduced future pension expenses, could the prejudice to the parties satisfactorily be cured during the normal review process?" The relief requested was that the schedule be modified so as to allow additional time for discovery and supplemental testimony, even if that rate process takes longer than 120 days. At the Rate Board's regular April 14, 2021, meeting the Department and the Public Advocate announced that settlement discussions were on-going, and that all participants would be able to join in those discussions. In light of that representation, Mr. Haver withdrew his appeal without prejudice.⁵⁵

Pursuant to the schedule contained in the February 24, 2021, Prehearing Conference Order, rebuttal testimony was filed and served by the Water Department on April 7, 2021:

- [PWD Rebuttal St. 1](#)⁵⁶ (Melissa La Buda, Valarie J. Allen, Katherine Clupper, Peter Nissen, Stephen J. Furtek, Susan M. Crosby, Ann Bui, Dave Jagt and Brian Merritt) addressed to the testimony of Public Advocate witness Morgan;
- [PWD Rebuttal St. 2](#)⁵⁷ (Ann Bui, Dave Jagt, and Brian Merritt) addressed to the testimony of Public Advocate witness Mierzwa;
- [PWD Rebuttal St. 3](#)⁵⁸ (Susan M. Crosby, Melissa La Buda, Jon Pilkenton Davis, Henrietta Locklear, Jennifer (Fitts) Tavantzis, Ann Bui, Dave Jagt, Brian Merritt, Dr. H. Gil Peach, Mark Thompson and Yvonne Whitelaw) addressed to the testimony of Public Advocate witness Colton; and
- [PWD Rebuttal St. 4](#)⁵⁹ (Melissa La Buda, Ann Bui, Dave Jagt and Brian Merritt) addressed to the testimony of intervenor Haver.

⁵⁵ See [Minutes of April 14, 2021](#), ¶ 5 (<https://www.phila.gov/media/20210507153046/4.14.2021-Meeting-Minutes-Updated-Draft-DWCH-20210504.pdf>)

⁵⁶ <https://www.phila.gov/media/20210409165047/PWD-REBUTTAL-STATEMENT-1-REBUTTAL-TESTIMONY-TO-PUBLIC-ADVOCATE-WITNESS-LAFAYETTE-MORGAN-L0997114xA35AE.pdf>

⁵⁷ <https://www.phila.gov/media/20210409165046/PWD-REBUTTAL-STATEMENT-2-REBUTTAL-TESTIMONY-TO-PUBLIC-ADVOCATE-WITNESS-JEROME-MIERZWA.pdf>

⁵⁸ <https://www.phila.gov/media/20210409165059/PWD-REBUTTAL-STATEMENT-3-REBUTTAL-TESTIMONY-TO-PUBLIC-ADVOCATE-WITNESS-ROGER-COLTON-L0997147xA35AE.pdf>

⁵⁹ <https://www.phila.gov/media/20210409165015/PWD-REBUTTAL-STATEMENT-4-REBUTTAL-TESTIMONY-TO-LANCE-HAVER.pdf>

The Large Users Group submitted the rebuttal testimony of Billie LaConte, (J. Pollock, Incorporated, [PLUG St. 1](#)⁶⁰) addressed to the testimony of Public Advocate witness Mierzwa.

By [order](#)⁶¹ dated April 16, 2021, I granted PWD's April 8, 2021 [Motion in Limine](#)⁶² addressed to issues raised by participant Michael Skiendzielewski, and its April 8, 2021, [Objections](#)⁶³ to related discovery⁶⁴. Following Mr. Skiendzielewski's April 12, 2021, [response](#)⁶⁵ to the Objections, I granted the Motion and sustained the Objections, finding that "The Rate Board does not have the authority to investigate, administer or enforce public integrity laws or ethical codes. Therefore, discovery or testimony intended to address allegations of misconduct in connection with administration of the HELP loan program will be excluded from the scope of this rate proceeding."

PWD also filed a [Motion in Limine](#)⁶⁶ addressed to portions of the testimony presented by Public Advocate witness Roger Colton (Public Advocate St. 3), in which the Department requested that the scope of the proceeding be limited to exclude certain issues and proposals relating to COVID-19 relief, the structure and operation of TAP, and customer service issues that the Department alleges are beyond the scope of a rate proceeding before the Rate Board and that portions of Mr. Colton's testimony on those issues be excluded or stricken. In light of the participants' on-going settlement discussions, I deferred ruling on the motion.⁶⁷

⁶⁰ <https://www.phila.gov/media/20210409164848/BSL-Rebuttal-TE.pdf>

⁶¹ <https://www.phila.gov/media/20210503164501/Order-Limine-Skiendzielewski-april-15-1-acjs.pdf>

⁶² <https://www.phila.gov/media/20210414161420/PWD-MOTION-IN-LIMINE-2021-SKIENDZIELEWSKI-L0996772xA35AE-2.pdf>

⁶³ <https://www.phila.gov/media/20210414161712/OBJECTION-L0997356xA35AE1.pdf>

⁶⁴ A motion in limine is a motion to exclude anticipated prejudicial evidence, keep extraneous issues out of the proceeding, preclude reference to prejudicial matters, or prevent encumbering the record with immaterial matter. See, *Commonwealth v. Pikur*, 596 A.2d 1253, 1259 (Pa. Commw. 1991).

⁶⁵ <https://www.phila.gov/media/20210420104435/CHESNUTresponseHELP1.pdf>

⁶⁶ <https://www.phila.gov/media/20210409165023/PWD-MOTION-IN-LIMINE-COLTON-TESTIMONY-4.5.21.pdf>

⁶⁷ In the Joint Petition, the Department withdrew its Motion.

An additional [Motion in Limine](#)⁶⁸ was filed by PWD to the direct testimony presented by Mr. Haver (Haver St. 1). PWD asserted that the legal argument and conclusions contained in it are not the proper subject of testimony (but may be raised in briefs) and therefore those portions of Mr. Haver's testimony should be excluded or stricken. By [Order](#)⁶⁹ dated April 7, 2021, I denied the Motion, finding that although the legal analysis and conclusions contained in Mr. Haver's statement were not the appropriate subject of testimony (but may be raised in appropriate motions or briefs), there is no apparent harm to any of the participants by denying the Motion and allowing the testimony.

By [letter](#)⁷⁰ to the Rate Board dated April 30, 2021, Water Commissioner Hayman responded to [correspondence](#)⁷¹ containing comments and recommendations submitted on April 16, 2021, by Citizens for Pennsylvania's Future, (PennFuture).⁷²

A virtual [technical hearing](#)⁷³ was held on April 30, 2021. This hearing was open to the public and advertised consistent with Rate Board regulations. Pro se participant Haver conducted cross-examination of PWD witness LaBuda, Black and Veatch witnesses Bui, Merritt and Jagt, and Public Advocate witness Morgan.

Issues relating to the pending proposed partial settlement were discussed, and PWD Hearing Exh. 1 (proof of publication of newspaper notices relating to the hearing) and PWD Hearing Exh. 2 (the Settlement Term Sheet) were admitted into the record; the record was closed, recognizing that a number of items (the transcript of the April 30, 2021, technical hearing, documents relating to the proposed joint partial settlement, the hearing officer's report, briefs and other submissions to the hearing officer and the Rate Board, responses to transcript requests and

⁶⁸ <https://www.phila.gov/media/20210409165053/PWD-Motion-in-Limine-Haver-4.5.211.pdf>

⁶⁹ <https://www.phila.gov/media/20210409164846/Order-Motion-Limine-Haver-ACJS.pdf>

⁷⁰ <https://www.phila.gov/media/20210504170436/PWD-Response-to-PennFuture-Comment-4.30.21.pdf>

⁷¹ <https://www.phila.gov/media/20210504170433/2021-4-16-PF-Comments-on-PWD-Rate-Increase-Proceeding.pdf>

⁷² In this letter, PennFuture describes itself as "a statewide environmental nonprofit advocacy group invested in protecting and improving water quality in Philadelphia and across Pennsylvania." PennFuture did not intervene in this proceeding or otherwise participate.

⁷³ <https://www.phila.gov/media/20210504170434/2021-General-Rate-Proceeding-Philadelphia-Water-Department-.pdf>

other outstanding discovery responses) were not yet available but would be included in the record (and posted on the Rate Board's website) without further order. I memorialized these determinations in a [Further Procedural Order](#)⁷⁴ dated April 30, 2021.

On May 3, 2021, intervenor Haver filed a [Motion to Compel](#),⁷⁵ requesting that the Public Advocate be directed "to put on the record the name, email address, physical address, and phone number of every civic group, community group, labor union, elected official and individual it contacted regarding the proposed water rate increase" so that "concerned members of the Public can contact them and tell them of the settlement that the Public Advocate secretly negotiated." On May 4, 2021, the Public Advocate filed an [Answer](#)⁷⁶ in which it specifically denied the material allegations of the Motion and requested that it be denied as untimely and improper. It further explained that "Mr. Haver's assertion mischaracterizes the process by which rate case settlements are routinely negotiated in Pennsylvania. In Pennsylvania, statutorily appointed advocates routinely represent the interests of customer classes and enter into settlement agreements informed by both public input and testimony of expert witnesses. Mr. Haver's characterization of the settlement negotiations in this proceeding as being "in secret" appears intended to mislead members of the public." As a "courtesy," however the Public Advocate attached to its Answer an "outreach list it compiled of direct contacts made in advance of the public input hearings," noting that it "has not tracked the names, emails, and phone numbers of any individuals contacted via this outreach (conducted by multiple CLS attorneys) and it would be unreasonably burdensome and potentially violative of confidentiality obligations to require the Public Advocate to undertake additional efforts and expense to assemble such information." By [Order](#)⁷⁷ dated May 5, 2021, I denied the Motion, noting that it had been rendered moot by the outreach list provided, as well as the fact that the Settlement Term Sheet had been posted on the websites of the Rate Board, PWD and the Public Advocate (as well as the Advocate's social media channels).

⁷⁴ <https://www.phila.gov/media/20210504170435/further-procedural-order-april-30-2021.pdf>

⁷⁵ <https://www.phila.gov/media/20210505154833/Motion-to-Compel-the-Public-Advocate-to-Put-on-the.pdf>

⁷⁶ <https://www.phila.gov/media/20210505154834/PA-Answer-to-LH-Motion-to-Compel.pdf>

⁷⁷ <https://www.phila.gov/media/20210505154834/Order-Haver-Motion-to-Compel.pdf>

On May 5, 2021, the Joint Petitioners (signatories PWD and the Public Advocate) filed a [Joint Petition for Partial Settlement](#)⁷⁸ (Joint Petition, proposed partial settlement agreement), along with separate Statements in Support. The Joint Petition set out a brief history of the proceeding, and described the agreement between the signatories, including several tables to demonstrate the prospective projected revenue and revenue impact of the proposed rates, and comparisons of existing and proposed rates on PWD’s residential and nonresidential customers. The signatory participants noted that the proposed settlement agreement was not opposed by the Large Users Group, that PECO took no position, that individual participants Haver and Skiendzielewski opposed it and that the other individual participants had not expressed an opinion. PWD and the Public Advocate requested that I recommend that the Rate Board find that the proposed rates and charges contained in the joint Petition to be “just and reasonable” and to authorize the Department to file modified rates and charges to become effective on September 1, 2021 (for Fiscal Year 2022), and on September 1, 2022 (for FY 2023), consistent with the terms and conditions contained in the Petition.

On May 10, 2021, Mr. Haver filed a [Motion to Remove Fraudulent Exhibits](#)⁷⁹ (which I considered as a Motion to Strike Exhibit), claiming that the March 26, 2021 [letter](#)⁸⁰ sent from City Finance Director Dubow to Deputy Water Commissioner LaBuda⁸¹ is “fraudulent” because it contains statements concerning the allocation of the federal stimulus funds expected to be received by the City before the budget had been acted on by the Philadelphia City Council, and requesting that I “strike the exhibit and all arguments using the exhibit from the record; and report the attorney(s) responsible for entering the fraudulent document into the record and/or using the fraudulent exhibit in any and all arguments to the Disciplinary Committee of the Pennsylvania Bar.” PWD responded with a [Memorandum in Opposition](#)⁸² to Lance Haver’s Motion for Removal of Schedule ML-10 (PWD Response) on May 12, 2021, pursuant to the response period I

⁷⁸ <https://www.phila.gov/media/20210505154832/Joint-Petition-for-Partial-Settlement.pdf>

⁷⁹ <https://www.phila.gov/media/20210510161805/withdraw-fraudulent-testimony.pdf>

⁸⁰ <https://www.phila.gov/media/20210405171512/Water-memo-3.30.21.pdf>

⁸¹ This letter was included in the record as Sch. ML-10, attached to the rebuttal testimony of Deputy Water Commissioner LaBuda, PWD Rebuttal St. 1.

⁸² <https://www.phila.gov/media/20210518083646/PWD-RESPONSE-TO-HAVER-MOTION-FOR-REMOVAL-MAY-12.pdf>

established. I denied the Motion by [Order](#)⁸³ dated May 14, 2021, finding that there was nothing incorrect or misleading about the exhibit, much less fraudulent.

Also on May 10, 2021, Mr. Haver filed [Objections](#)⁸⁴ to Both the Process and Terms of the Proposed Settlement (Objections or Haver Objections) asserting that the hearing and settlement process used in this proceeding violate “well-established principles of due process,” that the Public Advocate acted improperly by not seeking public input before agreeing to the settlement terms, that the Proposed Settlement is not in the public interest or supported by the record and is not reasonable. These objections are discussed *infra* at Section V.B.

Also on May 10, 2021, participant Michael Skiendzielewski by [email](#)⁸⁵ requested “recusal of counsel to the Water Rate Board due to the relevant decision-making, conflicts” claiming that “WRB has a basic and primary professional responsibility to ensure and safeguard the processes, reports and deliberations that occur and are produced from such deleterious effects such as conflicts of interest, unprofessional conduct, unethical decision making, etc. as evidenced on the record by counsel to the Water Rate Board.” He attached as support a letter, dated May 18, 2017, from this counsel. I treated the email as a petition (or motion) and by [Order](#)⁸⁶ dated May 11, 2021, denied it.

Pursuant to the schedule, on May 11, 2021, both [PWD](#)⁸⁷ and the [Public Advocate](#)⁸⁸ filed Main Briefs supporting the Joint Partial Settlement Agreement and addressing the issues that were not settled, as well as the objections of Mr. Haver and Mr. Skiendzielewski.

As requested at the technical hearing, the record was closed on April 30, 2021, by my Further Procedural Order, which recognized that several items were not yet available but would be included in the record. Pursuant to the Rate Board’s regulations, Section II(8)(b), the hearing

⁸³ <https://www.phila.gov/media/20210513174112/Order-Haver-motion-to-strike-may-14-final-Copy.pdf>

⁸⁴ <https://www.phila.gov/media/20210510161803/oppose-the-settlement.pdf>

⁸⁵ <https://www.phila.gov/media/20210513093207/Michael-Motion.pdf>

⁸⁶ <https://www.phila.gov/media/20210513093208/Order-Skiendzielewski-recusal-may-11-2021-final.pdf>

⁸⁷ <https://www.phila.gov/media/20210513093206/Brief-May-11-2021.pdf>

⁸⁸ <https://www.phila.gov/media/20200129125221/Public-Advocate-Main-Brief.pdf>

record consists of the Advance Notice and Formal Notice (including all supporting documents), all other testimony (including supporting documents), all discovery responses, orders, pleadings, evidence of proper advertising and posting (PWD Hearing Exh. 1), as well as the stenographic records of the public hearings (March 16 and 18, 2021) and technical review hearing (April 30, 2021). The record also includes this Hearing Officer Report and the correspondence, information and comments sent to the Rate Board in connection with this proceeding, as well as the Settlement Term Sheet (PWD Hearing Exh. 2), the Joint Petition for Partial Settlement and all related documents such as briefs, statements in support or opposition and correspondence.

III. RATE DETERMINATION STANDARDS

As explained above, the Rate Board was established to determine whether the rates and charges for water, sewer and storm water service proposed by the Water Department should be accepted, rejected or modified, after an open and transparent review process. The Rate Ordinance that established the Rate Board contains standards that the Board must consider in making its rate determinations, See, Philadelphia Code § 13-101(4), which provides that:

(4) Standards for Rates and Charges.

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

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

may provide for sufficient revenue to stabilize them over a reasonable number of years

(.1) In fixing rates and charges the Board shall recognize the importance of financial stability to customers and fully consider the Water Department's Financial Stability Plan. In addition, the Board shall determine the extent to which current revenues should fund capital expenditures and minimum levels of reserves to be maintained during the rate period. When determining such levels of current funding of capital expenditures and minimum levels of reserves, the Board shall consider all relevant information presented including, but not limited to, peer utility practices, best management practices and projected impacts on customer rates. ...

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

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

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

In addition, the Rate Ordinance provides for other types of special rates and charges, including those for service provided to charitable institutions, places of worship, public and private schools, public housing and the determination of various sewer charges. See, Philadelphia Code §§13-101(4) – (6).⁸⁹

Further, § 13-101(2) of the Rate Ordinance provides that the Water Department:

...shall develop a comprehensive plan ("Financial Stability Plan") which shall forecast capital and operating costs and expenses and corresponding revenue requirements. It shall identify the strengths and challenges to the Water Department's overall financial status including the Water Fund's credit ratings, planned and actual debt service coverage, capital and operating reserves and utility service benchmarks. It shall compare the Water Department to similar agencies in

⁸⁹ The full text of the relevant ordinances and regulations are posted on the Rate Board's website, at the section entitled "Regulations & Relevant Legal Authority." [About | Water, Sewer & Storm Water Rate Board | City of Philadelphia](https://www.phila.gov/departments/water-sewer-storm-water-rate-board/about/) (<https://www.phila.gov/departments/water-sewer-storm-water-rate-board/about/>)

peer cities in the United States. A Financial Stability Plan shall be submitted to Council every four (4) years and updated prior to proposing revisions in rates and charge.

As described above, PWD's rates must also be set at a level that produces sufficient revenue to ensure compliance with its rate covenants, which are described in the direct testimony of PWD Deputy Water Commissioner for Finance LaBuda (PWD St. 2 at 23-24):

In the 1989 General Bond Ordinance, the City covenanted with the bondholders that it will impose, charge and collect rates and charges in each fiscal year sufficient to produce annual net revenues which are at least 1.20 times the debt service requirements, excluding the amounts required for subordinated bonds (as defined in the 1989 General Bond Ordinance). In addition, the City's covenants to its bondholders require that net revenues in each fiscal year must be equal to 1.00 times (A) annual debt service requirements for such fiscal year, including the amounts required for subordinated bonds, (B) annual amounts required to be deposited in the debt reserve account, (C) the annual principal or redemption price of interest on General Obligation Bonds payable, (D) the annual debt service requirements on interim debt, and (E) the annual amount of the deposit to the Capital Account (less amounts transferred from the Residual Fund to the Capital Account).

Further, pursuant to the 1989 General Bond Ordinance, the City will, at a minimum, impose, charge and collect in each fiscal year such water and wastewater rents, rates, fees and charges and shall yield Net Revenues (defined for purposes of this covenant particularly, calculated to exclude any amounts transferred from the Rate Stabilization Fund to the Revenue Fund in, or as of the end of, such fiscal year) which will be equal to at least 0.90 times Debt Service Requirements for such fiscal year (excluding principal and interest payments in respect of Subordinated Bonds and transfers from the Rate Stabilization Fund). In this testimony, the above covenants are referred to collectively as the "Rate Covenants."

In the Rate Determination that addressed the 2018 rate proceeding, the Rate Board set forth targets for several financial metrics to be considered by the Department in its future operations and by the Board in its future rate decisions. These targets included a 1.3x senior debt service coverage ratio; a \$150 million combined reserve balance in the Department's Rate Stabilization Fund and Residual Fund; and 20% cash financing for capital expenditures. See, 2018

Rate Determination at 18-33.⁹⁰ The reasons for setting such targets for the 2018 rate proceeding include the need to support the credit ratings for the Department's bonds; higher credit ratings make it easier and less expensive to borrow money, providing interest savings for all customers for many years to come. The PWD indicates that it must borrow substantial amounts of money over the next five years to fund federally mandated improvements plus routine capital improvements to maintain a state-of-good-repair. Being able to borrow money at reasonable rates of interest is critical for both making the capital improvements and keeping the cost of service as reason as possible.

The revenue impact of the proposed settlement rates and charges will be evaluated using these requirements and targets. While the proposed settlement is presented as a “black box” settlement, in which the individual adjustments to the proposed rates and revenue are not specifically identified, the rates and the revenue they produce must be in compliance and supported by the record.

IV. PUBLIC INPUT

To fulfill the mandate in the Rate Ordinance, that an “open and transparent process for public input and comment on proposed water rates and charges” be used, the ordinance requires that “prior to fixing and regulating rates, the Board shall hold public hearings.” Philadelphia Code §§ 13-101(3)(e) and (f). To accomplish that, the [Rate Board's regulations](#) at Section II(B)(a)-(h)⁹¹ describe the number and timing of such hearings, how they are to be conducted and the use of the information, comments and suggestions received:

4. Public Hearings.

(a) The Board, or a designated member or Hearing Officer on its behalf, shall hold public hearings for the following purposes: (1) to ensure an open and transparent Rate Proceeding; (2) to make Departmental personnel available to answer relevant questions about the proposed changes in rates and charges; (3) to permit the Department and any person or entity affected by the proposed rates and

⁹⁰ The Board noted in its Order that those financial targets “are not mandated requirements and should not be considered to be either strict ceilings or floors.” 2018 Rate Determination at 23.

⁹¹ The regulations can be found on the Rate Board's [website](https://www.phila.gov/media/20190220105611/RegulationsAmended01092019withDocumentation.pdf), <https://www.phila.gov/media/20190220105611/RegulationsAmended01092019withDocumentation.pdf>

charges to provide information to the Board regarding any change in rates or charges as proposed by the Department; and (4) to assist the Board in the collection of information relevant to the Department's proposed changes in rates and charges.

In this proceeding, four public hearings were conducted, in the afternoons (1:00 p.m.) and evenings (6:00 pm.) of March 16 and March 18, 2021. Due to the on-going COVID-19 pandemic, all hearings were conducted remotely, with the option to participate via Zoom or telephonically. Outreach and notice were provided to ensure that maximum awareness of the scheduled hearings was imparted to the public. In addition to notices and guidelines about participation posted on the various websites (Rate Board, PWD and CLS/Public Advocate) and social media, there were flyers, newspaper notices, blast emails to various groups of customers and interested parties such as community energy agencies and offices of elected officials. In addition, there was an article about the hearings in the *Philadelphia Inquirer*, which was mentioned by a number of customers when I asked how they became aware of the public hearings.⁹² The stenographic records of these public hearings, as well as video recordings of each session, are posted on the Rate Board's website, under the Public Hearing tab of the 2021 Rate Proceeding section, [2021 Rate Proceeding | Water, Sewer & Storm Water Rate Board | City of Philadelphia](#).⁹³

At each of these public hearings, the Department and Public Advocate made short presentations and I described my background and the process used by the Rate Board to evaluate the proposed rates so that the customers could be assured that PWD's filing was being thoroughly examined. Every attempt was made to answer questions that were raised, either right then or by later response from PWD. Also, customers with specific billing or service concerns were connected directly with PWD representatives to assist them privately.

Each public hearing was well-attended; approximately 30 customers commented on the proposed increase in rates or asked questions, although there were more observers who did not participate directly. Virtually everyone expressed concerns about the affordability of water

⁹² In addition, most of the other customers were aware through e-mails they received, social media and websites, community groups and word of mouth.

⁹³ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#public-hearings>

service, especially during this challenging time of the COVID-19 pandemic and its economic effects. A number of people had questions concerning the necessity of any rate increase in light of the recently enacted federal legislation providing stimulus funding. For example, at the March 16, 2021, 6:00 p.m. hearing, Daniela Ascarelli stated: “I guess I’m here to say I’m a little concerned that you’re looking for a rate increase in the middle of a pandemic when we are the poorest large city in America.” Tr. 24-25.

Relevant and compelling testimony of the impact of higher rates was given by many of the other customers. Several members of the Workers Benefit Council described the impact of higher rates on lower-income workers, such as Terence Chambers (March 16, 2021, 6:00 p.m.): “Even though there will be a moratorium on terminations until next year, rate hikes will still present long-term ramifications for those still stuck in the rut. And even due to situations that are not their fault. And they are forced to turn to welfare and/or relatives and/or friends to help them make ends meet.” Tr. 54.

Lauren Katz-Smith explained that she is a clinical law professor at the Kline School of Law at Drexel University, and co-director of the Stern Community Lawyering Clinic, which offers free legal services to citizens of West Philadelphia. She described several cases including that of Ms. P: “Ms. P lost her job in March of 2020 and has not been able to find work. With three children living and learning remotely from home, her cost of living, including the cost of her utility bills throughout this pandemic and quarantine has increased significantly. As she awaits assistance, including rental assistance, she faces the threat of eviction and has watched her debt increase to unresolvable amounts. Through tears, she describes the stress that she is under to provide and stay afloat. She cannot pay her bills now and more is just not possible.” March 18, 2021, 1:00 p.m., Tr. 26.

Similarly, Dr. Allison S. Kenner an associate professor in the Center for Science Technology and Society at Drexel University, is the director of the Energy Rights Project, which is a three-year, federally funded study that looks at household energy insecurity in the U.S. Mid-Atlantic and Philadelphia: “I’m concerned about the timing of the proposed water rate increase and believe that the rate increase, like the shutoff moratorium, should be postponed for one year. Raising water rates during a pandemic will increase debts, hardship and vulnerability for many

Philadelphians. And social -- it will worsen social and economic inequality in a City that faces too much inequality already.” March 18, 2021, 6:00 p.m., Tr. 74-76.

Philadelphia City Councilmember Maria D. Quiñones Sánchez also testified at the March 18, 2021, 6:00 p.m. public hearing. She explained that “there's always been a political willingness and space for us to do what is necessary for our residents, for our infrastructure, by also protecting our most vulnerable” by ensuring that water service is available, and that tax money is used responsibly. She addressed City Council’s willingness to work with PWD to ensure that rates stay as low as possible, noted that federal funding was recently made available for bill assistance and described correspondence she had sent to Water Commissioner Hayman asking that the Water Department “to reconsider this rate proposal and to leverage our recent investments by the State and forthcoming, at that point, federal funds and to sign up thousands of families eligible and not yet enrolled in our TAP program.” March 18, 2021, 6:00 p.m., Tr. 3-10.

In addition to the public hearings, the Rate Board received over 100 comments from concerned customers regarding the proposed rate increase and the proposed partial settlement, all of which are made part of the record and posted on the Rate Board’s website at the Public Input tab, [2021 Rate Proceeding | Water, Sewer & Storm Water Rate Board | City of Philadelphia](https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#public-input).⁹⁴ All of the comments opposed the proposed rate increase. For example, Chris B. wrote: “We have some of the highest water rates already in the region. It does not seem appropriate to increase the rates without improving the service to some degree. Customers should not be punished for poor management of funds.” DeBorah Giles, a community organizer, presented a petition in opposition. While many of the comments were received after the posting of the proposed partial settlement, only a few referenced it directly. One person, Mike, felt it still increased rates by too much; Diane was “pleased the rate increase will be less than anticipated.”

On April 16, 2021, PennFuture sent a letter to the Rate Board requesting that the proceeding be stayed pending receipt of more definite information concerning the availability of federal stimulus funding and urging that the Department employ “holistic” means of funding its

⁹⁴ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#public-input>

green stormwater infrastructure commitments rather than through residential rates. Water Commissioner Hayman responded by letter dated April 30, 2021.

I must thank those customers who were able to take the time to attend one of the public hearings or who sent a comment. This information was helpful, sincere and compelling and serves to remind us all that the Rate Board's rate determination is not made in a vacuum. The decision about the rates and charges for water service, an essential utility, has a direct impact on the lives of the Department's customers. I know that I was very affected by it, and I can only believe that this testimony was a major motivating factor in moving the Public Advocate and PWD to reach agreement that, unsettled issues aside, resulted in a proposed settlement that greatly reduces the proposed rates while enhancing customer protections, especially those relating to the TAP program.

V. PROPOSED PARTIAL SETTLEMENT

A. Proposed Partial Settlement Terms and Conditions

The Proposed Partial Settlement Petition⁹⁵ contains a number of terms and conditions. Those relating to the proposed rates (including the reconciliation/adjustment procedure) and their impact on the customers can be found in Section II, Sections A-B at 3-7. In addition, the proposed agreement at Sections C and D (at 7-10) contains certain commitments, addressed to (1) convening stakeholders to discuss possible ways of allocating certain costs of service, including non-residential storm water overflow remediation projects, residential rate structure relating to storm water, and rate design, revenue allocation, cost of service; (2) customer service and policy issues (TAP recertification and outreach, language access, termination moratorium); and (3) COVID-19 protections (payment agreements, tenant issues), with PWD agreeing to provide quarterly reports to the Rate Board with regard to these issues.⁹⁶ Attached to

⁹⁵ Again, the Proposed Partial Settlement Petition as well as all related documents and comments are posted on the Rate Board's website in the section labeled "2021 Rate Proceeding" at the "Proposed Settlement" tab [2021 Rate Proceeding | Water, Sewer & Storm Water Rate Board | City of Philadelphia](https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#proposed-settlement) (<https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#proposed-settlement>)

⁹⁶ It should be noted that the Rate Board has no jurisdiction over non-rate items, and they are recognized here only for the purpose of discussing the proposed agreement. See, 2018 Rate Determination at 38, discussion of the conclusion of the City's Law Department that "the Rate Board's rate-setting authority does not include the right to require the Water Department to undertake any particular program, other than implementation of rates and charges."

the Joint Petition were Table C-1A (projected revenue and revenue requirements, base rates excluding TAP-R surcharge); Table C-4 (combined system: comparison of typical bill for residential customers under existing and proposed rates); and Table C-5 (combined system: comparison of example bills for non-residential customers under existing and proposed rates).

The signatory participants (PWD and the Public Advocate) explained there that this is a “black box” settlement, in which specific adjustments to projected expenses and revenues are not made. This agreement is designed to produce additional water, waste water, and storm water revenue of \$10.411 million to become effective for FY 2022 based on an increase in rates to become effective on September 1, 2021, and additional revenue of \$47.011 million for FY 2023 based on an increase in rates to become effective September 1, 2022, together with the full-year effect of the increase that became effective on September 1, 2021, for a total revenue increase of \$57.422 million over the two-year period of FY 2022 and FY 2023: A portion of the FY 2023 incremental revenue increase (\$34.110 million, referred to in the agreement as the FY 2023 Base Rate Incremental Increase) is subject to potential reduction if certain conditions occur.

As explained in the Joint Petition at 4-7, the signatories have proposed that this \$34.011 million FY 2023 Base Rate Incremental Increase is subject to two potential adjustments relating to (1) receipt of federal stimulus funding and (2) changes in FY 2021 performance, both to be addressed in a Special Rate Reconciliation Proceeding in FY 2023. Reduced to its essentials, the proposed FY 2023 Base Rate Incremental Increase is subject to reduction on a dollar-for-dollar basis should the Department receive federal stimulus funding (as defined in the Joint Petition) above the threshold amount of \$2 million. In addition, a similar process will be employed to determine if the FY 2023 Rate Base Incremental Increase should be reduced if the level of reserves contained in the Rate Stabilization Fund as of the end of FY 2021 is above a threshold amount to be determined. In both cases, this reconciliation/adjustment cannot lower the FY 2023 Base Rate Incremental Increase below zero dollars.

Finally, the Joint Petition in Section IV contains the standard terms and conditions stating that the agreement is made without prejudice to any position taken by either of the Joint Petitioners in this or future proceedings, that any proposal not specifically addressed in the Joint Petition continues as proposed by the Department, that it is conditioned upon the Rate Board’s

approval of the agreement without modification, that if the Rate Board fails to grant approval of the Settlement Petition or modifies any material term or condition of the Settlement, any Joint Petitioner may elect to withdraw, in whole or in part, from the Settlement upon written notice to the Rate Board and the other participants within three business days of the entry of the Rate Board's final order, and in that case, the settlement will be of no force and effect and each participant reserves its right to fully litigate⁹⁷ the case, and that the settling participants will support the settlement and make reasonable good faith efforts to obtain approval of the settlement by the Rate Board, and that Joint Petitioners reserve the right to file exceptions in the event of (a) any modification or of the terms of the proposed settlement; (b) any additional matter proposed by the Hearing Officer; or (c) to correct errors or misstatements in the Hearing Officer Report.

B. Discussion

1. Opposing Participant Position – Lance Haver

In his Objections, Mr. Haver has objected both to the “Process and Terms of the Proposed Settlement.” His position concerning the alleged procedural deficiencies is summarized at ¶23: “Because the amount PWD will need is still unknown, because the Public has been shut out, not given an opportunity to shape the position and/or agreements reached by the Public Advocate, the hearings fail to meet the legal requirements.” He specifically alleged failure on the part of the Public Advocate to adequately represent the public, because it failed to “create structures to allow for the Public to participate in the rate making process, to have input into the Public Advocate’s positions and to shape the concerns and needs that the Public Advocate advances” (¶12), that “allowing the Public Advocate to decide what is best for the Public, without Public Input deprives the Public of representation” (¶13) that “Unlike every other lawyer participating in the ‘private discussions’ regarding the settlement, the Public Advocate sought no input before agreeing to the settlement terms. Its decision to turn its back on the very people who are paying his salary, the Public Advocate makes a mockery of his own on the record statement that public input is important and must be listened to. . . its failure to seek input from any member

⁹⁷ I use the settling participants’ term but note that rate-setting by the Rate Board is not done by “litigation.”

of the Public is hubris; the Public Advocate is no more the Public than Louis the XIV was the State.” ¶¶20-21.

Initially, it needs to be noted that although he is a member of the public, Mr. Haver cannot speak for “the Public.” He is participating in this proceeding as an individual, and I will evaluate his statements as such.

Mr. Haver’s first argument is that the proceeding is flawed because the amount, if any, of any federal funds that may be available to PWD (and any subsequent impact on the requested revenue increase) was unknown at the time of the public hearings. This argument is without merit, as the proposed partial settlement agreement contains an explicit mechanism to ensure that any such funds, above a threshold amount, will be used to directly benefit PWD’s customers by reducing the FY 2023 Base Incremental Revenue Increase, up to \$34.011 million. While it is correct that many of the customers who testified expressed the hope that these funds could (or should) be used to obviate the need for any increase at all, those comments must be considered in connection with PWD’s need for rate relief. Clearly, the public hearings worked as intended by providing compelling testimony concerning these funds, which led to both PWD and the Public Advocate agreeing on a methodology to use them, if such funds become available, to potentially reduce the incremental revenue increase.

His second procedural argument, that the Public Advocate’s failure to seek input from the public before entering into the proposed partial settlement agreement, is similarly flawed. There is no legal requirement that would impose upon settling participants to a rate proceeding a requirement to seek public input prior to presenting a proposed settlement for approval.⁹⁸ Rather, it is clear that the testimony presented at the four public hearings – as well as the other contacts described in the Public Advocate’s Answer to Mr. Haver’s motion to Compel - was certainly

⁹⁸ As the Public Advocate noted in Section II.4 of its [Answer in Opposition](https://www.phila.gov/media/20210505154834/PA-Answer-to-LH-Motion-to-Compel.pdf) (<https://www.phila.gov/media/20210505154834/PA-Answer-to-LH-Motion-to-Compel.pdf>) to Mr. Haver’s Motion to Compel, “[i]n Pennsylvania, statutorily appointed advocates routinely represent the interests of customer classes and enter into settlement agreements informed by both public input and testimony of expert witnesses.” The Public Advocate also entered into the record evidence that it had engaged in outreach to dozens of potential commenters before the public hearings. *Id.* Section II.14 and Appendix I.

considered by the Public Advocate, who has had the benefit of representing the interests of PWD's customers in numerous rate proceedings. While it is correct that the Rate Board's jurisdiction encompasses only the proposed settlement rates and charges, it must be remembered that the proposed partial settlement contains numerous and substantial commitments on the part of PWD that will benefit the Department's customers. These are commitments that could not have been obtained from the Rate Board. As a participant, Mr. Haver was involved in settlement discussions before the Partial Settlement Agreement was presented. He had every opportunity to provide his own input and offer whatever terms he felt were appropriate. This was not any kind of secret agreement; the settlement term sheet was provided to all participants and posted on the Rate Board's website for public comment.

Mr. Haver's substantive objections to the terms of the proposed partial settlement are that the proposed settlement is not in the public interest, that it is not reasonable and that it is not supported by the record. ¶¶24-56.

Looking at his first argument, Mr. Haver claims that the proposed settlement agreement is not in the public interest because (1) it "gives PWD every penny it wants without requiring PWD to seek and receive any money from the Recovery Plan Act (¶24); (2) it does nothing to force PWD to enroll additional people into the "low-income plan" (¶28); (3) it does not require PWD to "look for operational cost savings" (¶30), to "open its operations to advances in renewable energy" (¶31), to "open its doors to engineering advances that may lower costs in the years to come" (¶32), to "take advantage of a buying co-op" (¶33), does not require PWD to market "excess water" to create jobs (¶34); does not "force PWD" to "seek local/minority owned businesses as vendors" (¶35), does not "require PWD to list what it buys regularly well ahead of when it seeks bids, thus making it harder for smaller, local business to prepare bid, compared with multi-national corporations who have lobbyists and 'expeditors' on staff" (¶36), would force consumers to "pay more than what the Public Advocate's expert said was needed" (¶37), and does not require PWD to correct "faulty projections" in its Five Year Plan (¶38).

Mr. Haver summarized these points in ¶39: "The proposed settlement is not in the public interest; if approved, PWD will not have to seek any additional funds from the recovery act, it fails to require PWD to increase the number of people in its low-income plan. The operations

of PWD will not improve, no local jobs will be created, no new businesses will be recruited into the City; PWD's infrastructure will not be used to advance renewable energy and reduce the City's carbon footprint; and it will not make it easier for local, minority owned businesses to win bids and create living wage jobs in the City of Philadelphia."

I will address each of these. Several are simply incorrect (there was no showing of "faulty projections" in the Five Year Plan, the proposed agreement has commitments regarding TAP outreach and enrollment, the proposed agreement requires PWD to use its best efforts to obtain stimulus funding, PWD did not receive "every penny it wants" but actually accepted a substantial reduction in its rate request) while virtually all of the others are outside the Rate Board's jurisdiction and could not have been achieved had the matter proceeded to full litigation. In addition, I cannot imagine PWD as a city department is not already subject to vendor requirements. There is simply no basis for accepting these proposals – no matter how attractive they sound in terms of job creation or environmental impact – based on the record. There is no evidence as to how to implement these broad suggestions, or the costs involved. Certainly, the fact that these suggestions were not included provides no reason to reject the proposed partial settlement.

Mr. Haver's second argument is that the proposed settlement is not reasonable: "It is not reasonable for a settlement to allow PWD to collect what it wants from ratepayers and then hope that PWD refunds money to ratepayers if it over collects, when PWD's history of refusing to refund its overcollection instead placing the overcollection in the rate stabilization fund is well document by the record." ¶42. The Proposed Settlement Agreement does in fact contain a mechanism whereby a portion of the FY 2023 Incremental Base Increase of \$34.011 million may be returned to PWD's customers if the balance in the Rate Stabilization Fund reaches a threshold balance.⁹⁹ The other paragraphs in this section are:

- Mr. Haver's opinions (¶¶40 and 41); or

⁹⁹ It should be noted that in addition to supporting the PWD's credit rating, the availability of funds in Rate Stabilization was instrumental in paying the Department's bills and achieving bond covenants in FY 2020 and again in this year. PWD St. 2 (LaBuda) at 8.

- incorrect (the settlement allows “PWD to collect what it wants from ratepayers and then hope that it finds money elsewhere” (§42), the facts are not known (§43), someone (presumably PWD or the Public Advocate) “went behind the back of City Council” (§44), that the decision to accept the proposed settlement is based on the “decision of one person, who is in no way average” (§45) and that “meaningful hearings” were not held because “participants have vacation and/or family obligations that might be interfered with” (§46).

Finally, Mr. Haver asserts that the proposed settlement is not supported by the record: “By refusing to disclose the proposed settlement to City Council Members during hearings, by refusing to inform civic and community groups of the proposed settlement in a timely fashion, the record cannot show that there is any support, other than those paid to participate in the process for settlement. And those paid to participate cannot be considered unbiased.”¹⁰⁰ Again, this section contains unsupported statements and attacks on both PWD and the Public Advocate. There is no question that an extensive record has been created in this proceeding, that there have been ample opportunities for public notice and input and that there is a substantial record upon which the Proposed Partial Settlement Petition should be evaluated to determine whether the Rate Board should accept the proposed rates and charges.

2. Opposing Participant Position – Michael Skiendzielewski

It was difficult to discern exactly what Mr. Skiendzielewski is objecting to in the proposed partial settlement; he did not submit any document entitled objections, but rather sent numerous emails. Indeed, as noted by PWD in its Main Brief at 67, Mr. Skiendzielewski did not submit either prepared testimony or public input testimony to make recommendations or proposals on the record concerning the Department’s proposed rates and charges. It seems that he is objecting to certain proposals made to him by PWD in the course of settlement negotiations.

¹⁰⁰ The Department’s cost of this proceeding, including counsel and other experts, is an operating cost and thus appropriate for funding in this proceeding. The Rate Board pays the Public Advocate to ensure that the Rate Board understands weaknesses in the Department’s proposals and appreciates the impacts on small customers. While Department rates and charges ultimately also fund the Rate Board and its contractors, I see no apparent incentive for the Public Advocate to collude with the Water Department, or evidence that it has done so.

For example, in one of his May 10, 2021 emails, he wrote:

As Hearing Officer, you are certainly entitled to, have the authority to and are free to do as you please. But it is abundantly clear and documented now in these records of communications, correspondence and emails that you made a declaration regarding the CONFIDENTIALITY of communications between parties involved in settlement discussions and when I show, prove and demonstrate with facts and evidence that PWD, its management and attorneys, have used this issue of CONFIDENTIALITY to hide from public discourse and WRB and records, bogus, unviable and useless proposals and offers to settlement which fly in the face of your allegiance to COLLABORATION, which all know is based on candor, forthrightness and genuine and honest professional conduct.

As noted by PWD in its Brief at 67, fn 224, however, “Settlement negotiations are privileged, confidential and inadmissible into evidence. The law is clear that an unaccepted offer to compromise or settle cannot be introduced into evidence. *See, e.g., Redevelopment Authority of City of Philadelphia v. Pelullo*, 409 A.2d 122, 125 (Pa. Cmwlth. 1979). Mr. Skiendzielewski participated in settlement discussions with the Department. His settlement proposals were presented to the Department for its consideration. No agreement was reached, as evidenced by Mr. Skiendzielewski’s opposition to the Partial Settlement.” I agree. Mr. Skiendzielewski has presented no reason – much less one supported by the record – why the proposed partial settlement agreement should be rejected by the Rate Board.

3. Revenue Requirement and Proposed Rates

With respect to the revenue requirement, this partial settlement agreement is a “black box” agreement between the signatories. This means that the Joint Petitioners were not able to agree on the specific elements of the revenue requirement calculation. While the Rate Board has not addressed this in prior rate proceedings, the Pennsylvania Public Utility Commission has recognized that “black box” settlements can serve an important purpose in reaching consensus in rate cases and encourages their use. As the Commission stated recently in *Pa. Pub. Util. Commission v. Philadelphia Gas Works*, Docket No. R-2020-3017206, Commission Opinion and Order entered November 19, 2020, at 14: “We have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have

been realized during the litigation process. Determining a company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases." In addition, such a settlement approach has no precedential value but serves to preserve each participant's positions in future cases.

As explained in the Joint Petition for Partial Settlement, the proposed settlement rates are designed to produce incremental revenue of \$10.411 million for FY 2022 (based on rates to become effective on September 1, 2021), and additional revenue of \$47.011 million for FY 2023 (based in rates to become effective on September 1, 2022) for a total revenue increase of \$57.422 million over the two-year period of FY 2022 and FY 2023. A portion of the FY 2023 incremental revenue increase (\$34.110 million, referred to in the agreement as the FY 2023 Base Rate Incremental Increase) is subject to potential reduction if certain conditions occur. This compares to PWD's proposal in its Advance and Final Notices to increase rates so as to produce incremental revenue of \$48.864 million (FY 2022) and \$92.076 million (FY 2023) for a total requested revenue increase of \$140.960 million.

Table 1 – Proposed Increases

	PWD (as filed)	Proposed Partial Settlement
Sept. 1, 2021 (FY 2022)	\$48.864M	\$10.411M
Sept. 1, 2022 (FY 2023)	\$92.096M	\$12.901M \$34.110M ^(A)
TOTAL	\$140.960M	\$57.422M ^(B)

^(A) Subject to reduction

^(B) Of this total, \$34.110M is subject to reduction

There can be no question that this represents a substantial decrease - \$83.538 million, or approximately 60% - from the originally requested revenue increase. It is possible that

had this proceeding been fully “litigated,” the Rate Board would have approved an increase in rates and charges to produce at least that amount of incremental revenue. Again, it must be remembered that this incremental revenue increase of \$57.422 million is a maximum – it may be reduced in FY 2023 after a special rate reconciliation proceeding.

As discussed above in Section III, the ratemaking standards established by City Council and applicable to this rate proceeding require the Rate Board to establish rates and charges sufficient to fund budgeted operating expense and annual debt service obligations from current revenues and to comply with rate covenants and the debt service reserve requirements. Philadelphia Code §13-101(4). The incremental revenue anticipated to be produced by the proposed settlement rates must be examined to ensure compliance with this mandate.

PWD Deputy Water Commissioner LaBuda discussed the factors that led to PWD’s decision to request permission to increase its rates and charges: “The need for rate relief in FY 2022 and 2023 is caused by the following main drivers: (1) changes in consumption patterns; (2) decline in collection rates; (3) higher costs related to supporting its CIP program, including the increased cost of infrastructure maintenance; and (4) unavoidable increases in workforce costs. Another factor driving the need for rate relief includes increases in costs over various categories, such as chemicals used in the water treatment process, as previously mentioned.” PWD St. 2 at 36.

The record establishes the need for some level of rate relief. Discussing the testimony and exhibits presented by Deputy Water Commissioner LaBuda (PWD St. 2), the Department explained in its Statement in Support at 2:

The Department’s financial condition has deteriorated, since the 2018 general rate proceeding. PWD Statement 2 at 4-5; Schedule ML-8. The Department experienced significant cost increases in FY 2020, and FY 2020 ended with expenses higher than projections. PWD Statement 2 at 6-7, 43; Schedule ML-2 at 8; Schedule ML-9. Revenues were not sufficient to pay all of the budgeted expenses in FY 2020, so the Department made a \$33 million withdrawal from cash reserves to meet obligations and debt service coverage for FY 2020. PWD Statement 2 at 3.

In 2020, the Department withdrew (without prejudice) its general rate proceeding that proposed increased rates and charges case for FY 2021, due to onset

of the pandemic. PWD Statement 2 at 5; Schedule ML-9. This left rates and charges unchanged in FY 2021. Even with the austerity measures implemented by the Department, revenues will not pay all of the budgeted expenses in FY 2021. PWD Statement 2 at 4, 19. This means that the Department is projected to make another withdrawal from cash reserves to meet obligations and debt service coverage for FY 2021. PWD Statement 2 at 4, 8-9.

Expenses have continued to increase. PWD Statement 2 at 5, 11, 36-40. The Department cannot continue to absorb increased expenses without additional revenues, if the Department is going to maintain its financial status and current favorable bond ratings. PWD Statement 2 at 8-9, 18-20, 31. Continued reliance on withdrawals from cash reserves to meet obligations and debt service coverage is unsustainable. PWD Statement 2 at 8-11.

In FY 2022, without rate relief, the Department would barely meet the mandatory financial metrics and would be required to make another significant withdrawal from cash reserves to meet obligations and minimum debt service coverage requirements. PWD Statement 2 at 4. The depletion of cash reserves would leave the Department with few options on a going-forward basis to fulfill its mission of providing high-quality, reliable service to its customers. PWD Statement 2 at 4. Without rate relief, it is projected that the Department would fail to meet the rate covenant requirements in FY 2023. PWD Statement 2 at 4.

Indeed, even had PWD received the entire rate increase contained in its original filing, PWD stated that it would not have been able to meet the financial targets approved by the Rate Board in the 2018 Rate Determination of 1.3x senior debt coverage and a combined balance of \$150 million in the Residual Fund and the Rate Stabilization Fund, although it would have satisfied the metrics required by its bond insurance coverages. See, PWD St. 2 (LaBuda) at 28-29 and related schedules.

PWD's Brief has attached as Appendix A several tables showing the impact of the settlement revenue increase for FY 2022 and FY 2023. Table C-1A, which was attached to the Joint Petition, shows the combined system projected revenue and revenue requirements on base rates (excluding TAP-R surcharge); Table C-1B shows the effect on TAP-R surcharge revenue. Table C-1C displays the projected impact of the settlement rates (combined system, base and TAP-R surcharge) on the Rate Stabilization Fund and the covenant metrics. As shown on Table C-1C,

the proposed settlement rates are projected to result in satisfaction of the applicable metrics in each of the fiscal years at issue.

However, it needs to be recognized that while rate increases at any time may be difficult for customers to absorb, the current pandemic and its associated human and economic hardships make it especially challenging now. This was made clear by almost all the customers who took the time to testify at one of the public hearings, or who submitted comments to either the original filings or the proposed partial settlement.¹⁰¹ For example, Aisha A. on May 5, 2021, commented that “I am submitting a request to not raise the current rate of water. It has been a critical year and things are not the same. The rising cost of food had created a strain on my current budget. I am a senior about to reach the age of 70. I am not in a position to pay more for water because in the first place why is there a charge for water. Not a fan of pricing going up when my income stays the same.” Similarly, Michael B. wrote, “As a homeowner in Philadelphia I must object to the proposed rate increase. An increase of that magnitude would put many of us in difficult financial positions. Thank You for your consideration.” Clearly, both PWD and the Public Advocate took these sentiments seriously.

The proposed partial settlement recognizes the Department’s need for rate relief but as importantly attempts to mitigate the effect on customers in several ways besides substantially reducing the incremental revenue requirement. First, while there will be increases in the rates and charges in each of the fiscal years at issue, the increase on September 1, 2021, will be much smaller than the proposed increase on September 1, 2022, recognizing that the City and its water customers are just beginning to experience a recovery from the coronavirus-related restrictions of the last 14 months. For residential customers, the effects of the increases are shown on Table C-4, attached to the Partial Settlement Petition; it shows the impacts on residential customers with varying billing characteristics, including those for the typical senior and typical residential customers with 5/8” meters who use 0.3 mcf and 0.5 mcf each month, respectively. Table C-5 shows similar

¹⁰¹ [2021 Rate Proceeding | Water, Sewer & Storm Water Rate Board | City of Philadelphia](https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#public-input) (comments, <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#public-input>) and [2021 Rate Proceeding | Water, Sewer & Storm Water Rate Board | City of Philadelphia](https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#public-hearings) (public hearing transcripts, <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#public-hearings>).

comparisons of existing and proposed rates for non-residential customers; it shows the impacts on small business customers with varying billing characteristics, including those of a typical small business customer with a 5/8" meter, monthly usage of 0.6 mcf, and an impervious area (4,000 square feet) 85% of the gross area of 5,500 square feet. The monthly bill impact from the proposed settlement rates on the typical customers shown in Tables C-4 and C-5 (including the effects of TAP-R) are summarized below.

Table 2 – Impact on Residential and Small Business Customers

Customer Class	Typical Monthly Bill	FY 2022 Sept 1, 2021		FY 2023 Sept 1, 2022	
		Proposed Rates	Difference from Existing	Proposed Rates	Difference from FY 2022
Residential	\$66.73	\$69.15	\$2.42 3.6%	\$73.58	\$4.43 6.4%
Senior	\$51.24	\$53.07	\$1.83 3.6%	\$56.43	\$3.36 6.3%
Small Business	\$112.13	\$111.58	(\$0.55) (0.5%)	\$119.27	\$7.69 6.9%

The increases during the first year for residential customers are extremely modest, representing about 8 cents per day. The increase in FY 2023 charges for typical residential customers would be about 15 cents per day. It should be noted that these comparisons assume that the entire FY 2023 incremental revenue increase is passed through and recovered from rates. A substantial portion (\$34.011 million) of the \$47.011 million incremental FY 2023 increase is subject to reduction, thus potentially reducing the rates to be implemented for September 1, 2022. It is also noted that charges for TAP-eligible customers can be substantially lower than the charge for typical residential customers.

The Joint Petitioners have the ability to utilize a special proceeding to examine a potential reduction of the September 1, 2022, increase due to the receipt of federal stimulus funding and improvement in PWD's financial condition, as well as the substantial commitments to improvements in customer service and policy agreements to protect customers during (and after)

the pandemic such as access to the Tiered Assistance Program (TAP),¹⁰² as well as to promote language access rights and tenant bill access.

I therefore recommend that, based on the record adduced in this proceeding, the Rate Board find that the proposed rates and charges are supported by the record, are in compliance with the Rate Ordinance and other applicable requirements and therefore should be permitted to be placed in effect for service rendered on and after September 1, 2021, and September 1, 2022, consistent with the terms and conditions contained in the Joint Petition for Partial Settlement.

4. Special Rate Reconciliation Proceeding

It is obvious that both PWD and the Public Advocate took into consideration the concerns of the customers as to affordability of their rates in agreeing to both the amount and timing of the proposed incremental revenue increase. In addition, many people (directly and through their elected official representatives) suggested that any need for rate relief could be ameliorated by the federal stimulus funds the City was expected to receive through recently enacted legislation. The Joint Petition for Partial Settlement does that by ensuring that if such funding is made available to the Department, rates will be reduced or adjusted in FY 2023 subject to certain conditions. In addition, the FY 2023 rates may be reduced if the level of reserves contained in the Rate Stabilization Fund as of the end of FY 2021 is above a threshold amount to be determined. It is proposed that both determinations be made through use of a special rate reconciliation proceeding, which would be initiated by PWD and, subject to Rate Board approval, be implemented on September 1, 2022.

¹⁰² TAP is a customer assistance program that allows low-income customers to pay reduced bills based upon a percentage of their household income. The lost revenue is recovered through the TAP-R surcharge on customers not eligible for the discount.

These conditions are defined and discussed in the partial Settlement Petition at 4-7. Specifically, the Petition states that:

(2) Reconciliation Adjustments to FY 2023.

* * *

(i) Reconciliation Framework (Federal Stimulus).

Subject to Paragraph 11.A.(2)(a) and this subparagraph (i), the FY 2023 approved rate increase is subject to reduction on a dollar-for-dollar basis via the Special Rate Reconciliation Proceeding to reflect the impact of “Stimulus Funding” (defined below) received by PWD during the “Receipt Period” (from July 1, 2021 to December 31, 2021).

• **Definition:** “Stimulus Funding” is defined as:

◦ Except as excluded by the footnote below,¹⁰³ amounts from (a) the U.S. Department of Health and Human Services (HHS) or Philadelphia Housing Development Corporation (PHDC) under the Consolidated Appropriations Act of 2021, enacted on December 27, 2020 (“CARES Act”) and (b) the American Rescue Plan Act, enacted on March 11, 2021 (“ARPA”) (collectively, the “federal legislation”), that are allocated by City Council to PWD in the FY 2022 budget and/or received directly by PWD, during the Receipt Period, in either case, that can be used to reduce operating expenses that would otherwise be paid by ratepayers.

◦ During the Receipt Period, any amounts received directly by PWD for reimbursement of PWD operating expenses submitted under the CARES Act.

• **Best Efforts:** PWD will utilize its best efforts to secure Stimulus Funding.

• **Threshold Bucket:** Downward adjustment will occur, if PWD receives \$2 million or more in Stimulus Funding (“Minimum Threshold”). No adjustment will be made if less than the above Minimum Threshold is reached.

• **Adjustment, Mechanics:** Provided the Minimum Threshold is met, an across-the-board reduction to the FY 2023 Base Rate Incremental Increase will be made in an amount equal to the Stimulus Funding received.

¹⁰³ For this purpose, “Stimulus Funding” excludes: (i) any amounts received directly by PWD from the City, HHS, PHDC or other state or local agencies administering federal funds for infrastructure or capital projects; (ii) any amounts allocated and/or received directly by PWD customers under the federal legislation, or other state or federal action, to alleviate potential or actual financial hardship of PWD’s customers; (iii) any amounts allocated and/or received directly by PWD from Utility Emergency Services Fund (“UESF”) in connection with UESF’s locally funded programs including the Utility Grant Program, Water Conservation Housing Stabilization Program, and the Customer Assistance Program for Water; and (iv) any amounts adopted by City Council through the budget process and/or received directly by PWD, beyond the Receipt Period.

- **Maximum Adjustment:** Reconciliation under this adjustment, separately or in combination with other adjustments, cannot lower the FY 2023 Base Rate Incremental Increase below zero dollars.

(ii) Reconciliation Framework (Changes in FY 2021 Performance).

Subject to Paragraph 11.A.(2)(a)(i) and this subparagraph (ii), the FY 2023 Base Rate Incremental Increase is subject to reduction on a dollar-for-dollar basis via the Special Rate Reconciliation Proceeding and within the parameters described below.

- **Adjustment, Mechanics:** The Department shall file a reconciliation request for FY 2023, setting forth the amount by which it requests the Rate Board reduce the FY 2023 Base Rate Incremental Increase to share with customers the benefit of FY 2021 amounts above a minimum threshold in the Rate Stabilization Fund. The Department shall include the City's annual financial report for such fiscal year and a statement explaining the basis for the Department's requested reduction (which may be any amount, including zero, up to \$34.110 million).
- **Maximum Adjustment:** Reconciliation under this adjustment, separately or in combination with other adjustments, cannot lower the FY 2023 Base Rate Incremental Increase below zero dollars.

The special rate reconciliation proceeding by which the potential reductions to the FY 2023 Base Rate Incremental Increase will be examined is set out in the Joint Petition at 4-5. There, it is described as "simple," limited to the two potential adjustments, analogous to the annual reconciliations of the Department's TAP-R surcharge.¹⁰⁴

As further set out in the Joint Petition at 5:

The Special Rate Reconciliation Proceeding is intended to be simple, limited to the two adjustments defined in Paragraph 11.A.(2) (a), and analogous to the TAP-R Reconciliation Proceeding. By approving the Settlement, the Rate Board is agreeing (in advance) to the use of the Special Rate Reconciliation Proceeding. Both the Department and the Public Advocate will be deemed to be Participants in the Special Rate Reconciliation Proceeding without notification to the Rate Board.

The Department shall initiate the Special Rate Reconciliation Proceeding. Any adjustment or reconciliation will be implemented effective September 1, 2022. It is anticipated that the Department will commence the above-described Special Rate Reconciliation Proceeding by filing an Advance Notice on or before March 1,

¹⁰⁴ The TAP-R rider tracks revenue losses resulting from application of the TAP discount, to permit annual reconciliation if they are greater or less than projected.

2022. In the Department's sole discretion, the Special Rate Reconciliation Proceeding may or may not be presented as part of the annual TAP-R Reconciliation Proceeding. In any event, the Public Advocate and other stakeholders shall be afforded a reasonable period of time to review and conduct discovery in order to evaluate the Department's reconciliation adjustments and may submit testimony and briefs supporting the Department's requested reduction or a different reduction to the FY 2023 Base Rate Incremental Increase.

Although it agreed to use of a special rate proceeding as described here, PWD in its Main Brief at 60 takes the position that this use of a special rate proceeding is not permitted under the Rate Board's current regulations: "The Rate Board's regulations anticipate three types of rate proceedings: a general rate proceeding, a TAP-R reconciliation proceeding and a special rate proceeding. The proposed Special Rate Reconciliation Proceeding is not (1) a general rate proceeding, since the proposed proceeding has limited issues; (2) a TAP-R reconciliation proceeding because the proposed proceeding does not impact TAP-R; (3) a special rate proceeding (as currently defined), since the proposed proceeding may or may not have a "de minimis impact on residential customer bills." It recommended several ways in which the regulations could be amended.

It is not my task to determine whether the Rate Board needs to, or should, revise its regulations as suggested by the Department. I do note that the clear intent of the availability of special rate proceedings under Section II.D of the Board's Regulations, and the limitation that it involves no more than "a de minimis impact on residential customer bills," appears designed to ensure that customers do not face more than minor increases in their rates without adequate notice and an opportunity to thoroughly investigate proposed rates. Here, while the impact may be more than that, the only way that rates will potentially be adjusted is to reduce them. Or, to put it another way, there is no way pursuant to the proposed settlement that any customer bills will be increased. The Board could reasonably decide that, since this would be a limited issue proceeding where the only result is a potential rate reduction, customers are protected.

Certainly, it would be a good idea, if possible, to amend and clarify the regulations as suggested. However, even if that is not possible, the current regulations at Section II.D do recognize the use of a special rate proceeding to allow the Board "further flexibility." The mechanism contained in the Joint Petition is a reasonable method of ensuring that the benefit of

any federal funding or improved financial performance above threshold levels will be used to directly benefit customers by reducing the incremental revenue requirement (and thus rates) for FY 2023. Therefore, I recommend the proposal to utilize a special rate reduction proceeding be approved by the Rate Board consistent with the terms and conditions contained in the Joint Petition for Partial Settlement. I further recommend that the Rate Board amend its regulations concerning use of special rate proceedings to clarify the appropriate use of such limited, non-general rate proceedings.

5. Non-Rate Terms

As explained above, the proposed partial settlement agreement at Sections C and D (Proposed Partial Settlement Petition at 7-10) contains numerous non-rate commitments on the part of PWD. While the Rate Board has no jurisdiction with respect to these non-rate issues, they represent potential significant protections and improvements for PWD's customers (and thus ultimately also benefit the Department). The Joint Petition provides that PWD will provide quarterly reports to the Rate Board with respect to the customer service and policy issues; these are for informational purposes only. The non-rate issues¹⁰⁵ include:

a) Storm Water Cost of Service and Benefit Allocation Issues

The Department agreed to undertake further evaluation and develop further proposals (following or in connection with stakeholder meetings) to share the cost/benefits of ratepayer funded non-residential storm water overflow remediation projects, and to develop a proposal to evaluate tiered residential rate structures to reflect the range of residential property sizes;

¹⁰⁵ I am following the Proposed Partial Settlement Petition in describing these issues as "non-rate" items; it may well be that the Rate Board has jurisdiction over cost-of-service issues in proceedings before it.

b) Customer Service and Policy Issues

(1) TAP recertification: for the short term, PWD will continue to waive program recertification during the pandemic, and will consider the merits of establishing a longer period of TAP recertification for certain groups such as pensioners, SSI and LIHEAP recipients;

(2) TAP outreach/participation: PWD will evaluate new approaches to inform customers of this and other assistance programs, including organizing and participating in community meetings, summits or other gatherings and meeting with Black community leaders and Black grassroots community members;

(3) Language access: PWD will consider changes in its language access plans, in consultation with the Mayor's Office of Immigrant Affairs, including interacting with community stakeholders and translating customer-service related forms and applications into additional languages and making them available; and

(4) Moratorium on shut offs: PWD will continue to review and evaluate the need to extend the current moratorium, and, prior to lifting the current moratorium, will consult with stakeholders to evaluate the feasibility of extending the moratorium considering public health guidance and economic conditions; and

c) COVID-19 Protections

(1) Payment agreements: PWD will provide more flexible terms for payment arrangements to help PWD customers make their accounts current, and will continue to extend payment arrangements for up to five years and income-based payment agreements for up to 15 years, will evaluate the Public Advocate's proposals to proactively extend payment arrangements to assist customers who have fallen behind during the pandemic and will conduct outreach with community organizations to "enroll" customers with past due balances in "suitable payment arrangements with longer repayment terms;" and

(2) Tenant issues: to address certain tenant issues (establishing tenant accounts, proof of residency), PWD will review its business practices, website disclosures and regulations and its internal policies, website language and regulations regarding establishing a tenant account and in conjunction with the Law Department will review its policies to facilitate tenants opting to request transfer pre-existing arrearages into his/her account.

VI. CONTESTED ISSUES

A. TAP Arrearage Forgiveness

The Joint Petitioners, PWD and the Public Advocate, were unable to reach agreement on two related issues relating to arrearage forgiveness, which is a component of the Department's customer assistance program, TAP (Tiered Assistance Program). TAP allows low-income customers to pay reduced bills based upon a percentage of their household income. The TAP-R rider tracks revenue losses resulting from application of the TAP discount, in order to permit annual reconciliation if they are greater or less than projected. The TAP-R surcharge is charged to customers not eligible for the discount. These two issues, implementation of this arrearage forgiveness and cost recovery through rates, are addressed by PWD in its Main Brief at 50-57, and by the Public Advocate in its Main Brief at 9-23.

As discussed in more detail below, I find that the Rate Board lacks the jurisdiction to directly approve the implementation adjustments proposed by the Public Advocate; I do find that the Public Advocate has raised serious questions about way in which PWD discharges its responsibility to provide arrearage forgiveness, and recommend that the Rate Board accept the Public Advocate's recommendation that it require PWD to report monthly on the performance of its arrearage forgiveness policies and any obstacles prohibiting PWD from operating an arrearage forgiveness program that allows TAP customers to earn and realize arrearage forgiveness immediately with each monthly TAP payment. The Board should further require PWD to report monthly on its efforts to reduce TAP denials and TAP churn, which limit the availability of pre-TAP arrearage forgiveness to low-income customers.

I further recommend that the Rate Board reject PWD's proposal to modify the TAP Rider to include a mechanism (the Arrearage Forgiveness or AF factor) to recover from non-TAP

customers a percentage of the amount of pre-TAP arrears forgiven beginning in FY 2023. While in concept this is reasonable, PWD failed to rebut the Public Advocate's showing that PWD failed to adjust the collectability factors used in this proceeding to take this modification into account.

1. Arrearage Forgiveness: Implementation

On its face, this is a simple issue: Should TAP recipients receive forgiveness of outstanding principal, charges and penalties on pre-TAP arrears after twenty-four non-consecutive monthly payments of the TAP bill as proposed by PWD, or should these customers earn and realize arrearage forgiveness immediately with each monthly TAP payment, as recommended by the Public Advocate? However, the initial determination of this issue depends on the scope of the Rate Board's jurisdiction to address it in this proceeding.

TAP replaced a previous program, the Income-based Water Rate Assistance Program, which was established in the Philadelphia Code, § 19-1605, Limitation on Action to Enforce Collection; Income-Based Water Rate Assistance Program. Arrearage forgiveness was made an express component of the program, § 19-1605(3)(h.2): "*Earned forgiveness*. Earned forgiveness of arrearages shall be available under such terms and conditions as are adopted by regulation. Customers with household income from one hundred fifty percent (150%) to two hundred fifty percent (250%) of FPL, shall be offered payment plans that result in a total bill - including arrearages - that is affordable."

PWD explained further in its Rebuttal St. 3 at 20:

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.

The Public Advocate has argued that although PWD has promulgated regulations that provide for additional arrearage forgiveness, these regulations are insufficient to provide meaningful relief: "... however, as of December 2020, PWD has inexplicably provided just \$2,292 of principal forgiveness [citing Mr. Colton's testimony, PA St. 3 at 54-56]. This negligible amount of arrearage forgiveness warrants further investigation. As Mr. Colton testified:

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

PWD should be required to provide a complete accounting of the principal arrearage that should have been forgiven under these three existing PWD policies, as compared to the \$2,292 of principal arrearages that were reported as having been forgiven in fact (PA-VIII-24). To the extent that principal forgiveness has not been granted where merited, PWD should provide such forgiveness with interest.

The Public Advocate claims that PWD's operation of TAP imposes major impediments to TAP customers' ability to receive arrearage forgiveness under PWD's current forgiveness process, so that the arrearage forgiveness to which TAP customers are entitled is not meaningfully available and thus is violative of the Philadelphia Code and its regulations and policies. See, Public Advocate Main Brief at 10-13.

In its Main Brief at 51, PWD asserts that the Rate Board does not have the authority to change the TAP arrearage forgiveness policies, that "authority lies with the Law Department," and that "the Department and the Department of Revenue worked in collaboration with the Law Department and others to develop the City's current policy." It claims that the "current policy is a reasonable approach to arrearage forgiveness. The City's current policy provides both penalty forgiveness and principal forgiveness, a significant benefit offered to eligible TAP customers. The

current policy also offers a more favorable result to TAP participants than the prior policy. The arrearage forgiveness program encourages participants to build good habits by paying bills on a consistent basis, which serves to decrease the cost to serve all customers.”

The Public Advocate (Main Brief at 8) cited to the Public Utility Code to describe by analogy the jurisdiction exercised by the Public Utility Commission (Commission) over jurisdictional utilities, especially the expansive definition of “service” contained in 66 Pa.C.S.A. § 102. That definition provides that “service” is “used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities.” This reference is inapt, there is no comparison between the two agencies. The Commission is an oversight agency with both subject-matter and party jurisdiction over those entities that are defined as public utilities, as shown by the express references to both “rates” and “service.” In contrast, the Rate Board has no party jurisdiction over the Department; its limited subject-matter jurisdiction is limited to the authority to “fix and regulate rates and charges” as set forth in its enabling ordinance, the Philadelphia Code § 13-101(3).

More persuasively, the Public Advocate argues that the Rate Board has authority to order PWD to change how it calculates and applies this TAP arrearage forgiveness by explaining that the Rate Ordinance Phila. Code § 13-101(4)(d) requires that the rates “fixed and regulated” by the Rate Board must be “just and reasonable” among other requirements. In its Main Brief at 6, the Advocate explains that “just and reasonable rates” is a constitutional standard that calls for “a careful weighing of the interests of customers in affordable rates against the financial needs of the utility. This strict legal standard reflects ultimately that utility rates that are not appropriately balanced can become confiscatory, depriving customers of interests in property if they cannot maintain service at rates that are too high, and depriving utilities of revenues necessary to maintain property dedicated to public service if rates are too low. The rate maker must balance the interests of customers in receiving efficient utility service at the lowest possible rates, and the interest of the utility in obtaining sufficient revenues to conduct its operations, maintain its financial integrity, and achieve access to financial markets for revenue bonds at reasonable rates,” and that this standard has been applied in Pennsylvania to the ratemaking involving Philadelphia Gas

Commission, a municipally-owned utility subject to the Pa. Public Utility Commission's jurisdiction.¹⁰⁶ It further cites to the guidance provided to the Rate Board by the City's Law Department in 2016, that stated "[i]t would be impossible for the Rate Board to determine that rates and charges are 'reasonable' without weighing them to some extent against the service provided," and that 2016 Memorandum also found that the Board is empowered to "tak[e] into account the impact on revenues of administrative policies." 2016 Final Rate Determination, Appendix B at 45. Public Advocate Main Brief at 7, fn. 11.

I agree that the testimony and exhibits proffered by the Public Advocate raises serious questions about the availability of arrearage forgiveness for TAP customers, and whether changes need to be made to the program. However, PWD is also correct that the Rate Board may not have jurisdiction to directly order these changes.

In its 2016 Rate Determination, the Rate Board refused to address the issue of arrearage forgiveness, stating at 33: "The PA proposed that, for customers with incomes between 150% and 250% of poverty, the Department provide an earned arrearage program. Under the proposal, if such a customer paid 4% of income each month, a portion of pre-IWRAP arrears would be written off. The Board discussed whether it would entertain these and related topics if permitted to do so by the Law Department. The Board consulted the Law Department, which advised that requiring such abatements was beyond the jurisdiction of the Board. The Board accepted the advice of the Law Department and determined that it would not consider arrearage forgiveness for the 150-250% of FPL. Since the point was moot, no vote was taken." The June 6, 2016 Memorandum "Rate Board's Authority over Design and Delinquency Collection" is attached to the 2016 Rate Determination as Appendix B.

In its 2018 Rate Determination at 80, the Rate Board did not explicitly adopt the Public Advocate's recommendation that it "order the Department to establish an arrearage forgiveness program as part of its TAP rate" but the Rate Board noted "it is not clear why such a program has not been implemented or even proposed for the Philadelphia Water Department at

¹⁰⁶ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 607 (1944); *Public Advocate v. Philadelphia Gas Commission*, 674 A.2d 1056, 1061 (Pa. 1996).

this time, but the Board directs the Department to seek to work with the Department of Revenue and the Law Department to determine what legal barriers must be overcome in order to implement an arrearage forgiveness program as explicitly required under the Philadelphia Code provision noted above. The Board further directs the Department to report back to the Board on the results of those efforts in a timely manner.” Clearly, the Rate Board recognized that it lacked the authority to order the program, but referred PWD to work with the Department of Revenue and the Law Department.

This directive is essentially what the Public Advocate is requesting here: “The Board should require PWD to report monthly on the performance of its arrearage forgiveness policies and any obstacles prohibiting PWD from operating an arrearage forgiveness program that allows TAP customers to earn and realize arrearage forgiveness immediately with each monthly TAP payment. The Board should further require PWD to report monthly on its efforts to reduce TAP denials and TAP churn, which limit the availability of pre-TAP arrearage forgiveness to low-income customers.” Public Advocate Main Brief at 9.

I agree. While I do not feel that the Rate Board can order direct changes to the program, it can require this information for examination in the next rate proceeding. I am hopeful that this focus on the arrearage forgiveness component of the TAP program will provide a productive basis for potential improvements that make the program work to benefit both PWD and its customers. Indeed, that happened after the 2018 rate proceeding, as seen by the changes made to the arrearage forgiveness regulations since then. It may be that the Department, along with the Department of Revenue and the Law Department, and perhaps with input from the Public Advocate/CLS as appropriate, will continue to ensure that the TAP program operates to its full potential.¹⁰⁷

¹⁰⁷ In this connection, I note in the Joint Proposed Partial Settlement Petition, at Section II(D)(1), PWD negotiated with the Public Advocate and agreed to undertake efforts with respect to TAP, including recertification and outreach. I hope this spirit of cooperation continues, which can only benefit the Department and its customers, as the program continues to evolve.

2. Arrearage Forgiveness: Cost Recovery

The second issue the Joint Petitioners failed to resolve concerns the method used to recover costs associated with arrearage forgiveness earned through TAP participation. This issue is addressed in PWD's Main Brief at 53-58 and in the Public Advocate's Main Brief at 19-23. PWD has proposed to modify the TAP Rider to include a mechanism (the Arrearage Forgiveness or AF factor) to recover from non-TAP customers a percentage of the amount of pre-TAP arrears forgiven beginning in FY 2023, asserting that this "is (i) reasonable; (ii) calculated based on the amount of arrearage forgiven in an annual reporting period; and (iii) consistent with current City policy." PWD Main Brief at 53-54. The Public Advocate has opposed this, claiming that it would result in a double recovery (through base rates and the TAP-R Rider) of these amounts, because "the collectability of billings, including total arrearages of TAP and non-TAP customers alike, are already factored into PWD's cost of service study to support base rates via the collection factors" utilized in PWD's rate model. Public Advocate Main Brief at 5.

The basic premise of the TAP-R rider is relatively straightforward: The Department projects its revenues based on billing all customers according to its general rate schedule; when it offers discounted charges to qualifying TAP customers, those "lost" revenues must be made up and the make-up is accomplished through the TAP-R surcharge whereby an additional charge is placed on all non-TAP customers. The reconciliation of projected lost revenues and actual losses is also relatively straightforward and is intended to ensure there is no substantial over-recovery or under-recovery of such revenues. PWD St. 7B at 10-14

The TAP Rate Rider, as defined in Section 10.0 of the Water Department's Rates and Charges, provides for the separate recovery of that lost revenue recovered through the TAP-R surcharge rates, which are added to the water, fire service and sewer quantity charge rate schedules. The purpose of the rider is to provide a mechanism to "reconcile, in a timely fashion, actual TAP costs with estimated TAP-R revenues as well as update projected TAP costs for the Next Rate Period. The TAP Rate Rider provides a process to align the timing of the revenue and cost reconciliation more closely with cost incurrence." PWD St. 7B at 4, 10-14.

PWD's specific proposal with respect to recover arrearage forgiveness costs through the TAP-R Rider and reconciled annually is discussed in its Main Brief at 54-55, 57:

For purposes of cost recovery, PWD proposes that arrearage forgiveness be determined at the time of the annual TAP-R reconciliation. Arrearage forgiveness will be based on the actual amount of arrears forgiven in accordance with Section 206.7 of the Department's regulations. The total amount of AF, used in determining the TAP-R surcharge for a given reporting period, will be adjusted by applying a proposed TAP-R lost revenue adjustment factor of 9% ("lost revenue factor"). The lost revenue factor is intended to represent the percentage of pre-program arrears that a TAP customer would have likely paid (i) had such customer not been enrolled in the program; (ii) had their arrears not been frozen; and (iii) had PWD continued to collect on those arrears. PWD proposes only to recover the amount of arrears forgiven (as adjusted above) in the calculation of the TAP-R surcharge rate. Recovery of AF will also be tracked so, on an annual basis, any amount of over or under recovery will be included in the subsequent annual reconciliation filing. The AF Factor would also not be subject to interest earnings. Stated simply, the amount of forgiven arrears proposed to be recovered, by including AF in the development of TAP-R surcharge rates, is determined by multiplying the lost revenue factor by the actual arrears forgiven for the reporting period. The resulting dollar amount is the amount of arrearage forgiveness included in TAP-R surcharge rates. . . . the AF Factor be included in the TAP-R formula beginning September 1, 2021, for FY 2022. It would be set at zero (at the beginning of the first reporting period for arrearage forgiveness) until the annual TAP-R adjustment for FY 2023 rates. As arrears are forgiven, they will be captured for the reporting period at the time of annual reconciliation.

The Public Advocate has opposed this proposal, claiming that the total combined collection factors used to project anticipated revenue already takes into account payments (and lack of payments) associated with accounts of both TAP and non-TAP customers:

Unlike projected billings, which do not take into account the cost or recovery for TAP discounts, the collection factors that are applied to determine revenue requirements for retail service are based upon gross billings and gross receipts (excluding PWD) over a nine-year period from FY 2012 through FY 2020. As is clearly shown on Schedule RFC-6 to PWD Statement No. 6, the collection factor is calculated on the basis of operating receipts against Total Billings (excluding only PWD), split between Non-SWO and SWO accounts based on the account's installation designation, and all payments as shown in the Payment Patterns Report. As a result, the total Company collection factors already takes into account payments (and lack of payments) associated with accounts of TAP and non-TAP customers alike. Public Advocate Main Brief at 21.

I find that the Public Advocate has established that PWD's proposal to recover the TAP arrearage forgiveness costs through the TAP-R rider may overcharge customers. PWD is correct when it states (Main Brief at 56) that collection factors are "used to project future revenues from billings so as to provide sufficient revenues to support the utility. Collection factors are not intended to collect on prior unpaid bills or outstanding arrears." It is not correct, however, when it asserts that without the TAP-R Rider, it would have no way to recover past due amounts associated with TAP customers. The revenue requirement associated with these customers are already reflected in the cost of service, and thus base rates.

In concept, the PWD proposal to recover a portion of each dollar of arrearage forgiveness provided by the Department to eligible TAP customers through the TAP-R rider is appropriate. It failed, however, to rebut the Public Advocate's showing that the collection factors used in this proceeding to project anticipated revenue already "take into account payments (and lack of payments) associated with accounts of both TAP and non-TAP customers."

PWD in its Main Brief at 56 mentioned that Public Advocate Colton "has completely reversed his position from the 2018 rate proceeding. There, he recommended that arrearage forgiveness credits, provided in connection with TAP, should be recovered through the TAP Rider." I will respond with PWD's own objection to that proposal, as explained by the Rate Board in its 2018 Rate Determination at 80: "In any event, the Department argues, inclusion of arrearage forgiveness as part of the TAP-Rider at this time, without any additional consideration to its implications on the revenue projection approach and cost of service analysis that are already used in the determination of the base rates, could risk a potential overstatement of the impact of arrearage forgiveness." Here, the record does not show that PWD performed "any additional consideration to its implications on the revenue projection approach and cost of service analysis that are already used in the determination of the base rates."

Therefore, I recommend that the Rate Board reject this proposed modification of the TAP- R Rider in this proceeding.

VII. OTHER ISSUES

In its Main Brief at 58-60, PWD raised other miscellaneous issues that have not been contested. First, twelve categories of style, clarification and conforming changes were proposed by the Department to revise language in the Department's regulations. These housekeeping changes to its regulations should be adopted, since they appear to be reasonable and were not contested by any active participant.

Second, the Department proposed to raise miscellaneous rates and charges, as set out in PWD St. 7A at 46, Exh. BV-4 (Tables M-1, regular hours and M-2, overtime hours) and PWD Exh. 3, Section 6 (miscellaneous water charges). These proposed rates and charges should be permitted to go into effect, as they appear to be reasonable and (once the issues raised by the Public Advocate were resolved) not contested.

VIII. CONCLUSION

(1) That the Rate Board approve without modification the Joint Petition for Partial Settlement;

(2) That the Rate Board find that the proposed rates and charges are supported by the record, are in compliance with the Rate Ordinance and other applicable requirements and therefore should be permitted to be placed in effect for service rendered on and after September 1, 2021, and September 1, 2022, consistent with the terms and conditions contained in the Joint Petition for Partial Settlement;

(3) That the Rate Board accept the proposal to utilize a special rate reduction proceeding be approved by the Rate Board consistent with the terms and conditions contained in the Joint Petition for Partial Settlement. I further recommend that the Rate Board amend its regulations concerning use of special rate proceedings to clarify the appropriate use of such limited, non-general rate proceedings if necessary;

(4) That the Rate Board require the Philadelphia Water Department to report monthly on the amount and type of arrearage forgiveness that PWD is providing to TAP

customers, the result of its efforts to determine what legal and/or operational barriers must be overcome to implement ratable forgiveness for each month the TAP participant pays the TAP bill; and the efforts PWD is taking to reduce TAP denials and TAP churn;

(5) That the Rate Board reject the proposal of the Philadelphia Water Department to recover through the TAP-R surcharge rider costs associated with arrearage forgiveness earned by TAP program participants;

(6) That the Rate Board permit the Philadelphia Water Department to place into effect the uncontested tariff changes and changes miscellaneous rates and charges; and

(7) That the Rate Board reject any remaining issues, proposals, modifications and/or adjustments by the other participants that are not contained in the Partial Settlement except as otherwise directed.

Marlane R. Chestnut
Hearing Officer

May 18, 2021

APPENDIX: TABLES

TABLE C-1: PROJECTED REVENUE AND REVENUE REQUIREMENTS
Base and TAP-R Surcharge Rates
(In thousands of dollars)

Line No.	Description	2022	2023
OPERATING REVENUE			
1	Water Service - Existing Rates	266,656	269,813
2	Wastewater Service - Existing Rates	427,613	433,417
3	Total Service Revenue - Existing Rates	694,269	703,229
Additional Service Revenue Required			
	Percent Months		
	Year Increase Effective		
4	FY 2021	0.00%	10
5	FY 2022	1.80%	10
6	FY 2023	5.93%	10
7	FY 2024		10
8	FY 2025		10
9	FY 2026		10
10	Total Additional Service Revenue Required	10,411	47,611
11	Total Water & Wastewater Service Revenue	704,679	750,241
Other Income (a)			
12	Other Operating Revenue	21,719	21,858
13	Debt Reserve Fund Interest Income	-	-
14	Operating Fund Interest Income	1,290	1,269
15	Rate Stabilization Interest Income	1,088	982
16	Total Revenues	728,716	774,110
OPERATING EXPENSES			
17	Total Operating Expenses	(517,470)	(533,064)
NET REVENUES			
18	Transfer From/(To) Rate Stabilization Fund (b)	10,151	11,554
19	NET REVENUES AFTER OPERATIONS	221,376	252,600
DEBT SERVICE			
Senior Debt Service			
Revenue Bonds			
20	Outstanding Bonds	(163,516)	(164,558)
21	Penawick Parity Bonds	(10,885)	(11,087)
22	Projected Future Bonds	(8,000)	(30,798)
23	Commercial Paper	(2,000)	(4,000)
24	Total Senior Debt Service	(184,401)	(210,423)
25	TOTAL SENIOR DEBT SERVICE COVERAGE ((L19/L26) (c)	1.20 x	1.20 x
26	Subordinate Debt Service	-	-
27	Transfer to Escrow	-	-
28	Total Debt Service on Bonds	(184,401)	(210,423)
29	CAPITAL ACCOUNT DEPOSIT	(25,447)	(31,155)
30	TOTAL COVERAGE ((L10/(L24+L26+L29)) (c)	1.03 x	1.04 x

RESIDUAL FUND			
31	Beginning of Year Balance	15,042	15,020
32	Interest income	150	150
	Plus:		
33	End of Year Revenue Fund Balance	7,529	11,022
34	Deposit for transfer to City General Fund (i)	1,859	2,057
	Less:		
35	Transfer to Construction Fund	(7,700)	(11,500)
36	Transfer to City General Fund	(1,839)	(2,037)
37	Transfer to Debt Service Reserve Fund	-	-
38	End of Year Balance	15,020	15,092
RATE STABILIZATION FUND			
39	Beginning of Year Balance (e)	113,968	103,857
40	Deposit From/To Revenue Fund	(10,151)	(11,554)
41	End of Year Balance	103,857	92,303

(a) Includes other operating and nonoperating income, including interest income on funds and accounts transferable to the Revenue Fund and reflects projected contra revenue credits for Affordability Program Discounts (TAP Costs).

(b) Pursuant to the General Ordinance, as of June 30 of each Fiscal Year, the City may transfer (i) from the Rate Stabilization Fund to the Revenue Fund or (ii) from the Revenue Fund to the Rate Stabilization Fund, the amount determined. The amounts presented are subject to actual results.

(c) Projected estimates are subject to actual financial results and final transfers to/from Rate Stabilization (see note (b)). The amounts presented are subject to actual results.

(d) Transfer of interest earnings from the Bond Reserve Account to the Residual Fund as shown in Line 34 to satisfy the requirements for the transfer to the City General Fund shown on Line 36.

(e) Beginning balance is estimated based on projected financial results. The amounts presented are subject to actual results.

TABLE C-1A: PROJECTED REVENUE AND REVENUE REQUIREMENTS
Base Rates Excluding TAP-R Surcharge
(in thousands of dollars)

Line No.	Description	2022	2023
OPERATING REVENUE			
1	Water Service - Existing Rates	285,595	288,745
2	Wastewater Service - Existing Rates	423,433	429,267
3	Total Service Revenue - Existing Rates	687,026	696,010
Additional Service Revenue Required			
	Percent Months		
4	Year Increase Effective		
4	FY 2021 0.00% 10	-	-
5	FY 2022 1.85% 10	10,411	12,501
6	FY 2023 5.88% 10		56,110
7	FY 2024 10		
8	FY 2025 10		
9	FY 2026 10		
10	Total Additional Service Revenue Required	10,411	47,611
11	Total Water & Wastewater Service Revenue	697,437	743,622
	Other Income (a)		
12	Other Operating Revenue	29,192	29,111
13	Debt Reserve Fund Interest Income	-	-
14	Operating Fund Interest Income	1,230	1,249
15	Rate Stabilization Interest Income	1,088	982
16	Total Revenues	728,947	774,364
OPERATING EXPENSES			
17	Total Operating Expenses	(517,470)	(533,664)
NET REVENUES			
18	Transfer From/(To) Rate Stabilization Fund (b)	9,900	11,300
19	NET REVENUES AFTER OPERATIONS	221,376	252,600
DEBT SERVICE			
Senior Debt Service			
Revenue Bonds			
20	Outstanding bonds	(185,518)	(186,558)
21	Pennvest Parity Bonds	(10,885)	(11,067)
22	Projected future bonds	(8,000)	(50,798)
23	Commercial Paper	(2,000)	(4,000)
24	Total Senior Debt Service	(184,401)	(210,423)
25	TOTAL SENIOR DEBT SERVICE COVERAGE ((L19)/(L24)) (c)	1.20 x	1.20 x
26	Subordinate Debt Service	-	-
27	Transfer to Escrow	-	-
28	Total Debt Service on Bonds	(184,401)	(210,423)
29	CAPITAL ACCOUNT DEPOSIT	(29,887)	(31,155)
30	TOTAL COVERAGE ((L19)/(L24+L26+L29)) (c)	1.03 x	1.04 x
31	End of Year Revenue Fund Balance	7,529	11,622

(a) includes other operating and nonoperating income, including interest income on funds and accounts transferable to the Revenue Fund.

(b) Pursuant to the General Ordinance, as of June 30 of each Fiscal Year, the City may transfer (i) from the Rate Stabilization Fund to the Revenue Fund or (ii) from the Revenue Fund to the Rate Stabilization Fund, the amount determined. The amounts presented are subject to actual results.

(c) Projected estimates are subject to actual financial results and final transfers to/from rate stabilization (see note (b)). The amounts presented are subject to actual results.

TABLE C-2
Base and TAP-R Surcharge Rates
COMBINED SYSTEM: PROJECTED RATE STABILIZATION FUND
AND COVENANTS METRICS PERFORMANCE

Line #	Description	2022	2023
RATE STABILIZATION FUND			
1	Beginning Balance: Rate Stabilization Fund (a)	113,988	109,857
2	Transfers From (To) Revenue Fund (b)	(10,131)	(11,554)
3	Year-End Rate Stabilization Fund Balance (Line 1 + Line 2)	103,857	92,303
General Bond Ordinance Covenants			
4	Senior Debt Coverage (c)	1.20	1.20
5	Total Debt Coverage (d)	1.03	1.04
6	90% Test - Senior Debt Coverage from Current Revenues (e)	1.14	1.14
O&M Actual to Budget Ratio			
7	Projected O&M Budget (f)	595,439	612,858
8	O&M Actual to Budget Ratio	86.9%	87.0%
Rate Ordinance Requirements			
9	Projected Total Revenues	728,716	774,110
10	Projected Total Appropriations (g)	816,815	865,458
11	Rate Ordinance Requirement Compliance (h)	Yes	Yes
Cash Funding			
12	Cash Funded Capital (i)	37,147	42,255
13	Capital Improvement Program annual expenses	345,303	425,730
14	Cash Funded Capital Ratio (j)	10.0%	9.9%

(a) Estimated based on projected financial results. The amounts presented are subject to actual results.

(b) See Line 18 in Table C-1 and related footnote (b).

(c) Senior Debt Coverage = (Total Revenues - Operating Expenses + Transfer From (to) Rate Stabilization) divided by Senior Debt. The General Bond Ordinance requires the minimum Senior Debt Service Coverage of 1.20. The amounts presented are subject to actual results.

(d) Total Debt Coverage = (Total Revenues - Operating Expenses + Rate Stabilization Transfer) divided by (Senior Debt + Subordinate Debt + Capital Account Deposit). The General Bond Ordinance requires the minimum Total Debt Service Coverage of 1.00. The amounts presented are subject to actual results.

(e) Senior Debt Coverage from Current Revenues = (Total Revenues - Operating Expenses - Transfer to Rate Stabilization Fund) divided by Senior Debt. Transfers from Rate Stabilization are excluded from the Total Revenues. The General Bond Ordinance requires a minimum Senior Debt Service Coverage of 0.90 from Current Revenues. The amounts presented are subject to actual results.

(f) FY 2022 and FY 2023 reflect projected budget based on annual cost escalation factors.

(g) Total Appropriation = Total O&M Budget + Senior Debt + Subordinate Debt + Transfer to Escrow + Capital Account Deposit + Transfer to Rate Stabilization Fund + Transfer to Residual Fund. Costs to service the City included as required by the General Bond Ordinance rate covenants.

(h) Rate Ordinance requires that Total Revenues not exceed Total Appropriations.

(i) Cash Funded Capital = Capital Account Deposit + Residual Transfer to Construction Fund

(j) Cash Funded Capital Ratio = Cash Funded Capital divided by Capital Improvement Program annual expenses.

TABLE C-4
COMBINED SYSTEM: COMPARISON OF TYPICAL
BILL FOR RESIDENTIAL CUSTOMERS
UNDER EXISTING AND PROPOSED RATES

(1) Meter Size	(2) Monthly Use	(3) FY 2021	(4) FY 2022	(5)	(6) FY 2023	(7)
		Existing Rates	Proposed Rates	% Proposed of Existing	Proposed Rates	% Proposed of FY 2022
Inches	Mcf	\$	\$	%	\$	%
5/8	0.0	28.02	28.96	3.4	30.70	6.0
5/8	0.2	43.50	45.04	3.5	47.85	6.2
5/8	0.3	51.24	53.07	3.6	56.43	6.3
5/8	0.4	58.98	61.11	3.6	65.01	6.4
5/8	0.5	66.73	69.15	3.6	73.58	6.4
5/8	0.6	74.46	77.18	3.7	82.15	6.4
5/8	0.7	82.20	85.22	3.7	90.73	6.5
5/8	0.8	89.94	93.25	3.7	99.31	6.5
5/8	1.7	159.60	165.59	3.8	176.49	6.6
5/8	2.7	232.63	243.40	4.6	259.46	6.6
5/8	3.3	275.33	289.42	5.1	308.52	6.6

Typical Senior

Typical Residential

Notes:

The FY 2021 figures reflect the existing base and current TAP-R rates, of \$0.57/MCF for water and \$0.78/MCF for sewer.

The FY 2022 figures reflect:

- (1) the proposed TAP-R rates, of \$0.70/MCF for water and \$1.07/MCF for sewer; and
- (2) the proposed FY 2022 base rates in accordance with the Settlement Agreement.

The FY 2023 figures reflect:

- (1) the proposed FY 2023 TAP-R rates, of \$0.70/MCF for water and \$1.07/MCF for sewer; and
- (2) the proposed FY 2023 base rates in accordance with the Settlement Agreement.

These rates are subject to reconciliation prior to implementation.

The TAP-R rates are subject to annual reconciliation.

Typical Senior Citizen is presented prior to discount. Eligible Senior Citizen's receive a 25% discount on their total bill. The associated FY 2021, FY 2022, and FY 2023 bills would be \$38.43, \$39.80 and \$42.32, respectively.

Mcf - Thousand cubic feet

TABLE C-5
COMBINED SYSTEM: COMPARISON OF EXAMPLE BILLS
FOR NON-RESIDENTIAL CUSTOMERS
UNDER EXISTING AND PROPOSED RATES

(1) Meter Size	(2) Monthly Use	(3) Impervious Area	(4) Gross Area	(5)	(6)	(7)	(8)	(9)
				FY 2021 Existing Rates	FY 2022 Proposed Rates	% Proposed of Existing	FY 2023 Proposed Rates	% Proposed of FY 2022
Inches	Mcf	sf	sf	\$	\$	%	\$	%
5/8	0.0	1,794	2,110	39.75	38.55	(3.0)	41.01	6.4
5/8	0.2	1,794	2,110	55.23	54.63	(1.1)	58.16	6.5
5/8	0.3	1,794	2,110	62.97	62.66	(0.5)	66.74	6.5
5/8	0.4	1,794	2,110	70.71	70.70	(0.0)	75.32	6.5
5/8	0.5	1,794	2,110	78.46	78.74	0.4	83.89	6.5
5/8	0.6	4,000	5,500	111.13	111.58	(0.5)	119.27	6.9
5/8	0.7	4,000	5,500	119.87	119.62	(0.2)	127.85	6.9
5/8	0.8	25,000	38,000	412.25	399.86	(3.0)	430.54	7.7
5/8	1.7	25,000	38,000	481.93	472.20	(2.0)	507.72	7.5
5/8	2.7	4,000	5,500	270.30	277.80	2.8	296.58	6.8
5/8	3.3	4,000	5,500	311.00	323.82	3.5	345.64	6.7
5/8	11.0	7,000	11,000	901.27	953.16	5.8	1,017.05	6.7
1	1.7	7,700	7,900	251.68	252.31	0.2	269.95	7.0
1	5.0	22,500	24,000	668.22	678.11	1.5	726.33	7.1
1	8.0	7,700	7,900	701.88	716.68	5.0	786.30	6.7
1	17.0	22,500	24,000	1,522.14	1,598.63	5.0	1,707.57	6.8
2	7.6	1,053	1,250	621.72	658.68	5.9	703.88	6.6
2	16.0	22,500	24,000	1,478.95	1,550.54	4.8	1,656.12	6.8
2	33.0	65,500	80,000	3,245.05	3,385.99	4.3	3,620.31	6.9
2	100.0	7,700	7,900	7,276.55	7,622.62	7.5	8,339.46	6.6
4	30.0	7,700	7,900	2,391.49	2,550.83	6.7	2,718.89	6.6
4	170.0	10,500	12,000	11,779.08	12,657.30	7.5	18,487.90	6.6
4	330.0	25,000	38,000	21,960.87	23,608.78	7.4	25,154.47	6.5
4	500.0	140,000	160,000	34,010.90	36,379.51	7.0	38,775.99	6.6
6	150.0	10,500	12,000	10,665.70	11,451.84	7.4	12,202.99	6.6
6	500.0	41,750	45,500	52,921.57	55,349.72	7.4	57,960.16	6.5
6	1,000.0	25,000	38,000	63,978.69	68,785.12	7.5	73,266.57	6.5
6	1,500.0	140,000	160,000	96,627.12	103,738.45	7.4	110,512.79	6.5
8	750.0	10,500	12,000	48,312.53	51,946.12	7.5	55,128.63	6.5
8	1,500.0	65,500	80,000	95,875.96	103,632.69	7.5	109,746.67	6.5
8	2,000.0	25,000	38,000	126,617.52	136,167.40	7.5	145,028.21	6.5
8	3,000.0	140,000	160,000	189,685.95	203,830.73	7.5	217,109.43	6.5
10	600.0	22,500	24,000	89,284.40	92,203.78	7.4	96,958.17	6.5
10	1,700.0	41,750	45,500	106,254.22	116,376.47	7.5	123,951.40	6.5
10	3,300.0	25,000	38,000	206,971.34	222,583.87	7.5	237,058.81	6.5
10	5,000.0	140,000	160,000	374,862.77	402,991.20	7.5	429,211.03	6.5

Typical Small
Business

(a) Examples with gross area less than 5,000 square feet reflect an impervious area of 85% of the gross area consistent with PWD Regulations section 304.3.

(b) FY 2021 figures reflect existing base and current TAP-R rates, of \$0.57/MCF for water and \$0.78/MCF for sewer.

(c) FY 2022 figures reflect:

(1) the proposed TAP-R rates, of \$0.70/MCF for water and \$1.07/MCF for sewer; and

(2) the proposed FY 2022 base rates in accordance with the Settlement Agreement.

(d) The FY 2023 figures reflect:

(1) the proposed FY 2023 TAP-R rates, of \$0.70/MCF for water and \$1.07/MCF for sewer; and

(2) the proposed FY 2023 base rates in accordance with the Settlement Agreement. These rates are subject to reconciliation prior to implementation.

The TAP-R rates are subject to annual reconciliation.

Mcf - Thousand cubic feet

sf - square feet