

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

In Re: Philadelphia Water Department :
2022 Special Rate Proceeding : **Advance Notice Filed January 21, 2022**

**MOTION TO STRIKE
OF
PUBLIC ADVOCATE**

TO HEARING OFFICER MARLANE R. CHESTNUT:

The Public Advocate, by and through its attorneys, hereby files this Motion to Strike, and requests that the following portions of the Philadelphia Water Department’s (PWD) Advance Notice be stricken from the record of this proceeding:

- PWD Statement No. 1 (La Buda), Q&A 25-27 and Schedule ML-2;
- PWD Statement No. 2 (Clupper & Nissen), Q&A 9 and Schedule FA-1; and
- PWD Statement No. 3 (Black & Veatch), Q&A 16, 18, 19, 20, 21, 22, 23, 24 and Schedule BV-4.

The portions of PWD’s Advance Notice set forth above are irrelevant to this Special Rate Proceeding and seek to convert the reconciliation mechanism approved in the 2021 Rate Determination into a complete reassessment of PWD’s future financial operating condition. The Public Advocate submits this Motion in advance¹ of PWD’s Formal Notice in order to provide PWD an opportunity to conform its Formal Notice filing to the Hearing Officer’s ruling on this Motion.

In support of its Motion to Strike, the Public Advocate states as follows:

¹ The Public Advocate informed PWD’s counsel of its intent to file this Motion by email on February 3, and discussed this matter by telephone with PWD’s counsel on February 4, 2022.

1. In the June 16, 2021 Rate Determination of the Philadelphia Water, Sewer and Storm Water Rate Board (Board), the Board approved a settlement term proposed by PWD and the Public Advocate that requires PWD to initiate a special rate reconciliation/reduction proceeding to determine whether the previously-approved FY 2023 rate increase (\$34.110 million) should be reduced.
2. Under the framework set forth in the Joint Petition for Partial Settlement (Settlement), the FY 2023 rate increase is subject to reduction based upon two, specific, distinct and limited metrics: (i) the amount of Federal stimulus funding received during a designated period; and (ii) PWD's 2021 financial performance, as measured by its Rate Stabilization Fund balance.
3. The special rate reconciliation mechanism is an exception to the Settlement's "black box" agreement regarding overall revenue requirements, approved by the Board, without identifying specific adjustments that produce them. Rate Determination at 33-40.
4. The Settlement reserved to PWD and the Public Advocate the ability to reach separate conclusions regarding the amount of the adjustment; only minimum and maximum potential adjustment amounts, as described in the Board's Rate Determination, were set forth in the Settlement.
5. The Settlement also ensured that the Public Advocate and other stakeholders would be afforded a reasonable period of time to review and conduct discovery, and submit testimony and briefs, regarding the Department's reconciliation adjustments.
6. As the Rate Determination recognized:

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.

Rate Determination at 43.

7. Under the framework of the Board's regulations, in particular Section II.C.1(c) thereof, a TAP-R reconciliation proceeding does not entail review of new financial assumptions beyond the Reconciliation Statement setting forth data and assumptions regarding the operation of the TAP-R rider.
8. TAP-R reconciliation proceedings do not entail review of new assumptions regarding future non-TAP revenue requirements.
9. TAP-R reconciliation proceedings do not entail review or consideration of future operating conditions or an updated Financial (Stability) Plan.²
10. On January 21, 2022, PWD filed its Advance Notice commencing the Special Rate Proceeding.
11. Contrary to the Rate Determination and the Settlement, explicitly identifying that this Special Rate Proceeding would be analogous to a TAP-R reconciliation proceeding, PWD has filed an Advance Notice that is not limited to the two potential adjustments, but instead sets forth entirely new financial assumptions for FY 2022 and 2023.
12. Rather than simply setting forth PWD's analysis and position concerning the reconciliation/reduction mechanism, PWD seeks to bolster its request that no reduction be approved by introducing a host of new and irrelevant assumptions.
13. In the context of this Special Rate Proceeding, PWD's new financial assumptions for FY 2022 and FY 2023 are not presented for review, but rather are presented to distract from

² Philadelphia Code §13-101(2) requires PWD to prepare a Financial Stability Plan. PWD refers to this document as its Financial Plan.

the specific, distinct and limited previously agreed-to bases for the Board to approve a greater than \$0 reconciliation/reduction.

14. Review of PWD's new financial assumptions cannot be undertaken in this proceeding without also extending the scope of review to encompass quality of service, consumer programs and protections, additional non-ratepayer revenue opportunities, and a host of other considerations vital to assessing PWD operations that directly impact upon its financial condition.

PWD Statement No. 1, Q&A 25, 26, 27 and Schedule ML-2

15. PWD Statement No. 1, at Q&A 25, presents testimony regarding future "challenges and cost pressures," which are irrelevant to the two specific metrics upon which rate reconciliation/reduction may be considered in this Special Rate Proceeding.
16. PWD Statement No. 1, at Q&A 26, presents testimony prognosticating that any reconciliation/reduction approved by the Board in this Special Rate Proceeding would "be reversed by an upcoming rate increase" (based on anticipated higher costs), an assertion which is irrelevant to the two specific metrics upon which the rate reconciliation/reduction may be considered in this Special Rate Proceeding.
17. PWD Statement No. 1 at Q&A 27, baldly asserts that PWD's assumptions about its future financial condition are relevant contrary to the express language of the Settlement and the Rate Determination that this "simple" proceeding would be limited and conducted in a manner analogous to a TAP-R reconciliation proceeding.
18. PWD Statement No. 1, Schedule ML-2, presents PWD's FY 2021 Summary and Five-Year Financial Projection Plan (Financial Plan).

19. PWD's Financial Plan depicts additional future assumptions concerning capital projects, policy considerations, regulatory considerations, operating conditions, and financial performance. None of these factors are relevant to the two specific metrics upon which rate reconciliation/reduction may be considered in this Special Rate Proceeding.

PWD Statement No. 2, Q&A 9, Schedule FA-1

20. PWD Statement No. 2, Q&A 9, recommends that the Board acknowledge certain "pressures and challenges" that have arisen since the Rate Determination, none of which are relevant to the two specific metrics upon which rate reconciliation/reduction may be considered in this Special Rate Proceeding.
21. PWD Statement No. 2, Schedule FA-1, presents a memorandum from PWD's Financial Advisors, with the stated purpose of supporting PWD's Financial Plan, policies and metrics, to "maintain and strengthen [PWD's] financial health and viability going forward," a subject which is not properly before the Board in this Special Rate Proceeding, which is limited in scope to the receipt of stimulus funding and FY 2021 financial results.

PWD Statement No. 3 Q&A 16, 16, 18, 19, 20, 21, 22, 23, 24 and Schedule BV-4.

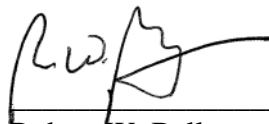
22. PWD Statement No. 3, Q&A 16, concurs with Ms. La Buda in the identification of risks and challenges, including certain identified potential future costs, which are not relevant to the two specific metrics upon which rate reconciliation/reduction may be considered in this Special Rate Proceeding.
23. PWD Statement No. 3, Q&A 18-24, provide extensive testimony in support of PWD's Financial Plan and Black & Veatch's Schedule BV-4, which are irrelevant to the two

specific metrics upon which rate reconciliation/reduction may be considered in this Special Rate Proceeding.

24. PWD Statement No. 3, Schedule BV-4, functions as an entirely new Cost of Service Study, utilizing new assumptions to produce never-before-seen Revenue Requirement projections for the current and future fiscal years, thereby impermissibly converting this limited scope reconciliation/reduction proceeding into a full-blown General Rate Proceeding.
25. If allowed to remain on the record of this proceeding, the portions of the Advance Notice identified herein will unnecessarily and unproductively increase the time, expense, and extent of this limited scope proceeding, contrary to the intentions of PWD and the Public Advocate, as set forth in the Settlement, and the Board in its Rate Determination.

WHEREFORE, on the basis of the foregoing, the Public Advocate requests that Hearing Officer Chestnut grant this Motion and strike the identified portions of the Advance Notice from the record of this proceeding.

Respectfully submitted,



Robert W. Ballenger
Kintéshia S. Scott

For the Public Advocate

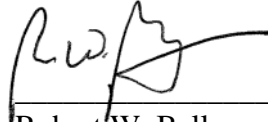
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February 9, 2022

VERIFICATION

I, Robert W. Ballenger, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities)

February 9, 2022

A handwritten signature in black ink, appearing to read 'R.W. Ballenger', written over a horizontal line.

Robert W. Ballenger

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

In Re: Philadelphia Water Department :
2022 Special Rate Proceeding : **Advance Notice Filed January 21, 2022**

**MEMORANDUM OF LAW
IN SUPPORT OF
MOTION TO STRIKE OF PUBLIC ADVOCATE**

The Public Advocate hereby submits this memorandum of law in support of its Motion to Strike (Motion) designated portions of the Philadelphia Water Department’s (PWD) Advance Notice in the above captioned proceeding.

I. Introduction

After extensive negotiations, PWD and the Public Advocate submitted a Joint Petition for Partial Settlement (Settlement) addressing the majority of substantive issues raised in PWD’s 2021 Rate Proceeding (concerning rates and charges for FY 2022-2023). Included among the proposed settlement terms was an agreement to utilize a special rate reconciliation proceeding to reduce the FY 2023 rate increase approved by the Board, if certain conditions are met. As set forth in the Settlement, PWD and the Public Advocate agreed that this special proceeding would be “simple,” analogous to PWD’s annual TAP-R reconciliation proceedings, and limited to two specific adjustments:

1. A dollar-for-dollar downward adjustment to reflect the Stimulus Funding (as defined in the Joint Petition) received during a designated period over a threshold amount, and
2. A dollar-for-dollar downward adjustment to “share” with customers the benefit of excess funds in PWD’s Rate Stabilization Fund in FY 2021.

Motion ¶¶2, 6.

The Board approved the Settlement in its Rate Determination on June 16, 2021. Motion ¶1. PWD filed its Advance Notice, commencing the proceeding to review its proposed adjustment of \$0, on January 21, 2021. Motion ¶10. As set forth herein, PWD's Advance Notice includes voluminous and irrelevant testimony, raising matters far beyond what is permissible pursuant to the Settlement and the Board's Rate Determination. Motion ¶¶11-24. The Public Advocate respectfully requests that the identified portions of the Advance Notice be struck from the record of this proceeding in order to properly limit the Board's consideration to the reconciliation/reduction mechanism set forth in the Rate Determination.

II. Challenges and Risks Identified by PWD are Irrelevant to the Simple Reconciliation Process Agreed Upon in Settlement and Approved by the Board.

As set forth in the Motion, PWD has propounded three witness written statements in support of its position that the Board should approve a reconciliation/reduction amount of \$0. While portions of these statements are relevant to this inquiry, significant portions and voluminous exhibits simply are not.

Consideration of Ms. La Buda's testimony regarding future challenges and risks, future operating conditions, and future capital expenditures, including the presentation set forth in PWD's Financial Plan, would impermissibly expand the breadth of this proceeding. Motion ¶¶15-19. Likewise, testimonial support for Ms. La Buda's positions, provided by PWD's Financial Advisors and rate consultants (Black & Veatch), is inappropriate. Motion ¶¶20, 22. PWD's Financial Advisors in essence submit that no reduction should be considered based on the hypothetical reactions of bond rating agencies to future financial circumstances, which have no bearing on the past financial results (stimulus funding and accumulated reserves) on which the Board's reconciliation adjustment must be based. Motion ¶¶20-21. Finally, Black & Veatch's Schedule BV-4, and accompanying testimony, functions as a Cost of Service Study,

introducing entirely new estimates of future Revenue Requirements, based on myriad revised assumptions, none of which are relevant to the two, specific adjustment mechanisms agreed to by PWD and the Public Advocate, and adopted by the Board in its Rate Determination. Motion ¶¶23-24.

If the identified portions of PWD’s testimony and schedules are allowed on the record of this proceeding, the Board will be required to assess the appropriateness of rate relief for PWD for FY 2023 based on reimagined Revenue Requirements assumptions and other hypothetical contingencies for FY 2022 and FY 2023. This was clearly not the intention of the Settlement, setting forth specific, distinct and limited bases for this reconciliation/reduction proceeding, that serve as a limited exception to the “black box” nature of the settlement. Motion ¶3. By presenting all new assumptions, PWD has dismantled the black box, revising its contents and portraying revenue requirements contrary to the Rate Determination. The Public Advocate submits that its Motion should be granted in order that this proceeding be appropriately limited in scope to the reconciliation/reduction mechanism required by the Board’s Rate Determination.

III. The Board Cannot Consider PWD’s New Projections Regarding FY 2022 and FY 2023 Financial Performance Without Permitting Stakeholders an Opportunity to Evaluate All Relevant Operations and Revenue Opportunities.

Allowing PWD’s testimony concerning future operating and financial conditions to remain on the record of this proceeding will require extensive and unanticipated review of PWD affairs. If the Motion is not granted, the extent of discovery, testimony and briefing in this proceeding must expand far beyond what is necessary to evaluate the reconciliation/reduction mechanism.

Evaluating new operating and financial assumptions set forth in PWD’s testimony, and in particular Black & Veatch’s Schedule BV-4 (setting forth entirely new Revenue Requirements

for FY 2022 and 2023), was never contemplated by the “simple” reconciliation/reduction mechanism. It was specifically understood and agreed that this Special Rate Proceeding would be conducted in a manner analogous to PWD’s annual TAP-R reconciliation proceedings. Motion ¶¶6-9. Contrary to this understanding and agreement, the identified portions of PWD’s Advance Notice will drastically expand the scope of this proceeding such that it must resemble a general rate proceeding.

As PWD and the Hearing Officer know, it is essential in a general rate proceeding that stakeholders are able to evaluate not only the utility’s filings and the assumptions underlying them, but also the quality of service provided. It is for this reason that the parties dedicate significant time and resources to evaluating how PWD policies, practices and procedures impact PWD’s customers, in particular the residential and small user customers who rely upon affordable access to water and wastewater service for their health, safety and security. PWD’s projections of its revenue requirements are inextricably linked to customer behavior and customer service.

If allowed to remain on the record, the Public Advocate will be required to fully review the myriad assumptions underlying PWD’s new Revenue Requirements for FY 2022 and 2023. Furthermore, the Public Advocate will necessarily have to independently determine the extent to which additional factors, such as ongoing federal low income water assistance and utility assistance available from the Pennsylvania Housing Finance Agency (via the Homeowner Assistance Fund), may impact upon PWD’s collections. Expansion of the scope in this manner may require the Public Advocate to retain additional witnesses, and potentially utilize additional counsel, beyond those identified to the Board’s counsel prior to PWD’s Advance Notice filing.

The Public Advocate submits that this expansion of scope is unwarranted and unnecessary, and will detrimentally increase the cost of this proceeding to PWD's customers. Motion ¶25. Respectfully, the resources PWD has utilized to prepare those provisions of its Advance Notice which are irrelevant and unnecessary to consideration of the reconciliation/reduction mechanism have already been wasted. We need not waste more ratepayer resources going forward.

IV. PWD's Updated Financial Plan is Unnecessary and Irrelevant in the Context of a Limited Scope Reconciliation Proceeding.

PWD may assert that its revised Financial Plan (Schedule ML-2) is properly before the Board in this proceeding and that, in fact, it is obligated to submit a Financial (Stability) Plan by Philadelphia Code § 13-101. However, that assertion would be contrary to the meaning and purpose of a reconciliation proceeding. Indeed, were a new Financial Plan required in this reconciliation proceeding, it would also be required in each TAP-R reconciliation proceeding. Yet PWD has never submitted a Financial Plan in a TAP-R reconciliation proceeding. Motion ¶9. Instead, TAP-R reconciliation proceedings entail submission of PWD's proposed Reconciliation Statement pursuant to Board Regulation II.C.1(c).

There is a very simple reason why PWD's Financial Plan is unnecessary and irrelevant in a reconciliation proceeding: the requirement to submit a Financial Plan only arises when PWD proposes revisions to rates and charges. A reconciliation mechanism is not such a proposal, and the mechanisms that may adjust rates in a reconciliation proceeding are not influenced by future financial performance. In both the TAP-R and this special rate reconciliation proceeding, adjustments are made based on pre-approved metrics, set forth in and approved by the Board in a prior General Rate Proceeding. In this way, reconciliation proceedings function in tandem with

prior General Rate Proceedings for which the Philadelphia Code requires review and consideration of PWD's Financial Plan.

The Public Advocate submits that like the testimony of PWD's witnesses concerning potential challenges or pressures that may or may not arise, PWD's Financial Plan is unnecessary and irrelevant to consideration of the special rate reconciliation/reduction set forth in the Settlement and approved in the Rate Determination.

V. Conclusion

The Public Advocate respectfully requests the Hearing Officer grant its Motion to Strike in order to ensure appropriate and diligent consideration be given to the specific, distinct and limited bases for potential reconciliation/reduction of PWD's FY 2023 rate increase. PWD's residential and small business customers, whose interests are represented by the Public Advocate, should not be required to fund additional and unnecessary review of PWD's operations and financial condition in FY 2022 and 2023, which review would extend far beyond the intended scope of this proceeding.

Respectfully submitted,



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February 9, 2022