BEFORE THE
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD

In the Matter of the Philadelphia Water Department's Proposed Change in Water, Wastewater and Stormwater Rates and Related Charges	Special Rate Filing: Reconciliation Proceeding for Fiscal Year 2023

**PHILADELPHIA WATER DEPARTMENT'S
MEMORANDUM IN OPPOSITION TO
THE MOTION TO STRIKE OF THE PUBLIC ADVOCATE**

I. INTRODUCTION

This Memorandum is submitted on behalf of the Philadelphia Water Department ("Department" or "PWD") in response to the Public Advocate's Motion to Strike ("Motion") filed in the Special Rate Proceeding ("SPR" or "Special Rate Proceeding") before the Philadelphia Water, Sewer and Storm Water Rate Board ("Board").

The instant proceeding is convened pursuant to the Settlement in the 2021 General Rate Proceeding ("Settlement")[1] and the Board's Rate Determination, dated June 21, 2021("2021 Rate Determination").[2] The Settlement and 2021 Rate Determination provide that the "FY 2023 Base Rate Incremental Increase," to become effective on September 1, 2022 (sometimes referred to as "FY 2023 approved rates"), is to be subject to two potential adjustments (i.e., a Federal Stimulus Adjustment and/or an FY 2021 Financial Performance Adjustment) under the limited circumstances defined in the Settlement. This proceeding is to decide whether one or both of the two potential adjustments should be made.

The Department filed the Advance Notice in this proceeding on January 21, 2022

1 https://www.phila.gov/media/20210505154832/Joint-Petetion-for-Partial-Settlement.pdf

2 https://www.phila.gov/media/20210618105014/2021-General-Rate-Determination-as-filed-with-Records-Dept-20210616.pdf

together with written testimony, schedules and other supporting documentation. A description of the SPR, notice and documentation filed by PWD and requested relief are detailed in Section II.

The Public Advocate's ("Advocate") Motion specifically requests that the Board strike the following PWD testimony and related schedules from the record of this proceeding:

- PWD Statement 1 (LaBuda) Q/A 25-27, Schedule ML-2;
- PWD Statement 2 (Clupper/Nissen) Q/A 9, Schedule FA-1; and
- PWD Statement 3 (Black & Veatch) Q/A 16, 18-24, Schedule BV-4.

Please note that the above testimony and schedules primarily relate to the Department's position concerning the FY 2021 Financial Performance Adjustment (one of the two potential adjustments in this proceeding). This will surely be the most contentious area of the proceeding, as the scope of the evidence to be provided to support this adjustment is not well defined.

The Advocate has chosen a ham-handed approach to determine the appropriate scope of this proceeding. Rather than request clarification or direction from the hearing officer or even a *motion in limine* (or other form of motion), the Advocate seeks to strike PWD testimony/ schedules that it apparently finds disagreeable.

The Advocate's Motion contends that portions of the Department's testimony and related schedules are irrelevant; and that the same should be stricken from the record. In point of fact, there is no foundation for this argument, as this is a novel proceeding with one potential adjustment (of the two mentioned above) that is not well defined. Moreover, the formal proceeding has not started, as yet, and there is no record.

As explained below, all of the Department's testimony, including the testimony and schedules identified in the Motion, are central to its case and any fair determination related to FY 2021 Financial Performance, as this evidence:

1. explains and supports PWD's proposed "minimum threshold" for the Rate Stabilization Fund ("RSF") and its recommended utilization for purposes of the FY 2021 Financial Performance Adjustment;

2. provides support for the Department's recommendation that no adjustment to FY 2023 approved rates is warranted given PWD's lackluster performance in FY 2021;

3. describes the financial implications of any significant reduction in FY 2023 approved rates together with specific advisories from the credit rating agencies; and

4. provides corroboration for its recommendation that a "zero" adjustment be accepted for FY 2023 approved rates through the inclusion of the updated Financial Plan and the Financial Plan Report.

In addition to the foregoing, the Department is providing the Black & Veatch Rate Model so that, if proposed adjustments of other participants are accepted, new rates can be determined and the resulting financial metrics can be demonstrated.[3] The Department believes that all of the above are essential to the litigation of the issues related to the FY 2021 Financial Performance Adjustment.

II. STATEMENT OF THE PROCEEDING

PWD filed the Advance Notice in this proceeding on January 21, 2022. This proceeding is the upshot of the Settlement which was approved in the Board's 2021 Rate Determination. The Settlement and 2021 Rate Determination provide that the Department will initiate a special rate proceeding to propose a reconciliation of (or adjustment to) approved rates and charges to become effective in Fiscal Year 2023 ("FY 2023") under certain limited circumstances, based on two potential adjustments.

The first potential adjustment is related to PWD's direct receipt of certain Federal

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3 PWD has provided Schedule BV-2 reflecting the schedule of approved rates to become effective September 1, 2022, as included in the 2021 General Rate Proceeding compliance filing. The Microsoft Excel Based Computer Models ("Excel Based Models") supporting Schedule BV-2 will be made available to the participants, subject to a non-disclosure agreement. The Excel Based Models include the following: (i) Financial Plan, (ii) Water Cost of Service and (iii) Wastewater Cost of Service.

PWD has also provided Schedule BV-4 and the supporting Excel Based Model (including the Updated Financial Plan) which will also be made available to participants, subject to a non-disclosure agreement. The updated outlook provides the ability to test required performance metrics with more current information. The Settlement tables (shown in Appendix A of the 2021 Rate Determination) cannot provide a real test of current metrics. Using such tables here, in isolation, is a mathematical exercise and would not test the sufficiency of any adjustment to approved FY 2023 rates considered in this proceeding.

Stimulus Funding during the period July 1, 2021 through December 31, 2021 (the "Federal Stimulus Adjustment"). The second potential adjustment is related to the Department's FY 2021 financial performance, i.e., out-performance of projections in the 2021 General Rate Proceeding measured against a "minimum threshold" that was not defined in Settlement negotiations (the "FY 2021 Financial Performance Adjustment").[4]

The purpose of PWD Statement 1 (LaBuda), PWD Statement 2 (Clupper/Nissen), PWD Statement 3 (Black &Veatch) and related schedules is to fully explain the Department's position concerning the reconciliation (adjustment) of rates and charges for FY 2023 and demonstrate its impact.[5] As stated in the above PWD testimony and related schedules, no reduction in approved FY 2023 rates and charges is warranted related to either the Federal Stimulus Adjustment or the FY 2021 Financial Performance Adjustment.[6] It bears emphasis that a full explanation, rationale and corroboration for the Department's position should be permitted in this proceeding.

PWD believes that the Advocate is trying to tactically strike PWD testimony that runs counter to its position. As a practical matter, the Advocate's position appears to be to recommend adjustments (reductions to FY 2023 approved rates and charges)[7] based upon a simplistic comparison of projected RSF and Residual Fund balances with actual FY 2021 end of year balances. If this is its intention, the Advocate omits a critical step. That is, there must be a

4 To the extent necessary and appropriate, the 2021 Settlement, the 2021 Rate Determination, as well as the record of the 2021 General Rate Proceeding are incorporated into the Department's filing regarding the proposed reconciliation.

5 See, PWD Statement 3 (Schedule BV-4), Table C-1.

6 The Motion appears to be most related to the FY 2021 Financial Performance Adjustment, as opposed to the Federal Stimulus Funding Adjustment. As a practical matter, if either adjustment is accepted, PWD will need to run the B&V rate model. Producing this model and explaining its inputs is best done early in the proceeding, so its assumptions can be reviewed and vetted during discovery. Also, the Board's rate model can be prepared with the appropriate assumptions. This is a necessary exercise in testing the sufficiency of FY 2023 rates and establishing new rates and charges. The rate model must be run at the end of the proceeding, if the Board accepts any adjustment to approved FY 2023 rates and charges.

7 The starting point for any proposed reconciliation is the FY 2023 approved rate increase, which includes the FY 2023 Base Rate Incremental Increase ($34.110 million), is set forth in the Department's Compliance Filing of July 1, 2021 ("2021 Compliance Filing"). Any proposed reconciliation would be shown as an adjustment to the rates and charges in the 2021 Compliance Filing. See also, discussion in Section III.E.

"minimum threshold" established in this case for the RSF (or combined RSF/Residual Fund balances) from which a reasonable comparison can be made. Any adjustment based on FY 2021 Financial Performance requires this determination as a starting point. The comparison of the minimum threshold established in this proceeding with the actual FY 2021 RSF ending balance will indicate whether an adjustment should be considered (assuming the actual FY 2021 RSF ending balance is higher than the minimum threshold). Please recall that such adjustment is to effect a "sharing" of any excess benefits, if there is an out-performance by PWD compared to projections in the 2021 General Rate Proceeding. The RSF balance is the indicator of such out-performance. Absent such out-performance (i.e., lackluster performance), there need be no adjustment (as there is nothing to share).

To decide whether there should be a FY 2021 Financial Performance Adjustment, the Board is required to examine well-reasoned proposals from all perspectives. Perforce this requires a full explanation, rationale and corroboration (to the degree it can be demonstrated) regarding a proposed adjustment to rates and charges. This would include the Department's position, as set forth in PWD Statement 1, Schedule ML-2 (Financial Plan), PWD Statement 2, Schedule FA-1 (Financial Advisors Memorandum), PWD Statement 3, Schedule BV-4 (Financial Plan Report).

Also, whenever the Board sets rates and charges, it must give consideration to the Department's Financial Plan and the sufficiency of resulting rates and charges — in this case for FY 2023.[8] The Board, at the very least, will also need to run the Black & Veatch rate model ("Rate Model") at the end of the proceeding to generate new rates and charges and test coverage requirements and other rate covenants (assuming adjustments are accepted for FY 2023 approved

8 See, Philadelphia Code, Section 13-101, *et seq.*

rates).[9] As explained below, the PWD testimony and related schedules that the Advocate seeks to strike are actually needed to meet the terms and conditions of the Settlement and fulfill the Rate Board's responsibilities in setting rates for FY 2023.

III. ARGUMENT

A. The Advocate's Motion Should Be Denied As Untimely And Misguided.

PWD observes, in the first instance, that the Advocate's Motion is untimely (premature). The Advance Notice is a courtesy. That is, the Advance Notice is filed with City Council and the Board to announce the intention to initiate a rate proceeding pursuant to Section 13-101(7) of the Philadelphia Code and Section II.A.2(a) of the Board's regulations. Such notice is required to include all documents the Department intends to file with the Formal Notice (written testimony, exhibits, schedules and supporting documentation). It should be noted, however, that the documents included with the Advance Notice may be amended before filing the Formal Notice. The Formal Notice and supporting documentation will be the actual filing in this proceeding and will not be submitted until the week of February 22, 2022. As such, the Department maintains that the Motion should be denied as untimely, as the Formal Notice has not been filed and there will likely be changes to documents included with the Advance Notice.

Second, the Advocate's Motion is misguided and would be more appropriately framed as a *motion in limine* (or other motion) — clarifying the purpose of various documentation to be provided in the record and confirming the use of the same is in conformance with the Settlement

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9 The Advocate may also seek to block the use of the Black & Veatch rate model ("Rate Model") in this proceeding. Please note that would be antithetical to a reasonable outcome here, assuming any adjustment (reduction) in made to FY 2023 approved rates. Any adjustment requires the use of the Rate Model to establish new rates and charges. This would require the use of the Microsoft Excel Based Computer Models ("Excel Based Models") used to produce FY 2023 approved rates and charges which will be made available to participants in this proceeding, subject to a non-disclosure agreement.

PWD submits that an assessment need also be made reflecting current financial conditions to test the reasonableness of adjustments proposed in this proceeding. This would require the use of the Excel Based Model used with the Financial Plan Report (Schedule BV-4) which will also be available to participants, subject to a non-disclosure agreement. Please note that there is no cost of service model associated with Schedule BV-4. See also, discussion in Section III.F.

and 2021 Rate Determination — rather than a motion to strike. All participants should be permitted to make their case (direct and rebuttal).

The Advocate misinterprets the Department's filing as overly broad[10] when its components (testimony, exhibits, schedules) reflect PWD's assessment that (in what was anticipated to be an expedited proceeding) it needed to document its position early on, as there would be little time to bolster its position (after limited discovery) or respond to other participants through rebuttal testimony.

Several issues addressed by PWD (cost pressures, PWD financial condition) anticipate adjustments which, if accepted, would place the Department in jeopardy of a credit rating downgrade. PWD has anticipated the Advocate's position in this regard, and has offered its counter-arguments.

The Department also reasonably anticipated that actions in this proceeding will impact not only FY 2023 (if the Advocate seeks a rate reduction), but will spill-over into FY 2024, when PWD must again request increased rates. A rate spike is reasonable to anticipate in FY 2024 given the current outlook, if a sizable adjustment (reduction in approved FY 2023 rates) is made in this proceeding.

The Department further provided its updated Financial Plan as corroboration that, if its position is accepted, PWD projects that it can meet its financial metrics under current financial circumstances. Consideration of the updated Financial Plan is essential to establishing new rates. Absent such consideration, the Board will not be able to assess the impact of the various

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10 In its Motion, the Advocate emphasizes that the Special Rate Proceeding should be much like a TAP-R proceeding. Motion at 6-9. As we originally imagined the instant proceeding, TAP-R was really the only point of reference for a special proceeding other than the Community Gardens proceeding. As it turns out all of these proceedings are "special" in different ways. The Community Gardens proceeding focused on a narrow set of circumstances related to a City Council Ordinance (change of law) and had a *de minimis* rate impact. The TAP-R proceeding operates more like an accounting reconciliation, with a defined formula, reasonably predictable output and measured impact on rates and charges (at least to date). The SPR proceeding is well defined with regard to the Federal Stimulus Adjustment, but much less defined with respect to FY 2021 Financial Performance Adjustment (which is the most contentious area of litigation here). This potential adjustment may also have significant impact on FY 2023 rates ($34.110 million) and must be evaluated consistent with Charter, Philadelphia Code and 1989 General Ordinance requirements. See discussion, Section III.E.

proposals on the Department's current financial condition. Please note that the Financial Plan does not propose new rates in FY 2023 (additional revenues) — it only confirms that rates already approved for FY 2023 should not be reduced.[11]

The Department believes that the Board should have a full description of the PWD position and the implications of same for our financial condition. The Board should also be able to determine, under any scenario where an adjustment is proposed — what the new rates will be and what impact any adjustment would have on PWD financial metrics. The Department believes that this will require the utilization of the Rate Model and updated Financial Plan as a part of this proceeding.

In view of the above, PWD should not be barred from relying on such testimony in its case in chief or later in the proceeding.

B. The Advocate's Motion Should Be Denied Because the Department's Testimony and Schedules Are Wholly Relevant to this Proceeding.

A "simple" proceeding does not require the Board to put blinders over their eyes to avoid seeing what should be obvious to all. Before making a decision in this Special Rate Proceeding, the Board should know both (1) the rates for FY 2023 that are being approved; and (2) whether such rates will satisfy the required financial metrics in FY 2023.

Here, the Department's position (zero adjustment) does not require new rates for FY 2023, since rates for FY 2023 were already calculated and conditionally approved by the Board. To support its position, the Department submitted Schedule ML-2 and Schedule BV-4 to show that the Department believes it will satisfy financial metrics in FY 2023 (given the current perspective of the Rating Agencies). Without any downward adjustments, the Department anticipates avoiding a downgrade or negative action by the rating agencies. That is not

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11 The Department has provided the Rate Model in connection with this proceeding, as it must be run if any adjustment is made in this proceeding. Simply put, if a proposed reduction in FY 2023 approved rates is accepted by the Board, you will need to know what the new adjusted rates and charges will be and you will need to know the impact of these new rates on PWD financial metrics. The Rate Model would be used for this purpose.

necessarily true, if the Board reduces the rates/additional revenues for FY 2023.

The Department submits that its statements and schedules, identified in the Motion, have probative value and are admissible, proper and reasonable, since they fully explain PWD's position advocating a "zero" adjustment in FY 2023 approved rates. A synopsis of the PWD statements/schedules that the Advocate seeks to strike is provided below:

- **PWD Statement 1 (LaBuda) Q/A 25-27 and Schedule ML-2** is proffered by the Department's chief financial officer and explains that lowering rates/additional revenues for FY 2023 will create additional financial pressures on the Department. Ms. LaBuda also explains, in this context, that "sharing" does not automatically follow, if there are funds above the levels projected in the 2021 General Rate Proceeding in the Rate Stabilization Fund at the end of FY 2021. A minimum RSF threshold must be established in this proceeding. She explains some of the pressures and challenges facing the Department that will make it difficult for the Department to satisfy financial metrics even with all of FY 2023 Base Rate Incremental Increase, let alone if the level of rates/additional revenues is decreased. This testimony will be used to refute anticipated allegations that the Department has excess or surplus funds to share (by reducing rates/additional revenues for FY 2023) as well as to support PWD's affirmative position that a "zero" adjustment to FY 2023 approved rates is warranted.

  Schedule ML-2 is proffered to satisfy the requirement in the Rate Ordinance regarding the submission of an updated Financial Stability Plan prior to proposing revisions in rates and charges.[12] Schedule ML-2 also specifically describes actual FY 2021 financial performance including revenues, expenses, debt service, RSF transfers/liquidations and cash balances.

- **PWD Statement 2 (Clupper/Nissen) Q/A 9 and Schedule FA-1** generally explains that lowering the FY 2023 approved rates could cause a credit rating downgrade.

  The financial advisors also acknowledge the cost pressures and financial challenges identified by Ms. LaBuda, in Statement 1. They conclude that such pressures and challenges have the potential to impact the Department's financial position in FY 2023.

  Schedule FA-1 explains that, in FY 2023 (and beyond), that the Department's bond rating will likely be lower – if the balance of the RSF falls below $120

12 See, Rate Ordinance at §1301(2).

million. This issue and other rating agency advisories and warnings are addressed in this Schedule.

- **PWD Statement 3 (Black & Veatch) Q/A 16-24 and Schedule BV-4** explain, in general, that the rates - with all of the FY 2023 Base Rate Incremental Increase - will cover the level of revenues required under the Home Rule Charter, the Rate Ordinance, and the General Bond Ordinance. This testimony and schedule are offered as corroboration that the Department can meet various legally required metrics, if its position is accepted.

PWD submits that all of the above testimony/schedules are needed for a complete record in this proceeding. The Board should not become captive to the belief that this proceeding must result in a lowering of the Department's rates/additional revenues in FY 2023. The agreed-upon reconciliation process clearly recognized that no adjustment in FY 2023 approved rates would be made, unless certain conditions were satisfied. A minimum threshold for the RSF must be established as an integral part of this case (starting point for an analysis to support the FY 2021 Financial Performance Adjustment).

It bears emphasis that the Department has not proposed a change in the rates or additional revenues for FY 2023 in this proceeding. However, the Board will likely consider a proposed downward adjustment to the Department's rates/additional revenues for FY 2023 authored by other participants (which would take the form of lower rates in FY 2023). In the past, the Board has stated:

> It is important to understand that if the Board approves a proposed downward adjustment to the revenue requirements, … it means that the Board is persuaded by the participant offering the adjustment that the [proposed] revenue requirement and associated rates [will cover] the level of revenues required by the Department under the Home Rule Charter, the Rate Ordinance, and the General Bond Ordinance.[13]

So, even if this Board finds that the conditions for an adjustment are satisfied, any adjustment by the Board must demonstrate that lower additional revenues and associated rates will cover the

[13] See, 2018 Rate Determination at 38. See also, 2016 Rate Determination at 14-15.

level of revenues required by the Department under the Home Rule Charter, the Rate Ordinance, and the General Bond Ordinance. To be sure, the Board has initially undertaken this evaluation for FY 2023 approved rates (in the 2021 General Rate Proceeding). Any adjustment accepted in this proceeding (changing FY 2023 approved rates) must be subject to this same evaluation.

The point of the foregoing is that this is a simple (straightforward) proceeding, but cannot be as overly simplistic, as the Advocate appears to suggest. We cannot put blinders on and act as if adjustments to FY 2023 approved rates have no consequences in the present. There is nothing abstract about what we are doing here. Any adjustment should be fully explained and its impact vetted (e.g., the Board must know what new rates look like in FY 2023 and what impact will any adjustment have on FY 2023 PWD financial metrics).

C. The Advocate's Motion Should Be Denied as It Is Intended to Strike PWD's Explanation, Rationale and Support for Its Proposed Minimum Threshold for the Rate Stabilization Fund Which Is a Key Decision to Be Made in this Proceeding.

The Advocate seeks to strike key testimony related to establishing a minimum threshold for the RSF.[14] It bears reiteration that establishing this minimum threshold is central to determining whether an adjustment should be made based upon FY 2021 Financial Performance.

The Advocate seeks to strike PWD testimony/schedules identified in Section I related to key issues presented in this proceeding. The Department strongly disagrees with this tactical strike by the Public Advocate. An apparent motive for the Advocate's Motion seems to be to remove central parts of the Department's substantiation for a RSF minimum threshold. A comprehensive explanation of PWD's position regarding the establishment of a reasonable RSF minimum threshold (including a full explanation, rationale and corroborative support) is necessary as the basis for the FY 2021 Financial Performance Adjustment. This issue is pivotal in

[14] Motion at ¶ 21. The Financial Advisors Memorandum (Schedule FA-1) is a key building block (foundation) for the Department's minimum threshold position. *See also*, Motion at ¶¶ 15-17; 18-20; 22-23. Testimony regarding cost pressures and financial challenges also supports the Department's position that there should be a "zero" adjustment to approved FY 2023 rates.

this proceeding and should be fully explored.

As alluded to above, the "minimum threshold" is not defined in either the 2021 Settlement or the 2021 Rate Determination. The Department proposes a minimum threshold for the RSF of $135 million for reconciliation purposes. That amount is the same as the target level for the Rate Stabilization Fund in the Rate Board's 2018 Determination.[15] That amount is also consistent with the Department's goal to maintain liquidity by managing to a $135 million balance in the Rate Stabilization Fund (over time) and $15 million in the Residual Fund.[16]

The Department submits that a minimum threshold RSF balance of $135 million is the most prudent course to maintain the Department's liquidity at acceptable levels. Using an amount lower than $135 million as the "minimum threshold" for reconciliation purposes would, by definition, lower the Department's liquidity to potentially unacceptable levels. The Advocate seeks to deny the Department sufficient opportunity to makes its case. A full explanation of the Department's position (and that of all other participants for that matter) is required to reach a fair decision concerning the FY 2021 Financial Performance Adjustment.

Please recall that the Department agreed to a potential reconciliation (adjustment) of excess reserves, if it out-performed projections made in the 2021 General Rate Proceeding. Such out-performance is to be determined by comparing actual FY 2021 year-end financial results (i.e., RSF ending balance) with a reasonable minimum threshold to be established in this proceeding. PWD maintains that such out-performance is reasonably measured against the Department's minimum threshold for the RSF which is $135 million.

In this context, there is no agreement for sharing, if there are no excess reserves to share. This fact is corroborated by the Department's poor financial condition. That is, PWD is already

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15 See, 2018 Determination at 37-38. https://www.phila.gov/media/20180713144736/2018-RATE-DETERMINATION-TIMESTAMPED.pdf

16 PWD Schedule ML-2 (Financial Plan) at Slides 17-18; PWD Schedule FA-1 (Financial Advisors Memorandum) at 1-4.

facing cost pressures and other challenges in FY 2023 arising from dramatically increasing labor and chemical costs and recent storm events that clearly indicate that it lacks the financial wherewithal to share anything (i.e., in the form of a reduction in FY 2023 approved rates). In short, there is nothing to share (we are in a financial hole). A reduction in approved FY 2023 rates and charges will only further constrain PWD financial flexibility and place it in jeopardy of a credit rating downgrade. PWD submits that it should be permitted to explain its position fully — there is entirely too much at stake to do otherwise.

D. The Advocate's Motion Should Be Denied as It Is Intended to Bar Reasonable Discussion of Rating Agency Warnings Which Are Directly Related to this Proceeding.

The Advocate seeks to strike key testimony and schedules describing concerns raised by the credit rating agencies that are wholly relevant to this proceeding.[17] By seeking to strike portions of PWD Statement 1 and Schedule FA-1, the Public Advocate is arguing that sharing must occur regardless of the current perspective of the rating agencies. The Department totally disagrees with the Advocate, and notes that the current perspective of the rating agencies will be used to gauge the Department's financial condition in FY 2023.

Please note that PWD maintains that using a minimum threshold amount lower than $135 million in the Rate Stabilization Fund would not be reasonable given PWD's financial needs and the requirements of Fitch Ratings ("Fitch"), Moody's Investors Service ("Moody's"), and S&P Global Ratings ("S&P" and together with Fitch and Moody's, the "Rating Agencies"). The Rating Agencies expect the Department to maintain, or exceed, the target/goal of $135 million in the Rate Stabilization Fund. Having the RSF balance well below $135 million confirms that the Department is in a [financial] "hole."[18] If the Rate Board directs action that would increase the size of the gap (or hole) between Rate Stabilization Fund balance and the targeted balance of

17 Motion at ¶¶ 20-21.

18 See, PWD Statement 2 (Schedule FA-1); PWD Statement 1, Schedule ML-2.

$135 million, the Rate Board would be knowingly placing the Department in greater financial difficulty. The ratepayers will be called upon to fill that hole in FY 2024 and beyond.

In addition, the Board cannot be expected to make reasonable decisions by looking at outdated financial metrics. The Financial Advisors explain an important change has occurred since the 2021 General Rate Proceeding: S&P indicated that it will consider downgrading the Department's current credit rating, if they believe the Rate Stabilization Fund would fall below $120 million.[19] This means that using, for example, $113 million as the "minimum threshold" for the Rate Stabilization Fund in FY 2023 could trigger a downgrade, since the Department would not be authorized to maintain the "rock bottom" minimum balance in the Rate Stabilization, as expected by S&P. The foregoing should be emphasized in this proceeding as a critical concern, rather than stricken as verboten. The Rating Agencies are very much aware of this proceeding and its implications for FY 2023 rates as well as the Department's financial future.

PWD's financial condition is tenuous at best. That projections in Table C-1 from the 2021 General Rate Proceeding do not satisfy even the S&P "rock bottom" minimum threshold of having $120 million in the Rate Stabilization Fund. Notably, that Table C-1 shows more than a $27 million gap between the projected end of year balance of $93.3 million[20] and the S&P threshold of $120 million. So, in view of the above together with known increased pressures and challenges, the Department is clearly facing financial difficulties. The Department cannot further lower its rates/additional revenues or draw down financial reserves in this context. It has nothing to give without risking a downgrade, which will lead to increased future costs that will need to be paid by the Department's ratepayers. That is the point of the Financial Advisors testimony and related memorandum detailing their findings and credit rating agency admonitions (Schedule FA-1). We ignore such testimony at our peril. This testimony and Schedule FA-1 (Financial

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19 See Schedule ML-3 (Rating Agency Reports), S&P Report (September 17, 2021) at 3.

20 2021 Rate Determination at Appendix A. https://www.phila.gov/media/20210618105014/2021-General-Rate-Determination-as-filed-with-Records-Dept-20210616.pdf

Advisors Memorandum) must be included in the record of this proceeding.

PWD will access the capital markets in the coming months and the concerns raised in PWD Statement 2 and Schedule FA-1 will be front of mind as the new revenue bonds (in the aggregate amount of some $380 million) are rated and debt service obligations determined which ratepayers will be burdened with for the next 30 years. It is important to weigh this consideration together with all other PWD testimony/schedules as corroboration that a "zero" adjustment to FY 2023 approved rates is appropriate here.

E. The Advocate's Motion Should Be Denied As It Is Intended to Strike the PWD Financial Plan and Remove It From Consideration Despite the Requirements of the Rate Ordinance.

The Advocate also seeks to strike the PWD Financial Plan from the record of this proceeding as irrelevant.[21] By seeking to strike Schedule ML-2 and parts of PWD Statement 1, the Public Advocate is arguing that sharing must occur even if sharing means that the Department cannot pay other obligations. PWD again strongly disagrees.

The Financial Plan is merely demonstrating the need for previously agreed upon revenues in order to meet financial requirements under current conditions. Nothing could be more relevant to an adjustment (final determination) of FY 2023 rates and charges. In other words, the Department's financial position is relevant to this reconciliation proceeding because the Department's rates must be reasonable and consistent with the Philadelphia Home Rule Charter,[22] "Rate Ordinance,"[23] "1989 General Ordinance"[24] and general ratemaking principles.

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21 Motion at ¶¶ 18-19; 23-24.

22 See*, e.g.,* Section 5-801 of the Charter.

23 Chapter 13-100 of the Philadelphia Code.

24 Restated General *Water* and Wastewater Revenue Bond Ordinance of 1989, approved June 24, 1993, as amended by an Ordinance approved January 23, 2007.

The legal standards regarding rates and charges were summarized in PWD Statement 2[25] in the 2021 General Rate Proceeding and in Section III of the Department's Main Brief[26] in that same proceeding.

In addition, as the Board is aware, the Department must submit an updated Financial Plan when proposing revisions in rates and charges.[27] This was done, and is attached as Schedule ML-2 (Financial Plan). The Financial Plan Report together with updated assumptions and Table C-1 and related tables setting forth revenues, revenue requirements, financial metrics and rate impacts associated with PWD's position are also included as Schedule BV-4. The Department's updated Financial Plan is designed to maintain the Department's current credit rating. It also recommends that the Department continue to use $135 million as the goal (target) for the Rate Stabilization Fund and not rely upon the Rate Stabilization Fund to provide lower rates in FY 2023.

The Department also indicates what it believes will be the consequences of a significant reduction in FY 2023 approved rates and charges. Such an outcome would be financially perilous for PWD. The Financial Plan is one key indicator. The Rate Board should be curious to know if PWD will meet legally required metrics under current conditions (e.g., debt service coverage) if an adjustment to FY 2023 rates is accepted. The whole point of utilizing a Financial Plan is to assess the impact of rate changes on a given test period and project future revenues and revenue requirements for the benefit of the utility and its customers. The Board should not be "flying blind." In the instant context, PWD believes based upon its updated Financial Plan, that a reduction in approved FY 2023 rates may lead to a spike in future rates, since a rate increase would be required beginning in FY 2024 to raise additional revenues to bring the amount in the

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25 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.

26 https://www.phila.gov/media/20210513093206/Brief-May-11-2021.pdf

27 See, Philadelphia Code § 13-101(2).

Rate Stabilization Fund back to the target/goal of $135 million. For example, using the lower target amount for the RSF of $113 million for reconciliation purposes would presumably mean that (a) ratepayers would receive up to $12 million in reductions in FY 2023 (compared to the actual FY 2021 RSF ending balance of approximately $125 million) to lower the amount in the Rate Stabilization Fund; and (b) would need to pay that amount in increased rates in FY 2024 and beyond to raise the Rate Stabilization Fund back to $135 million target. The Department believes that ratepayers are poorly served by rates that "yo-yo," i.e., go up and down or down and up in short periods of time. This issue is further corroboration that the PWD recommendation of a "zero" adjustment is the preferred course; and should be included in the record of this proceeding. The Department should not be barred from fully documenting its position.

F. The Advocate's Motion Should Be Denied As It Is Intended to Strike the PWD Financial Plan Report (Schedule BV-4) and Remove It From Consideration.

The Advocate finally seeks to strike the updated Financial Plan Report ("Report").[28] By seeking to strike Schedule BV-4 and parts of PWD Statement 3, the Public Advocate is arguing that sharing must occur regardless of the Department's ability to satisfy financial metrics in FY 2023.

This Report relates to FY 2023 and future years and is relevant to any decision in this case. It reflects the changed circumstances since the 2021 General Rate Proceeding (including cost pressures and financial challenges referenced in PWD Statements 1 and 2). The Report was prepared to inform the Board of the Department's current financial condition and, in this instance, confirms that a "zero" adjustment to approved rates is consistent with the updated parameters of the Financial Plan. PWD provides the Financial Plan and the Report as corroboration for its position. Please also note that, if there are any proposed adjustments to FY 2023 approved rates, such adjustments should not be considered in a vacuum. The Financial Plan

[28] Motion at ¶¶ 23-24.

and related Report are key tools to test the reasonableness of adjustments proposed in this proceeding. The Financial Plan assumptions are discussed in PWD Statement 3 (Q/A 19-24) and the detailed output is set forth in various tables showing revenues, revenue requirements and financial metrics incorporated in Schedule BV-4. Without the above described testimony and Schedule BV-4, the Board will not have a way to assess the impact of any change in FY 2023 approved rates on PWD's financial condition.

The instant proceeding should include a reasonable way to understand the impact of decisions here on FY 2023 and the future. The Financial Plan and the related Report provide a way to confirm that resulting rates are just, reasonable consistent with principles of gradualism and will be understandable to customers. Lowering rates in FY 2023 without assessing its effect in FY 2024 (higher rate increase expected) seems short-sighted. PWD believes that the inclusion of the Financial Plan and related Report in this record are essential to creating comprehensive evidentiary support for the Board's decision in this case. As such, the Advocate's Motion should be denied.

IV. CONCLUSION

The Board's eyes must be open to the impact of reduced rates/additional revenues in FY 2023 upon the Department's financial condition in FY 2023. It would be imprudent, and unreasonable, for the Rate Board to confine its vision and what can be presented for consideration to only the projections attached to the 2021 Rate Determination. Adopting that limited view will disregard (a) the current perspective of the rating agencies and (b) the fact that the prior projections for FY 2023 do not comport with the current perspective of the Rating Agencies or with known cost pressures and financial challenges facing the Department in FY 2023 (or both).

Based upon the foregoing, the Water Department submits that the Motion to Strike should be dismissed and denied.

Respectfully submitted,

/s/ Andre Dasent

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