PHILADELPHIA WATER DEPARTMENT WATER, SEWER AND STORM WATER RATE BOARD TECHNICAL HEARING

RATE PERIOD: FY 2022 AND 2023

Thursday, April 28, 2022 Philadelphia, Pennsylvania

TIME: 9:00 a.m.

LOCATION: Virtually

HELD BEFORE: MARLANE R. CHESTNUT

Hearing Officer

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1	
2	(Technical Hearing commenced at 9:02 a.m.)
3	
	HEARING OFFICER CHESTNUT: Good
4	morning, everybody. I am Marlane R.
5	Chestnut, the Hearing Officer assigned to
6	this proceeding. As you know, it is being
7	recorded. And there is, also, a court
8	reporter who is will produce a
9	stenographic transcript of this hearing
10	today. So please, speak slowly and
11	clearly.
12	We are starting early because we
13	have a lot to cover, but I don't want us to
14	kill ourselves. If you need a break,
15	indicate it. If you want a drink or have a
16	snack while this is going on, that's fine,
17	too. But I do want us to focus on the
18	issue here so that we can accomplish this
19	in a reasonable amount of time.
20	Are there any preliminary matters
21	before we get to the cross-examination of
22	the various witnesses, Mr. Dasent?
23	MR. DASENT: I don't believe so
24	Judge Chestnut. We did circulate at your

1	direction the Revised Rebuttal Statement
2	One, including the errata so there is a
3	clean copy for the record. And we
4	authenticate we already agreed to
5	authenticate testimony by stipulation.
6	HEARING OFFICER CHESTNUT: Okay. I
7	guess at the end, we can talk about what's
8	going to be in the record and what's not.
9	I did notice that you submitted several
10	hearing exhibits. One of which is the
11	Notice of Publication
12	MR. DASENT: Yes.
13	HEARING OFFICER CHESTNUT: and
14	Notification? I guess the other two were
15	more directly related to this hearing.
16	And, Mr. Ballenger, I did get your
17	hearing exhibit.
18	MR. BALLENGER: Oh, yes. Sent that
19	yesterday afternoon around 1:30 I think.
20	Hopefully, it's a shorter exhibit than last
21	time.
22	So, I just wanted to I agree, we
23	are stipulating to the authenticity of
24	testimony and that it should be included on

1	the record. I just wanted to because
2	
	it's in PW's hearing exhibit, acknowledge
3	that there is one typographical error in
4	Mr. Morgan's testimony. And my
5	recollection is that we answered that in
6	the Discovery Request responses.
7	Just looking.
8	HEARING OFFICER CHESTNUT: Can you
9	tell me that cite to his testimony for
10	that?
11	MR. BALLENGER: Yes. On page 4,
12	lines 21 to 23 of his testimony, and you
13	will see this in the response to PWD's Set
14	1, No. 29, there was just an error in terms
15	of the dollar amounts authorized in the
16	rate determination in 2021 that was in his
17	testimony. We corrected that in the
18	Discovery Response.
19	HEARING OFFICER CHESTNUT: And
20	what's the correction?
21	MR. BALLENGER: Instead of 57.521
22	million. It should read 57.422 million.
23	HEARING OFFICER CHESTNUT: Okay.
24	Any other

1	MR. BALLENGER: That's the
2	substance of his testimony.
3	Sorry, no. It doesn't affect the
4	substance of Mr. Morgan's testimony. But I
5	just wanted to acknowledge that for the
6	record.
7	HEARING OFFICER CHESTNUT: Okay.
8	Does anybody else have anything of
9	a preliminary nature before we actually get
10	started with the cross-examination and
11	presentation of witnesses?
12	No? Okay.
13	I guess then, we will start with
14	you, Mr. Dasent, with your first panel.
15	MR. DASENT: Yes. The order of
16	witnessed, we were going to call the
17	financial panel first, which would be
18	Melissa LaBuda and Katherine Clupper.
19	And we don't swear our witnesses.
20	So, the witnesses are tendered for
21	cross-examination.
22	HEARING OFFICER CHESTNUT: Okay. I
23	guess ask if they have any additions,
24	corrections or changes to their testimony?

1	MR. DASENT: The errata addressed
2	that.
3	HEARING OFFICER CHESTNUT: Besides
4	what you have already provided. Okay.
5	Mr. Ballenger, do you want to?
6	MR. BALLENGER: Sure. Okay. Thank
7	you. Yes.
8	I would like to start at page 5 of
9	the rebuttal. And in the Rebuttal
10	Statement, you described the rate increases
11	that were approved in Fiscal Years 2019,
12	2020 and 2022. And you state that those
13	increases were plainly insufficient. And
14	that's the language I think in your
15	rebuttal testimony. It says "plainly
16	insufficient." And just to be clear, just
17	want to ask a couple of questions.
18	First, is it correct that the Water
19	Department didn't appeal either of those
20	two rate determinations, did it?
21	MS. LaBUDA: That's correct.
22	MR. BALLENGER: Okay. And the
23	Water Department has not suffered any
24	negative ratings action?

1	MS. LaBUDA: To date, that's
2	correct.
3	MR. BALLENGER: To date. Okay.
4	Your rebuttal also talks a little
5	bit about rate relief and the importance of
6	rate relief.
7	Can you define rate relief for me?
8	MS. LaBUDA: Sure.
9	Sufficient revenues that provide
10	the department the capacity to continue
11	serving Philadelphia with clean water that
12	meets all regulatory standards.
13	MR. BALLENGER: So when you
14	describe the rate increase of roughly
15	1.33 percent in Fiscal 2019 and 1.2 percent
16	in Fiscal 2020, is that all of the rate
17	relief that PWD received?
18	MS. LaBUDA: That is the reve
19	that was the approved rate relief at that
20	time.
21	MR. BALLENGER: Isn't it true that
22	the Board denied the City's proposal for
23	the Fire Department to stop paying
24	approximately \$8 million per year for water

1	in Fiscal 19 and Fiscal 2020?
2	MS. LaBUDA: Subject to check, I
3	believe that's correct.
4	MR. BALLENGER: So, that's
5	approximately \$16 million in revenues that
6	are not reflected in the 1.33 or the
7	1.2 percent increases that we just
8	discussed; is that right?
9	MS. LaBUDA: They are not
10	calculated in those percents. That's
11	correct.
12	MR. BALLENGER: Right. Those
13	are those under existing rates.
14	MS. LaBUDA: Correct.
15	MR. BALLENGER: So, that would
16	constitute a portion of the rate relief
17	that the Department received, wouldn't it?
18	MS. LaBUDA: I'm sorry. Can you
19	ask the question again, please?
20	MR. BALLENGER: Sure.
21	Continuing to receive those
22	revenues and the Board's denial of the
23	City's proposal to stop contributing those
24	revenues, wouldn't that be a portion of the

1	rate relief that the Department received
2	over those two years?
3	MS. LaBUDA: No. Because they are
4	already they're revenues that we were
5	required to recover regardless of who was
6	paying for them. So, wouldn't it be double
7	counting if you added them to the
8	1.2 percent or whatever the numbers were
9	that you were stating? I apologize. I
10	don't have the page in front of me.
11	They were part of base rates. They
12	were being paid either by the City or being
13	presented to be paid by customers. It's
14	the same dollars.
15	MR. BALLENGER: Right. And they
16	are not reflected in the 1.2 or the 1.3
17	percent.
18	MS. LaBUDA: Because that would be
19	double counting. They weren't new revenues
20	during that proceeding.
21	MR. BALLENGER: But they were
22	revenues that the Department anticipated it
23	would not receive. And so, requested
24	greater rate increases because of that

1	expectation.
2	MS. LaBUDA: They are not
3	additional revenues. It was shifting the
4	dollars of who was covering the cost.
5	MR. BALLENGER: Correct. So,
6	customers didn't have to pay that
7	\$16 million in additional rates and
8	charges.
9	MS. LaBUDA: The General Fund.
10	MR. BALLENGER: The General Fund
11	did?
12	MS. LaBUDA: Yeah.
13	MR. BALLENGER: Correct. So, that
14	maintained those revenues that were
15	projected to be lost, correct?
16	MS. LaBUDA: They weren't projected
17	to be lost. They were projected to be
18	shifted from one entity paying it to
19	another.
20	MR. BALLENGER: At the end of the
21	day, the Water Department received those
22	revenues, right?
23	MS. LaBUDA: The Department did
24	collect those revenues. That's correct.

1	MR. BALLENGER: Isn't it true that
2	if the Board accepts Mr. Morgan's
3	recommendation, that the Water Department's
4	still going to receive an increase in rates
5	in Fiscal 2023?
6	MS. LaBUDA: Can you remind me of
7	Mr. Morgan's recommendation, please?
8	MR. BALLENGER: Yes. Mr. Morgan's
9	recommendation was to adjust the
10	34-and-change million dollar rate increase
11	in Fiscal 2023 by \$6.6 million rounded.
12	MS. LaBUDA: Thank you.
13	Yes. We would still receive a rate
14	increase.
15	MR. BALLENGER: And that rate
16	increase would constitute rate relief?
17	MS. LaBUDA: That would constitute
18	a partial rate relief.
19	MR. BALLENGER: On page 8 of your
20	rebuttal, it states that here is the
21	quote: PWD is barely holding onto it's A
22	rating, end quote.
23	And I see that both the Department
24	and the Public Advocate put in some of the

1	information. The Department put the entire
2	reports from the rating agencies. The
3	Public Advocate just put the first page of
4	each of the reports of the rating agencies
5	into the hearing exhibit.
6	So if you look at the Public
7	Advocate's Hearing Exhibit page 1, 2 and 3,
8	you will see the first page of each of the
9	credit rating agencies' reports, which were
10	attached to your direct testimony. And I
11	just want to confirm that in each of those
12	reports, it reflects an A rating with a
13	stable outlook.
14	Isn't that correct?
15	MS. LaBUDA: That's correct.
16	MR. BALLENGER: Okay. And on page
17	9 of your rebuttal, you state here is
18	the quote: Diminishing the targeted RSF,
19	or Rate Stabilization Fund Balance, from
20	the 135 million-dollar level indicates a
21	downward trajectory which itself could
22	result in a negative rating action.
23	And I just wanted to confirm that
24	the Board's rate determination anticipated

1	that at the end of Fiscal 2022, the Rate
2	Stabilization Fund balance would be just
3	under \$104 million.
4	Isn't that correct?
5	MS. LaBUDA: I can't speak on the
6	Board's intent. I would like to note that
7	the reports are incomplete.
8	MR. BALLENGER: Correct. I just
9	put the first pages.
10	So if you look at page 13 of the
11	hearing exhibit, it's the second page of
12	Table C1 that was included in the Board's
13	2021 rate determination. And line 41, the
14	bottom of the table reports the end of year
15	balance and the Rate Stabilization Fund.
16	Do you see that?
17	MS. LaBUDA: Yes.
18	MR. BALLENGER: And the amount
19	reported there for Fiscal 2022 is just
20	under \$104 million.
21	MS. LaBUDA: The Department didn't
22	agree in the settlement to these amounts or
23	any other performance measurement.
24	MR. BALLENGER: We are going to get
I	

1	to that with the next panel. I think I
2	don't think that was part of your your
3	rebuttal statement, correct?
4	MS. LaBUDA: Correct. Thank you.
5	MR. BALLENGER: Okay. So anyway,
6	the numbers are are included in the rate
7	determination. And reflect \$104 million
8	rounded in the Rate Stabilization Fund at
9	the end of Fiscal 2022, correct?
10	MS. LaBUDA: I can affirm that that
11	is the number stated on page hearing
12	exhibit 13, correct.
13	MR. BALLENGER: And also, for
14	Fiscal 2023, the end-of-year balance shown
15	on this exhibit is just over \$92 million,
16	correct?
17	MS. LaBUDA: Again, we didn't agree
18	to the balances in the settlement I note.
19	And that is the number listed on this page.
20	Correct.
21	MR. BALLENGER: And just to confirm
22	again, there is nothing in the rate
23	determination from Fiscal 2021 that
24	projects \$135 million Rate Stabilization

1	Fund balance, correct?
2	MS. LaBUDA: Subject to check, that
3	is correct.
4	MR. BALLENGER: Okay.
5	Moving on to page 10 of your
6	rebuttal, discuss the Rate Board's
7	ordinance. And a provision in the
8	ordinance that authorizes a reasonable sum
9	to cover unforeseeable or unusual expenses.
10	I think that's the language of the
11	ordinance. You, also, indicate that the
12	Department utilizes the Rate Stabilization
13	Fund to cover unforeseeable or unusual
14	expenses, correct?
15	MS. LaBUDA: That's correct.
16	MR. BALLENGER: Okay. So in
17	practical terms in operation, the Rate
18	Stabilization Fund functions as that sum
19	from which you cover reasonable expenses
20	I'm sorry unanticipated expenses?
21	MS. LaBUDA: That's correct.
22	MR. BALLENGER: Okay. And in the
23	settlement in the 2021 rate case, the Water
24	Department and the Public Advocate agreed

1	that the rates and charges provided a
2	reasonable basis for recovery of revenues
3	sufficient to meet the Department's
4	obligations.
5	Isn't that correct?
6	MS. LaBUDA: Settlement did use the
7	word "reasonable." That is correct, yes.
8	MR. BALLENGER: And it does also
9	say and I think if you look at page 7 of
10	the hearing exhibit under Paragraph B, it
11	also says that the rates and charges comply
12	with the ordinance governing the proceeding
13	and provide a reasonable basis for recovery
14	of revenues sufficient to meet the
15	Department's obligations, correct?
16	MS. LaBUDA: Correct.
17	MR. BALLENGER: That was the
18	agreement at the time. Okay.
19	On page 11 of your testimony, you
20	expressed some disagreement with Mr. Morgan
21	regarding the 13 roughly
22	13 million-dollar transfer to the
23	Construction Fund.
24	Do you agree that that transfer

1	contributed to the Water Department
2	exceeding its senior debt service coverage
3	target 1.2?
4	MS. LaBUDA: That's correct.
5	MR. BALLENGER: Okay. And if that
6	transfer hadn't taken place, presumably the
7	Water Department would have had more
8	reserves.
9	Is that also correct?
10	MS. LaBUDA: More in reserves, less
11	in capital. Correct.
12	MR. BALLENGER: Okay. And you,
13	also state, that the transfer were to
14	reduce the debt burden on rate payers. And
15	I just want to check, is it your testimony
16	that that that transfer would work in
17	the future to reduce the debt service
18	expense? Or is it your testimony that it
19	actually would reduce debt service expense
20	in Fiscal 2021, the year for transfer?
21	MS. LaBUDA: Future. Because in
22	Fiscal Year 21, the transfer is made at
23	year end. Which is, typically, penned by
24	the City somewhere in October which is

1	after June 30. So clearly, it will reduce
2	debt service in fiscal further fiscal
3	years.
4	MR. BALLENGER: That was my that
5	was my assumption. Thank you.
6	Your rebuttal criticizes Mr. Morgan
7	for using the projected Fiscal 2021 closing
8	balance in the Rate Stabilization Fund as a
9	starting point. And that's the \$104
10	million that we discussed earlier. And you
11	called that unreasonable on page 13.
12	Turn to page 9 of the hearing
13	exhibit. This is part of the stipulation
14	in this case. And looking at paragraph 2,
15	wouldn't you agree that the stipulation
16	specifically acknowledges that the starting
17	point for determining the performance
18	adjustment is the end-of-year balance in
19	the Fiscal Year I'm sorry, the end of
20	Fiscal Year 2021 balance in the Rate
21	Stabilization Fund?
22	MS. LaBUDA: Reading the text.
23	MR. BALLENGER: Yes, okay.
24	MR. DASENT: Are you referring to

1	paragraph two?
2	MR. BALLENGER: Yes.
3	MS. LaBUDA: I I concur that
4	that paragraph two on Hearing Exhibit 9
5	says that's the starting point.
6	MR. BALLENGER: Okay. So the
7	actual
8	MS. LaBUDA: Actual.
9	MR. BALLENGER: Yes. The actual
10	ending balance, then, is reasonable for use
11	in this case, correct?
12	MS. LaBUDA: I do not agree that it
13	is reasonable.
14	MR. BALLENGER: Using the actual
15	year-end balance is not reasonable?
16	MS. LaBUDA: That is correct. I
17	don't believe it's reasonable at this point
18	in time to draw our reserves down any
19	further.
20	MR. BALLENGER: So, I'm surprised
21	by that since that's what we agreed to in
22	the stipulation. So, let's move along.
23	MR. DASENT: Let me insert an
24	objection or, at least, an observation here

1	that the starting point is different than
2	sort of the ending point for our proposal.
3	So, I'm not sure that your question is
4	absolutely clear.
5	HEARING OFFICER CHESTNUT: I think
6	his question was clear actually. I'm a
7	little surprised by the answer. But the
8	settlement says what the settlement says.
9	Whether you agree that adjustment should be
10	made to the approved rate increase or not,
11	it's a different issue.
12	MR. BALLENGER: So
13	HEARING OFFICER CHESTNUT: I
14	thought there was a meeting of the minds on
15	the settlement in terms of where you start
16	your analysis. And that is the actual
17	ending balance at the end of Fiscal Year
18	2022 I'm sorry, 2021.
19	MR. BALLENGER: Yeah. I only have
20	a few more questions for this panel. I
21	said I would keep it to moderate. So, I
22	would like to move on to page 21 of the
23	rebuttal testimony.
24	And you characterize Mr. Morgan's

testimony as proposing that a portion of the Residual Fund Balance be shared as an adjustment. And just wanted to confirm your understanding of Mr. Morgan's testimony. Isn't it true that Mr. Morgan calculated the amount of over-performance as the difference between the Rate Stabilization Fund balance shown in the rate determination, roughly 114 million, and the actual year-end balance for Fiscal 2021, which was over 124 million? MS. LaBUDA: I cannot confirm or deny those numbers. I don't have them in front of me. MR. BALLENGER: Okay. Mr. Morgan's adjustment or the amount that Mr. Morgan identifies as over-performance is \$10.7 million. Does that sound correct to you? MS. LaBUDA: Subject to check. MR. BALLENGER: Okay. And would you agree that that's the difference between the 124 million and 114 million		
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you agree that believe arrierence	22	MR. BALLENGER: Okay. And would
between the 124 million and 114 million	23	you agree that that's the difference
	24	between the 124 million and 114 million

1	that we've been talking about?
2	MS. LaBUDA: Subject to check.
3	MR. BALLENGER: And isn't it also
4	true that Mr. Morgan's testimony proposes
5	sharing more than half of that 10.7 million
6	rounding to 6.6 million total?
7	MS. LaBUDA: Subject to check.
8	MR. BALLENGER: And his testimony
9	doesn't actually propose any transfer of
10	funds from the Residual Fund, does it?
11	MS. LaBUDA: I'd have
12	unfortunately, I would have to go back to
13	the numbers.
14	MR. BALLENGER: Okay. Just if we
15	could just turn to pages 4 to starting
16	on page 4 of the Hearing Exhibit, I have an
17	exempt from the Joint Petition for
18	Settlement from the last case. And
19	starting on page 6 is the reconciliation
20	framework for financial performance.
21	In your Rebuttal Statement, it
22	you conclude that Mr. Morgan's adjustment
23	runs counter to the settlement. Stating
24	that the settlement terms and here is

1	the quote: Contemplate that a percentage
2	sharing, closed quote, would be determined.
3	And I would just like you to review pages 6
4	and 7 and confirm for me that the word
5	"percent" or "percentage" does not appear
6	anywhere in the settlement?
7	MS. LaBUDA: May I ask you to
8	clarify the hearing exhibit page, please?
9	MR. BALLENGER: Yes. Starting at
10	the bottom of page 6 is the reconciliation
11	framework
12	MS. LaBUDA: Thank you.
13	MR. BALLENGER: for Fiscal 2021
14	performance. And that carries over to page
15	7.
16	MS. LaBUDA: I concur.
17	MR. BALLENGER: Okay. Moving on to
18	page 26 of your Rebuttal Statement, you
19	you appear to criticize Mr. Morgan's
20	testimony for not making adjustments to
21	Fiscal 2023 projections to keep the Rate
22	Stabilization Fund above \$120 million.
23	And I think, again, in our
24	stipulation, we agreed that the adjustments

were solely to the 34.110 million-dollar increase. Is that your understanding of	
3 the stipulation?	
MS. LaBUDA: I have to review th	.e
5 stipulation. I don't want to misreprese	nt
6 the facts in the record.	
7 MR. BALLENGER: So Paragraph 6 c	f
8 the Stipulation says: Assuming there is	an
g amount to be shared, the parties can sub	mit
10 their respective position as to how much	
11 how such amounts should be shared to red	uce
the Fiscal 2023 incremental revenues	
13 \$34 million, right?	
MS. LaBUDA: I agree. Thank you	•
MR. BALLENGER: So if Mr if	
16 Mr. Morgan were to project higher revenu	.es
under existing rates, for example, in or	der
18 to affect the balance in the Rate	
Stabilization Fund, you would agree that	
20 that would not be the basis for a downwa	rd
adjustment to the the 34 million-doll	ar
rate increase as reflected in the	
23 settlement and the stipulation, wouldn't	
24 you?	

1	MS. LaBUDA: Would you ask the
2	question one more time, please?
3	MR. BALLENGER: Yeah. Let's say
4	that Mr. Morgan had, you know, done a full
5	cost of service study and projected
6	additional revenues and lower expenses in
7	Fiscal 2023. You would agree with me that
8	none of those projections would result in
9	an adjustment in this special rate
10	proceeding, wouldn't you?
11	MS. LaBUDA: I agree.
12	MR. BALLENGER: Okay. And on page
13	26, you also you comment on the Fiscal
14	2023 year-end balance shown in Mr. Morgan's
15	tables, which is over \$96 million. And I
16	just want to confirm that that's higher
17	than the amount shown in the rate
18	determination for Fiscal 2023.
19	Isn't that correct?
20	MS. LaBUDA: That is incrementally
21	more than the page we cited earlier, yes.
22	MR. BALLENGER: Thank you.
23	I promised I would keep it pretty
24	short today. So, I'm actually done with

1	this panel.
2	HEARING OFFICER CHESTNUT: Okay.
3	That is short. Okay.
4	Mr. Bachri, you indicated you have
5	no questions. Is that still the case?
6	(No response.)
7	I guess it is then.
8	Mr. Haver, do you have any
9	questions for this witness?
10	MR. HAVER: Yes, I do.
11	HEARING OFFICER CHESTNUT: Okay.
12	MR. HAVER: Good morning.
13	In response to a question two of
14	your direct testimony, you state that you
15	also lead the Department's efforts related
16	to the Philadelphia Water Department's
17	Financial Plan and Cost of Service Study
18	for general rate proceedings; is that
19	correct?
20	MS. LaBUDA: That is correct.
21	MR. HAVER: Are you responsible for
22	the creation of the exhibit and testimony
23	of PWD for these proceedings?
24	MS. LaBUDA: I'm responsible for my

1	testimony, my exhibits.
2	MR. HAVER: Who is responsible for
3	overseeing the testimony of the other
4	witnesses?
5	MS. LaBUDA: Mr. Haver, I'm not
6	sure this is directly in my testimony, but
7	I'm more than happy to answer. So, each of
8	the respective witnesses prepares their
9	testimony and exhibits.
10	MR. HAVER: And who oversees the
11	entire proceedings if not you?
12	MS. LaBUDA: Well, the Department
13	does oversee the proceedings.
14	MR. HAVER: And are you the one
15	responsible?
16	MS. LaBUDA: I do not prepare the
17	exhibits and testimony for our experts.
18	MR. HAVER: I understand that. But
19	are you responsible for their expert
20	testimony?
21	MS. LaBUDA: Again, this is outside
22	of the bands of my testimony.
23	MR. HAVER: Well, again, you say in
24	response to Question 2, that you are

1	responsible. You lead the Department's
2	efforts related to PWD's Financial Plan and
3	Cost of Service Study for General Rate
4	Proceedings. So, this is within your
5	testimony.
6	I'm asking you where your
7	responsibility ends?
8	MS. LaBUDA: I do not prepare
9	expert testimony for the City's consultants
10	or expert witnesses. I do review it and
11	participate and lead the Department's
12	efforts.
13	MR. HAVER: And if you believe the
14	testimony is incorrect, what do you do?
15	MR. DASENT: Objection. Objection.
16	Please, note our objection. I think this
17	reaches beyond the scope of her direct
18	testimony at this point. And we would ask
19	that you know, we direct it to some
20	substantive area of the testimony that
21	deals with the two adjustments in this
22	proceeding.
23	We think this is beyond the scope
24	of her testimony at this point.

1	HEARING OFFICER CHESTNUT: Yes. I
2	don't understand the point of it. The
3	Department is a participant. And how they
4	allocate who is responsible for overseeing
5	what piece of testimony, I'm not sure how
6	that that gets anywhere.
7	MR. HAVER: There are a number of
8	statements on the record in the exhibits
9	that I want to question. And I want to
10	make sure I'm asking the questions of the
11	correct witness.
12	HEARING OFFICER CHESTNUT: Well,
13	ask her your question. If she can't answer
14	it, she will refer it to a witness who is
15	better able to answer it.
16	MR. HAVER: Are you ruling my
17	question out of order?
18	HEARING OFFICER CHESTNUT: I'm
19	sorry. What was that?
20	MR. HAVER: I've asked what she
21	would do forgive me, Ms. LaBuda, am I
22	pronouncing it correctly?
23	MS. LaBUDA: Yes, thank you,
24	Mr. Haver.

1	MR. HAVER: I am asking what
2	Ms. LaBuda would do when she examines the
3	expert testimony if she believed there was
4	a mistake.
5	HEARING OFFICER CHESTNUT: I think
6	we are getting into prior preparation
7	material here, aren't we?
8	MR. HAVER: Mr. Dasent objected to
9	my question. You asked why I was asking.
10	I explained it, but I'm still waiting for
11	an answer.
12	HEARING OFFICER CHESTNUT: And I'm
13	waiting for you to move on. I've already
14	explained that if you ask a question that's
15	outside the scope of her testimony, she can
16	refer you to a witness better able to
17	answer it. That's fine.
18	MR. HAVER: Right. But you
19	didn't she hasn't said what
20	HEARING OFFICER CHESTNUT: You
21	haven't asked her a substantive wait,
22	Mr. Haver, ask her a substantive question.
23	MR. HAVER: I believe that is a
24	substantive question.

1	HEARING OFFICER CHESTNUT: That is
2	not a substantive question. You are asking
3	about their internal process for reviewing
4	and presenting their case.
5	MR. HAVER: Thank you.
6	Ms. LaBuda, did you create or have
7	created PWD Exhibit 1A?
8	MS. LaBUDA: I have to Mr.
9	Haver, you have to forgive me. I have to
10	look at
11	MR. HAVER: I can read you what I'm
12	interested in. It's 1.1
13	HEARING OFFICER CHESTNUT: Hold on
14	a second. Hold on a second. Let me pull
15	that up, please. 1A is you mean the
16	hearing exhibit?
17	MR. HAVER: Yes.
18	HEARING OFFICER CHESTNUT: Okay.
19	MR. HAVER: I'm interesting in 1.1:
20	Conformity with Existing Law.
21	MS. LaBUDA: Mr. Morgan, may I
22	Mr. Haver, may I just please confirm, you
23	are talking about the City's special
24	hearing exhibit, correct?

1	MR. HAVER: Yes.
2	MS. LaBUDA: 1A?
3	MR. HAVER: Yes.
4	MS. LaBUDA: Thank you. Just
5	opened the wrong document. You have to
6	forgive me.
7	HEARING OFFICER CHESTNUT: I am not
8	sure I'm clear. Are you talking about the
9	filing Exhibit 1A?
10	MR. HAVER: Yes.
11	HEARING OFFICER CHESTNUT: That
12	would be the proposed charges and rates?
13	MR. HAVER: Yes. It's under 1.1
14	Conformity with Existing Law.
15	HEARING OFFICER CHESTNUT: So, you
16	are talking about the tariffs.
17	MR. HAVER: I am talking about PWD
18	Exhibit 1A, Fiscal Year 2023 proposed rates
19	and charges (clean clothes).
20	HEARING OFFICER CHESTNUT: Okay.
21	You are talking about the tariff then that
22	was attached to the filing. Okay. I just
23	want to be sure I'm looking at the right
24	exhibit.

1	MR. HAVER: Section 1.1.
2	MS. LaBUDA: Mr. Haver, I have I
3	apologize for the delay. You have to
4	forgive my clunkiness, but I do have open
5	PWD Exhibit 1A, Fiscal Year 2023 proposed
6	rate and charges, the clean line version.
7	MR. HAVER: I'm asking whether you
8	reviewed this, saw this and approved this
9	prior to it being filed?
10	MS. LaBUDA: Yes. I did review it
11	prior to it being filed. The rates and
12	charges is approved by the Board, though.
13	But I did review it before it was filed.
14	Thank you.
15	MR. HAVER: Can you confirm that it
16	says nothing contained in here shall be
17	deemed to overrule or annul any existing
18	provisions of the Home Rule Charter or The
19	Philadelphia Code? Section 1.1.
20	MS. LaBUDA: Subject to check, I'm
21	not aware of a statement in here that says
22	the Board's rates and charges overrules if
23	that's a question of the Home Rule Charter.
24	MR. HAVER: I'm just asking if you

1	agree that's what it says?
2	MS. LaBUDA: Could you point to me
3	exactly, Mr. Haver, where it's making that
4	statement? I'm on page 1, Definitions.
5	I'm looking at, E, Home Rule Charter.
6	MR. HAVER: It's 1.1, Conformity
7	With Existing Law.
8	MR. DASENT: Is that lower on the
9	same page, Mr. Haver?
10	MR. HAVER: I don't know that my
11	HEARING OFFICER CHESTNUT: It's
12	after the Definitions.
13	MS. LaBUDA: Thank you. Again,
14	thank you, Mr. Haver, for your patience. I
15	do see 1.1. It's page 3 of 37 for anyone
16	who is using the pdf.
17	And nothing contained herein shall
18	be deemed to overrule any existing
19	provisions of the Home Rule Charter or the
20	Philadelphia Code. It does state that.
21	Thank you, again, for your
22	patience.
23	MR. HAVER: Thank you.
24	Moving on, Ms. LaBuda, did you

1	participate in the negotiations which
2	created the settlement agreement which was
3	approved by the Philadelphia Water Rate
4	Board which authorized PWD to raise rates
5	in Fiscal Year 2022?
6	MS. LaBUDA: With my counsel I
7	participated, Mr. Haver.
8	MR. HAVER: Yes. Are you familiar
9	with the clause entitled Maximum
10	Adjustment?
11	HEARING OFFICER CHESTNUT: I'm
12	sorry. Clause where?
13	MR. HAVER: In the Settlement
14	Agreement.
15	HEARING OFFICER CHESTNUT: Hold on.
16	Okay.
17	MS. LaBUDA: I believe I have the
18	Settlement Agreement, Mr. Haver. Would you
19	mind pointing me to the page or the
20	paragraph that you are referring to,
21	please?
22	MR. HAVER: I'll be honest, I don't
23	know if my computer paginates in the same
24	way that yours does. But I have it on page
1	

1	58 of the Philadelphia Water Rate Board's
2	decision.
3	HEARING OFFICER CHESTNUT: Well,
4	there is two subparagraphs entitled Maximum
5	Adjustment. Which one are you talking
6	about?
7	MR. HAVER: The one that says
8	reconciliation under this adjustment
9	separately or in combination with other
10	adjustments cannot lower FY 2023 base rates
11	incremental increase below \$0.
12	MS. LaBUDA: I see that, Mr. Haver.
13	It's on page 5 of 8 of the standalone
14	settlement sheet.
15	MR. HAVER: I think you just saved
16	me the next question, but I will ask it
17	anyway. Would you agree that's the
18	definition of the maximum adjustment?
19	MS. LaBUDA: That's what's in the
20	settlement, yes.
21	MR. HAVER: Thank you.
22	And to be clear, does that mean
23	that no matter how much money the Water
24	Department had received through stimulus or

1	any other method, that the rates could not
2	be lower than what they are today through
3	these proceedings?
4	MS. LaBUDA: Would you mind just
5	repeating that. I don't want to miss
6	mis-answer that, Mr. Haver.
7	MR. HAVER: Again, to go back to
8	your testimony on page 11, line 12 through
9	15, you state: The amount of any
10	adjustment per stimulus funding would be
11	subject to the maximum adjustment which
12	requires that any reconciliation under this
13	adjustment cannot lower the Fiscal Year
14	2023 base rate incremental increase below
15	\$0.
16	Is that correct?
17	MS. LaBUDA: Yes. That's correct,
18	Mr. Haver.
19	MR. HAVER: And does that in plain
20	English translate to the rates cannot
21	through these proceedings, the rates cannot
22	fall or be reduced below the level that
23	they are at today?
24	MS. LaBUDA: Subject to check, yes.

1	MR. HAVER: Forgive me. I'm not
2	sure what that term means. As Mr. Dasent
3	has recently discovered, I'm not an
4	attorney.
5	MS. LaBUDA: I believe that's
6	correct, Mr. Haver. But I, obviously,
7	would like to check with my legal counsel
8	and make sure I'm not misrepresenting
9	something on the record.
10	MR. HAVER: So, I can wait while
11	you do that.
12	MR. DASENT: We will use redirect
13	for that purpose if, Your Honor, please.
14	HEARING OFFICER CHESTNUT: Yes.
15	MR. HAVER: Okay.
16	Ms. LaBuda, are you familiar with
17	the Home Rule Charter Section 8-600? It's
18	entitled the Language Access Plan.
19	MS. LaBUDA: I'm familiar with the
20	Language Access Plan, Mr. Haver. Yes.
21	HEARING OFFICER CHESTNUT: Sorry.
22	What was that reference?
23	MR. HAVER: Section 8
24	HEARING OFFICER CHESTNUT: What was

1	the citation?
2	MR. HAVER: Section 8-600 of The
3	Philadelphia Home Rule Charter entitled The
4	Language Access Plan.
5	MS. LaBUDA: Mr. Haver, can you
6	point to where in my testimony this
7	where I discussed the Language Access Plan,
8	please?
9	MR. HAVER: Well, I'm getting to
10	that. But if you want me to skip to that
11	part, I will. Do you want me to skip to
12	that part now?
13	HEARING OFFICER CHESTNUT: Why
14	don't we agree that the Home Rule Charter
15	says what it says
16	MR. HAVER: I have
17	HEARING OFFICER CHESTNUT:
18	regardless of her understanding.
19	MR. HAVER: I have no idea why we
20	wouldn't. I just asked Ms. LaBuda if she
21	was familiar with it, and she said yes.
22	So, Ms. LaBuda
23	MR. DASENT: Just point of
24	clarification. Ms. LaBuda actually said

1	that she was familiar with the Language
2	Access Plan as opposed to the Charter, just
3	so the record is clear.
4	MR. HAVER: All right. So, let me
5	go back and ask, Ms. LaBuda, are you
6	familiar with Section 8-600 of The
7	Philadelphia Home Rule Charter which is the
8	Language Access Plan?
9	MS. LaBUDA: Mr. Haver, I cannot
10	say that I have read the full Home Rule
11	Charter. I am familiar with the
12	Department's Language Access Plan.
13	MR. HAVER: Okay. In preparing the
14	testimony and the proceedings on behalf of
15	the PWD, did you review the public notice
16	that was posted on the Philadelphia Water
17	Rate Board which reads: On January 21,
18	2022, the Philadelphia Water Department
19	filed advance notice of the initiation of
20	the special rate proceeding regarding a
21	reconciliation and potential downward
22	adjustment of water, sewer and storm water
23	rates and charges previously approved to
24	take effect September 1, 2022. This
I	

1	proceeding is pursuant to the rate
2	determination and joint petition for
3	partial settlement in the 2021 general rate
4	proceedings?
5	MS. LaBUDA: I did review that,
6	Mr. Haver.
7	MR. HAVER: Do you believe that a
8	person quoting from the Home Rule Charter
9	Section 8-600 with limited English
10	proficiency would understand the choice of
11	words used to publicize today's hearings
12	and proceedings?
13	MR. DASENT: Objection, Your Honor.
14	I think this is beyond the scope of
15	Ms. LaBuda's testimony.
16	HEARING OFFICER CHESTNUT:
17	Sustained.
18	MR. HAVER: Ms. LaBuda, who would
19	be responsible for implementing the rules
20	and regulations under Section 8-600 of the
21	Philadelphia Home Rule Charter?
22	MS. LaBUDA: Mr. Haver, again, I
23	believe this is outside the bounds of my
24	testimony. And I don't think it's a good
i .	

1	idea for me to guess on which City agency
2	leads those type of matters on a City-wide
3	basis.
4	MR. HAVER: At the Water
5	Department, I'm not asking City-wide. Who
6	at the Water Department is responsible?
7	MS. LaBUDA: The Department
8	again, I believe this is outside the bounds
9	of my testimony. But I'm happy to answer
10	that the Department's Public Affairs
11	Division leads the efforts for the
12	Department.
13	MR. HAVER: And will they be
14	presenting a witness today?
15	MS. LaBUDA: They are not. To the
16	best of my understanding, they are not,
17	Mr. Haver.
18	MR. HAVER: Okay. Skipping again.
19	On page 13, line 11 and 12 of your
20	testimony, you state the Department
21	received no stimulus funding within the
22	scope of the definition during the
23	HEARING OFFICER CHESTNUT: Wait,
24	hold on a second. I have to pull that up.
i .	

1	What was that reference again, Mr. Haver?
2	MR. HAVER: Page 13, lines 11 and
3	12.
4	HEARING OFFICER CHESTNUT: Let me
5	get 13 up.
6	MR. HAVER: Of Ms. LaBuda's
7	testimony.
8	HEARING OFFICER CHESTNUT: Rebuttal
9	testimony or
10	MR. HAVER: No, direct.
11	HEARING OFFICER CHESTNUT: Hold on.
12	Let me go back. Okay, I have it.
13	MR. HAVER: Thank you.
14	Ms. LaBuda, again, you state the
15	Department received no stimulus funding
16	within the scope of the definition during
17	the receipt period; is that correct?
18	MS. LaBUDA: That's correct,
19	Mr. Haver.
20	MR. HAVER: Outside the scope of
21	the definition in the settlement, did PWD
22	receive directly or indirectly any stimulus
23	money?
24	MS. LaBUDA: We didn't receive any

1	stimulus money from the American Recovery
2	Protection Act.
3	MR. HAVER: I'm saying from
4	anywhere. From the state? From the
5	Federal Government? From the City?
6	Did you receive any stimulus
7	dollars, CARE dollars, any money that had
8	been allocated from the federal, state or
9	city government to help with the crisis
10	that was created through the COVID?
11	MR. DASENT: Please note our
12	objection that this reaches beyond the
13	scope of Ms. LaBuda's testimony. The four
14	corners of the testimony are framed by this
15	two adjustments. Federal stimulus
16	adjustment is defined in the joint petition
17	for settlement. And this is outside the
18	range of the adjustments that are to be
19	made in this proceeding.
20	HEARING OFFICER CHESTNUT: I agree.
21	It is outside the scope of the proceeding
22	because it does define the eligible
23	stimulus funding. But if you can answer
24	the question, I think it is irrelevant

1	frankly because it doesn't matter what they
2	receive because it doesn't fall within the
3	definition. So, it can't be used as the
4	basis for any adjustment.
5	Can you briefly answer that
6	question, Ms. LaBuda, or not?
7	MS. LaBUDA: I can. We did not
8	we received a reimbursement under the
9	original act for expenses related to COVID
10	and budgeted expenses. And that was
11	written in my testimony.
12	But outside of that, I'm not aware
13	of any direct receipt of funding to the
14	Department. I can't answer that on a
15	Citywide basis. But we don't have we
16	didn't receive direct funding to the best
17	of my knowledge outside of that one
18	reimbursement in my testimony for expenses
19	not contemplated in the Fiscal Years 20 and
20	21 budget related to COVID expenses for
21	protective equipment for our critical
22	employees.
23	MR. HAVER: And going to your
24	testimony on page 14, lines 18 to 20, you

1	state that the City did not allocate
2	amounts under ARPA to PWD during the
3	receipt period; is that correct?
4	MS. LaBUDA: That's correct.
5	MR. HAVER: Did PWD ask City
6	Council to allocate ARPA funds?
7	MS. LaBUDA: We asked the budget
8	I'm sorry. We asked the Director of
9	Finance to allocate ARPA funds. We did not
10	ask City Council.
11	MR. HAVER: And why is that?
12	MS. LaBUDA: The ARPA funds were
13	controlled again, this is outside of the
14	bounds of my testimony. I'm happy to
15	attempt to answer the question.
16	We asked the question to the person
17	responsible for those allocations, which is
18	the Budget Director.
19	MR. HAVER: So it's clear on the
20	record, how did you ask the Budget Director
21	for those funds? In a written request?
22	MS. LaBUDA: Again, this is outside
23	the bounds of this rate case testimony.
24	But I'm happy to remind you that in my

1	prior rate case testimony, I believe we
2	submitted the actual memo that was
3	submitted to the Director of Finance. But
4	again, this appears to be outside of my
5	current testimony, Mr. Haver.
6	MR. HAVER: Since the Settlement
7	Agreement, did you ask for funding
8	HEARING OFFICER CHESTNUT: Look, I
9	think we spent enough time on this. You
10	raised this in the underlying base rate
11	case, discussing the settlement about the
12	Water Department's efforts to seek out and
13	obtain additional funding. And it was
14	address there. It's not part of this case.
15	We have moved on, so why don't you
16	move on with your questions, please.
17	MR. HAVER: Well, I want to put on
18	the record that I'm asking about things
19	that have happened since the Settlement
20	Agreement was imposed upon rate payers.
21	I'm not asking about prior. I'm asking
22	directly because in Ms. LaBuda's testimony,
23	she says that they did not receive any.
24	And so, I am asking what effort

1	they put in to getting these revenues after
2	the settlement was signed that was
3	obviously, could not have been covered
4	during the settlement proceedings.
5	HEARING OFFICER CHESTNUT: All
6	right. Do you have another question?
7	MR. HAVER: Well, I am waiting for
8	you to acknowledge that I am not asking
9	about situations before the settlement, but
10	I'm asking about conditions after the
11	settlement.
12	HEARING OFFICER CHESTNUT: I don't
13	understand the point of this. Did you I
14	mean, is there some kind to indicate
15	that there were funds available that the
16	Department didn't get?
17	MR. HAVER: Absolutely.
18	HEARING OFFICER CHESTNUT: Did
19	you I mean, is there some basis for
20	that
21	MR. HAVER: We are going to get to
22	that part in a second.
23	HEARING OFFICER CHESTNUT:
24	besides your feeling that there should be

1	more?
2	MR. HAVER: We are going to get to
3	that part in a second.
4	HEARING OFFICER CHESTNUT: Well,
5	let's go to it now.
6	MR. HAVER: Well, I want to, again,
7	establish the record. I want to ask and
8	put my case on in the way that I want. I'm
9	asking.
10	HEARING OFFICER CHESTNUT: Your
11	case has to be put on within the scope of
12	this proceeding.
13	MR. HAVER: I am ask again, if
14	you rule me out of order, you can. But I'm
15	not seeking your advice. I don't believe
16	your advice is helpful to me.
17	HEARING OFFICER CHESTNUT: I'm not
18	giving you advice. I'm giving you
19	directives at this point.
20	MR. HAVER: You do not
21	HEARING OFFICER CHESTNUT: Please,
22	ask your next question.
23	MR. HAVER: I'm asking again, my
24	question is, since after the Settlement

1	Agreement was signed and imposed, did PWD
2	ask the Finance Director or City Council
3	for ARPA funds?
4	MS. LaBUDA: The City's decision
5	was made. The monies were allocated. We
6	didn't again, outside the bounds of my
7	testimony. So since the decision was made,
8	the money was allocated, we did not submit
9	another request post the settlement,
10	Mr. Haver.
11	MR. HAVER: Thank you. In the
12	Fiscal Year 2021 Summary Five Year
13	Financial Projection Plans dated
14	February 2022, which I believe you prepared
15	and has been attached as an exhibit, is
16	that correct that you prepared it or had it
17	prepared?
18	MR. DASENT: What are we referring
19	to, Mr. Haver? I'm sorry.
20	MR. HAVER: Fiscal Year 2021
21	Summary and Five Year Financial Projection
22	Plan dated February 2022.
23	HEARING OFFICER CHESTNUT: What's
24	the citation for that?

1	MR. HAVER: It's an exhibit.
2	HEARING OFFICER CHESTNUT: Was it
3	attached to your direct where was it? I
4	am trying to find it here.
5	MR. HAVER: It's attached as an
6	exhibit.
7	HEARING OFFICER CHESTNUT: To what?
8	MR. HAVER: To her direct
9	testimony. Excuse me, to Ms. LaBuda's
10	direct testimony. Forgive me, I don't mean
11	to refer to you as a her.
12	MS. LaBUDA: Thank you, Mr. Haver.
13	HEARING OFFICER CHESTNUT: Is that
14	VB4?
15	MR. DASENT: I think it's Schedule
16	ML-2.
17	HEARING OFFICER CHESTNUT: ML-2?
18	MR. DASENT: Yeah.
19	MS. LaBUDA: Thank you, Andre
20	Mr. Dasent.
21	MR. DASENT: I prefer Andre.
22	MS. LaBUDA: If it helps, Madam
23	Hearing Officer, it's the appendix to the
24	PowerPoint presentation in my testimony

1	right before the rating agency reports.
2	HEARING OFFICER CHESTNUT: Okay.
3	All right. I got it now.
4	MR. HAVER: Ms. LaBuda, did you
5	prepare that or have it prepared?
6	MS. LaBUDA: I did have it
7	prepared, Mr. Haver.
8	MR. HAVER: Okay. And does it
9	state as of January 3, 2022, there are over
10	69,000 accounts eligible for shutoffs?
11	MS. LaBUDA: I'm sorry, Mr. Haver.
12	I don't see that in this table. Can you
13	point me in the direction of where that is
14	in this table?
15	MR. HAVER: I'm not sure what
16	you're asking me, so I don't
17	HEARING OFFICER CHESTNUT: She is
18	asking what line it is.
19	MR. HAVER: Again, my computer
20	doesn't paginate in the same way. So, I
21	don't have
22	HEARING OFFICER CHESTNUT: No, the
23	exhibit has lines on it, doesn't it?
24	MR. HAVER: No. It's an attachment
1	

1	that was a report.
2	HEARING OFFICER CHESTNUT: Are we
3	looking at ML-2?
4	MR. HAVER: Don't know, Your Honor,
5	what you are looking at.
6	HEARING OFFICER CHESTNUT: Are you
7	looking at Schedule ML-2?
8	MR. HAVER: Again, I'm looking at
9	the Fiscal Year 2021 Summary and Five Year
10	Financial Protection Plan dated February
11	HEARING OFFICER CHESTNUT:
12	Mr. Dasent, can you help me out
13	here?
14	MR. DASENT: Yeah. I'm scanning it
15	trying to see in ML-2 is there any
16	reference to the 69,000.
17	MR. SHULTZ: This is Mr. Shultz. I
18	believe it's under Schedule ML-2. And the
19	heading is Policy Considerations. There is
20	a major heading of Operation where you in
21	System Level Planning, Water Master Plan,
22	Capital Improvement, CIP and then policy
23	considerations. And a subheading with
24	Shutoff Moratorium.

1	MR. DASENT: Ah, it's page 35 of
2	139.
3	MS. LaBUDA: Thank you, again, for
4	your patience, Mr. Haver.
5	MR. HAVER: You're certainly
6	welcome.
7	HEARING OFFICER CHESTNUT: Page 35
8	of 139? I thought I had it.
9	MR. DASENT: Yeah. It says Policy
10	Considerations in the heading. Shutoff
11	Moratorium is the subheading.
12	HEARING OFFICER CHESTNUT: Oh, I
13	see. Okay. So, it's the text not the
14	table you are talking about. Not the
15	scope okay.
16	MR. DASENT: I've forgotten the
17	question, Mr. Haver.
18	MR. HAVER: My question for
19	Ms. LaBuda was, did you write or have
20	written testimony, quote, as of January 3,
21	2022, there were over 69,000 accounts
22	eligible for shutoffs?
23	MS. LaBUDA: Yes.
24	MR. HAVER: Has that number changed

1	since this report was prepared?
2	MS. LaBUDA: Again, outside of the
3	bounds of my current testimony. And yes,
4	the number is different today.
5	MR. HAVER: What is that number as
6	of today?
7	MS. LaBUDA: I would have to get
8	back to you. I don't want to misstate it
9	on the record, Mr. Haver.
10	MR. HAVER: Do you believe that
11	that number has increased or decreased?
12	MS. LaBUDA: I believe the number
13	is different. And I don't want to forecast
14	anything that's incorrect on the record. I
15	would be happy to provide it in a written
16	response. Again, it's outside the bounds
17	of my current testimony. But we will get
18	back to you.
19	MR. HAVER: At the time that you
20	wrote the or had written the Summary and
21	Five Year Financial Plan, was the Water
22	Assistance Program, which sometimes gets
23	called LIHWAP, in place?
24	MS. LaBUDA: Again, I think this is

1	over I believe LIHWAP started in
2	January, but I would have to subject to
3	check, I would have to confirm the exact
4	date that LIHWAP kicked off in the
5	Commonwealth of Pennsylvania. I believe it
6	was January.
7	MR. HAVER: Thank you. Excuse me.
8	Are you familiar with the LIHWAP
9	program?
10	MS. LaBUDA: Generally speaking,
11	yes.
12	MR. HAVER: Would you agree that it
13	offers up to \$5,000 per household?
14	MS. LaBUDA: That is my
15	understanding of how the Commonwealth is
16	administering the program. Correct.
17	MR. HAVER: How many of the people
18	scheduled for shutoffs do you project will
19	be receiving the LIHWAP grant?
20	MS. LaBUDA: I believe this is
21	outside the bounds of my testimony. And I
22	do not have a projection for you,
23	Mr. Haver.
24	MR. HAVER: If any money is
I	

1	received through the LIHWAP grants, how
2	will that be allocated in PWD's revenue?
3	MR. DASENT: Objection. This is
4	beyond the scope of Ms. LaBuda's testimony.
5	And we ask that we sort of stay on the path
6	of the two adjustments that are before us,
7	either federal stimulus or the financial
8	performance adjustment. That those are the
9	boundaries of this particular testimony and
10	this proceeding.
11	HEARING OFFICER CHESTNUT: I
12	think
13	MR. HAVER: LIHWAP is a federal
14	stimulus project program. And of course
15	HEARING OFFICER CHESTNUT: Okay.
16	well, obviously, that's not relevant to the
17	federal stimulus funding as defined in the
18	Settlement Agreement. But I thought the
19	purpose of the questioning was to determine
20	the impact of any recommended adjustment.
21	Because I guess I don't understand to some
22	extent because the Rate Board already
23	approved the rate increase.
24	The rates can only go down. So any

1	impact on existing customers would only be
2	positive.
3	Is that your understanding,
4	Mr. Haver?
5	MR. HAVER: My understanding is
6	that as part of the Settlement Agreement in
7	which the Public Advocate was given a
8	no-bid contract, they agreed to a rate
9	increase this year and a rate increase next
10	year. And these hearings are to see how
11	large next year's rate increase will be.
12	HEARING OFFICER CHESTNUT: That is
13	incorrect.
14	MR. HAVER: Okay. Tell me, again,
15	what you just said then.
16	HEARING OFFICER CHESTNUT: You are
17	completely incorrect on that. The rate
18	increase was already approved.
19	MR. HAVER: Wasn't it approved
20	through the settlement?
21	HEARING OFFICER CHESTNUT: Through
22	the settlement.
23	MR. HAVER: And wasn't that the
24	settlement wasn't that a settlement the

1	Public Advocate agreed to?
2	HEARING OFFICER CHESTNUT: can
3	be made to reduce the rates that have
4	previously been approved.
5	MR. HAVER: Wasn't that
6	HEARING OFFICER CHESTNUT: They can
7	only go down. They can't go up.
8	MR. HAVER: Wasn't that a
9	settlement the Public Advocate agreed
10	today?
11	HEARING OFFICER CHESTNUT: What's
12	the point of that question? Of course they
13	did.
14	MR. HAVER: I just want to make
15	sure we are talking about the same
16	settlement.
17	HEARING OFFICER CHESTNUT: Of
18	course it is.
19	MR. HAVER: Okay. And isn't it
20	don't we have direct testimony from
21	Mr. LaBuda that the rates cannot go down
22	below the level they are at now?
23	HEARING OFFICER CHESTNUT: No.
24	That is not her testimony.
1	

1	MR. HAVER: So, can we go back then
2	and clarify that?
3	HEARING OFFICER CHESTNUT: So her
4	testimony okay.
5	MR. HAVER: Because that
6	HEARING OFFICER CHESTNUT: I can
7	generalize.
8	MR. HAVER: You talk about the
9	maximum adjustment. I believe that's what
10	she said. So, I would like to go back and
11	revisit that definition then.
12	HEARING OFFICER CHESTNUT: No.
13	What we are talking about is the
14	incremental increase scheduled to take
15	effect on September 1.
16	MR. HAVER: But
17	HEARING OFFICER CHESTNUT: It's the
18	incremental increase that may be adjusted
19	downward.
20	MR. HAVER: But the rates cannot go
21	down through these proceedings below the
22	level they are at now; is that correct?
23	HEARING OFFICER CHESTNUT: No. The
24	settlement says that any adjustment cannot

1	be used to reduce the incremental increase
2	below zero.
3	MR. HAVER: Right. Which means,
4	again in plain language, that the rates
5	cannot go down below where they are today.
6	HEARING OFFICER CHESTNUT: Because
7	of this adjustment. That is correct.
8	MR. HAVER: And that's all we are
9	discussing these proceedings; is that
10	correct?
11	HEARING OFFICER CHESTNUT: Yes.
12	MR. HAVER: Okay. So again, my
13	question is, how much does the Water
14	Department project it will be collecting
15	through LIHWAP? And how will that money be
16	allocated in revenues by the PWD?
17	MR. DASENT: Objection. That has
18	nothing to do with either one of the
19	adjustments. Any LIHWAP assistance does
20	not fall within the definition of federal
21	stimulus. And the receipt period is
22	relevant to this discussion, also. And the
23	receipt period ended December 31.
24	HEARING OFFICER CHESTNUT: I

1	thought we already discussed this. My
2	understanding, Mr. Haver because
3	Mr. Dasent is correct. LIHWAP those
4	funds cannot be considered within the
5	definition of federal stimulus funding as
6	defined by the settlement.
7	I thought you were going to see
8	what the impact if any adjustment is made.
9	And that's why I didn't understand it. Any
10	adjustment is going downward.
11	MR. HAVER: So, I have on the
12	record what you just said, correct? Let me
13	make sure I understood it.
14	You are saying that the LIHWAP
15	revenues fall outside of the definition
16	agreed to in the settlement; is that
17	correct? Have I understood you?
18	HEARING OFFICER CHESTNUT: That's
19	my understanding, yes.
20	MR. HAVER: Ms. LaBuda, is that
21	your understanding?
22	MS. LaBUDA: Yes. That's my
23	understanding, as well, Mr. Haver.
24	MR. HAVER: Ms. LaBuda, I only have

1	a few more questions. I appreciate your
2	patience with me.
3	Did you attend the City Council
4	hearings yesterday?
5	MS. LaBUDA: Yes. This is outside
6	the bounds of my testimony. But yes, I
7	attended the hearings yesterday.
8	MR. HAVER: Was the hearing on the
9	Philadelphia Water Department?
10	MR. DASENT: Just note our
11	continuing objection. These questions have
12	absolutely nothing to do with the
13	proceeding unless in the next question we
14	have something that ties to one of the two
15	adjustments.
16	HEARING OFFICER CHESTNUT: I don't
17	have a question. Again, I really don't see
18	the relevance.
19	MR. HAVER: I will help you.
20	Ms. LaBuda, did your testimony at
21	City Council yesterday talk about the
22	federal stimulus programs?
23	MS. LaBUDA: During the Fiscal 23
24	Budget Testimony, I did discuss different
1	

1	grants the Department has applied for,
2	which are also detailed in the Board
3	reports we submit on a monthly basis. And
4	which, I believe, are also posted. I did
5	review some of those same applications in
6	Council testimony yesterday. Yes.
7	MR. HAVER: Did any Councilmember
8	offer to help the Philadelphia Water
9	Department get grants?
10	MR. DASENT: Just note our
11 ,	continuing objection. Thank you.
12	MS. LaBUDA: This is outside the
13	bounds of my testimony. Yes, someone
14	offered to provide a Councilperson did
15	offer to provide additional information
16	which I welcomed. Thank you, Mr. Haver.
17	MR. HAVER: Ms. LaBuda, had you
18	asked that Councilperson previously for
19	help getting stimulus dollars?
20	MS. LaBUDA: Outside of my
21	testimony, the answer is no.
22	MR. HAVER: Thank you. That's all
23	I have. I appreciate your patience.
24	HEARING OFFICER CHESTNUT: Okay. I

1	guess there is no further cross.
2	Do you want the opportunity to
3	redirect, Mr. Dasent? Should we take a
4	short break?
5	MR. DASENT: Thank you, yes.
6	HEARING OFFICER CHESTNUT: How
7	about we resume it's 10:05. How about
8	if we resume at 10:10.
9	MR. DASENT: Okay.
10	(Off the record at 10:05 a.m.)
11	
12	(Back on the record at 10:13 a.m.)
13	HEARING OFFICER CHESTNUT: Shall we
14	resume?
15	MR. DASENT: Ms. LaBuda, on
16	cross-examination by Mr.Ballenger, you
17	indicated that the stipulation's starting
18	balance when you refer to the starting
19	balance in the stipulation, I believe it's
20	at paragraph six. Now that starting
21	balance was agreed to.
22	What is in controversy in this
23	particular case?
24	MS. LaBUDA: The maximum adjustment

1	or the ending balance is what is
2	we're discussing in this case.
3	MR. DASENT: Okay. So, there is no
4	controversy considering paragraph six of
5	the stipulation?
6	MS. LaBUDA: There is no
7	controversy on paragraph six of the
8	stipulation.
9	MR. DASENT: Now, Mr. Ballenger
10	also raised the issue of the Capital Fund
11	transfer, 13.2 million roughly in Fiscal
12	2021. He indicated there was impact on
13	coverage from that particular transfer, and
14	you agreed.
15	But what's the impact on customer
16	costs in terms of the cost that customers
17	bear for our construction program?
18	MS. LaBUDA: Sure. Any transfers
19	from revenues to the capital account
20	reduces the amount the Department needs to
21	borrow. If you borrow less money, your
22	debt service is lower. So, it would reduce
23	the debt burden to customers.
24	MR. DASENT: Okay. Now, Mr. Haver,

1	raised in his cross-examination, you know,
2	whether we have gone back to the City
3	Council after the settlement in the last
4	case. Did the City indicate during the
5	course of the last case, it's possession
6	concerning the allocation or ARPA monies to
7	the City as a whole as opposed to the Water
8	Department Finance Director?
9	MS. LaBUDA: The Finance Director,
10	yes.
11	MR. DASENT: That's that's all
12	we have, Judge Chestnut.
13	HEARING OFFICER CHESTNUT: Okay.
14	Mr. Ballenger, do you have any
15	recross based on the redirect?
16	MR. BALLENGER: Just one quick
17	question, and I appreciate the opportunity
18	again. I just wanted to recognize and have
19	you confirm, Ms. LaBuda, that the
20	Department has filed monthly updates
21	pursuant to the settlement which lists all
22	of the efforts it's taking to pursue
23	financial assistance from the Federal
24	Government, hasn't it?

1	MS. LaBUDA: That's correct.
2	MR. BALLENGER: And that that list
3	is growing?
4	MS. LaBUDA: Yes, it is. That's
5	correct.
6	MR. BALLENGER: Thank you,
7	Ms. LaBuda.
8	MS. LaBUDA: Thank you.
9	HEARING OFFICER CHESTNUT: Okay.
10	Mr. Haver, do you have any recross
11	based on the redirect?
12	MR. HAVER: I was going to ask a
13	question.
14	HEARING OFFICER CHESTNUT: Go
15	ahead.
16	MR. HAVER: Ms. LaBuda, the efforts
17	that you list in the monthly reports, am I
18	to understand that they've all been
19	unsuccessful?
20	MS. LaBUDA: No.
21	MR. HAVER: So, you have received
22	stimulus dollars?
23	MS. LaBUDA: We have received low
24	cost loans to date, Mr. Haver. We have not

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	1	received any stimulus dollars. So when
	2	as detailed in the Board Report, we have
	3	spent significant amounts of effort
	4	applying for financial assistance with the
	5	Commonwealth of Pennsylvania. And it has
	6	all resulted, even in our most recent
	7	award, in very low cost loans. The most
	8	recent award was 1 percent for
	9	125 million-dollar project.
	10	MR. HAVER: How much did that save
	11	rate payers?
	12	MS. LaBUDA: I would have to get
	13	back to you on that calculation, Mr. Haver.
	14	I don't have that within reach.
	15	MR. HAVER: Would that savings
	16	count as under the definition that the
	17	Public Advocate and the Water Department
	18	agreed to in the settlement?
	19	MS. LaBUDA: I believe it's outside
	20	the definition, Mr. Haver.
	21	MR. HAVER: I'm sorry?
	22	MS. LaBUDA: It's my understanding
	23	it's outside the definition, Mr. Haver.
	24	MR. HAVER: So to be very clear,
		·

1	
1	the savings that the applications that
2	you report monthly and the savings that are
3	generated through those efforts do not
4	count as stimulus dollars under the
5	definitions that was agreed to by the
6	Public Advocate and the Philadelphia Water
7	Department; is that correct?
8	MS. LaBUDA: Definition didn't
9	contemplate reduce debt service, so that is
10	correct, Mr. Haver.
11	MR. HAVER: Thank you.
12	MS. LaBUDA: You're welcome.
13	MR. HAVER: Again, just to be
14	clear, there are no other dollars that the
15	Philadelphia Water Department was
16	successful in obtaining in the last 24
17	months through the any of the stimulus
18	packages; is that correct?
19	MS. LaBUDA: That's correct,
20	Mr. Haver.
21	MR. HAVER: Thank you.
22	HEARING OFFICER CHESTNUT: Okay. I
23	was a little remiss. Thank you,
24	Ms. LaBuda, you are excused as are the

1	other two members of the panel.
2	I was a little remiss in starting
3	here because I we don't it's not a
4	formalized procedure the way PC Hearings
5	are. So, we don't do voir dire. But I
6	think I should have had you at least
7	identify the members of the panel,
8	Mr. Dasent. How about better late than
9	never, if you can identify.
10	MR. DASENT: Sure. Ms. LaBuda,
11	obviously our Chief Financial Officer at
12	the Philadelphia Water Department, was our
13	lead on the panel. Also present and
14	participating are Ms. Katherine Clupper,
15	who is a Managing Director at PFM Financial
16	Advisors. And Peter Nissen, who is a
17	Managing Director at Acacia Financial
18	Advisors.
19	And so between those three, that
20	was our panel. And they are identified in
21	the resumes attached to their direct
22	testimony in this case.
23	HEARING OFFICER CHESTNUT: Okay.
24	Thank you.

1	Shall we move on then to your next
2	panel?
3	MR. DASENT: Yes. The next panel
4	would be the Black and Veatch panel. And
5	included in that panel will be Ann Bui,
6	Brian Merritt and Dave Jagt. All members
7	of Black and Veatch.
8	HEARING OFFICER CHESTNUT: And do
9	you have any additions to or corrections to
10	the testimony other than what you've
11	already indicated?
12	MR. DASENT: No.
13	HEARING OFFICER CHESTNUT: Okay.
14	So I guess, Mr. Ballenger.
15	MR. BALLENGER: Thank you.
16	Like to start off the Residual Fund
17	and the discussion of the Residual Fund in
18	your rebuttal.
19	And you criticized Mr. Morgan for
20	calculating his adjustment based on the
21	ending balance in the Residual Fund as well
22	as the Rate Stabilization Fund, right?
23	MR. DASENT: May I ask where you
24	are referring, just to get a page

1	reference?
2	MR. BALLENGER: I believe it's page
3	9.
4	MR. JAGT: That's in the rebuttal
5	testimony?
6	MR. BALLENGER: Correct.
7	MR. JAGT: Give us a second.
8	So our
9	MR. BALLENGER: I'm sorry. Just to
10	be clear, it's Q&A 11 is what I am
11	referring to.
12	MS. BUI: And so, Rob if you
13	don't mind, Mr. Ballenger, could you repeat
14	that question now that we found where you
15	are referring to?
16	MR. BALLENGER: Just trying to
17	summarize your testimony and make sure I
18	understand it correctly.
19	MS. BUI: Understood.
20	MR. BALLENGER: And I believe what
21	you are saying is that the you're
22	criticizing Mr. Morgan's direct because he
23	used the Residual Fund balance as a
24	consideration in his testimony; is that

1	correct?
2	MR. JAGT: That is correct.
3	MR. BALLENGER: Okay. And there on
4	page 9 in Q&A 11, you state that the
5	stipulation does not include the Residual
6	Fund and its terms; similarly, the terms
7	and conditions of the Joint Settlement
8	position also do not contemplate and you
9	say the adjustment there.
10	Is that a correct statement based
11	on your testimony?
12	MR. JAGT: That's correct.
13	MR. BALLENGER: Would you agree
14	that the over-performance that Mr. Morgan
15	calculates, around \$10.7 million, is based
16	solely on the amounts in the Rate
17	Stabilization Fund?
18	MR. JAGT: Sure. As initial
19	out-performance based on the Rate
20	Stabilization Fund balance. That's
21	correct.
22	MR. BALLENGER: Okay. Would it be
23	inconsistent with the settlement or the
24	stipulation if Mr. Morgan testified that

1	all \$10.7 million should be shared with
2	
	customers, returning 100 percent of that
3	amount in reduced rates?
4	MR. JAGT: I guess it would be
5	subject to his interpretation of sharing.
6	But Sharing would imply something less than
7	a hundred percent, correct?
8	MR. BALLENGER: Would it
9	that's I'm not a witness, so I'm not
10	going to answer it. But I am going to go
11	down that line with you then.
12	So what if Mr. Morgan testified
13	that 75 percent of the 10.7 should be
14	shared? Would that be consistent with
15	those documents you referenced, the
16	stipulation in the settlement?
17	MR. JAGT: It would be his position
18	regarding the the sharing.
19	MR. BALLENGER: You wouldn't say
20	that was inconsistent with those documents
21	then? You would simply say you disagree
22	with his testimony, right?
23	MS. BUI: If I could,
24	Mr. Ballenger. I believe that the amount

1	of the sharing or the that distribution
2	was to be determined as part of the
3	proceeding, as well. It doesn't
4	necessarily indicate it's inconsistent with
5	the if that's Mr. Morgan's position.
6	MR. BALLENGER: Okay. And is there
7	any provision in the settlement or the
8	stipulation that requires Mr. Morgan to
9	ignore the Residual Fund Balance in
10	calculating his proposed adjustment?
11	MR. JAGT: The settlement clearly
12	leaves out the balance in the Residual Fund
13	as the basis for the adjustments. It
14	clearly indicates that the only balance
15	that's going to be recognized is the Rate
16	Stabilization Fund.
17	And whether you recognize it in
18	your initial calculation or in the
19	follow-up allocation of that amount, it
20	recognizing it anyway, isn't appropriate
21	within the bounds of the settlement which
22	clearly indicates that it should be based
23	on the Rate Stabilization Fund.
24	MR. BALLENGER: And the

1	Department's position is that no adjustment
2	should be made based upon the targeted
3	you know, the financial metric of 135
4	million in the Rate Stabilization Fund.
5	Does that figure appear anywhere in
6	the settlement or the stipulation?
7	MR. JAGT: The specific 135
8	million, no. But identifying a threshold,
9	yes.
10	MR. BALLENGER: So although that's
11	not included in either of those two
12	documents, just like the Residual Fund is
13	not included in either of those two
14	documents
15	MS. BUI: Can you give us
16	clarification? What's "that"?
17	MR. BALLENGER: The 135
18	million-dollar balance.
19	MR. JAGT: So, Mr. Ballenger,
20	during the 2018 rate proceeding, it was
21	established and also suggested or stated
22	that the Board and the Department going
23	forward will recognize the 135 million as a
24	target for the Rate Stabilization Fund.
I	

1	MR. BALLENGER: And has that been a
2	affirmed in subsequent rate determinations
3	to your knowledge?
4	MR. JAGT: It's been continually
5	recognized that the
6	MR. BALLENGER: By the Board? By
7	the Board, Mr. Jagt?
8	MR. JAGT: In that the position of
9	the rate or the Water Department
10	continually supplying the as a target,
11	we are going to try and maintain the
12	135 million. And that's always in our
13	presentation and the for the rate case.
14	Whether it's recognized in the
15	determination is might not have been
16	specifically identified.
17	But providing the revenues to
18	maintain that level has been clear.
19	Plus
20	MR. BALLENGER: Yes.
21	MR. JAGT: per the 2018
22	decision, it was saying going forward, it
23	will be recognized.
24	MS. BUI: Yeah. If I may, I

1	believe, Mr. Ballenger and I'm sure that
2	we can have that subject to check from our
3	legal counsel is that it has not been
4	relitigated as to whether or not
5	MR. JAGT: That's true.
6	MS. BUI: 135 is the was
7	going to change. So to the best of our
8	knowledge since the 2018 rate
9	determination, that has been the target.
10	MR. BALLENGER: And in the kind
11	of going down a path I wasn't sure we would
12	need to go down. I think it's important to
13	note here.
14	The the statement from S&P
15	regarding minimum Rate Stabilization Fund
16	balance, was that described or discussed in
17	the settlement or the joint petition?
18	MR. JAGT: No. The position of S&P
19	was provided after that the date of the
20	settlement. However, they have always
21	expressed concerns regarding liquidity for
22	the Department.
23	MR. BALLENGER: Just want to make
24	sure that we all understand that your
i .	

1	the Department's witnesses are relying upon
2	a bunch of stuff that's not in the
3	settlement or the stipulation. And your
4	testimony criticizes Mr. Morgan for the
5	same thing basically.
6	MR. JAGT: Right. However, these
7	references that we are providing are all
8	relative to the Rate Stabilization Fund and
9	not the Residual Fund.
10	MR. BALLENGER: And you recognize
11	that Mr. Morgan's proposed adjustment of
12	6.6 million is based on the balance in the
13	Residual Fund, correct? I'm sorry, based
14	on the balance in the Rate Stabilization
15	Fund.
16	MR. JAGT: His initial amount, yes.
17	MR. BALLENGER: Okay. And the
18	proposed adjustment is less than the total
19	difference he identifies in the Rate
20	Stabilization Fund balance, correct?
21	MR. JAGT: Correct.
22	MR. BALLENGER: Okay. So on pages
23	10 and 11, your Rebuttal Statement claims
24	that your belief that the Fiscal 2021

1 Rate Stabilization Fund balance in the	
² settlement results from projected revenues	
and expenses that were not agreed to.	
4 Is that a correct summary of your	
5 testimony there?	
6 MR. DASENT: Which question and	
⁷ answer are you referring to?	
8 MR. BALLENGER: Page 15, I believe	
9 MR. JAGT: I mean, he did not	
provide any justification of whether it's	a
reasonable amount of reserves for the	
Department to maintain.	
MR. BALLENGER: I'm asking about	
14 your testimony. Am I correctly	
understanding your testimony as saying that	.t
the balance in the Rate Stabilization Fund	
17 results from revenues and expenses that	
were not agreed to?	
MR. DASENT: Are you referring to	
lines 24? It looks like 24 and 23.	
MR. BALLENGER: Yeah, 23 and 24.	
MR. DASENT: Yeah. That's what I	
thought.	
MR. JAGT: That is correct.	

1	MR. BALLENGER: Okay.
2	MR. JAGT: The balance is reflected
3	in the tables of the rate or the
4	settlement. Those balances you end up at
5	as a result of revenues, projected revenues
6	and projected expenses which none of
7	which were agreed to as this was a black
8	box settlement.
9	MR. BALLENGER: That's where I was
10	going. You're intending to describe here
11	the nature of black box settlement where
12	specific adjustments to the revenues and
13	expenses were not agreed upon, right?
14	MR. JAGT: That is correct.
15	Correct.
16	MR. BALLENGER: Isn't it true that
17	the settlement set forth the agreed upon
18	final revenue requirements negotiated
19	between the Department and the Public
20	Advocate?
21	MR. JAGT: When you look at the
22	settlement and it points out that it's a
23	black box settlement and there are no
24	agreements, the very next paragraph

1	establishes what the agreement was. And
2	that identifies the additional revenues.
3	The additional revenues for Fiscal Year 22
4	and 23 were the only fed numbers that we
5	are agreeing to.
6	MR. BALLENGER: And those so, we
7	didn't agree upon the inputs. But you
8	agree that we we agreed on the outputs
9	then?
10	MR. JAGT: We agreed to the
11	additional revenues for 22 and 23.
12	MR. BALLENGER: Is that an output
13	of the rate model?
14	MR. JAGT: So it's it's based on
15	the based on the unagreed to
16	adjustments, we adjusted them to achieve
17	the additional revenues as reflected on
18	those lines and tables U-1A to achieve the
19	level or the to establish the rates to
20	developed that level of additional
21	revenues.
22	That's correct.
23	MR. BALLENGER: Okay. And you
24	would agree that there were additional
1	

1	outputs from that model, including the
2	balance shown in the Rate Stabilization
3	Fund on page 13 of the Public Advocate
4	exhibit hearing. That is also an output of
5	that rate model, correct?
6	MR. DASENT: I'm scrolling there.
7	MR. JAGT: Line 13.
8	MR. BALLENGER: Sorry. Page 13,
9	line 41.
10	MR. JAGT: Of the settlement?
11	MR. DASENT: Of the C1 table on
12	MR. BALLENGER: Of the C1 table
13	included in the rate determination.
14	MR. JAGT: Right. Which provides
15	Fiscal Years 22 and 23?
16	MR. BALLENGER: Yes.
17	MR. DASENT: And the end-of-year
18	balance of the Rate Stabilization Fund is
19	what you are asking the question about?
20	MR. BALLENGER: Well, actually, I
21	would start with the beginning of the year
22	balance in line 39.
23	MR. DASENT: Okay.
24	MR. BALLENGER: That's also an

1	output of the rate model based upon the
2	Settlement Agreement.
3	MR. JAGT: Based on the additional
4	revenues. So to understand this position,
5	you are starting from a beginning balance
6	of the Rate Stabilization Fund as of Fiscal
7	Year 2000. We're projecting through 2001,
8	2002 and 2021, sorry. So, 2020. We
9	project through Fiscal Year 2021, 2022 and
10	2023. However, the revenue requirements
11	were not agreed to and neither are the
12	revenues.
13	So to say that you agree to the
14	outcome of that as a result of comparing
15	the unagreed to revenues to unagreed to
16	expenses and continue to add to the balance
17	or deduct from the balance is we are
18	acknowledging that that is not an agreed to
19	number. We could have done those tables
20	based on a different mix of the subjects.
21	So going back if we look at the
22	decision, within the decisions from the
23	Board sorry, it's probably the Hearing
24	Officer's report, it recognizes that the

2.0

you know, the black box settlement, we are not agreeing to a specific adjustments. In fact, like in a quote from the PC, it says that there are numerous ways to come to the agreement of the additional revenues. We could have identified or got to the same level of additional revenues by adjusting revenues, by adjusting O&M expenses, by adjusting projected debt service.

It's any combination of those that would have come out with a different Rate Stabilization Fund balance. So we did -- the amount of balance that shows up in those tables is subject to all the assumptions in there, which were not agreed to. If we had manipulated it to reduce O&M instead of using rate stabilization balance to come up with additional revenues, we would have had additional balance.

This is one of the reasons why we did not agree in the settlement to compare it to these numbers. We agreed to compare it to a threshold, which would be discussed. And our position is those

1	numbers are not legitimate numbers to base
2	a projection on them.
3	MR. BALLENGER: That's interesting.
4	Let me just ask, I mean, you are aware that
5	the ordinance governing the Board requires
6	it to determine appropriate levels of
7	reserves to be maintained during the rate
8	period, are you not?
9	MR. JAGT: Yes.
10	MR. BALLENGER: Okay. And you're
11	suggesting that the funds shown in the rate
12	determination as reserves for the
13	Department for Fiscal Years 2022 and 2023
14	are not real numbers? They are made up
15	numbers?
16	MR. JAGT: They are
17	MR. BALLENGER: Made them up?
18	MR. JAGT: They are one
19	presentation of the possible outcome
20	depending on how how we were going to
21	get to that result.
22	MR. BALLENGER: Okay. Excuse me.
23	How you were going to get to that result.
24	I believe it's the Board's rate

1	determination. So, these numbers are in
2	the rate determination. They are actually
3	not in the settlement. I would correct you
4	on that, Mr. Jagt.
5	The balances shown in the Rate
6	Stabilization Fund and the Residual Fund
7	are in rate determination for a reason. So
8	if they are not legitimate numbers, then I
9	suppose the Board violated the ordinance.
10	Is that your position?
11	MR. DASENT: Objection. I think
12	you are mischaracterizing Mr. Jagt's
13	testimony.
14	MR. BALLENGER: I think I
15	understand it pretty well. Let's just move
16	on.
17	MR. JAGT: I would like to point
18	out that there are a number of projections
19	of the Rate Stabilization Fund balance on
20	the record. The Board reviews or makes
21	their decisions based on what's on the
22	record.
23	MR. BALLENGER: Okay. On page 13
24	of your rebuttal I'm getting there

1	you state it's on lines 3 to 6. You
2	state that basically, Mr. Morgan's reliance
3	on the projected Rate Stabilization Fund
4	balance shown in the rate determination,
5	and you say it implies that the financial
6	metrics presented in the settlement tables
7	were sufficient, reasonable and represents
8	an acceptable financial position.
9	Do you see that statement?
10	MR. JAGT: Correct. Yes.
11	MR. BALLENGER: So, I would like us
12	to take a look at Hearing Exhibit, page 14.
13	And this is a statement that's included in
14	the Water Department's statement in support
15	of the settlement. I have highlighted the
16	language there. Like to ask you to review
17	that. Let me know when you are done.
18	MR. DASENT: You mean on page 12 or
19	page 13?
20	MR. BALLENGER: Page 14 of the
21	Public Advocate's hearing exhibit, the
22	highlighted language.
23	MR. DASENT: Got it.
24	MR. JAGT: So, it's not page 14 of

1	the PDF, right?
2	MR. BALLENGER: No. It's the page
3	numbered 14. So, be page 15.
4	MR. DASENT: Yeah. It's 15.
5	MR. BALLENGER: I didn't number the
6	cover page.
7	MR. DASENT: But it's highlighted
8	in yellow.
9	MR. JAGT: Right.
10	MR. DASENT: Is there a question?
11	MR. BALLENGER: Yes. I was asking
12	Mr. Jagt to confirm when he's done
13	reviewing that, please.
14	MR. JAGT: Okay. I have read it
15	including the footnotes associated with
16	that text.
17	MR. BALLENGER: Okay. And doesn't
18	this statement specifically acknowledge
19	that the financial metrics produced by the
20	settlement are reasonable and sufficient?
21	MR. JAGT: The footnotes clearly
22	indicate that this is a limited we are
23	presenting limited first of all, the
24	projections are for '22 and '23 and not for

1	2021. We do not show the projection
2	through Fiscal Year 2021. So, I want to
3	point that out, that it was never included
4	in the Rate Board or the settlement.
5	MR. BALLENGER: And again, the
6	question is whether or not the Department
7	included in entering the settlement, that
8	the proposed rates and charges should
9	produce sufficient rates and revenues to
10	provide appropriate levels of cash that
11	service levels and other financial metrics.
12	That's the statement that is
13	included here, correct?
14	MR. JAGT: Correct. And I would
15	like to point out, it's pointing out to
16	HEARING OFFICER CHESTNUT: Wasn't
17	that a yes-or-no question?
18	MR. BALLENGER: It was.
19	MR. JAGT: Yes.
20	MR. BALLENGER: Moving onto page 16
21	of your rebuttal statement. And I think
22	there's let me see if understand the
23	statement here.
24	MR. DASENT: What's the question?

1	MR. BALLENGER: In Q&A 25.
2	MR. DASENT: Thanks.
3	MR. BALLENGER: And you criticize
4	Mr. Morgan here and state that he's
5	contradicted himself. Just want to make
6	sure I understand.
7	Isn't it true that the Fiscal 2021
8	financial data used in the Black and Veatch
9	model used to produce VB-4 is not identical
10	to the financial results reported in
11	response to PA-113?
12	MR. JAGT: That's incorrect.
13	MR. BALLENGER: I'm sorry.
14	MR. JAGT: In our VB4 we clearly
15	state, we use the balances from 2021 as the
16	starting point. In fact in the pages you
17	provided us, it clearly states that.
18	MR. BALLENGER: And that's what is
19	in the rate model that you provided?
20	MR. JAGT: That's correct. The
21	fund balances are
22	MR. BALLENGER: Oh, the fund
23	balances.
24	MR. JAGT: Yes, sir.

1	MR. BALLENGER: What about the
2	revenue?
3	MR. JAGT: VB-4 never presents
4	Fiscal Year 2021.
5	MR. BALLENGER: Right.
6	MR. JAGT: However
7	MR. BALLENGER: It's in and I'm
8	asking about the model used to produce VB-4
9	which is why I'm going to repeat the
10	question.
11	MR. DASENT: Objection. I don't
12	believe he was allowed to answer the first
13	part of the question.
14	MR. BALLENGER: Well, it's a
15	yes-or-no question. And he answered that
16	it was not. But again, I don't think
17	that's accurate.
18	MR. DASENT: I don't think it's a
19	yes-or-no question. Your Honor, please,
20	note my objection.
21	HEARING OFFICER CHESTNUT: Excuse
22	me. Mr. Dasent, let's let Mr. Ballenger
23	see if he can clarify this.
24	MR. BALLENGER: Again, I'm talking

1	about the Fiscal 2021 data that was
2	included in the proprietary and
3	confidential Black and Veatch rate model is
4	not identical to the actual I'm not
5	going to call it an actual, going to call
6	them the results shown in response to
7	PA-113. The data is not identical.
8	Isn't that correct?
9	MR. JAGT: The data in the model,
10	you will find that the data is input in the
11	model. The section that your witness
12	referred to a calculated result.
13	MR. BALLENGER: Okay. We're going
14	to get to that.
15	HEARING OFFICER CHESTNUT: Is the
16	answer to that yes?
17	MR. JAGT: Yes. I mean, the data
18	for the actual data for 2021 is in the
19	model.
20	HEARING OFFICER CHESTNUT: Sorry.
21	Can I just ask a clarifying question here?
22	I mean, it's calculated date. Is that the
23	point of this?
24	

1	MR. BALLENGER: I think it's one
2	point it's one point. I was going to
3	talk a little bit more about that, as well.
4	Okay. So on page 17 of your
5	rebuttal, you criticized Mr. Morgan again
6	for using the Black and Veatch model, the
7	information shown for Fiscal 2021 in the
8	Black and Veatch model, instead of the
9	response to data in PA-113.
10	Isn't that correct? Isn't that a
11	fair summary of your testimony?
12	MR. JAGT: Can you repeat your
13	statement again?
14	MR. BALLENGER: Yeah.
15	It's Q&A 25. And I take this
16	statement to criticize Mr. Morgan for not
17	using the data in PA-113; and instead,
18	using the data that was in the rate model?
19	MR. JAGT: Correct. He presents it
20	as an actual and it's tables.
21	MR. BALLENGER: Okay. Can we
22	you recognize that the question PA-113
23	specifically asks for year-end results in
24	the form of Table C1, correct?

1	MR. JAGT: Correct.
2	MR. BALLENGER: Okay. And I've
3	included the response, if I can find my
4	hearing exhibit. Give me one second. I
5	think I closed my hearing exhibit.
6	HEARING OFFICER CHESTNUT: Are you
7	looking at Table C-1 in your hearing
8	exhibit?
9	MR. JAGT: Page 16 of the PDF?
10	MR. BALLENGER: Yeah. It's the
11	second to last page. This is the and it
12	says at the bottom of the page, says
13	Response Attachment PA-113.
14	Do you see that?
15	MR. JAGT: Correct, yes.
16	MR. BALLENGER: Is this table in
17	the format of Table C-1?
18	MR. JAGT: Yes, it is. And we
19	provide the line numbers which match up.
20	MR. BALLENGER: They are not in
21	order, are they? Have some of the lines
22	been moved?
23	MR. JAGT: Yeah. The debt service
24	coverage is out of order at the bottom.

1	MR. BALLENGER: And have some of
2	the lines been consolidated?
3	MR. JAGT: Yes, sir.
4	MR. BALLENGER: Have some of the
5	lines been omitted?
6	MR. JAGT: Yes, sir. For the
7	some of the line items are, like,
8	calculations within the model that
9	developed the detail. The information
10	that's available from the City's accounting
11	system provides it at a summarized level.
12	We provided it at the level that we had
13	available to provide the response.
14	MR. BALLENGER: At the top of the
15	page, doesn't it also state that this is
16	preliminary?
17	MR. JAGT: Yes.
18	MR. BALLENGER: Okay. And in the
19	executive summary to the financial plan
20	report that was attached to your direct
21	testimony, doesn't Black and Veatch
22	specifically state that it's an updated
23	forecast begins with preliminary final
24	results from Fiscal Year 2021 including

1	that page?
2	MR. JAGT: Thank you. And it says:
3	As reflected in the 2022 starting balances.
4	MR. BALLENGER: Okay. And it,
5	also, I believe and doesn't the Black
6	and Veatch model include Table C-1?
7	MR. JAGT: Yes, it does.
8	MR. BALLENGER: Okay. And so,
9	isn't it then correct that Black and Veatch
10	in utilizing its model created a Table C-1
11	that reflected preliminary financial
12	results for Fiscal 2021?
13	MR. JAGT: Calculated revenues and
14	in Table C-1. Again, we did not present
15	2021 as part of the VB-4. We provided a
16	model that supports what we presented our
17	schedule VB-4. But within the table that
18	you are pulling from the model, the table
19	C-1A presents revenues which are
20	calculated.
21	We use the model to as a test
22	for itself. So we run the model based on
23	actual billing data, the collection factors
24	that we have, and all the actual data from

1	Fiscal Year 2021 and calculate the revenue
2	to do a test on the accuracy of the model.
3	And I believe we pointed out that we were
4	within .5 percent of the actual 2021 total
5	revenue.
6	MR. BALLENGER: Yeah. I'm not I
7	don't think I was asking that. So, let's
8	stick with the questions, if we can, going
9	forward.
10	On page 20 of your rebuttal, you
11	again reiterate that Mr. Morgan is using
12	what you claim to be the wrong data. And
13	you say that Fiscal 2021 data in B and V's
14	model is projected.
15	Do you see that statement?
16	MR. DASENT: Are you in Question
17	30? The response, I guess, this looks like
18	line 21. Somewhere in there.
19	MR. BALLENGER: I think so, yes.
20	Q&A 30. You said its financial results are
21	projected; isn't that correct?
22	MR. JAGT: Correct. They are
23	projected calculations of revenues.
24	MR. BALLENGER: But again, going

1	
1	back to ES-1, your report states that you
2	projected revenues and financial data for
3	the study period.
4	Isn't that what it states?
5	MR. JAGT: For the study period,
6	Fiscal Year 22 through Fiscal Year I
7	can't recall if we get VB-4 provided
8	through '27.
9	MR. MERRITT: '27.
10	MR. BALLENGER: It's 2022 to 2027
11	projected?
12	MR. JAGT: Yes.
13	MR. BALLENGER: Okay.
14	MR. JAGT: And for VB-4, schedule
15	VB-4 as presented. We are mixing what's
16	scheduled VB-4 and the model for VB-4.
17	MR. BALLENGER: Correct. We are
18	talking about the model for VB-4.
19	MR. JAGT: Okay, yes. Our
20	testimony refers to VB-4. Your questioning
21	the model. Okay.
22	So the model the model for the
23	study period in the report is projected.
24	Fiscal Year 21, which you are referring to

1	for revenues, is also calculated or
2	projected numbers.
3	MR. BALLENGER: Okay. And it
4	doesn't say that in ES-1. It says
5	preliminary final results.
6	MR. JAGT: Yes. ES-1, correct. It
7	would not. It's relative to the scheduled
8	VB-4
9	MR. BALLENGER: To VB-4.
10	MR. JAGT: we presented.
11	MR. BALLENGER: Which was
12	generate which was for which the
13	model was developed, correct?
14	MR. JAGT: Yes, sir.
15	MR. BALLENGER: Okay. So on page
16	21 of your testimony, you state that the
17	tables in the Settlement Agreement I
18	will get to it. The tables included in the
19	Settlement Agreement already reflect
20	updated pension costs.
21	Do you see that statement?
22	MR. DASENT: Tell me where you are
23	referring to, Mr. Ballenger.
24	HEARING OFFICER CHESTNUT: It's 31,

1	isn't it?
2	MR. BALLENGER: Q&A 31.
3	MR. DASENT: Thank you.
4	MR. JAGT: To be honest, I didn't
5	have our testimony open yet. So, I will go
6	back to that. Sorry, give me a few
7	seconds.
8	MR. BALLENGER: No problem. No
9	problem.
10	MS. BUI: So while Mr. Jagt is
11	pulling that up we need more screens
12	yes. That particular statement,
13	Mr. Ballenger, is correct.
14	MR. BALLENGER: Thank you, Ms. Bui.
15	How is that so if it was a black
16	box settlement?
17	MR. DASENT: How be
18	Mr. Ballenger, how is what so?
19	MR. BALLENGER: How could updated
20	pension costs have been included in a black
21	box settlement?
22	MR. DASENT: They're in the box.
23	I'm sorry.
24	MR. BALLENGER: Just open the box.

1	
1	MR. JAGT: We can present we can
2	provide as a follow up the calculation and
3	the difference between our original formal
4	notice and the O&M reflected in the
5	settlement. The difference will be that
6	the change that was identified during the
7	proceeding. The lower costs that we were
8	going to have for pensions as a result of
9	information provided by the City during the
10	proceeding.
11	MR. BALLENGER: We talked a little
12	bit earlier about the black box and how
13	there was all this stuff that wasn't in the
14	black box and you didn't agree to it. And
15	not you are saying that, in fact, the
16	settlement reflects something specific?
17	An adjustment to pension expense?
18	Is that your testimony?
19	MR. JAGT: Like I said, the change
20	in the O&M between the formal notice and
21	the settlement reflects the only adjustment
22	because both sides would have agreed that
23	the City offered this lower amount as going
24	forward, the Department was going to
1	

1	project the numbers they provided was
2	going to be this amount.
3	MR. BALLENGER: And you're saying
4	that the tables included in the Settlement
5	Agreement reflect this adjustment, which
6	runs totally contrary to the notion of a
7	black box settlement, doesn't it?
8	MR. JAGT: I said we didn't agree
9	to the total O&M adjustments. As you may
10	recall, your witness provided several
11	adjustments for O&M. Because this was
12	identified after his testimony, it's not
13	reflected in that. But he proposed a
14	number of adjustments which are
15	MR. BALLENGER: Which of Mr.
16	Morgan's adjustments to O&M are included in
17	the settlement tables?
18	MR. JAGT: None. We didn't agree
19	to them.
20	MR. BALLENGER: We didn't agree to
21	your pension adjustment. It's a black box
22	settlement.
23	MR. JAGT: It was based on known
24	information provided by the City.

1	MR. BALLENGER: On the last page of
2	your rebuttal, you state that the projected
3	Fiscal Year 2023 ending balance I'm
4	getting to the statement here is just
5	barely above the level that would trigger a
6	rating downgrade.
7	Isn't that what it states here?
8	MR. JAGT: So, we are referring to
9	the projected
10	HEARING OFFICER CHESTNUT: It's Q&A
11	33, isn't it?
12	MR. DASENT: Yes.
13	MR. BALLENGER: Yes.
14	MR. DASENT: Line 9.
15	MR. JAGT: Correct.
16	MR. BALLENGER: Just to be clear,
17	there were a number of bases that S&P
18	listed as potentially triggering downgrade,
19	weren't there?
20	MR. JAGT: Yes, sir. But they
21	clearly state that if the Department
22	MR. BALLENGER: Getting there. I'm
23	getting there. Hang on.
24	Did S&P state that if the Rate

1	Stabilization Fund were \$119,999,999 that
2	it would automatically trigger a downgrade?
3	I just want to know whether I
4	should pay my bills in advance, Mr. Jagt.
5	I really want to help the Department here.
6	Did it say that?
7	MR. JAGT: No.
8	MR. BALLENGER: Okay. Isn't it
9	true even if the Board accepts Mr. Morgan's
10	recommendation, that the Water Department
11	will receive an increase in rates?
12	MR. JAGT: That's correct. We
13	still have additional revenues.
14	MR. BALLENGER: In the interest of
15	time, I am going to wrap there and we can
16	move on. Thank you, Mr. Jagt, Mr. Merritt,
17	Ms. Bui.
18	MS. BUI: Thank you, Mr. Ballenger.
19	MR. JAGT: Thank you.
20	MR. DASENT: Your Honor, please
21	I'm sorry.
22	HEARING OFFICER CHESTNUT: I was
23	going to ask Mr. Bachri if he had any
24	cross. But I'm not sure if he is actually
1	

1	involved in this.
2	Mr. Haver, do you have any
3	questions?
4	MR. HAVER: Yes. I will attempt to
5	be very brief. It appears I have to be
6	directing my questions to Mr. Jagt; is that
7	correct?
8	MR. JAGT: As a panel, that's fine.
9	MR. HAVER: Mr. Jagt, as Mr. Dasent
10	is so fond of pointing out, I'm not an
11	attorney. Perhaps Mr. Dasent can also
12	point out that I'm not an expert on what
13	black box means in the way that you are
14	using it. So, could you help me understand
15	that?
16	Does a black box allow for numbers
17	to be allocated in different ways by
18	different parties?
19	MR. JAGT: The black box does
20	not the black box provides a method or
21	an approach for establishing an agreement.
22	We agree to the additional revenues. We
23	agree to the rates as the output.
24	We do not agree on any specific

1	adjustments that get us to the end result
2	of the additional revenues or the rates.
3	MR. HAVER: Does the purpose, in
4	your opinion, of a black box settlement
5	give the greatest latitude to the Water
6	Department to allocate revenues in
7	different ways?
8	MR. JAGT: I would not agree to
9	that because we still have to have the
10	parties agree to the resulting rates.
11	MR. HAVER: What's the advantage to
12	the Water Department to accept a black box
13	settlement then?
14	MS. BUI: If I may, Dave?
15	MR. JAGT: Sure.
16	MS. BUI: I do not know if you
17	recall, Mr. Haver, but that particular rate
18	proceeding was pretty long and drawn out.
19	And I think that it is to both sides and
20	all parties involved benefit that we reach
21	a partial settlement via the black box.
22	It is a mechanism that allows us to
23	get to an end point regardless of you
24	know, without requiring that both parties

1	agree to every single line item type
2	adjustment. So, I don't believe I think
3	there was considerable negotiation and
4	movement on both sides to get to that
5	position.
6	MR. HAVER: Okay. Just to be
7	clear, does that give some flexibility for
8	the Water Department in how it allocates
9	revenues?
10	MS. BUI: It allows the Water
11	Department, no different than the
12	Mr. Ballenger's CLS side to come up with
13	different combinations as they so wish to
14	get to this end result. But the end result
15	is still the same in terms of what is
16	agreed upon for the adjusted revenues.
17	MR. HAVER: I will try one more
18	time. Thank you, Ms. Bui.
19	MS. BUI: You're welcome.
20	MR. HAVER: I will try one more
21	time, and I will move on.
22	So the actual amount that is
23	collected is defined. But how it's
24	allocated and where it comes from is not;

1	is that correct?
2	HEARING OFFICER CHESTNUT: I'm
3	sorry. Allocated? You mean, like, for
4	bookkeeping?
5	MR. HAVER: Yes.
6	MR. JAGT: I wouldn't agree with
7	that because we do agree to the rates that
8	are included within the I mean, the
9	rate the final rate schedules are
10	attached as settlement. So, there is a
11	recognition that those rates are based on
12	an allocation of the cost.
13	MR. HAVER: Again, I'm at a loss to
14	understand the advantage for the black box.
15	But I don't want to belabor the point. I
16	am sure you have done your best in
17	explaining it. And I am sure it's just a
18	deficiency in my intellect that stops me
19	from understanding the advantages of being
20	able to not be straightforward in saying
21	what it means.
22	Mr. Jagt, was your firm hired,
23	retained or in any way consulted to help
24	PWD get stimulus dollars?

1	MR. JAGT: So, we do we do
2	provide assistance in terms of the
3	Department's efforts to obtain WIFIA
4	funding.
5	MR. HAVER: What were those
6	efforts, please?
7	MR. BALLENGER: We provide
8	information to fulfill or submit the
9	application to WIFIA.
10	MR. HAVER: And how many
11	applications did you help submit?
12	MR. JAGT: So, the one WIFIA
13	application. There is one.
14	MR. HAVER: I'm sorry. Did you say
15	one?
16	MR. JAGT: Yes, sir.
17	MR. HAVER: And how much was that
18	for?
19	MR. JAGT: 500 million in capital
20	project funding.
21	MR. HAVER: And who was it
22	submitted to?
23	MR. MERRITT: The EPA,
24	Environmental Protection Agency.

1	MR. HAVER: I'm sorry?
2	MR. MERRITT: The Environmental
3	Protection Agency.
4	MR. HAVER: But you are defining
5	that as stimulus dollars; is that correct?
6	MR. MERRITT: No.
7	MR. HAVER: Let me back up again
8	and ask Mr. Jagt.
9	Mr. Jagt, were you was your firm
10	retained to help the Water Department get
11	stimulus dollars?
12	MR. JAGT: Are we defining stimulus
13	dollars, like, in terms of the settlement?
14	MR. HAVER: I would do it broadly,
15	but let's start with the settlement, yes.
16	MR. JAGT: In terms of the
17	settlement, no.
18	MR. HAVER: More broadly more
19	broadly, in terms of the CARE Act or ARPA,
20	was your firm retained to help the Water
21	Department get stimulus dollars?
22	MR. DASENT: Note our objection,
23	Your Honor. This is beyond the scope of
24	their testimony. But if they know the

1	answer.
2	HEARING OFFICER CHESTNUT: I will
3	allow the question. I don't understand the
4	point of it, but okay. I don't again, I
5	don't see how their the extent or the
6	nature of their input has anything to do
7	with it.
8	MR. HAVER: Your Honor asking me to
9	explain what it has to do with it?
10	HEARING OFFICER CHESTNUT: Yes.
11	MR. HAVER: Okay. So in the
12	settlement, there is wording that suggests
13	that the Water Department, it will make its
14	best efforts and I'm paraphrasing
15	because I don't have the exact line in
16	front of me best efforts to get stimulus
17	dollars.
18	I believe I have a right to examine
19	what those efforts have been. And I am now
20	doing so to ask the distinction between
21	what the Water Department sought within the
22	parameters that were agreed upon in the
23	settlement versus the parameters outside of
24	the settlement.

1	HEARING OFFICER CHESTNUT: You can
2	ask that. I'm not sure these witnesses are
3	helpful
4	MR. HAVER: I understand that.
5	HEARING OFFICER CHESTNUT: in
6	answering that issue.
7	MR. HAVER: I am putting on my case
8	in the way that I wish.
9	MS. BUI: Mr. Haver
10	MR. HAVER: Whether you think it's
11	helpful or not doesn't really matter to me.
12	What matters to me is I can put on my case
13	in my way.
14	HEARING OFFICER CHESTNUT: No. As
15	we've talked many times, you cannot you
16	do not have unfettered ability here. It
17	has to be within the scope of the
18	proceeding. It has to be within the scope
19	of these witnesses' testimony.
20	But I will allow the question. If
21	you can answer it, fine. Again, I don't
22	think that it advances the record much
23	because I'm not sure they really can
24	contribute a responsive answer a

1	substantive type of answer. If you want to
2	try and answer it, go ahead.
3	MR. HAVER: Mr. Jagt
4	HEARING OFFICER CHESTNUT: Ms. Bui
5	seemed to indicate that she wanted to say
6	something about this.
7	MS. BUI: So, I was going to say
8	thank you, Judge Chestnut.
9	Mr. Haver, to the best of our
10	ability, we do provide the Water Department
11	with financial analyses and assessments.
12	We are not currently aware beyond our work
13	with WIFIA explicitly what else the
14	Department has been doing. We do
15	understand that the Department has other
16	consulting firms on its books that are
17	available to them to do research into the
18	grants.
19	So if I may redirect, I think that
20	that question would be better answered by
21	the finance panel.
22	MR. HAVER: Thank you. But to be
23	clear, you don't have a contract to help
24	the Water Department you did not have a

1	contract during the last Fiscal Year to
2	help the Water Department get stimulus
3	dollars as defined in the Settlement
4	Agreement; is that correct?
5	MS. BUI: Not explicitly to do
6	that. But as part of general tasks, yes.
7	As I said, Mr. Haver, I would
8	strongly suggest that Ms. LaBuda is better,
9	far better suited to answer that question
10	in terms of efforts with respect to the
11	stimulus funding.
12	MR. HAVER: Thank you.
13	MS. LaBUDA: Mr. Haver, again, this
14	is outside the bounds of my testimony. But
15	I'm more than happy to answer your
16	question.
17	Is that the Department does have a
18	of separate contract, specifically helping
19	us as a Department pursue federal
20	subsidies. And those efforts are detailed
21	in the monthly Board Report. They have
22	helped us apply to building resilient
23	infrastructure communities, which is a
24	grant program. 75 percent grant,

1	25 percent would be our contribution for a
2	capital project. We have applied for two
3	or three hazard mitigation grants.
4	Again, these are all detailed in
5	the Board's Report. We are researching
6	some other grants related to security and
7	research now. But we do have another firm
8	on contract that their specific scope is to
9	research grant opportunities for the
10	Department.
11	MR. HAVER: Who is that contract
12	with, please, Ms. LaBuda?
13	MS. LaBUDA: It's all in the public
14	domain. The contract is with Arcadis.
15	MR. HAVER: I'm sorry?
16	MS. LaBUDA: Arcadis.
17	MR. HAVER: Could you help me with
18	the spelling of that, please?
19	MS. LaBUDA: You bet.
20	A-r-c-a-d-i-s. Hopefully, I got that
21	right.
22	MR. HAVER: Thank you.
23	MS. LaBUDA: You're welcome.
24	MR. HAVER: And Ms. LaBuda, when

1	was that contract signed?
2	MS. LaBUDA: May I look do you
3	mind if I look it up, Mr. Haver? Because I
4	don't want to give you
5	MR. HAVER: Please do so.
6	MS. LaBUDA: The contract start
7	date was June 1, 2021.
8	MR. HAVER: When was the first
9	deliverable received?
10	MS. LaBUDA: I don't have that
11	information readily available, Mr. Haver.
12	We submitted the Building Resilient
13	Infrastructure Communities Grant for
14	specific capital projects some time in the
15	fall of 2022. But again, any of our
16	efforts are detailed in the Board Report.
17	That is definitely the best source for this
18	information.
19	MR. HAVER: Sorry. I missed that.
20	I was taking notes.
21	MS. LaBUDA: No, of course. The
22	list of things we have submitted for
23	financial assistance is all detailed in the
24	monthly Board Report. There is a table in

ı		
	1	the back that has the dates of the
	2	applications and memos. That is the best
	3	source for the activities.
	4	MR. HAVER: Was there anything in
	5	the contract that specifically asked the
	6	consultant to help raise stimulus dollars
	7	as defined by the Settlement Agreement?
	8	MR. DASENT: Please, note our
	9	continuing objection now because I think we
	10	are going very far afield of this
	11	particular subject.
	12	HEARING OFFICER CHESTNUT: Again, I
	13	think the reports are the best source of
	14	the efforts made and the results of those
	15	efforts. But if you can answer it quickly
	16	or I think you should if you can
	17	direct Mr. Haver somewhere, go ahead.
	18	Mr. Haver, this could have been
	19	done in discovery. You could have asked
	20	them prior to this. And they would have
	21	been able to probably give you a better
	22	response than waiting til now.
	23	If you think you can answer it
	24	MS. LaBUDA: I can. I'll be happy

1	to. The the grant, the contract, the
2	scope of services did not specifically cite
3	the settlement. We did not want to be
4	limited to just the settlement pursuit. We
5	wanted as a City, as a Department, to
6	pursue all the federal funding that we can
7	given our 600 million-dollar Capital
8	Program.
9	So the scope of services was much
10	broader than just the settlement. It was
11	to assist the Department in researching,
12	applying and meeting all the compliance and
13	complex terms related to pursuing federal
14	financial assistance.
15	MR. HAVER: Thank you.
16	MS. LaBUDA: Thank you, Mr. Haver.
17	MR. HAVER: Going back to Mr. Jagt
18	as opposed to Ms. Bui, although, I don't
19	know who to direct it to. I am going to
20	ask about the savings that Ms. LaBuda spoke
21	about when she testified that the Water
22	Department had successfully gotten low
23	interest loan.
24	Should that question be directed to

1	Ms. Bui or Mr. Jagt or Mr. Merritt?
2	HEARING OFFICER CHESTNUT: Ask your
3	question, and they will decide who to
4	answer.
5	MR. HAVER: Thank you.
6	How much rate payer sayings was
7	generated by the reduction in the interest
8	rate on that loan?
9	MR. JAGT: Can we clarify, like,
10	which which loan?
11	MR. HAVER: Well, I will do my
12	best. But Ms. LaBuda in testimony today
13	said the Water Department had been very
14	successful in getting a PennVest low
15	interest loan that was part of the stimulus
16	package. And when I asked her specifically
17	about how much savings that was and what it
18	meant in terms of debt service and saving
19	for rate payers, she said she was not
20	aware.
21	So I'm asking you, how much that
22	savings was and its effect on rate payers.
23	MR. JAGT: In that it's not, like,
24	part of her testimony in this proceeding, I

1	don't have it readily available right now.
2	I mean, that's something we could calculate
3	and provide you with the information.
4	Again, it's probably that
5	capital dollars, the program that it's
6	providing is probably not going to provide
7	savings like, debt service savings to
8	the Department until Fiscal Year 2024 or
9	beyond. So but we can provide that
10	information to if you want.
11	MR. HAVER: I would like to have
12	it. Thank you.
13	Mr. Jagt, it's my recollection that
14	you participated in last year's rate case;
15	is that correct?
16	MR. JAGT: That's correct.
17	MR. HAVER: And it's my
18	recollection that you reviewed the
19	Settlement Agreement; is that correct?
20	MR. JAGT: Yes, that's correct.
21	MR. HAVER: And would you say the
22	Settlement Agreement was favorable for the
23	Water Department?
24	MR. JAGT: As a rate consultant for

1	the Water Department, I would say no.
2	MR. HAVER: So, you oppose the
3	Settlement Agreement?
4	MR. JAGT: Oppose? I mean, it's
5	you know, as we stated, like, for a black
6	box settlement, it was a settlement that
7	was reached that provided some additional
8	revenues for the Department without
9	extended litigation. And from that point
10	of view, it you know, there's a benefit
11	of the Department to agree to that to get
12	to that point.
13	But in the overall financial
14	position and the level of additional
15	revenues provided, I would say we are
16	it's not providing a solid financial
17	results for the Department.
18	MR. HAVER: Thank you, Mr. Jagt.
19	Hearing Examiner, that concludes my
20	questions for this panel.
21	HEARING OFFICER CHESTNUT: Okay.
22	MR. DASENT: Your Honor, please, we
23	would like to request a break before we
24	proceed with redirect.
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1	HEARING OFFICER CHESTNUT: Okay.
2	It's 11:14. Why don't we resume at 11:20.
3	MR. DASENT: Can we go just a
4	little longer than that? Just because
5	HEARING OFFICER CHESTNUT: Sure,
6	11:25.
7	MR. DASENT: I appreciate that.
8	HEARING OFFICER CHESTNUT: How
9	about 11:25?
10	MR. DASENT: Thank you.
11	(Off the record at 11:14 a.m.)
12	
13	(Back on the record at 11:28 a.m.)
14	HEARING OFFICER CHESTNUT: We are
15	going to resume.
16	MR. DASENT: Thank you.
17	In response to Mr. Ballenger's
18	questions to Black and Veatch, the minimum
19	threshold was raised as an issue to be
20	litigated in this case. What is the
21	importance of the 135 million-dollar
22	minimum threshold metric?
23	MS. BUI: Sorry. I was trying to
24	unmute there. Go ahead, Dave.

1	MR. JAGT: Uh
2	MS. BUI: Okay. So, I think in
3	response to that, Mr. Dasent, is that the
4	135 is the only target metric that we have
5	that has been agreed upon in the past rate
6	proceeding in 2018. With respect to the
7	importance of it and why we are looking to
8	it, I am going to defer that question over
9	to Ms. LaBuda and Ms. Clupper and
10	Mr. Nissen.
11	MR. DASENT: Missy, can you help us
12	there?
13	MS. LaBUDA: Sure. Good afternoon.
14	I am going to look to my other
15	participants, Ms. Clupper and Mr. Nissen to
16	weigh in.
17	MS. CLUPPER: Thank you.
18	MS. LaBUDA: Go ahead, Kathy,
19	please.
20	MS. CLUPPER: It's important to
21	remember the financial metrics the Board
22	agreed to and discuss in the 2018 hearing
23	were what were viewed as sort of the
24	minimal thresholds to have a strong

1 financial credit profile. And those were 2 in addition to the liquidity, also debt 3 service coverage of 1.3 and pay bill of 4 20 percent. 5 Those metrics were then shared with 6 rating agencies. They were shared in 7 the -- with the investor public. They are 8 disclosed in the official statement. And 9 they are -- I mean, just to put a point on 10 it, actually, the minimum level compared to 11 other peer rated water and sewer. 12 So when the last rating, the last 13 bond issue that was done, the rating 14 agencies, all three of them mentioned 15 these. So in addition to the S&P concern 16 about going below 120 -- understand, this 17 was in the middle of COVID. They were 18 giving most systems a bit of a pass. But 19 they were concerned about it going below a 20 certain threshold. They called out the 21 120. 22 But in addition to S&P, Moody's 23 also cited as a reason for a downgrade 24 would include, you know, the inability for

1	increase rates to commensurate with
2	coverage requirements and in line with the
3	Department's internal standard as a
4	reference to the financial metrics agreed
5	upon in 2018. Fitch, also, specifically
6	mentioned having leverage ratios increase
7	over ten times.
8	That's the debt-to-liquidity. They
9	are already at an eight times leverage,
10	which is higher than other peers. And a
11	failure to secure rate increases is
12	sufficient to maintain, quote, current
13	financial profile as leading to a negative
14	rating action.
15	So, it's not just S&P. All three
16	rating agencies are concerned with the
17	inability to increase rates to maintain
18	minimum financial metrics. The 135 was
19	called out in this last as one of the
20	metrics that people could hang their hat
21	on, in a sense. So, I I I don't thin
22	it's an issue of going below 120 by a

23

24

dollar. It's a bigger picture issue of

not -- the Rate Board not increasing rates,

1	not providing rates in a way that this
2	Department can continue to, you know, to
3	move up to the financial ratios.
4	Understanding that in the next couple
5	years I mean, we are in the middle of a
6	crisis here.
7	But clearly, the expectation going
8	forward is that the Department and the Rate
9	Board will, you know, manage to those
10	minimum thresholds.
11	MR. DASENT: Back to the Black and
12	Veatch panel unless, Missy, do you have
13	anything more to add? Let me ask that
14	
15	question.
16	MS. LaBUDA: No, thank you. I
	think we covered it. Thanks so much.
17	MR. DASENT: Okay. Back to Black
18	and Veatch. Mr. Ballenger discussed this
19	Table C-1 and the final RSF balance that's
20	shown in the settlement table.
21	Why do you think the RSF balance
22	that's shown there is not a good metric for
23	the minimum threshold?
24	MR. JAGT: You know, if you look at

the rate case history before this, you can see, like, during -- we have submitted a financial plan for the FY 2021 rate or 2020 rate case where we were going to set rates for Fiscal Year 2021.

The financial plan reflected in that submittal reflects that the Department was going to drown down the RSF, but still maintain the 135 million target. Which, you know, as we stated, the Department has consistently, you know, communicated that level of target to the rating agencies, to -- you know, with every financial report have established 135 as their target for the Fund Balance.

When we resubmitted for the '22 or '21 rate proceeding -- '22 rate proceeding, which was for the Fiscal Year '22 and '23 rates, we had agreed not to pursue the increase in '21 due to COVID. So as a result and because of the collections the Department was being faced with during COVID, we had to show that we were going to project below the 135 target.

1	So you know, when we withdrew that,
2	the '21 or the request for increases in
3	'21, the result is the Department knew we
4	were going below 135. But we tried to
5	maintain that Fund Balance as much as we
6	could without burdening the customers to go
7	back up immediately to 135. So all along,
8	the Department has communicated that the
9	target is 135. But we were willing to
10	forego it for the sake of COVID and putting
11	pressure on the rate customers.
12	So, the turn all along
13	consistent communication since the 2018
14	rate determination has been that the
15	Department will maintain the 135. The
16	reason why it's not in the settlement is
17	because we couldn't come to an agreement in
18	the time frame we had for the settlement.
19	So, that's why it was put in there that we
20	would have you know, each party would
21	present their own opinion. And a
22	determination would be made for what the
23	threshold would be to establish that basis.
24	But the Department's always

1	communicated 135 million.
2	MR. DASENT: Mr. Jagt, in response
3	to Mr. Haver's questions, you indicated the
4	Department for Black and Veatch could
5	calculate savings related to debt service
6	or savings for Fiscal '24 and beyond.
7	Could you provide that as a written
8	transcript request?
9	MR. JAGT: Yes, we can.
10	MR. DASENT: Okay. That's all we
11	have, Your Honor.
12	HEARING OFFICER CHESTNUT:
13	Mr. Ballenger, did you want to do
14	recross based on the redirect?
15	MR. BALLENGER: Just one point of
16	clarification. That the tables Mr. Dasent
17	was referencing are in the rate
18	determination, not in the settlement.
19	There is no Rate Stabilization Fund balance
20	shown in the table attached to the
21	settlement. So just for the record, I want
22	to make sure that's clear.
23	MR. DASENT: So noted. Thank you.
24	HEARING OFFICER CHESTNUT: Anything

1	else?
2	MR. BALLENGER: Nothing further
3	from me.
4	HEARING OFFICER CHESTNUT:
5	Mr. Haver, do you have any further
6	questions based on the redirect?
7	MR. HAVER: I do not.
8	HEARING OFFICER CHESTNUT: Okay.
9	Hearing nothing further then, the
10	witnesses are excused. Thank you very much
11	for appearing.
12	MR. MERRITT: Thank you.
13	MS. BUI: Thank you, Judge.
14	HEARING OFFICER CHESTNUT: That
15	takes us to our next witness who is
16	Mr. Morgan I guess.
17	MR. BALLENGER: Trying to find
18	Mr there he is. Okay.
19	Just to start us off here, we have
20	stipulated to the authenticity of Mr.
21	Morgan's testimony. So, I will be very
22	quick in just introducing Mr. Morgan.
23	Lafayette K. Morgan, Jr., who is a
24	consultant for the Public Advocate, filed

1	pre-cert testimony on the record in this
2	proceeding earlier. And he is he available
3	for cross-examination.
4	HEARING OFFICER CHESTNUT: Thank
5	you very much. Good morning, Mr. Morgan.
6	MR. MORGAN: Good morning.
7	HEARING OFFICER CHESTNUT:
8	Mr. Dasent, do you have questions
9	for Mr. Morgan?
10	MR. DASENT: Yes. We have a few
11	questions. And, Mr. Morgan, I tried to
12	forward to you the hearing exhibits, PWD
13	Hearing Exhibit 2. And that will sort of
14	guide us through the various questions.
15	And hopefully, you will have that on your
16	computer.
17	MR. MORGAN: Just a minute. Okay.
18	MR. DASENT: Now, Tab 2 of the PWD
19	Hearing Exhibit, it's on page 20.
20	HEARING OFFICER CHESTNUT: I'm
21	sorry. Mr. Dasent, I was getting myself
22	organized here.
23	Would you restate that reference?
24	MR. DASENT: Sure.
I	

1	THE PENCHAGO CONTINUE.
1	HEARING OFFICER CHESTNUT: Am I
2	looking at your hearing exhibit?
3	MR. DASENT: Yes, No. 2.
4	HEARING OFFICER CHESTNUT: Right.
5	And what page?
6	MR. DASENT: I'm scrolling to page
7	20. It's the first date of response at Tab
8	2.
9	HEARING OFFICER CHESTNUT: This
10	page 20 of 79?
11	MR. DASENT: Yeah. As I scrolled,
12	it says 20. And it's the date of response
13	for the Public Advocate to PWD questions.
14	HEARING OFFICER CHESTNUT: Okay.
15	MR. DASENT: Okay.
16	Now, Mr. Morgan, you indicate that
17	the recommendations in your testimony are
18	intended to be consistent with the
19	reconciliation procedures that are or
20	the reconciliation procedure that was
21	included in the settlement. And that's the
22	joint petition.
23	Do you agree with that as
24	MR. MORGAN: Yes.

1	MR. DASENT: stated in your
2	Question 2? All right.
3	And this context, you also note
4	your testimony is consistent with a
5	stipulation negotiated between the Advocate
б	and the Philadelphia Water Department; am I
7	correct? That's also referenced in your
8	test in your your answers.
9	Now, the stipulation covers a range
10	of issues, some of which are raised by the
11	Advocate and its motion to strike PWD
12	testimony filed in this case.
13	Do you recall that?
14	MR. MORGAN: Yes.
15	MR. DASENT: And those issues
16	specifically address the stipulation. And
17	you can find that, also, if you scroll
18	through the if you scroll through the
19	Hearing Exhibit. You will find that it's
20	Tab 3. It covers a range of issues. And
21	these include the starting point, minimum
22	threshold and sharing.
23	For the sake of it, let me sort of
24	follow along also. Now, there are other

1	issues, as well, that are addressed in the
2	stipulation which included FY23, Approved
3	Revenue. Incremental Revenues must be
4	sufficient to fulfill PWD's required
5	covenants with bond holders and other legal
6	requirements.
7	Do you remember that, as well?
8	That's Paragraph 9.
9	MR. MORGAN: Yes.
10	MR. DASENT: Turning your attention
11	to Paragraph 2 of the stipulation for
12	Fiscal 2021 Financial Performance. This
13	particular adjustment is as stated in
14	Paragraph 2?
15	MR. MORGAN: Yes.
16	MR. DASENT: Okay. And now, could
17	you read that for the record? I believe it
18	begins: The starting point for
19	determining.
20	MR. MORGAN: Starting point for
21	determining the 2021 financial performance
22	adjustment will be the actual Rate
23	Stabilization Fund, RSF balance, for the
24	beginning of FY 2020, which is the same as

1	the ending balance for FY 2021. The
2	starting point is hereafter referred to as
3	the actual RSF balance.
4	MR. DASENT: And which, also
5	directing your attention to Paragraph 3 of
6	the stipulation.
7	Would you agree that it states
8	there that the starting point or the actual
9	RSF starting balance will be compared to a
10	minimum threshold for the RSF as determined
11	by each stipulating party?
12	Isn't that true?
13	MR. MORGAN: That's true.
14	MR. DASENT: Yup. Now directing
15	your attention to your response of PWD
16	discovery at Tab 2 of PWD Hearing Exhibit
17	2, Question F4. I give you time to get
18	there. You have to go back.
19	HEARING OFFICER CHESTNUT: I'm
20	sorry, Mr. Dasent. What was that hearing
21	exhibit reference?
22	MR. DASENT: Hearing Exhibit 2.
23	And it's at Tab 2, which are the discovery
24	responses.

1	HEARING OFFICER CHESTNUT: Tabs
2	aren't, like, helpful to me since I'm
3	scrolling.
4	MR. DASENT: I know.
5	HEARING OFFICER CHESTNUT: Do you
6	know the page? That would help.
7	MR. DASENT: Page 23.
8	HEARING OFFICER CHESTNUT: Oh,
9	okay.
10	MR. DASENT: Okay.
11	Mr Mr. Morgan, directing your
12	attention to the response of PWD Discovery
13	Response, Question 4. The minimum
14	threshold is not defined in the rate
15	determination, correct?
16	MR. MORGAN: That is correct.
17	MR. DASENT: Okay. And as stated
18	in your response to Question 3 just
19	before
20	MR. BALLENGER: Objection to the
21	question. You referred to the rate
22	determination. Wasn't your question
23	whether it was defined in the settlement?
24	MR. DASENT: Well, I'm looking at

1	Question 4. Let me see what he says.
2	HEARING OFFICER CHESTNUT: I think
3	it says in
4	MR. BALLENGER: Okay. It says it
5	
	in the answer. Okay.
6	MR. DASENT: Yes. Yup.
7	MR. BALLENGER: Withdrawn.
8	HEARING OFFICER CHESTNUT: And that
9	wasn't that was just a misstatement,
10	isn't it? I mean, it's not intended to be
11	what the answer would be.
12	MR. DASENT: Well, it was not
13	defined in the settlement and as a prude in
14	the rate determination. You are correct.
15	The answer may be in-artfully stated.
16	Now directing your attention,
17	Mr. Morgan, to Question 3. The minimum
18	threshold to be used for the Fiscal 2021
19	financial performance adjustment is an
20	issue that must be litigated here.
21	Isn't that correct?
22	MR. MORGAN: As I responded, I
23	acknowledged that in the stipulation, it
24	lays out that it must be litigated.

1	MR. DASENT: Okay.
2	HEARING OFFICER CHESTNUT: Excuse
3	me. Mr. Morgan, can you speak up a little
4	bit? It's hard for me to hear you.
5	MR. MORGAN: Okay. I will get
6	closer.
7	MR. DASENT: Okay. Now, Mr.
8	Morgan, let's turn to sharing.
9	With respect to the issue of
10	sharing, and that's addressed in the
11	Hearing Exhibit, it's Tab 3, so that's the
12	stipulation. You have to scroll back. And
13	I will get there with you and help
14	everyone. It's a stipulation, Paragraph 6.
15	MR. MORGAN: I'm there.
16	MR. DASENT: Okay. Now with regard
17	to sharing, let us direct your attention to
18	Paragraph 6.
19	Under the stipulation, assuming
20	there is an amount to be shared, the
21	parties can submit their respective
22	positions, correct? It's literally what it
23	says.
24	MR. MORGAN: Correct.

1	MR. DASENT: Yeah. And I take it
2	you'd agree that the split or the amount of
3	sharing each party proposes, whether it's
4	50/50 or some other percentage, should be
5	consistently applied.
6	Would you agree with that?
7	MR. MORGAN: Not necessarily, no.
8	MR. DASENT: Okay. And explaining
9	that, you are saying, basically, it could
10	be 50/50. It could be 68 percent. It
11	could be some other percentage?
12	MR. MORGAN: Could be yeah. It
13	could be it could vary from 50/50,
14	70/30.
15	MR. DASENT: Now, let's turn to
16	your adjustment in this case, your
17	recommendation. Your initial adjustment
18	was 5.35 million or half of the 10.7
19	million you characterized as Fiscal 2021
20	over-performance; am I right?
21	MR. MORGAN: Yes.
22	MR. DASENT: And that's an amount
23	to reduce rates for Fiscal 2023.
24	MR. MORGAN: Correct.

1	MR. DASENT: Okay. That's your
2	minimum adjustment. You have a second
3	adjustment that's based upon other
4	criterias. Let's say that for an
5	additional 1.24 million; am I right?
6	MR. MORGAN: Correct.
7	MR. DASENT: Right. And in your
8	testimony, you opine that 10.5 million
9	should be available for sharing in light of
10	2021 financial performance. That's the
11	total amount, correct?
12	MR. BALLENGER: I don't believe
13	that's correct. I think you said 10.5,
14	Mr. Dasent.
15	MR. DASENT: It's 10.7 in the
16	testimony, but subject to check.
17	Do you accept that subject to
18	check?
19	MR. MORGAN: Subject to check, yes.
20	MR. DASENT: Okay. And if that
21	amount is shared equally, it results in a
22	minimum adjustment of 5.53 million
23	correctly correct?
24	MR. BALLENGER: Subject to check,

1	Mr. Morgan, if you prefer.
2	MR. MORGAN: Subject to check.
3	MR. DASENT: Okay. Now in
4	addition, you identify 1.24 million for
5	sharing based upon let me characterize
6	the Residual Fund balance, which is higher
7	than projected. You mentioned that in your
8	testimony. But there's an additional
9	1.24 million. That's the point for me.
10	MR. MORGAN: That is correct.
11	MR. DASENT: And you add that
12	amount to the 1 to the 5.35 million?
13	MR. MORGAN: Right.
14	MR. DASENT: Okay. Now a little
15	more global question, Mr. Morgan. I take
16	it you agree that PWD operation should be
17	self-sustaining; am I right?
18	MR. MORGAN: Yes.
19	MR. DASENT: Okay. So the rate
20	so rate revenue should cover the
21	Department's expenses, and that's the whole
22	idea?
23	MR. MORGAN: That is the whole
24	idea.

1	MR. DASENT: Okay. Now, let's move
2	a little more to the mundane in your
3	testimony. At Tab 2, which is the
4	Department's the Advocate's response to
5	PWD Discovery. So, we have to scroll back.
6	And it's at Question 14.
7	When you get there, please, let me
8	know.
9	HEARING OFFICER CHESTNUT: Where is
10	Tab 2? I'm sorry.
11	MR. DASENT: Tab 2, it's page 33.
12	HEARING OFFICER CHESTNUT: Okay.
13	MR. DASENT: As I scroll through.
14	It's the answer to Question 14
15	MR. MORGAN: Yes.
16	MR. DASENT: of our PWD request
17	to you.
18	MR. MORGAN: Right.
19	MR. DASENT: I take it from your
20	answer to those discovery responses, we can
21	agree that Hurricane Ida was in August 29,
22	2021 when it made landfall.
23	MR. MORGAN: This is what it shows.
24	MR. DASENT: Yeah.

1	MR. MORGAN: The I would say
2	this in my testimony where I mention
3	Hurricane Ida, this was in response to what
4	was presented in ML-2 where ML-2 purports
5	to discuss FY 2021 operations result. And
6	Hurricane Ida is cited as one of the
7	occurrences that occurred that is
8	discussed, so.
9	MR. DASENT: Yeah my only point
10	is sorry. My only point is, the date of
11	the landfall is August 29, 2021.
12	MR. MORGAN: Right. Right.
13	MR. DASENT: Okay. And the Fiscal
14	Year for 2022 begins July 1, 2021; am I
15	right?
16	MR. MORGAN: Right.
17	MR. DASENT: Okay. Now, let me
18	direct your attention to Discovery
19	Responses again at Questions 12 and 13, so
20	just a little above where you are now.
21	I take it
22	MR. MORGAN: Did you say 13?
23	MR. DASENT: Twelve and 13.
24	MR. MORGAN: Okay.

1	MR. DASENT: Which is I am
2	looking now at 31 as I scroll through.
3	Now, I take it the source of your
4	information for Tables 9 and 12 of your
5	testimony was VB-4. That's my takeaway
6	from the answers to 12 and 13.
7	Am I right in assuming that?
8	MR. MORGAN: Yes.
9	MR. DASENT: Okay. And
10	specifically, the electronic workbooks
11	provided with the schedule?
12	MR. MORGAN: That is correct.
13	MR. DASENT: Okay. And I take it
14	in making your comparisons in those tables,
15	it's for illustrative purposes only because
16	those are taken from VB-4?
17	MR. MORGAN: Correct. And I will
18	point out that what really matters in in
19	using VB-4 is the fact that the balance in
20	the RSF is an amount that is equal to what
21	is shown in Ms. LaBuda's testimony. And
22	even Mr. Jagt earlier today acknowledged
23	that those balances are correct.
24	MR. DASENT: Okay. But because

1	VB-4 consistent with the stipulation is to
2	be used for illustrative purposes only, my
3	point is that your schedules or tables on
4	pages 9 and 12 are offered for that purpose
5	for illustrative purposes?
6	MR. MORGAN: Yes. As to make a
7	comparison, as well.
8	MR. DASENT: Okay.
9	Now, Mr. Morgan, you criticized
10	PWD's discussion of cost pressures in the
11	record for not including lower pension fund
12	contributions. You do this in your
13	testimony toward the end of pages 18 and
14	19.
15	Do you recall that?
16	MR. MORGAN: Yes.
17	MR. DASENT: Now, I take it you are
18	referring there to pension fund
19	contributions for Fiscal 22 as projected in
20	the 2021 general rate case?
21	MR. MORGAN: I'm not certain
22	that's but that information was provided
23	in one of the initial data request that
24	was

1	MR. DASENT: But your testimony on
2	pages 18 and 19 is referring to that time
3	period, Fiscal 22 as projected in the last
4	rate case.
5	MR. MORGAN: Yes.
6	MR. DASENT: And then toward the
7	end of your testimony on beginning of page
8	19, PWD updated projections and scheduled
9	VB-4 are also referred to.
10	Do you recall that? That would be
11	the final paragraph I think page 19,
12	lines 7 through 10.
13	MR. MORGAN: That is correct.
14	MR. DASENT: Okay. Now directing
15	your attention to responses, PWD Discovery
16	Requests 23, so that's pretty close to
17	where we were a minute ago, give or take
18	ten questions. And, Your Honor, that's on
19	page 42 if you are scrolling.
20	HEARING OFFICER CHESTNUT: Yeah. I
21	got that.
22	MR. DASENT: Okay.
23	Now, you indicate there in the
24	response that you're unable to

1	affirmatively state whether lower pension
2	funds contributions are reflected in VB-4;
3	
	am I right?
4	MR. MORGAN: That's correct.
5	MR. DASENT: Okay. And I take it
6	your answer is similar with regard to
7	projections that are for the Fiscal 2021
8	rate case? That would be the next
9	question.
10	MR. MORGAN: Can you repeat that?
11	MR. DASENT: Sure. I take it your
12	answer is similar with regard to the
13	projections from Fiscal 21, general rate
14	case, reflecting the lower pension
15	requirements as was the case was settled
16	and it was a black box settlement?
17	MR. MORGAN: I'm sorry. When you
18	say Fiscal 21, are you talking about what
19	was presented in the rate case?
20	MR. DASENT: Well, I'm referring to
21	the Question 23. And Question A of that,
22	you denied any specific you denied that
23	in the answer because the settlement was
24	part of a black box. So I'm suggesting to

1	you, that you didn't know the lower pension
2	fund requirements are reflected in the
3	settlement because it was a black box
4	settlement.
5	MR. MORGAN: In the settlement, I
6	would say it's not black box. We don't
7	know what the costs are that we are
8	considering.
9	MR. DASENT: Directing your
10	attention to schedule LKM-1, 3 of 3, which
11	is appended to your testimony. The very
12	last page, you know, shows the various
13	tables, C-1 tables, that you prepared. And
14	it shows the ending balance of 96.376
15	million for 2023; am I correct?
16	MR. MORGAN: Correct.
17	MR. DASENT: And this amount is
18	well below the projected RSF balance shown
19	in Table C-1 in the 2021 rate
20	determination; am I correct?
21	That's 113.998 million.
22	MR. MORGAN: Again, these numbers
23	are presented for illustration. They
24	are yes. To answer you directly, yes.

1	But even in settlement, the amount that was
2	agreed was less than the amount that PWD is
3	now claiming to be the threshold.
4	MR. DASENT: Using your number, and
5	with reference to this specific number,
б	96.376 million, if any assuming that was
7	actually approved, if any significant
8	unanticipated event occurs during Fiscal
9	2023, that would require utilization of the
10	Rate Stabilization Fund like a storm event,
11	all else being equal, that would result in
12	an even lower RSF balance then you're
13	showing here in LKM-1; isn't that true?
14	MR. MORGAN: No. These numbers
15	to start off, these are numbers that or
16	model, I should say, is not something that
17	I generated from the beginning. The
18	numbers in here starts off with PWD's
19	revised model to reflect settlement.
20	And so, there are assumptions in
21	here that we don't know what they are. And
22	so, to say that these are the actual
23	numbers that would be attained, I simply
24	cannot say that. Again, what this is a

1	tool that we have been provided.
2	And essentially, what I'm trying to
3	do here is to show that if the Board were
4	to accept my proposal, there is an effect
5	
	on the results that that are presented
6	in this model.
7	MR. DASENT: Assuming the Board
8	does accept your proposal, and the RSF
9	balance is 96.376 million in Fiscal 23,
10	safe to assume, all else being equal, if
11	there was a storm event like Ida or any
12	other emergency, that that would draw that
13	number down even lower?
14	MR. BALLENGER: Object to the
15	assumptions and speculation. Mr. Morgan
16	has testified about where this model came
17	from. This model is not his.
18	HEARING OFFICER CHESTNUT: Your
19	objection is overruled. Let's see if he
20	can answer. I think it's been kind of
21	asked already, but just to if there is
22	some clarification, Mr. Morgan can provide.
23	MR. MORGAN: Again, to say that if
24	my recommendations are accepted, that it

1	would result in this number is simply an
2	assumption that I don't think I can except
3	because the assumptions that went in this
4	model are unknown.
5	What we do know is that PWD has had
6	a history of over-performing. And even if
7	to look at the rating reports, Fitch and
8	Moody's talk about PWD having a strong
9	financial profile. And that their
10	performance was consistent with historical
11	results. So based on that, I don't think
12	we can expect to see a number like the
13	96.376.
14	MR. DASENT: Well, let's turn to
15	the rating agency reports. If you look to
16	57 on PWD Hearing Exhibit 2, scrolling to
17	that, you will see the S&P rating agency
18	report.
19	MR. MORGAN: What tab is that?
20	MR. DASENT: That is Tab 4. But
21	scrolling to it, you will see it's in red,
22	S&P report. And it's 57 if you are looking
23	at it on the computer.
24	MR. MORGAN: No, I have it.

1	MR. DASENT: Okay. Now, would you
2	agree the rating agencies are monitoring
3	PWD legal metrics, revenues, revenue
4	requirements of PWD increasing need to
5	utilize its RSF balance to meet its
6	operating expenses? You'd agree, it's
7	looking at all of this, correct?
8	MR. MORGAN: No. They are not
9	they are not just looking at the RSF
10	balance. That's for sure.
11	If you go through this, you will
12	find that I think it's only S&P that talks
13	about that measures the specific
14	balance. But they, all look at several
15	different factors in coming up with their
16	rate increase. It's not all focused on the
17	RSF balance.
18	MR. DASENT: But liquidity is a
19	major concern for all the rating agencies.
20	You would agree with that?
21	MR. MORGAN: And that's also
22	consistent with my recommendation. At the
23	end of the day, whether or not the the
24	Board accepts if the Board accepts my
1	

г		
	1	position, PWD still gets a rate increase
	2	and improves their liquidity.
	3	MR. DASENT: But let's look at the
	4	S&P report.
	5	MR. MORGAN: Okay.
	6	MR. DASENT: And it's dated
	7	September 17, '21. It's at page 57.
	8	MR. MORGAN: Yup.
	9	MR. DASENT: And I think I've
	10	highlighted, you know, the areas that I am
	11	really focused on. But in looking at that
	12	report, doesn't it indicate that higher
	13	than planned use of liquidity could cause
	14	S&P to lower the rating for the Department?
	15	MR. MORGAN: It says the
	16	highlighted section starts off with if.
	17	"If," I think, is the operative word there.
	18	This hasn't come to fruition because they
	19	would have lowered it if they are
	20	consistent with what they say.
	21	But clearly, it says what it says.
	22	But if you look through just above, it
	23	tells you that the stable outlook is
	24	predicated on the City being able to obtain
- 1		

1	a rate covenant compliance with
2	un-significant deviations in the year and
3	unmistaken cash in investment.
4	So just looking at the RSF
5	balances, it's kind of narrow. And if we
6	were to look through the rating agencies
7	reports, you will find that there are other
8	factors that are concerned.
9	MR. DASENT: Doesn't S&P, though,
10	explicitly state that depleting reserves
11	below 120 million will likely result in a
12	downgrade for the Department?
13	That is correct
14	MR. MORGAN: That's what it says.
15	And no one and I'm not recommending that
16	we deplete the reserves below 120 million.
17	MR. DASENT: Okay. And S&P, in
18	effect, is drawing a red line there saying
19	basically ahead of time, here is what you
20	need to watch out for.
21	Isn't that true?
22	MR. MORGAN: Yes, that's true.
23	MR. DASENT: And Fitch is also, as
24	you scroll back, suggesting rate

1	adjustments to maintain PWD's current level
2	of liquidity is important. And Moody's
3	makes similar observations. But there are
4	a landscape of things they are looking at,
5	but liquidity is among them.
6	Isn't that true?
7	MR. MORGAN: Yeah. If you look at
8	Fitch at the bottom, Fitch describes what
9	drives the rating. And they talk about PWD
10	being a monopolistic service provider. It
11	has low operating risks. And it has strong
12	financial profile.
13	If you go up to Moody's, you'll
14	find that Moody's in fact, Moody's is
15	the one that comes out and says that
16	that PWD, while the financial challenges do
17	not enforce an immediate risk to the
18	Department credit profile, prolonged
19	economic stress will cause will effect
20	their rating. But in that case, they are
21	responding to the idea that if the
22	Department is unable to maintain its
23	result.
24	So, I think the rating agencies

1	take a holistic approach to determining
2	when to downgrade. And it's not again
3	focused on the RSF funds fund balance.
4	MR. DASENT: Mr. Morgan, would you
5	also agree with reference to the Moody's
6	Report, they do indicate the inability to
7	raise rates commensurate with coverage
8	requirements and in line with the
9	Department's internal standards could lead
10	to a downgrade?
11	MR. MORGAN: Yes. And again,
12	that's that's a scenario that they are
13	presenting. Moody's states that they found
14	PWD's financial performance to be
15	satisfactory. That's right on the ratings
16	rationale. So, it's not like they see a
17	plane that's crashing.
18	MR. DASENT: But I think they are
19	looking at things over a period of years
20	and observing PWD in comparison to its
21	peers. And indicating there are liquidity
22	concerns as are all the rating agencies.
23	MR. MORGAN: That's correct.
24	MR. DASENT: Okay. Now, let's talk

1	about a black box settlement and see if we
2	can conclude there.
3	Turning your attention to Tab 2,
4	Question 15. Those are the Discovery
5	Responses. And I am scrolling back so I
6	can tell you where they are. They are not
7	far away from where we are now.
8	MR. MORGAN: Tab 2, Question 15?
9	MR. DASENT: Yup.
10	MR. MORGAN: Okay.
11	MR. DASENT: And that's page 34 if
12	you are scrolling to it on a computer.
13	Now in Question 15, you indicate
14	that the rate determination dated June 16,
15	2021 was approved as a black box
16	settlement; isn't that true?
17	MR. MORGAN: That is true.
18	MR. DASENT: The rate determination
19	actually approved a black box settlement.
20	MR. MORGAN: And I confirmed the
21	same.
22	MR. DASENT: Okay. And with
23	respect to Question 16, the next one, you'd
24	agree that the black box settlement

1	represents an agreement between the parties
2	in which the components and derivation of
3	the settlement amount are not disclosed?
4	MR. MORGAN: That's that's what
5	I stated. But the revenue is disclosed.
6	MR. DASENT: Yes. The approved
7	revenues, yes. And you indicate in
8	response to PWD Discovery Question 17,
9	which would be the next one, that a black
10	box settlement only disclosed total
11	additional revenues to be generated.
12	That's your point. And from an agreed upon
13	settlement.
14	So, we are in agreement on that,
15	also?
16	MR. BALLENGER: Objection to the
17	question. Doesn't say "only."
18	MR. DASENT: I guess that's my
19	editorial. The black box settlement
20	discloses the total additional revenues.
21	Let me see what it actually says.
22	Yes. It doesn't have "only" in
23	there. Thank you.
24	Now toward the end of my hearing

1	exhibits we have I mean, it's literally
2	the last page. We have a table that sets
3	forth the the breakdown for 2021 rate
4	proceeding.
5	MR. BALLENGER: I want to go ahead
6	and just object to this exhibit. This is
7	taking something from Mr. Morgan's
8	testimony in 2021, which has not been used
9	in this case. It's outside the scope of
10	his testimony in this case.
11	I would object to these exhibits.
12	HEARING OFFICER CHESTNUT: I think
13	it's appropriate to look at the record of
14	the underlying rate case. That's the
15	record established in that case. And I
16	think it can be referenced in this case.
17	Now, how useful that is, I don't
18	know. But I think it's appropriate to look
19	at what happened.
20	MR. BALLENGER: Just in light of
21	the the Water Department's own counsel
22	asked that we limit cross to the four
23	corners of the bond testimony during the
24	prehearing conference. I'm more than

1	surprise they're moving forward with this.
2	MR. DASENT: Well, there are
3	references in Mr. Morgan's testimony to how
4	we are performing vis-a-vis, where we are
5	projected to be and where he projected we
6	might be. So, just a couple simple
7	questions.
8	Mr. Morgan, looking at this table,
9	the very last page of PWD Exhibit 2, does
10	it show that the PWD ending balance for the
11	Rate Stabilization Fund at the end of the
12	year as in column one as you projected is
13	175,652,000?
14	Is that what the table says?
15	MR. MORGAN: Can you repeat the
16	question, because I
17	MR. DASENT: Sure.
18	Looking at the first column
19	Schedule LKM-1, in that final page of PWD
20	Exhibit 2, it shows a comparison of Fiscal
21	21 rate proceeding, LKM testimony, Schedule
22	LKM-1 compared to actual results. And in
23	the first column it shows for the Rate
24	Stabilization Fund balance 175,652,000

1	according to your testimony in the 2021
2	rate proceeding; is that correct? Subject
3	to check.
4	MR. MORGAN: It is correct. And
5	then, I will point out that that was
6	without the rate increase.
7	MR. DASENT: Yes.
8	MR. MORGAN: So and there is
9	several assumptions that may or may not be
10	currently reflected.
11	MR. DASENT: Uh-huh. And how does
12	that compare with Column 2 that shows the
13	Rate Stabilization Fund balance under
14	actual results 124,661,000? Is there a
15	delta or something like 50 million?
16	MR. MORGAN: Roughly.
17	MR. DASENT: Okay. And that's all
18	we have. Thank you very much, Mr. Morgan.
19	I appreciate it.
20	MR. BALLENGER: I think that's
21	HEARING OFFICER CHESTNUT: Wait,
22	wait, wait. Mr. Haver, do you have any
23	questions for Mr. Morgan?
24	Mr. Haver, do you have any

1	questions for Mr. Morgan?
2	Okay. No response.
3	MR. BALLENGER: During prehearing
4	conference, he said he had questions for
5	the two panels. So absent a response
6	HEARING OFFICER CHESTNUT: Okay.
7	Make sure everybody has an opportunity
8	here, but okay.
9	Do you want a break before you do
10	redirect?
11	MR. BALLENGER: Yes. I would
12	really appreciate about ten minutes. Maybe
13	if we can come back at 12:25, round up a
14	little bit.
15	HEARING OFFICER CHESTNUT: Okay.
16	We will do that.
17	MR. BALLENGER: Thank you.
18	(Off the record at 12:12 p.m.)
19	
20	(Back on the record at 12:25 p.m.)
21	HEARING OFFICER CHESTNUT: Are we
22	ready to resume?
23	MR. BALLENGER: Yes, Judge. Thank
24	you.
1	

1	MR. DASENT: Yes.
2	MR. BALLENGER: Okay. Thank you
3	for the pause. I just had a couple of
4	questions for Mr. Morgan on redirect.
5	And
6	MR. HAVER: Your Honor, I would
7	like to have my opportunity for direct.
8	HEARING OFFICER CHESTNUT: I had
9	asked you before, and you didn't respond.
10	MR. HAVER: I apologize. I must
11	have had a computer glitch.
12	HEARING OFFICER CHESTNUT: All
13	right.
14	MR. BALLENGER: I'm sorry. Are you
15	going to cross-examine Mr. Morgan,
16	Mr. Haver?
17	MR. HAVER: I am happy to answer
18	Judge Chestnut's questions.
19	HEARING OFFICER CHESTNUT: I don't
20	have a question. I said you can go ahead
21	if you have cross for Mr. Morgan.
22	MR. HAVER: Thank you.
23	Mr. Morgan, did you participate in
24	a Fiscal Year 2022 rate case?

1	MR. MORGAN: Fiscal Year 2022 rate
2	case? I participated in the TAP
3	Reconciliation filing.
4	Is that what you are referring to?
5	MR. HAVER: No. I am referring to
6	the case that we happened before this
7	case, that the settlement resulted in this
8	case.
9	MR. MORGAN: That was 22 fiscal
10	22/23, yes.
11	MR. HAVER: Okay. In preparing for
12	the proceedings, preparing your testimony,
13	did you have an opportunity to review the
14	public notice that was posted on the
15	Philadelphia Water Rate Board?
16	MR. MORGAN: Unfortunately, I am
17	more focused in that proceeding, there
18	was a separate cost of service for a
19	designed witness. And so, my focus was on
20	the total revenue requirement.
21	MR. HAVER: No, sir. Mr. Morgan, I
22	am talking about the public notice for
23	today's hearing.
24	MR. MORGAN: Oh, no, I didn't.

1	MR. HAVER: Mr. Morgan, would you
2	know which witnesses the Public Advocate
3	were responsible for reviewing the public
4	notices?
5	MR. MORGAN: There is somebody
6	rattling paper. And so, I couldn't hear
7	what you were saying.
8	MR. HAVER: Your Honor, could you,
9	please, ask the person to mute themselves
10	if they are going to rattle paper?
11	MR. MORGAN: Okay. Go ahead.
12	HEARING OFFICER CHESTNUT: Ask the
13	question, please.
14	MR. HAVER: Okay. Mr. Morgan, if
15	you know, which witnesses of the Public
16	Advocate are responsible for reviewing the
17	public notices?
18	MR. MORGAN: I do not know.
19	MR. HAVER: Okay. Mr. Morgan, are
20	you familiar with Section 8-600 of the
21	Philadelphia Home Rule Charter?
22	MR. MORGAN: I have read it. I
23	don't know it by section, but I have gone
24	through it.

1	MR. HAVER: Okay. Are you familiar
2	with the requirement that public notices
3	are written in such a way that they are
4	available and understood by people who have
5	limited English proficiency?
6	MR. MORGAN: That's more of a legal
7	question. I you know, I'm a numbers
8	person. So, I don't know what the
9	requirements are for that.
10	MR. HAVER: Thank you.
11	MR. LIANG: If I could interject
12	really quickly. I am not
13	MR. HAVER: I object, Your Honor.
14	I have not asked the question
15	HEARING OFFICER CHESTNUT: No, be
16	quite, Mr. Haver.
17	What, Steven?
18	MR. HAVER: I have a right to
19	object, Your Honor.
20	HEARING OFFICER CHESTNUT: No.
21	Mr. Haver, Steven needs to make an
22	announcement.
23	MR. LIANG: I just wanted to
24	clarify one

1	MR. HAVER: I have a right to
2	HEARING OFFICER CHESTNUT: Steven,
3	what? Please mute Mr. Haver for a minute.
4	And what were you going to say.
5	MR. LIANG: I was just going to say
6	that the public notices I'm the one
7	responsible for posting them. And I get
8	approval from Board Counsel Daniel
9	Cantu-Hertzler and Sonny Popowsky on the
10	language, so.
11	HEARING OFFICER CHESTNUT: Fair.
12	MR. LIANG: I just wanted to
13	clarify.
14	MR. HAVER: I object to that being
15	part of the record, Your Honor.
16	HEARING OFFICER CHESTNUT: No.
17	Your objection is overruled. You wanted
18	information and you got it.
19	MR. HAVER: No. That's not what I
20	wanted. I wanted to ask Mr. Morgan a
21	specific question. And once again, you
22	have showed your prejudice.
23	HEARING OFFICER CHESTNUT: Yes.
24	Okay. Go ahead.

1	MR. HAVER: Mr. Morgan, on line
2	10 on your direct testimony on page 10,
3	line 3, you state if you don't have it
4	in front of you, I will wait.
5	HEARING OFFICER CHESTNUT: Wait,
6	wait. Page 10?
7	MR. HAVER: Page 10, line 3.
8	You state that in the Fiscal Year
9	2022/23 rate case, you recommended no
10	increase for Fiscal Year 22; is that
11	correct?
12	MR. MORGAN: On page 10, line 3? I
13	don't see that. But I did recommend no
14	increase in that rate case.
15	MR. BALLENGER: That discussion is
16	at the top of page 8, the numbered page 8.
17	It's page 10 if you're counting in your
18	browser.
19	MR. MORGAN: Okay. Pdf page. I'm
20	with you now.
21	MR. HAVER: Thank you. Under the
22	Settlement Agreement, did the Water
23	Department get a rate increase?
24	MR. MORGAN: Yes.

1	MR. HAVER: How many millions were
2	they given?
3	MR. MORGAN: 10.4 million.
4	MR. HAVER: And that was even
5	though you testified that no rate increase
6	was necessary; is that correct?
7	MR. MORGAN: That's correct. The
8	settlement is in negotiation. So, no party
9	gets exactly what they want.
10	MR. HAVER: On the same document on
11	my page 20, I don't know how it paginates
12	for you. You state: In Philadelphia,
13	there is an attempt to balance the interest
14	of consumers and the utility.
15	Do you see where you said that?
16	MR. MORGAN: I remember making the
17	statement. What was your page again? I'm
18	sorry.
19	MR. HAVER: Again, on my
20	pagination, it's page 20. I don't know how
21	it translates to your computer.
22	MR. MORGAN: Okay. Go ahead. I
23	don't have it but
24	HEARING OFFICER CHESTNUT: Wait,

1	wait. Hang on.
2	MR. BALLENGER: It's page 20 of the
3	pdf, but the page is numbered 18. Lines 5
4	to 8.
5	HEARING OFFICER CHESTNUT: Got it.
6	Okay.
7	MR. HAVER: Mr. Morgan, who owns
8	the Philadelphia Water Department?
9	MR. MORGAN: The City.
10	MR. HAVER: Understanding that you
11	made the statement, my question is, what
12	interest do you believe the utility has
13	that are not consumer's interest?
14	MR. MORGAN: Can you I'm not
15	sure I followed the question. Can you just
16	repeat it?
17	MR. HAVER: Well, let me I will
18	try and rephrase it to make it a little
19	easier. So you were in your testimony,
20	you are making the distinction between the
21	consumers and the utility. The utility is
22	owned by the consumers.
23	So I'm asking you, what is the
24	distinction that you are making when you

1	are saying that there are two distinct
2	interests?
3	MR. MORGAN: The distinction I was
4	making in that paragraph is in response to
5	the peer review. And when I went through
6	the peer review, it was quite clear in some
7	instances there's not an independent board
8	that sets rates.
9	And in Philadelphia, what has been
10	done, I believe, in 2012 in the past, the
11	Rate Board was created so as to have an
12	independent body that will listen to
13	evidence both on the consumer side and the
14	Water utility side. And at some point,
15	determine what in the Board's view is a
16	reasonable resolution.
17	And so, that's what I was saying.
18	Is that in Philadelphia, there has been
19	this attempt to rather than have the
20	utility have sole discretion of over
21	setting rates, there's an attempt to have a
22	body that will moderate the impact of rates
23	on rate payers.
24	MR. HAVER: Are you suggesting that

1	the Water Department should have some other
2	priority other than its water consumers?
3	MR. MORGAN: What I'm suggesting is
4	that the water utility's focused on
5	providing what I would consider to be good
6	customer service safe and reliable
7	service. I will put it that way.
8	And but how you get there, how
9	they get there and how as the
10	representative of the consumer, how I think
11	they can get there are two different
12	things. There are several ways to get
13	to to providing safe and reliable
14	service without hampering that service with
15	too low rates or going to the extreme and
16	having rates that are too high.
17	MR. HAVER: In your testimony
18	today, you spent a fair amount of time
19	talking about what the rating agencies are
20	saying; is that correct?
21	MR. MORGAN: Correct.
22	MR. HAVER: Do you believe that the
23	rating agencies play a significant role in
24	setting rates for the Water Department?

1	MR. MORGAN: I don't think that
2	they play a significant role in the sense
3	that they have in this proceeding as an
4	example, they have no representation. They
5	present no evidence. They don't take sides
6	in the rate proceeding.
7	The impact of their ratings is felt
8	when the Water Department brings in
9	information from the rating agencies to
10	bolster their case.
11	MR. HAVER: Do you believe it's
12	important to consider what the rating
13	agencies say about the Philadelphia Water
14	Department?
15	MR. MORGAN: I think one should
16	listen to what the rating agencies have to
17	say with a critical mind. And when I say
18	critical mind, is to is to question and
19	reason with the information that is
20	presented in those reports.
21	MR. HAVER: Sir, are you aware that
22	Philadelphia's in the process of
23	establishing a public bank?
24	MR. MORGAN: No. I'm not aware of
1	

1	that.
2	MR. HAVER: If there was a public
3	bank controlled by the City that would
4	replace the private banks that are loaning
5	the Water Department money, would that have
6	any impact at all on the importance of the
7	rating agencies?
8	MR. BALLENGER: Objection.
9	HEARING OFFICER CHESTNUT: Are you
10	objecting, Mr. Ballenger?
11	MR. BALLENGER: I you know, I
12	thin he answered that he was unfamiliar
13	with the public bank proposal. So, I was
14	going to allow Mr. Morgan to answer if he
15	knew or had an opinion about the matter.
16	HEARING OFFICER CHESTNUT: Okay.
17	Because I think it's clearly outside the
18	scope of this proceeding.
19	MR. BALLENGER: I agree, Judge.
20	HEARING OFFICER CHESTNUT: It's
21	clearly outside the scope of his testimony.
22	If you want to try and have him answer it,
23	go ahead.
24	MR. MORGAN: I indicated that I

1	don't know.
2	MR. HAVER: Thank you.
3	In your direct testimony on page
4	21 again, that's how it paginates on my
5	computer line 14 through 18, you state
б	that there is no reduction in rates no
7	reduction in rates is warranted with
8	respect to receipts of stimulus funds as
9	established in the settlement.
10	Quote: PWD reports it did not
11	receive federal stimulus funding in an
12	amount sufficient to warrant an adjustment.
13	Is that your testimony?
14	MR. MORGAN: Yes.
15	MR. HAVER: Did you investigate on
16	your own whether PWD received any stimulus
17	dollars?
18	MR. MORGAN: Yes. We looked at
19	source of we asked them outright. We
20	looked at monies that came in. We even
21	questioned them on something that we
22	thought would qualify. And based on the
23	definition as stated in the settlement, it
24	did not apply.
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1	MR. HAVER: What evidence did you
2	review to examine whether P
3	MR. MORGAN: We as I said, I
4	I looked at responses to data requests.
5	And
6	MR. HAVER: Mr. Morgan, I'm asking
7	a different question. But I'm happy to be
8	quiet as you answer the question you think
9	I'm asking.
10	MR. MORGAN: I thought I was
11	answering the question.
12	MR. HAVER: I appreciate that.
13	What evidence did you review
14	showing the applications or attempts that
15	PWD made or is making to receive federal
16	stimulus funding?
17	MR. MORGAN: There have been some
18	monthly reports. And part of the
19	settlement, PWD made a good faith effort or
20	stated that they pursued federal stimulus
21	funds.
22	MR. HAVER: Again, referring back
23	to your testimony on page 22 on my page
24	22 you make a recommendation of a rate

1	increase. How much of a rate increase in
2	dollars are you recommending?
3	MR. BALLENGER: I would object to
4	
	the characterization. It's not Mr
5	HEARING OFFICER CHESTNUT: First
6	off, let me find that reference.
7	Mr. Ballenger, can you give me a
8	hard copy page reference?
9	MR. BALLENGER: Well, I think he's
10	referring to page 19, which would be pdf
11	page 21 of Mr. Morgan's testimony. Lines,
12	I'm guessing, 18 through 22 maybe. I don't
13	know.
14	HEARING OFFICER CHESTNUT: Okay.
15	Mr. Haver, you got to give me a
16	reference that I can look at.
17	MR. HAVER: I did.
18	HEARING OFFICER CHESTNUT: I'm
19	looking at scrolling number 19 out of 43 or
20	page 17.
21	MR. BALLENGER: Okay. It would be
22	21, the discussion under what do you
23	recommend for this proceeding starting on
24	pdf page 21.
1	

1	HEARING OFFICER CHESTNUT: Okay.
2	Got that. All right.
3	Now, Mr. Haver, you are saying that
4	Mr. Morgan is recommending what?
5	MR. HAVER: I'm asking him what he
6	is recommending? How much of a rate
7	increase in dollar amounts is he
8	recommending?
9	HEARING OFFICER CHESTNUT: Wait,
10	you got to clarify. He's not recommending.
11	Let me ask Mr. Morgan to make sure I
12	understand.
13	You're not recommending any rate
14	increase, are you?
15	MR. MORGAN: Not recommending a
16	rate increase.
17	MR. HAVER: Sir, forgive me if I'm
18	wrong. What you are saying then is that
19	you are recommending the entire amount that
20	was included in the Settlement Agreement be
21	erased, and that there been zero dollars
22	added to the current rates?
23	MR. MORGAN: No. What I'm saying
24	is that the rate increase that would come
Ī	

1	into effect in FY 2023 has been decided.
2	I'm not recommending that here.
3	What I am recommending is that
4	there are some dollars that should be
5	float back to customers. And that is what
6	I'm recommending. That these dollars,
7	\$6.6 million, should go back to customers.
8	MR. HAVER: And I'm asking you to
9	do a very simple calculation.
10	When you deduct what you believe is
11	appropriate from the amount in the
12	settlement, how much is left?
13	MR. BALLENGER: We can take notice
14	of mathematics. Mr. Morgan, if you care to
15	respond, you may. But this not within the
16	scope of your testimony.
17	HEARING OFFICER CHESTNUT:
18	Well, Mr. Haver, if he did the
19	math, you can ask him subject to check.
20	MR. MORGAN: I would say it would
21	be you know, I don't want to I can
22	provide that data, but I don't want to.
23	And the reason and it's not that I'm
24	being evasive, the schedule on which I

1	have or the schedule on which the FY26
2	
2	23 rate increase is provided has ten
3	months instead of twelve. And so, I don't
4	think that's an actual amount. So and I
5	don't want to misstate something here.
6	MR. HAVER: Let me back into it
7	then. In the Settlement Agreement, how
8	much was agreed upon for Fiscal Year 2023
9	as a rate increase?
10	MR. MORGAN: Just a second. 34.110
11	million.
12	MR. HAVER: 34.11 million?
13	MR. MORGAN: 11 yes.
14	MR. HAVER: Thank you. And how
15	much are you recommending that be reduced
16	by?
17	MR. MORGAN: 6.6 million.
18	MR. HAVER: So using a calculator,
19	would it be fair to say if we subtracted
20	34.11 million, we subtracted 6.6 million
21	from 31.1 million[sic], we would get
22	27,000,051?
23	MR. MORGAN: Yes.
24	MR. HAVER: Is that how much you

1	are recommending the rates go up?
2	MR. MORGAN: Again, the rates
3	increase has been decided. And what I am
4	recommending in this proceeding is the
5	amount that those rates should be reduced
6	by.
7	MR. HAVER: Again, sir, I am just
8	asking you to do very simple calculation,
9	which you just did with me. Said based on
10	your testimony, the agreement says the
11	Water Department, if there is no reduction,
12	gets 34.11 million. You are making a
13	recommendation that 6.6 million be reduced
14	from that amount.
15	I'm saying, that means that you are
16	recommending the rates be increased by
17	27.51 million; is that correct?
18	MR. MORGAN: Mathematically.
19	Mathematically that is what happens. But
20	if I were to be recommending an increase, I
21	would have to look at the cost of service
22	to come up with what I think it should be.
23	At this point, I have not done that because
24	it's beyond the scope of this proceeding.

1	So, I cannot accept the argument
2	that I'm recommending that increase.
3	MR. HAVER: If you add the rate
4	increase from last Fiscal Year, what
5	remains after your deduction? What would
6	the total rate increase be?
7	MR. MORGAN: When you say last
8	year?
9	MR. HAVER: Yes. Fiscal Year
10	22/23. The amount that was included in the
11	settlement.
12	MR. MORGAN: Be roughly 37.9
13	million.
14	MR. BALLENGER: And subject to
15	check, Mr. Morgan?
16	MR. MORGAN: Yes.
17	MR. BALLENGER: I'm not sure what
18	we're doing here. So there is a if it
19	helps, Mr. Haver, there is a schedule
20	attached to Mr. Morgan's testimony that has
21	all of the numbers that I think you are
22	talking about.
23	MR. HAVER: Mr. Morgan, for the
24	purposes of these limited hearings and not

1	looking at anything else, what you are
2	saying in your opinion and in your
3	testimony is that it is fair and just for
4	it to be in two years a \$37.9 million rate
5	increase; is that correct?
6	MR. BALLENGER: Object here.
7	Again, that's not what he's testifying.
8	HEARING OFFICER CHESTNUT: He's not
9	making any kind of recommendation
10	concerning any kind of rate increase. What
11	he's saying is that based on the terms of
12	the settlement, that there was sufficient
13	financial performance to justify a
14	reduction in the already improved increase.
15	And I think that's a different
16	issue.
17	MR. HAVER: That doesn't
18	HEARING OFFICER CHESTNUT: what
19	you agree to.
20	MR. HAVER: Doesn't that mean
21	HEARING OFFICER CHESTNUT: I think
22	you need to restate your question,
23	Mr. Haver.
24	MR. HAVER: No. I think I'm going

1	to leave it as it is with your comments.
2	HEARING OFFICER CHESTNUT: Okay.
3	MR. HAVER: I think that's
4	sufficient to make my point. I'm once
5	again glad that you are helping expose
6	what's going on.
7	Mr. Morgan, going back to last
8	year's proceedings, isn't it true that last
9	year you recommended zero increase in 2022
10	and in 2023? And I will read you your
11	testimony. This is from line page 7 and
12	8 in my pagination in Fiscal Year 2022 rate
13	case.
14	Quote: I recommend the Board not
15	approve the increase in rates as filed by
16	the Department. Instead, I am recommending
17	adjustments to the cost of service as
18	presented by the Department to reduce costs
19	that appear to be excessive and to reflect
20	certain costs at a reasonable level. As a
21	result of these adjustments, my analysis
22	show that the Department's request to
23	increase rates is unnecessary.
24	Do you remember testifying to that,

1	sir?
2	MR. MORGAN: I remember. I don't
3	have the testimony before me. I will
4	accept that subject to check.
5	MR. HAVER: And now you no longer
6	have that opinion; is that correct?
7	MR. MORGAN: Mr. Haver, it's not
8	it's not one has to be prudent when
9	making statements. If this were a full
10	rate case where I had the opportunity to
11	look at the cost elements given today's
12	environment, I'm likely to have a different
13	opinion.
14	The rates have been settled. In
15	this country we operate by the rule of law.
16	And following the law, I have to accept
17	what the Board has deemed to be the rates
18	going forward. Yes, as the consumer
19	advocate, I would like to see rates lower.
20	But at the same time, you're not even
21	giving me any credit for pursuing a rate
22	decreases. It's as if there is no effort.
23	And so, I disagree with the premise
24	of your question.
1	

1	MR. HAVER: I'm not giving you
2	credit or not credit. I'm just asking
3	questions. It will be up to somebody else
4	to decide whether you are doing a good job
5	or bad job. It's certainly not something I
6	have the privilege of deciding.
7	MR. MORGAN: Okay.
8	MR. HAVER: But again, is it the
9	settlement itself that precludes you from
10	looking at the rates and deciding whether a
11	rate reduction is warranted?
12	MR. MORGAN: It's a legal process.
13	MR. HAVER: Is it the settlement
14	that defines your inability to look at all
15	of the rates?
16	MR. MORGAN: No. It's the legal
17	process.
18	MR. HAVER: I don't understand what
19	you mean by the legal process.
20	MR. MORGAN: It's not the
21	settlement. The legal process less this
22	proceeding, so to speak. And so, I have to
23	abide by what has been decided and
24	authorized by the Board. It's not up to me

1	to go out and do what I want to do.
2	MR. HAVER: Were these legal
3	proceedings set up and limited by the
4	Settlement Agreement?
5	MR. MORGAN: Which legal
6	proceedings?
7	MR. HAVER: The ones we are at
8	today.
9	MR. MORGAN: Can you repeat the
10	question?
11	MR. HAVER: The proceedings which
12	are taking place today, were they created
13	and limited as a result of the Settlement
14	Agreement?
15	MR. MORGAN: It is consistent with
16	the Settlement Agreement.
17	MR. HAVER: In fact, sir, doesn't
18	the Settlement Agreement call for these
19	proceedings?
20	MR. MORGAN: You know, I again,
21	we are getting into an area where it could
22	be up to legal interpretation. What I can
23	say is that this is consistent with the
24	Settlement Agreement.

1	MR. HAVER: Going back to your
2	testimony in the prior rate case.
3	In the prior rate case, you
4	projected that the Philadelphia Water
5	Department would be able to access Rate
6	Stabilization Fund transfers and also be
7	able to get stimulus dollars. And again,
8	I'm quoting from your testimony which
9	you've already said you don't have in front
10	of you.
11	But on page 6 of my pagination,
12	your testimony says, quote, I then
13	summarize for the Board's consideration the
14	likely receipt of federal stimulus funds.
15	Do you recall saying something like
16	that, sir? I know you don't have access to
17	the exact language.
18	MR. MORGAN: Yes. I recall saying
19	something to that effect.
20	MR. HAVER: Are you disappointed
21	that the Water Department did not receive
22	within the parameters of the Settlement
23	Agreement a single penny of federal
24	stimulus dollars?

1	MR. MORGAN: At the time, I made
2	those statements, the government, there
3	were economic stimulus proposals.
4	Proposals for infrastructure. There were
5	several things. So to the extent that none
6	of those dollars have come to the Water
7	company or the Water Department, I should
8	say, yes, it's a little disappointing.
9	MR. HAVER: Is it true, sir, that
10	as a result of the settlement, the
11	Philadelphia Water Department did not
12	financially need any money from the
13	stimulus package?
14	MR. BALLENGER: Objection. I don't
15	think Mr. Morgan
16	HEARING OFFICER CHESTNUT: I don't
17	think there's any basis for that question.
18	I'm sorry. What did you say,
19	Mr. Ballenger?
20	MR. BALLENGER: I was saying, I
21	don't think Mr. Morgan can testify on
22	behalf of the Department as to what it
23	needed.
24	HEARING OFFICER CHESTNUT: Yeah.

1	
1	Mr. Haver, you know you can't we're not
2	going back and reexamining the settlement.
3	The settlement is done. The rate case is
4	over. So please, try to refocus your
5	questions.
6	MR. HAVER: I am focusing my
7	questions. Again, it's always amazing to
8	me. Prior to this, you said that looking
9	at the past record was fine when other
10	people questioned about former testimony
11	and former record, you said, quote, it's
12	appropriate to look at the past record.
13	Now when I raise those questions, you say
14	it's inappropriate.
15	I don't know what could be more
16	proof of prejudicial treatment then that.
17	It's all right for some people to look at
18	the prior record, but it's not all right
19	for me to look at the prior record?
20	HEARING OFFICER CHESTNUT:
21	Mr. Haver, I'm not going to get
22	into any argument with you because you,
23	obviously, don't listen. So
24	MR. HAVER: Once again

1	HEARING OFFICER CHESTNUT: I'm
2	going to save my breath and will extend
3	everybody the same effort here, and tell
4	you to ask Mr. Morgan questions related to
5	the testimony he presented in this case.
6	You can't ask him about what you know,
7	I'm going to back up.
8	Just ask your questions about his
9	statement in this case.
10	MR. HAVER: Once again, prejudicial
11	on your part. Other attorneys, other
12	parties, other participants were allowed to
13	ask about prior records. And you are
14	telling me that I cannot.
15	HEARING OFFICER CHESTNUT: Go
16	ahead. Ask your question.
17	MR. BALLENGER: You've asked a
18	number of questions you've asked a
19	number of questions about 2021 rate case.
20	And the one that you just asked wasn't
21	about the rate case settlement or
22	Mr. Morgan's
23	MR. HAVER: Excuse me. I object to
24	Mr. Ballenger testifying.

1	HEARING OFFICER CHESTNUT: He's not
2	testifying. Be quiet.
3	MR. HAVER: He is certainly
4	testifying.
5	HEARING OFFICER CHESTNUT:
6	Attorneys are allowed to speak.
7	MR. HAVER: Your Honor
8	HEARING OFFICER CHESTNUT: It's not
9	testimony.
10	MR. HAVER: Once again, Your Honor,
11	your prejudicial nature is being shown. He
12	is not allowed to testify.
13	HEARING OFFICER CHESTNUT: He is
14	not testifying.
15	MR. HAVER: He is not a witness.
16	He can
17	HEARING OFFICER CHESTNUT: Steven,
18	mute Mr. Haver for a few minutes.
19	MR. HAVER: You can rule me out of
20	order. He is not allowed to testify.
21	HEARING OFFICER CHESTNUT: Steven,
22	mute Mr. Haver so that Mr. Ballenger can
23	make a statement.
24	MR. BALLENGER: We have allowed

1	Mr. Haver to ask questions about
2	Mr. Morgan's testimony in the 2021 rate
3	case just as we you know, Mr. Dasent
4	did. So, we haven't raised an objection to
5	talking about his prior testimony.
6	The last question that he asked was
7	about whether the Water Department somehow
8	was relieved of any need or urgency to
9	pursue stimulus dollars. That is just not
10	something Mr. Morgan can testify about. He
11	can't testify on behalf of the Water
12	Department. So, that's why I objected to
13	that question.
14	If Mr. Haver has more questions
15	that are even close to the subject matter,
16	I will continue to allow Mr. Morgan to
17	answer if he has an answer.
18	HEARING OFFICER CHESTNUT: Okay.
19	Thank you.
20	Mr. Haver, you can continue.
21	Steven, I think you need to unmute
22	Mr. Haver.
23	MR. LIANG: I asked him to unmute.
24	It's

1	HEARING OFFICER CHESTNUT: Okay.
2	MR. HAVER: Mr. Morgan, under the
3	Settlement Agreement, would the Water
4	Department be able to pay its bills? Be
5	able to meet its debt service? Be able to
6	retain its credit worthiness according to
7	the rating agencies even if it did not get
8	a single stimulus dollar?
9	MR. MORGAN: I think it's stated in
10	the Settlement Agreement that the rates
11	that were determined from the settlement
12	was just unreasonable. And so if that is
13	the case, then the Water Department should
14	have been is able to meet his
15	obligations.
16	MR. HAVER: Without a stimulus
17	dollar?
18	MR. MORGAN: Yes. Because at that
19	time, the rates were not based on the
20	deduction from stimulus dollars.
21	MR. HAVER: That con thank you
22	very much, Mr. Morgan. That concludes my
23	testimony.
24	I would like to raise for the

1 record, once again, the prejudicial nature
of the Administrative Law Judge. And once
again, go on record as complaining about
4 her duplicitous behavior.
5 HEARING OFFICER CHESTNUT: You make
6 whatever statements you want, Mr. Haver.
7 MR. HAVER: I just did.
8 HEARING OFFICER CHESTNUT:
9 Mr. Ballenger, do you need a few
10 minutes?
MR. BALLENGER: Maybe if you can
just give me two minutes to call
Mr. Morgan. We will back at 1:05.
14 HEARING OFFICER CHESTNUT: How
about if we are back at 1:10.
MR. BALLENGER: 1:10 is fine.
17 Thank you.
18 (Off the record at 1:03 p.m.)
(Back on the record at 1:10 p.m.)
HEARING OFFICER CHESTNUT: Okay.
We ready to resume?
MR. BALLENGER: Yes, Your Honor.
MR. DASENT: Yes.

1	MR. BALLENGER: Mr. Morgan, you
2	were asked some questions about your
3	testimony in the 2021 rate case. And in
4	particular, I think Mr. Dasent asked you
5	some questions about LKM-1, the tables at
6	the end of your testimony.
7	Could you just describe your
8	methodology and explain what LKM-1 is?
9	MR. MORGAN: LKM-1 is a product of
10	a model that we used in determining our
11	recommendation. It should be noted that
12	that recommendation starts off with
13	projections by the Water Department using a
14	fairly complex model that we have been
15	given the opportunity to use.
16	We do our best to go through and
17	make adjustments as we see fit. And
18	ultimately, it's a product of using their
19	projections with our adjustment. And so,
20	what we end up with is a representation of
21	items we may not necessarily agree with.
22	But as a part of a streamline process, we
23	have used their projections with our
24	adjustments.

1	MR. BALLENGER: You talked about
2	the adjustments that go into your
3	methodology.
4	In a fully litigated case, a case
5	that doesn't settle, wouldn't it be correct
6	that the Board would decide whether or not
7	it wanted to approve each sort of
8	adjustment as opposed to approving your
9	overall recommendation?
10	MR. MORGAN: Yes. I've been in
11	this business for over 37 years, I think.
12	And there's never been an instance where I
13	provided testimony and have a commission
14	Board, an authoritative body accept
15	everything that I recommended.
16	It also bears mentioning that even
17	in the instance of a settlement, you have
18	to weigh the possibility that if we decide
19	that we will dig in our heels and not
20	accept a compromise, that the Board or the
21	Commission might see otherwise. And so, we
22	have as I said earlier, we have to be
23	prudent and make decisions based on what we
24	believe to a good decision for rate payers.

1	In this instance, the result of our
2	compromise have saved rate payers over or
3	roughly \$85 million. And I think that's
4	a something to mention because it's not
5	like we just accepted everything that the
6	Water Department has presented.
7	MR. BALLENGER: Thank you,
8	Mr. Morgan. That's all I have on redirect.
9	HEARING OFFICER CHESTNUT: Okay.
10	Mr. Dasent, do you have questions
11	based on the redirect?
12	MR. DASENT: Nothing further.
13	Thank you.
14	HEARING OFFICER CHESTNUT:
15	Mr. Haver, do you have questions
16	based on the redirect?
17	MR. HAVER: Mr. Morgan, in your
18	experience that you just drew upon in your
19	testimony just now, do utility companies
20	often ask for more than what they expect?
21	MR. MORGAN: I my time with the
22	utility was very short. It was three
23	years. And what I can say is that they put
24	together a package that they believe they

1	can justify. I don't think there's the
2	idea that, let's ask for me just because we
3	
	think we'll end up somewhere less.
4	MR. HAVER: To the best of your
5	knowledge, has there ever been a rate case
6	you worked on where the utility got every
7	single cent of the rate increase it sought?
8	MR. MORGAN: No.
9	MR. HAVER: Would it be normal then
10	for a utility to receive less than what it
11	asked for?
12	MR. MORGAN: I think I would say
13	yes.
14	MR. HAVER: And would you suggest
15	that the people who run utilities are
16	unaware of that fact?
17	MR. MORGAN: I I you know,
18	that's generalization that I wouldn't want
19	to make.
20	MR. HAVER: Okay. Do you believe
21	that the majority of people who run
22	utilities, whether the CEO, COO or CFO, are
23	intelligent, smart and well-informed?
24	MR. BALLENGER: Do you feel

1	comfortable with that, Mr. Morgan?
2	MR. MORGAN: For the most part.
3	MR. HAVER: And do you think they
4	would be aware of the history of rate
5	requests versus what was gift granted?
6	MR. MORGAN: If you are a utility
7	
	executive and you are not aware of what has
8	been granted and what has been requested,
9	then there is an issue. So, the answer to
10	your question is yes.
11	MR. HAVER: Thank you.
12	MR. BALLENGER: Is that it,
13	Mr. Haver?
14	HEARING OFFICER CHESTNUT:
15	Mr. Haver, you are muted.
16	MR. HAVER: Sorry.
17	Your Honor, yes, I'm done. Thank
18	you very much, Mr. Morgan.
19	HEARING OFFICER CHESTNUT: Okay.
20	Then I think that concludes this. Thank
21	you very much, Mr. Morgan, you are excused.
22	I think we have come to the end of
23	the witness presentation for today. Let's
24	talk about schedule and the record.

1	According to the schedule, have you
2	had settlement discussions?
3	MR. DASENT: We have talked on and
4	off about the possibility of settlement.
5	We sort of got distracted with TAP-R
6	truthfully, and not much more. But you
7	know if I will talk to Rob after.
8	HEARING OFFICER CHESTNUT: I would
9	urge you to talk.
10	MR. DASENT: And I have transcript
11	responses as next because we have a couple
12	of those for today. Expect those by
13	Monday, Your Honor.
14	HEARING OFFICER CHESTNUT: Okay.
15	MR. BALLENGER: I think there
16	were I only heard one, Andre, but I am
17	just confirming. I don't think there were
18	any for Mr. Morgan.
19	MR. DASENT: No. We wrote down
20	two. One had to do for Mr. Haver. And one
21	had to do with household subject to
22	shutoff.
23	MR. BALLENGER: Oh, yup. It's
24	something else Mr. Jagt was going to get

1	numbers on.
2	MR. DASENT: Yeah.
3	HEARING OFFICER CHESTNUT: Okay.
4	MR. DASENT: And then briefs by May
5	10. I will reach out to Rob before then.
6	HEARING OFFICER CHESTNUT: I really
7	do urge you to settle. I know that there
8	is some strong feelings, especially on the
9	utilities part. I there is a lot of
10	reasons why you couldn't come to some
11	agreements on this.
12	I will try and comply with this
13	target date May 27. Can't guarantee it
14	obviously. It depends on your briefing. I
15	will give you a heads up again like I did
16	before, which is I'm not going to spend a
17	lot of time discussing and analyzing this.
18	I think it's pretty straightforward.
19	Should there be an adjustment, you know,
20	what is it based on.
21	And what I'm looking at is you
22	know, I'm not bound by your stipulation,
23	but I think maybe it would help if I gave
24	you a heads up.

1	One of the factors I am going to
2	look at is the projection that the Water
3	Department made in the rate case as to what
4	the Rate Stabilization Fund would be. And
5	compare that I'm not saying that that's
6	definitely going to be my minimum
7	threshold. But that certainly is one that
8	I'm looking at.
9	So that's a just a heads up for
10	you. I'm going to look to see if there
11	could be any kind of rate reduction and the
12	impact on utility if that happens. This
13	could only be a rate decrease for the
14	customers. That is the way that I am
15	approaching it.
16	Now in terms of the record, the
17	regs testify pretty much with the record is
18	comprised of. Let me find my regs here.
19	And that's going to be the advance and
20	formal notices. I'm going to need an
21	exhibit, a numbered exhibit from you,
22	Mr. Dasent, about the advertising of the
23	notifications.
24	MR. DASENT: Yes. We have started

1	it with the outreach exhibit, PWD Hearing
2	Exhibit 1. But we need to supplement that
3	with the state reg proofs of publication.
4	HEARING OFFICER CHESTNUT: Yes.
5	Obviously, written testimony and exhibits,
6	the record of the hearings, my report and
7	then it says and briefs, exceptions,
8	written statements and argument, which I
9	guess is testimony. What I don't see
10	here oh, I take that back. I'm not
11	clear about responses to discovery.
12	Because that's not listed in the regs as a
13	separate item. But it is listed under
14	three, which is information accepted into
15	the record by the Board and the Hearing
16	Officer.
17	Now I know that in general cases,
18	all discovery responses are automatically
19	part of the record. But I think this is
20	maybe you can tell me.
21	Does it have to be specifically
22	identified in these types of limited cases?
23	MR. DASENT: That hasn't been our
24	practice. We've let the posted information
I	

1 be include	ed in the record for your
2 considerat	tion.
3 HI	EARING OFFICER CHESTNUT: Okay.
$\frac{4}{}$ Then all α	discovery responses are included
5 in the red	cord, whether or not they've been
6 included :	in the hearing exhibits.
7 MI	R. DASENT: Yeah. And we'd have
8 to note ge	enerally objections, but not in
⁹ this case	•
10 MI	R. BALLENGER: You anticipated
11 what I was	s going to say, Andre. Yes,
12 that's exa	actly right.
13 MI	R. HAVER: I want to add to the
14 record, my	y objection to the Hearing
15 Examiner 1	referring to this case as a rate
16 reduction	. Consumers will end up paying
17 more. Tha	at is not a reduction. They will
18 pay more t	than what they are paying today
19 even if th	he Public Advocate's numbers are
20 accepted.	To call it a rate reduction is
21 to enter 1	1984.
22 HI	EARING OFFICER CHESTNUT: Whatever
23 M	r. Haver, you know, you're wrong,
24 but I'm no	ot going to explain it again. You

1	can characterize it as you wish, but it's
2	clear what the process is here. And the
3	impact
4	MR. HAVER: I just want the
5	record
6	HEARING OFFICER CHESTNUT: I'm not
7	going to get into an argument with you.
8	MR. HAVER: I'm not arguing. I
9	just want the record to show that I am
10	objecting to the way that you are framing
11	the issue. It is prejudicial for the
12	public for you to refer as paying more as a
13	rate reduction.
14	It is misleading. It is
15	disingenuous. And it creates a tremendous
16	disincentive for the public to participate.
17	HEARING OFFICER CHESTNUT: Okay.
18	So let's I think we are finished talking
19	about the record.
20	You do you want your hearing
21	exhibits specifically identified as part of
22	the record?
23	MR. DASENT: We request that, Your
24	Honor.

1	MR. BALLENGER: Please.
2	HEARING OFFICER CHESTNUT: Okay.
3	Then I guess, the only thing outstanding is
4	the exhibit from you then, Mr. Dasent,
5	right?
6	MR. DASENT: Yes.
7	HEARING OFFICER CHESTNUT: Are
8	there any other procedural matters then
9	that need to be addressed?
10	Mr. Ballenger?
11	MR. BALLENGER: Just as a heads up,
12	I was debating putting in an exhibit about
13	our outreach. But I think what I would
14	like to do is just include that as an
15	appendix to the brief.
16	HEARING OFFICER CHESTNUT: I think
17	it should be in fact, I think it should
18	be required that you put on the record
19	somewhere your outreach.
20	MR. BALLENGER: Happy to do that.
21	HEARING OFFICER CHESTNUT: You want
22	to make it an exhibit, attach it to your
23	brief. As long as it's there.
24	MR. BALLENGER: Why don't I put

1	together a post-hearing exhibit and submit
2	it to Your Honor.
3	HEARING OFFICER CHESTNUT: Okay.
4	That's fine. Anything further from you,
5	Mr. Dasent?
6	MR. DASENT: Nothing further.
7	Thank you.
8	HEARING OFFICER CHESTNUT:
9	Mr. Haver?
10	MR. HAVER: I made what objections
11	on the record that I wanted. Thank you.
12	HEARING OFFICER CHESTNUT: Okay.
13	(At this time, brief discussion off
14	the record with the stenographer.)
15	HEARING OFFICER CHESTNUT: All
16	right. If nothing further then, thank you
17	all very much. This hearing is adjourned.
18	(At this time, the Hearing
19	adjourned at 1:30 p.m.)
20	
21	
22	
23	
24	
1	

Rate Hearing Board 4/28/2022

CERTIFICATION

I, hereby certify that the proceedings and evidence noted are contained fully and accurately in the stenographic notes taken by me in the foregoing matter, and that this is a correct transcript of the same.

ANGELA M. KING, RPR, Court Reporter, Notary Public

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