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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HEARING OFFICER CHESTNUT: Good morning, everybody. I am Marlane R. Chestnut, the Hearing Officer assigned to this proceeding. As you know, it is being recorded. And there is, also, a court reporter who is -- will produce a stenographic transcript of this hearing today. So please, speak slowly and clearly.

We are starting early because we have a lot to cover, but I don't want us to kill ourselves. If you need a break, indicate it. If you want a drink or have a snack while this is going on, that's fine, too. But I do want us to focus on the issue here so that we can accomplish this in a reasonable amount of time.

Are there any preliminary matters before we get to the cross-examination of the various witnesses, Mr. Dasent?

MR. DASENT: I don't believe so Judge Chestnut. We did circulate at your
direction the Revised Rebuttal Statement One, including the errata so there is a clean copy for the record. And we authenticate -- we already agreed to authenticate testimony by stipulation.

HEARING OFFICER CHESTNUT: Okay. I guess at the end, we can talk about what's going to be in the record and what's not. I did notice that you submitted several hearing exhibits. One of which is the Notice of Publication --

MR. DASENT: Yes.

HEARING OFFICER CHESTNUT: -- and Notification? I guess the other two were more directly related to this hearing.

And, Mr. Ballenger, I did get your hearing exhibit.

MR. BALLenger: Oh, yes. Sent that yesterday afternoon around 1:30 I think. Hopefully, it's a shorter exhibit than last time.

So, I just wanted to -- I agree, we are stipulating to the authenticity of testimony and that it should be included on
the record. I just wanted to -- because it's in PW's hearing exhibit, acknowledge that there is one typographical error in Mr. Morgan's testimony. And my recollection is that we answered that in the Discovery Request responses.

Just looking.

HEARING OFFICER CHESTNUT: Can you tell me that -- cite to his testimony for that?

MR. BALLenger: Yes. On page 4, lines 21 to 23 of his testimony, and you will see this in the response to PWD's Set 1, No. 29, there was just an error in terms of the dollar amounts authorized in the rate determination in 2021 that was in his testimony. We corrected that in the Discovery Response.

HEARING OFFICER CHESTNUT: And what's the correction?

MR. BALLenger: Instead of 57.521 million. It should read 57.422 million.

HEARING OFFICER CHESTNUT: Okay.

Any other --
MR. BALLENGER: That's the substance of his testimony.

Sorry, no. It doesn't affect the substance of Mr. Morgan's testimony. But I just wanted to acknowledge that for the record.

HEARING OFFICER CHESTNUT: Okay.

Does anybody else have anything of a preliminary nature before we actually get started with the cross-examination and presentation of witnesses?

No? Okay.

I guess then, we will start with you, Mr. Dasent, with your first panel.

MR. DASENT: Yes. The order of witnessed, we were going to call the financial panel first, which would be Melissa LaBuda and Katherine Clupper.

And we don't swear our witnesses. So, the witnesses are tendered for cross-examination.

HEARING OFFICER CHESTNUT: Okay. I guess ask if they have any additions, corrections or changes to their testimony?
MR. DASENT: The errata addressed that.

HEARING OFFICER CHESTNUT: Besides what you have already provided. Okay.

Mr. Ballenger, do you want to?


I would like to start at page 5 of the rebuttal. And in the Rebuttal Statement, you described the rate increases that were approved in Fiscal Years 2019, 2020 and 2022. And you state that those increases were plainly insufficient. And that's the language I think in your rebuttal testimony. It says "plainly insufficient." And just to be clear, just want to ask a couple of questions.

First, is it correct that the Water Department didn't appeal either of those two rate determinations, did it?

MS. LaBUDA: That's correct.

MR. BALLenger: Okay. And the Water Department has not suffered any negative ratings action?
MS. LaBUDA: To date, that’s correct.

MR. BALLenger: To date. Okay.

Your rebuttal also talks a little bit about rate relief and the importance of rate relief.

Can you define rate relief for me?

MS. LaBUDA: Sure.

Sufficient revenues that provide the department the capacity to continue serving Philadelphia with clean water that meets all regulatory standards.

MR. BALLenger: So when you describe the rate increase of roughly 1.33 percent in Fiscal 2019 and 1.2 percent in Fiscal 2020, is that all of the rate relief that PWD received?

MS. LaBUDA: That is the reve -- that was the approved rate relief at that time.

MR. BALLenger: Isn’t it true that the Board denied the City’s proposal for the Fire Department to stop paying approximately $8 million per year for water
in Fiscal 19 and Fiscal 2020?

MS. LaBUDA: Subject to check, I believe that's correct.

MR. BALLENGER: So, that's approximately $16 million in revenues that are not reflected in the 1.33 or the 1.2 percent increases that we just discussed; is that right?

MS. LaBUDA: They are not calculated in those percents. That's correct.

MR. BALLENGER: Right. Those are -- those under existing rates.

MS. LaBUDA: Correct.

MR. BALLENGER: So, that would constitute a portion of the rate relief that the Department received, wouldn't it?

MS. LaBUDA: I'm sorry. Can you ask the question again, please?

MR. BALLENGER: Sure.

Continuing to receive those revenues and the Board's denial of the City's proposal to stop contributing those revenues, wouldn't that be a portion of the
rate relief that the Department received over those two years?

MS. LaBUDA: No. Because they are already -- they're revenues that we were required to recover regardless of who was paying for them. So, wouldn't it be double counting if you added them to the 1.2 percent or whatever the numbers were that you were stating? I apologize. I don't have the page in front of me.

They were part of base rates. They were being paid either by the City or being presented to be paid by customers. It's the same dollars.

MR. BALLenger: Right. And they are not reflected in the 1.2 or the 1.3 percent.

MS. LaBUDA: Because that would be double counting. They weren't new revenues during that proceeding.

MR. BALLenger: But they were revenues that the Department anticipated it would not receive. And so, requested greater rate increases because of that
expectation.

MS. LaBUDA: They are not additional revenues. It was shifting the dollars of who was covering the cost.

MR. BALLINGER: Correct. So, customers didn't have to pay that $16 million in additional rates and charges.

MS. LaBUDA: The General Fund.

MR. BALLINGER: The General Fund did?

MS. LaBUDA: Yeah.

MR. BALLINGER: Correct. So, that maintained those revenues that were projected to be lost, correct?

MS. LaBUDA: They weren't projected to be lost. They were projected to be shifted from one entity paying it to another.

MR. BALLINGER: At the end of the day, the Water Department received those revenues, right?

MS. LaBUDA: The Department did collect those revenues. That's correct.
MR. BALLenger: Isn't it true that if the Board accepts Mr. Morgan's recommendation, that the Water Department's still going to receive an increase in rates in Fiscal 2023?

MS. LaBUDA: Can you remind me of Mr. Morgan's recommendation, please?

MR. BALLenger: Yes. Mr. Morgan's recommendation was to adjust the 34-and-change million dollar rate increase in Fiscal 2023 by $6.6 million rounded.

MS. LaBUDA: Thank you.

Yes. We would still receive a rate increase.

MR. BALLenger: And that rate increase would constitute rate relief?

MS. LaBUDA: That would constitute a partial rate relief.

MR. BALLenger: On page 8 of your rebuttal, it states that -- here is the quote: PWD is barely holding onto it's A rating, end quote.

And I see that both the Department and the Public Advocate put in some of the
information. The Department put the entire reports from the rating agencies. The Public Advocate just put the first page of each of the reports of the rating agencies into the hearing exhibit.

So if you look at the Public Advocate's Hearing Exhibit page 1, 2 and 3, you will see the first page of each of the credit rating agencies' reports, which were attached to your direct testimony. And I just want to confirm that in each of those reports, it reflects an A rating with a stable outlook.

Isn't that correct?

MS. LaBUDA: That's correct.

MR. BALLINGER: Okay. And on page 9 of your rebuttal, you state -- here is the quote: Diminishing the targeted RSF, or Rate Stabilization Fund Balance, from the 135 million-dollar level indicates a downward trajectory which itself could result in a negative rating action.

And I just wanted to confirm that the Board's rate determination anticipated
that at the end of Fiscal 2022, the Rate Stabilization Fund balance would be just under $104 million.

Isn't that correct?

MS. LaBUDA: I can't speak on the Board's intent. I would like to note that the reports are incomplete.

MR. BALLenger: Correct. I just put the first pages.

So if you look at page 13 of the hearing exhibit, it's the second page of Table C1 that was included in the Board's 2021 rate determination. And line 41, the bottom of the table reports the end of year balance and the Rate Stabilization Fund.

Do you see that?

MS. LaBUDA: Yes.

MR. BALLenger: And the amount reported there for Fiscal 2022 is just under $104 million.

MS. LaBUDA: The Department didn't agree in the settlement to these amounts or any other performance measurement.

MR. BALLenger: We are going to get
to that with the next panel. I think -- I don't think that was part of your -- your rebuttal statement, correct?

MS. LaBUDA: Correct. Thank you.

MR. BALLENGER: Okay. So anyway, the numbers are -- are included in the rate determination. And reflect $104 million rounded in the Rate Stabilization Fund at the end of Fiscal 2022, correct?

MS. LaBUDA: I can affirm that that is the number stated on page -- hearing exhibit 13, correct.

MR. BALLENGER: And also, for Fiscal 2023, the end-of-year balance shown on this exhibit is just over $92 million, correct?

MS. LaBUDA: Again, we didn't agree to the balances in the settlement I note. And that is the number listed on this page. Correct.

MR. BALLENGER: And just to confirm again, there is nothing in the rate determination from Fiscal 2021 that projects $135 million Rate Stabilization
Fund balance, correct?

MS. LaBUDA: Subject to check, that is correct.

MR. BALLenger: Okay.

Moving on to page 10 of your rebuttal, discuss the Rate Board's ordinance. And a provision in the ordinance that authorizes a reasonable sum to cover unforeseeable or unusual expenses. I think that's the language of the ordinance. You, also, indicate that the Department utilizes the Rate Stabilization Fund to cover unforeseeable or unusual expenses, correct?

MS. LaBUDA: That's correct.

MR. BALLenger: Okay. So in practical terms in operation, the Rate Stabilization Fund functions as that sum from which you cover reasonable expenses -- I'm sorry -- unanticipated expenses?

MS. LaBUDA: That's correct.

MR. BALLenger: Okay. And in the settlement in the 2021 rate case, the Water Department and the Public Advocate agreed
that the rates and charges provided a reasonable basis for recovery of revenues sufficient to meet the Department's obligations.

Isn't that correct?

MS. LaBUDA: Settlement did use the word "reasonable." That is correct, yes.

MR. BALLENERGER: And it does also say -- and I think if you look at page 7 of the hearing exhibit under Paragraph B, it also says that the rates and charges comply with the ordinance governing the proceeding and provide a reasonable basis for recovery of revenues sufficient to meet the Department's obligations, correct?

MS. LaBUDA: Correct.

MR. BALLENERGER: That was the agreement at the time. Okay.

On page 11 of your testimony, you expressed some disagreement with Mr. Morgan regarding the 13 -- roughly 13 million-dollar transfer to the Construction Fund.

Do you agree that that transfer
contributed to the Water Department exceeding its senior debt service coverage target 1.2?

MS. LaBUDA: That's correct.

MR. BALLenger: Okay. And if that transfer hadn't taken place, presumably the Water Department would have had more reserves.

Is that also correct?

MS. LaBUDA: More in reserves, less in capital. Correct.

MR. BALLenger: Okay. And you, also state, that the transfer were to reduce the debt burden on rate payers. And I just want to check, is it your testimony that -- that that transfer would work in the future to reduce the debt service expense? Or is it your testimony that it actually would reduce debt service expense in Fiscal 2021, the year for transfer?

MS. LaBUDA: Future. Because in Fiscal Year 21, the transfer is made at year end. Which is, typically, penned by the City somewhere in October which is
after June 30. So clearly, it will reduce debt service in fiscal -- further fiscal years.

MR. BALLENGER: That was my -- that was my assumption. Thank you.

Your rebuttal criticizes Mr. Morgan for using the projected Fiscal 2021 closing balance in the Rate Stabilization Fund as a starting point. And that's the $104 million that we discussed earlier. And you called that unreasonable on page 13.

Turn to page 9 of the hearing exhibit. This is part of the stipulation in this case. And looking at paragraph 2, wouldn't you agree that the stipulation specifically acknowledges that the starting point for determining the performance adjustment is the end-of-year balance in the Fiscal Year -- I'm sorry, the end of Fiscal Year 2021 balance in the Rate Stabilization Fund?

MS. LaBUDA: Reading the text.

MR. BALLENGER: Yes, okay.

MR. DASENT: Are you referring to
paragraph two?

MR. BALLenger: Yes.

MS. LaBUDA: I -- I concur that that paragraph two on Hearing Exhibit 9 says that's the starting point.

MR. BALLenger: Okay. So the actual --

MS. LaBUDA: Actual.

MR. BALLenger: Yes. The actual ending balance, then, is reasonable for use in this case, correct?

MS. LaBUDA: I do not agree that it is reasonable.

MR. BALLenger: Using the actual year-end balance is not reasonable?

MS. LaBUDA: That is correct. I don't believe it's reasonable at this point in time to draw our reserves down any further.

MR. BALLenger: So, I'm surprised by that since that's what we agreed to in the stipulation. So, let's move along.

MR. DASENT: Let me insert an objection or, at least, an observation here
that the starting point is different than sort of the ending point for our proposal. So, I'm not sure that your question is absolutely clear.

HEARING OFFICER CHESTNUT: I think his question was clear actually. I'm a little surprised by the answer. But the settlement says what the settlement says. Whether you agree that adjustment should be made to the approved rate increase or not, it's a different issue.

MR. BALLENGER: So --

HEARING OFFICER CHESTNUT: I thought there was a meeting of the minds on the settlement in terms of where you start your analysis. And that is the actual ending balance at the end of Fiscal Year 2022 -- I'm sorry, 2021.

MR. BALLENGER: Yeah. I only have a few more questions for this panel. I said I would keep it to moderate. So, I would like to move on to page 21 of the rebuttal testimony.

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. BALLINGER: 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. BALLINGER: Okay. And would
you agree that that's the difference
between the 124 million and 114 million
that we've been talking about?

MS. LaBUDA: Subject to check.

MR. BALLANGER: And isn't it also true that Mr. Morgan's testimony proposes sharing more than half of that 10.7 million rounding to 6.6 million total?

MS. LaBUDA: Subject to check.

MR. BALLANGER: And his testimony doesn't actually propose any transfer of funds from the Residual Fund, does it?

MS. LaBUDA: I'd have -- unfortunately, I would have to go back to the numbers.

MR. BALLANGER: Okay. Just if we could just turn to pages 4 to -- starting on page 4 of the Hearing Exhibit, I have an exempt from the Joint Petition for Settlement from the last case. And starting on page 6 is the reconciliation framework for financial performance.

In your Rebuttal Statement, it -- you conclude that Mr. Morgan's adjustment runs counter to the settlement. Stating that the settlement terms -- and here is
the quote: Contemplate that a percentage sharing, closed quote, would be determined. And I would just like you to review pages 6 and 7 and confirm for me that the word "percent" or "percentage" does not appear anywhere in the settlement?

MS. LaBUDA: May I ask you to clarify the hearing exhibit page, please?

MR. BALLenger: Yes. Starting at the bottom of page 6 is the reconciliation framework --

MS. LaBUDA: Thank you.


MS. LaBUDA: I concur.

MR. BALLenger: Okay. Moving on to page 26 of your Rebuttal Statement, you -- you appear to criticize Mr. Morgan's testimony for not making adjustments to Fiscal 2023 projections to keep the Rate Stabilization Fund above $120 million.

And I think, again, in our stipulation, we agreed that the adjustments
were solely to the 34.110 million-dollar increase. Is that your understanding of the stipulation?

MS. LaBUDA: I have to review the stipulation. I don't want to misrepresent the facts in the record.

MR. BALLenger: So Paragraph 6 of the Stipulation says: Assuming there is an amount to be shared, the parties can submit their respective position as to how much -- how such amounts should be shared to reduce the Fiscal 2023 incremental revenues $34 million, right?

MS. LaBUDA: I agree. Thank you.

MR. BALLenger: So if Mr -- if Mr. Morgan were to project higher revenues under existing rates, for example, in order to affect the balance in the Rate Stabilization Fund, you would agree that that would not be the basis for a downward adjustment to the -- the 34 million-dollar rate increase as reflected in the settlement and the stipulation, wouldn't you?
MS. LaBUDA: Would you ask the question one more time, please?

MR. BALLenger: Yeah. Let's say that Mr. Morgan had, you know, done a full cost of service study and projected additional revenues and lower expenses in Fiscal 2023. You would agree with me that none of those projections would result in an adjustment in this special rate proceeding, wouldn't you?

MS. LaBUDA: I agree.

MR. BALLenger: Okay. And on page 26, you also -- you comment on the Fiscal 2023 year-end balance shown in Mr. Morgan's tables, which is over $96 million. And I just want to confirm that that's higher than the amount shown in the rate determination for Fiscal 2023.

Isn't that correct?

MS. LaBUDA: That is incrementally more than the page we cited earlier, yes.

MR. BALLenger: Thank you.

I promised I would keep it pretty short today. So, I'm actually done with
HEARING OFFICER CHESTNUT: Okay.
That is short. Okay.
Mr. Bachri, you indicated you have no questions. Is that still the case?
(No response.)
I guess it is then.
Mr. Haver, do you have any questions for this witness?
MR. HAVER: Yes, I do.
HEARING OFFICER CHESTNUT: Okay.
MR. HAVER: Good morning.
In response to a -- question two of your direct testimony, you state that you also lead the Department's efforts related to the Philadelphia Water Department's Financial Plan and Cost of Service Study for general rate proceedings; is that correct?
MS. LaBUDA: That is correct.
MR. HAVER: Are you responsible for the creation of the exhibit and testimony of PWD for these proceedings?
MS. LaBUDA: I'm responsible for my
testimony, my exhibits.

MR. HAVER: Who is responsible for overseeing the testimony of the other witnesses?

MS. LaBUDA: Mr. Haver, I'm not sure this is directly in my testimony, but I'm more than happy to answer. So, each of the respective witnesses prepares their testimony and exhibits.

MR. HAVER: And who oversees the entire proceedings if not you?

MS. LaBUDA: Well, the Department does oversee the proceedings.

MR. HAVER: And are you the one responsible?

MS. LaBUDA: I do not prepare the exhibits and testimony for our experts.

MR. HAVER: I understand that. But are you responsible for their expert testimony?

MS. LaBUDA: Again, this is outside of the bands of my testimony.

MR. HAVER: Well, again, you say in response to Question 2, that you are
responsible. You lead the Department's efforts related to PWD's Financial Plan and Cost of Service Study for General Rate Proceedings. So, this is within your testimony.

I'm asking you where your responsibility ends?

MS. LaBUDA: I do not prepare expert testimony for the City's consultants or expert witnesses. I do review it and participate and lead the Department's efforts.

MR. HAVER: And if you believe the testimony is incorrect, what do you do?

MR. DASENT: Objection. Objection. Please, note our objection. I think this reaches beyond the scope of her direct testimony at this point. And we would ask that -- you know, we direct it to some substantive area of the testimony that deals with the two adjustments in this proceeding.

We think this is beyond the scope of her testimony at this point.
HEARING OFFICER CHESTNUT: Yes. I don't understand the point of it. The Department is a participant. And how they allocate who is responsible for overseeing what piece of testimony, I'm not sure how that -- that gets anywhere.

MR. HAVER: There are a number of statements on the record in the exhibits that I want to question. And I want to make sure I'm asking the questions of the correct witness.

HEARING OFFICER CHESTNUT: Well, ask her your question. If she can't answer it, she will refer it to a witness who is better able to answer it.

MR. HAVER: Are you ruling my question out of order?

HEARING OFFICER CHESTNUT: I'm sorry. What was that?

MR. HAVER: I've asked what she would do -- forgive me, Ms. LaBuda, am I pronouncing it correctly?

MS. LaBUDA: Yes, thank you, Mr. Haver.
MR. HAVER: I am asking what Ms. LaBuda would do when she examines the expert testimony if she believed there was a mistake.

HEARING OFFICER CHESTNUT: I think we are getting into prior preparation material here, aren't we?

MR. HAVER: Mr. Dasent objected to my question. You asked why I was asking. I explained it, but I'm still waiting for an answer.

HEARING OFFICER CHESTNUT: And I'm waiting for you to move on. I've already explained that if you ask a question that's outside the scope of her testimony, she can refer you to a witness better able to answer it. That's fine.

MR. HAVER: Right. But you didn't -- she hasn't said what --

HEARING OFFICER CHESTNUT: You haven't asked her a substantive -- wait, Mr. Haver, ask her a substantive question.

MR. HAVER: I believe that is a substantive question.
HEARING OFFICER CHESTNUT: That is not a substantive question. You are asking about their internal process for reviewing and presenting their case.

MR. HAVER: Thank you.

Ms. LaBuda, did you create or have created PWD Exhibit 1A?

MS. LABUDA: I have to -- Mr. Haver, you have to forgive me. I have to look at --

MR. HAVER: I can read you what I'm interested in. It's 1.1 --

HEARING OFFICER CHESTNUT: Hold on a second. Hold on a second. Let me pull that up, please. 1A is -- you mean the hearing exhibit?

MR. HAVER: Yes.

HEARING OFFICER CHESTNUT: Okay.

MR. HAVER: I'm interesting in 1.1: Conformity with Existing Law.

MS. LABUDA: Mr. Morgan, may I -- Mr. Haver, may I just please confirm, you are talking about the City's special hearing exhibit, correct?
MR. HAVER: Yes.

MS. LABUDA: 1A?

MR. HAVER: Yes.

MS. LABUDA: Thank you. Just opened the wrong document. You have to forgive me.

HEARING OFFICER CHESTNUT: I am not sure I'm clear. Are you talking about the filing Exhibit 1A?

MR. HAVER: Yes.

HEARING OFFICER CHESTNUT: That would be the proposed charges and rates?

MR. HAVER: Yes. It's under 1.1 Conformity with Existing Law.

HEARING OFFICER CHESTNUT: So, you are talking about the tariffs.

MR. HAVER: I am talking about PWD Exhibit 1A, Fiscal Year 2023 proposed rates and charges (clean clothes).

HEARING OFFICER CHESTNUT: Okay. You are talking about the tariff then that was attached to the filing. Okay. I just want to be sure I'm looking at the right exhibit.
MR. HAVER:  Section 1.1.

MS. LaBUDA:  Mr. Haver, I have -- I apologize for the delay. You have to forgive my clunkiness, but I do have open PWD Exhibit 1A, Fiscal Year 2023 proposed rate and charges, the clean line version.

MR. HAVER:  I'm asking whether you reviewed this, saw this and approved this prior to it being filed?

MS. LaBUDA:  Yes. I did review it prior to it being filed. The rates and charges is approved by the Board, though. But I did review it before it was filed. Thank you.

MR. HAVER:  Can you confirm that it says nothing contained in here shall be deemed to overrule or annul any existing provisions of the Home Rule Charter or The Philadelphia Code?  Section 1.1.

MS. LaBUDA:  Subject to check, I'm not aware of a statement in here that says the Board's rates and charges overrules if that's a question of the Home Rule Charter.

MR. HAVER:  I'm just asking if you
agree that's what it says?

MS. LaBUDA: Could you point to me exactly, Mr. Haver, where it's making that statement? I'm on page 1, Definitions. I'm looking at, E, Home Rule Charter.

MR. HAVER: It's 1.1, Conformity With Existing Law.

MR. DASENT: Is that lower on the same page, Mr. Haver?

MR. HAVER: I don't know that my --

HEARING OFFICER CHESTNUT: It's after the Definitions.

MS. LaBUDA: Thank you. Again, thank you, Mr. Haver, for your patience. I do see 1.1. It's page 3 of 37 for anyone who is using the pdf.

And nothing contained herein shall be deemed to overrule any existing provisions of the Home Rule Charter or the Philadelphia Code. It does state that.

Thank you, again, for your patience.

MR. HAVER: Thank you.

Moving on, Ms. Labuda, did you
participate in the negotiations which
created the settlement agreement which was
approved by the Philadelphia Water Rate
Board which authorized PWD to raise rates
in Fiscal Year 2022?

MS. LaBUDA: With my counsel I
participated, Mr. Haver.

MR. HAVER: Yes. Are you familiar
with the clause entitled Maximum
Adjustment?

HEARING OFFICER CHESTNUT: I'm
sorry. Clause where?

MR. HAVER: In the Settlement
Agreement.

HEARING OFFICER CHESTNUT: Hold on.
Okay.

MS. LaBUDA: I believe I have the
Settlement Agreement, Mr. Haver. Would you
mind pointing me to the page or the
paragraph that you are referring to,
please?

MR. HAVER: I'll be honest, I don't
know if my computer paginates in the same
way that yours does. But I have it on page
58 of the Philadelphia Water Rate Board's decision.

HEARING OFFICER CHESTNUT: Well, there is two subparagraphs entitled Maximum Adjustment. Which one are you talking about?

MR. HAVER: The one that says reconciliation under this adjustment separately or in combination with other adjustments cannot lower FY 2023 base rates incremental increase below $0.

MS. LaBUDA: I see that, Mr. Haver. It's on page 5 of 8 of the standalone settlement sheet.

MR. HAVER: I think you just saved me the next question, but I will ask it anyway. Would you agree that's the definition of the maximum adjustment?

MS. LaBUDA: That's what's in the settlement, yes.

MR. HAVER: Thank you.

And to be clear, does that mean that no matter how much money the Water Department had received through stimulus or
any other method, that the rates could not
be lower than what they are today through
these proceedings?

MS. LaBUDA: Would you mind just
repeating that. I don't want to miss --
mis-answer that, Mr. Haver.

MR. HAVER: Again, to go back to
your testimony on page 11, line 12 through
15, you state: The amount of any
adjustment per stimulus funding would be
subject to the maximum adjustment which
requires that any reconciliation under this
adjustment cannot lower the Fiscal Year
2023 base rate incremental increase below
$0.

Is that correct?

MS. LaBUDA: Yes. That's correct,
Mr. Haver.

MR. HAVER: And does that in plain
English translate to the rates cannot --
through these proceedings, the rates cannot
fall or be reduced below the level that
they are at today?

MS. LaBUDA: Subject to check, yes.
MR. HAVER: Forgive me. I'm not sure what that term means. As Mr. Dasent has recently discovered, I'm not an attorney.

MS. LaBUDA: I believe that's correct, Mr. Haver. But I, obviously, would like to check with my legal counsel and make sure I'm not misrepresenting something on the record.

MR. HAVER: So, I can wait while you do that.

MR. DASENT: We will use redirect for that purpose if, Your Honor, please.

HEARING OFFICER CHESTNUT: Yes.

MR. HAVER: Okay.

Ms. LaBuda, are you familiar with the Home Rule Charter Section 8-600? It's entitled the Language Access Plan.

MS. LaBUDA: I'm familiar with the Language Access Plan, Mr. Haver. Yes.

HEARING OFFICER CHESTNUT: Sorry. What was that reference?

MR. HAVER: Section 8 --

HEARING OFFICER CHESTNUT: What was
the citation?


MS. LaBUDA: Mr. Haver, can you point to where in my testimony this -- where I discussed the Language Access Plan, please?

MR. HAV: Well, I'm getting to that. But if you want me to skip to that part, I will. Do you want me to skip to that part now?

HEARING OFFICER CHESTNUT: Why don't we agree that the Home Rule Charter says what it says --

MR. HAV: I have --

HEARING OFFICER CHESTNUT: -- regardless of her understanding.

MR. HAV: I have no idea why we wouldn't. I just asked Ms. LaBuda if she was familiar with it, and she said yes. So, Ms. LaBuda --

MR. DASENT: Just point of clarification. Ms. LaBuda actually said
that she was familiar with the Language
Access Plan as opposed to the Charter, just
so the record is clear.

MR. HAVER: All right. So, let me
go back and ask, Ms. LaBuda, are you
familiar with Section 8-600 of The
Philadelphia Home Rule Charter which is the
Language Access Plan?

MS. LaBUDA: Mr. Haver, I cannot
say that I have read the full Home Rule
Charter. I am familiar with the
Department's Language Access Plan.

MR. HAVER: Okay. In preparing the
testimony and the proceedings on behalf of
the PWD, did you review the public notice
that was posted on the Philadelphia Water
Rate Board which reads: On January 21,
2022, the Philadelphia Water Department
filed advance notice of the initiation of
the special rate proceeding regarding a
reconciliation and potential downward
adjustment of water, sewer and storm water
rates and charges previously approved to
take effect September 1, 2022. This
proceeding is pursuant to the rate
determination and joint petition for
partial settlement in the 2021 general rate
proceedings?

MS. LaBUDA: I did review that,
Mr. Haver.

MR. HAVER: Do you believe that a
person quoting from the Home Rule Charter
Section 8-600 with limited English
proficiency would understand the choice of
words used to publicize today's hearings
and proceedings?

MR. DASENT: Objection, Your Honor.
I think this is beyond the scope of
Ms. LaBuda's testimony.

HEARING OFFICER CHESTNUT:
Sustained.

MR. HAVER: Ms. LaBuda, who would
be responsible for implementing the rules
and regulations under Section 8-600 of the
Philadelphia Home Rule Charter?

MS. LaBUDA: Mr. Haver, again, I
believe this is outside the bounds of my
testimony. And I don't think it's a good
idea for me to guess on which City agency
leads those type of matters on a City-wide
basis.

MR. HAVER: At the Water
Department, I'm not asking City-wide. Who
at the Water Department is responsible?

MS. LaBUDA: The Department --
again, I believe this is outside the bounds
of my testimony. But I'm happy to answer
that the Department's Public Affairs
Division leads the efforts for the
Department.

MR. HAVER: And will they be
presenting a witness today?

MS. LaBUDA: They are not. To the
best of my understanding, they are not,
Mr. Haver.

MR. HAVER: Okay. Skipping again.

On page 13, line 11 and 12 of your
testimony, you state the Department
received no stimulus funding within the
scope of the definition during the --

HEARING OFFICER CHESTNUT: Wait,
hold on a second. I have to pull that up.
What was that reference again, Mr. Haver?

MR. HAVER: Page 13, lines 11 and 12.

HEARING OFFICER CHESTNUT: Let me get 13 up.

MR. HAVER: Of Ms. LaBuda's testimony.

HEARING OFFICER CHESTNUT: Rebuttal testimony or --

MR. HAVER: No, direct.

HEARING OFFICER CHESTNUT: Hold on. Let me go back. Okay, I have it.

MR. HAVER: Thank you.

Ms. LaBuda, again, you state the Department received no stimulus funding within the scope of the definition during the receipt period; is that correct?

MS. LaBUDA: That's correct, Mr. Haver.

MR. HAVER: Outside the scope of the definition in the settlement, did PWD receive directly or indirectly any stimulus money?

MS. LaBUDA: We didn't receive any
stimulus money from the American Recovery Protection Act.

MR. HAVER: I'm saying from anywhere. From the state? From the Federal Government? From the City?

Did you receive any stimulus dollars, CARE dollars, any money that had been allocated from the federal, state or city government to help with the crisis that was created through the COVID?

MR. DASENT: Please note our objection that this reaches beyond the scope of Ms. LaBuda's testimony. The four corners of the testimony are framed by this two adjustments. Federal stimulus adjustment is defined in the joint petition for settlement. And this is outside the range of the adjustments that are to be made in this proceeding.

HEARING OFFICER CHESTNUT: I agree. It is outside the scope of the proceeding because it does define the eligible stimulus funding. But if you can answer the question, I think it is irrelevant
frankly because it doesn't matter what they receive because it doesn't fall within the definition. So, it can't be used as the basis for any adjustment.

Can you briefly answer that question, Ms. LaBuda, or not?

MS. LaBUDA: I can. We did not -- we received a reimbursement under the original act for expenses related to COVID and budgeted expenses. And that was written in my testimony.

But outside of that, I'm not aware of any direct receipt of funding to the Department. I can't answer that on a Citywide basis. But we don't have -- we didn't receive direct funding to the best of my knowledge outside of that one reimbursement in my testimony for expenses not contemplated in the Fiscal Years 20 and 21 budget related to COVID expenses for protective equipment for our critical employees.

MR. HAVER: And going to your testimony on page 14, lines 18 to 20, you
state that the City did not allocate amounts under ARPA to PWD during the receipt period; is that correct?

MS. LaBUDA: That's correct.

MR. HAVER: Did PWD ask City Council to allocate ARPA funds?

MS. LaBUDA: We asked the budget -- I'm sorry. We asked the Director of Finance to allocate ARPA funds. We did not ask City Council.

MR. HAVER: And why is that?

MS. LaBUDA: The ARPA funds were controlled -- again, this is outside of the bounds of my testimony. I'm happy to attempt to answer the question.

We asked the question to the person responsible for those allocations, which is the Budget Director.

MR. HAVER: So it's clear on the record, how did you ask the Budget Director for those funds? In a written request?

MS. LaBUDA: Again, this is outside the bounds of this rate case testimony. But I'm happy to remind you that in my
prior rate case testimony, I believe we submitted the actual memo that was submitted to the Director of Finance. But again, this appears to be outside of my current testimony, Mr. Haver.

MR. HAVER: Since the Settlement Agreement, did you ask for funding --

HEARING OFFICER CHESTNUT: Look, I think we spent enough time on this. You raised this in the underlying base rate case, discussing the settlement about the Water Department's efforts to seek out and obtain additional funding. And it was address there. It's not part of this case.

We have moved on, so why don't you move on with your questions, please.

MR. HAVER: Well, I want to put on the record that I'm asking about things that have happened since the Settlement Agreement was imposed upon rate payers. I'm not asking about prior. I'm asking directly because in Ms. LaBuda's testimony, she says that they did not receive any.

And so, I am asking what effort
they put in to getting these revenues after
the settlement was signed that was --
obviously, could not have been covered
during the settlement proceedings.

HEARING OFFICER CHESTNUT: All
right. Do you have another question?

MR. HAVER: Well, I am waiting for
you to acknowledge that I am not asking
about situations before the settlement, but
I'm asking about conditions after the
settlement.

HEARING OFFICER CHESTNUT: I don't
understand the point of this. Did you -- I
mean, is there some kind -- to indicate
that there were funds available that the
Department didn't get?

MR. HAVER: Absolutely.

HEARING OFFICER CHESTNUT: Did
you -- I mean, is there some basis for
that --

MR. HAVER: We are going to get to
that part in a second.

HEARING OFFICER CHESTNUT: --
besides your feeling that there should be
more?

MR. HAVER: We are going to get to that part in a second.

HEARING OFFICER CHESTNUT: Well, let's go to it now.

MR. HAVER: Well, I want to, again, establish the record. I want to ask and put my case on in the way that I want. I'm asking.

HEARING OFFICER CHESTNUT: Your case has to be put on within the scope of this proceeding.

MR. HAVER: I am ask -- again, if you rule me out of order, you can. But I'm not seeking your advice. I don't believe your advice is helpful to me.

HEARING OFFICER CHESTNUT: I'm not giving you advice. I'm giving you directives at this point.

MR. HAVER: You do not --

HEARING OFFICER CHESTNUT: Please, ask your next question.

MR. HAVER: I'm asking -- again, my question is, since after the Settlement
Agreement was signed and imposed, did PWD ask the Finance Director or City Council for ARPA funds?

MS. LaBUDA: The City's decision was made. The monies were allocated. We didn't -- again, outside the bounds of my testimony. So since the decision was made, the money was allocated, we did not submit another request post the settlement, Mr. Haver.

MR. HAVER: Thank you. In the Fiscal Year 2021 Summary Five Year Financial Projection Plans dated February 2022, which I believe you prepared and has been attached as an exhibit, is that correct that you prepared it or had it prepared?

MR. DASENT: What are we referring to, Mr. Haver? I'm sorry.


HEARING OFFICER CHESTNUT: What's the citation for that?
MR. HAVER: It's an exhibit.

HEARING OFFICER CHESTNUT: Was it attached to your direct -- where was it? I am trying to find it here.

MR. HAVER: It's attached as an exhibit.

HEARING OFFICER CHESTNUT: To what?

MR. HAVER: To her direct testimony. Excuse me, to Ms. LaBuda's direct testimony. Forgive me, I don't mean to refer to you as a her.

MS. LaBUDA: Thank you, Mr. Haver.

HEARING OFFICER CHESTNUT: Is that VB4?

MR. DASENT: I think it's Schedule ML-2.

HEARING OFFICER CHESTNUT: ML-2?

MR. DASENT: Yeah.

MS. LaBUDA: Thank you, Andre -- Mr. Dasent.

MR. DASENT: I prefer Andre.

MS. LaBUDA: If it helps, Madam Hearing Officer, it's the appendix to the PowerPoint presentation in my testimony.
right before the rating agency reports.

HEARING OFFICER CHESTNUT: Okay.

All right. I got it now.

MR. HAVER: Ms. LaBuda, did you prepare that or have it prepared?

MS. LaBUDA: I did have it prepared, Mr. Haver.

MR. HAVER: Okay. And does it state as of January 3, 2022, there are over 69,000 accounts eligible for shutoffs?

MS. LaBUDA: I'm sorry, Mr. Haver. I don't see that in this table. Can you point me in the direction of where that is in this table?

MR. HAVER: I'm not sure what you're asking me, so I don't --

HEARING OFFICER CHESTNUT: She is asking what line it is.

MR. HAVER: Again, my computer doesn't paginate in the same way. So, I don't have --

HEARING OFFICER CHESTNUT: No, the exhibit has lines on it, doesn't it?

MR. HAVER: No. It's an attachment
that was a report.

HEARING OFFICER CHESTNUT: Are we looking at ML-2?

MR. HAVER: Don't know, Your Honor, what you are looking at.

HEARING OFFICER CHESTNUT: Are you looking at Schedule ML-2?

MR. HAVER: Again, I'm looking at the Fiscal Year 2021 Summary and Five Year Financial Protection Plan dated February --

HEARING OFFICER CHESTNUT: Mr. Dasent, can you help me out here?

MR. DASENT: Yeah. I'm scanning it trying to see in ML-2 is there any reference to the 69,000.

MR. SHULTZ: This is Mr. Shultz. I believe it's under Schedule ML-2. And the heading is Policy Considerations. There is a major heading of Operation where you in System Level Planning, Water Master Plan, Capital Improvement, CIP and then policy considerations. And a subheading with Shutoff Moratorium.
MR. DASENT: Ah, it's page 35 of 139.

MS. LaBUDA: Thank you, again, for your patience, Mr. Haver.

MR. HAVER: You're certainly welcome.

HEARING OFFICER CHESTNUT: Page 35 of 139? I thought I had it.

MR. DASENT: Yeah. It says Policy Considerations in the heading. Shutoff Moratorium is the subheading.

HEARING OFFICER CHESTNUT: Oh, I see. Okay. So, it's the text not the table you are talking about. Not the scope -- okay.

MR. DASENT: I've forgotten the question, Mr. Haver.

MR. HAVER: My question for Ms. LaBuda was, did you write or have written testimony, quote, as of January 3, 2022, there were over 69,000 accounts eligible for shutoffs?

MS. LaBUDA: Yes.

MR. HAVER: Has that number changed
since this report was prepared?

MS. LaBUDA: Again, outside of the bounds of my current testimony. And yes, the number is different today.

MR. HAVER: What is that number as of today?

MS. LaBUDA: I would have to get back to you. I don't want to misstate it on the record, Mr. Haver.

MR. HAVER: Do you believe that that number has increased or decreased?

MS. LaBUDA: I believe the number is different. And I don't want to forecast anything that's incorrect on the record. I would be happy to provide it in a written response. Again, it's outside the bounds of my current testimony. But we will get back to you.

MR. HAVER: At the time that you wrote the or had written the Summary and Five Year Financial Plan, was the Water Assistance Program, which sometimes gets called LIHWAP, in place?

MS. LaBUDA: Again, I think this is
over -- I believe LIHWAP started in January, but I would have to -- subject to check, I would have to confirm the exact date that LIHWAP kicked off in the Commonwealth of Pennsylvania. I believe it was January.

MR. HAVER: Thank you. Excuse me. Are you familiar with the LIHWAP program?

MS. LaBUDA: Generally speaking, yes.

MR. HAVER: Would you agree that it offers up to $5,000 per household?

MS. LaBUDA: That is my understanding of how the Commonwealth is administering the program. Correct.

MR. HAVER: How many of the people scheduled for shutoffs do you project will be receiving the LIHWAP grant?

MS. LaBUDA: I believe this is outside the bounds of my testimony. And I do not have a projection for you, Mr. Haver.

MR. HAVER: If any money is
received through the LIHWAP grants, how will that be allocated in PWD's revenue?

MR. DASENT: Objection. This is beyond the scope of Ms. LaBuda's testimony. And we ask that we sort of stay on the path of the two adjustments that are before us, either federal stimulus or the financial performance adjustment. That those are the boundaries of this particular testimony and this proceeding.

HEARING OFFICER CHESTNUT: I think --

MR. HAVER: LIHWAP is a federal stimulus project program. And of course --

HEARING OFFICER CHESTNUT: Okay. well, obviously, that's not relevant to the federal stimulus funding as defined in the Settlement Agreement. But I thought the purpose of the questioning was to determine the impact of any recommended adjustment. Because I guess I don't understand to some extent because the Rate Board already approved the rate increase.

The rates can only go down. So any
impact on existing customers would only be positive.

Is that your understanding, Mr. Haver?

MR. HAVER: My understanding is that as part of the Settlement Agreement in which the Public Advocate was given a no-bid contract, they agreed to a rate increase this year and a rate increase next year. And these hearings are to see how large next year's rate increase will be.

HEARING OFFICER CHESTNUT: That is incorrect.

MR. HAVER: Okay. Tell me, again, what you just said then.

HEARING OFFICER CHESTNUT: You are completely incorrect on that. The rate increase was already approved.

MR. HAVER: Wasn't it approved through the settlement?

HEARING OFFICER CHESTNUT: Through the settlement.

MR. HAVER: And wasn't that the settlement -- wasn't that a settlement the
Public Advocate agreed to?

HEARING OFFICER CHESTNUT: -- can be made to reduce the rates that have previously been approved.

MR. HAVER: Wasn't that --

HEARING OFFICER CHESTNUT: They can only go down. They can't go up.

MR. HAVER: Wasn't that a settlement the Public Advocate agreed today?

HEARING OFFICER CHESTNUT: What's the point of that question? Of course they did.

MR. HAVER: I just want to make sure we are talking about the same settlement.

HEARING OFFICER CHESTNUT: Of course it is.

MR. HAVER: Okay. And isn't it -- don't we have direct testimony from Mr. LaBuda that the rates cannot go down below the level they are at now?

HEARING OFFICER CHESTNUT: No.

That is not her testimony.
MR. HAVER: So, can we go back then and clarify that?

HEARING OFFICER CHESTNUT: So her testimony -- okay.

MR. HAVER: Because that --

HEARING OFFICER CHESTNUT: I can generalize.

MR. HAVER: You talk about the maximum adjustment. I believe that's what she said. So, I would like to go back and revisit that definition then.

HEARING OFFICER CHESTNUT: No. What we are talking about is the incremental increase scheduled to take effect on September 1.

MR. HAVER: But --

HEARING OFFICER CHESTNUT: It's the incremental increase that may be adjusted downward.

MR. HAVER: But the rates cannot go down through these proceedings below the level they are at now; is that correct?

HEARING OFFICER CHESTNUT: No. The settlement says that any adjustment cannot
be used to reduce the incremental increase below zero.

MR. HAVER: Right. Which means, again in plain language, that the rates cannot go down below where they are today.

HEARING OFFICER CHESTNUT: Because of this adjustment. That is correct.

MR. HAVER: And that's all we are discussing these proceedings; is that correct?

HEARING OFFICER CHESTNUT: Yes.

MR. HAVER: Okay. So again, my question is, how much does the Water Department project it will be collecting through LIHWAP? And how will that money be allocated in revenues by the PWD?

MR. DASENT: Objection. That has nothing to do with either one of the adjustments. Any LIHWAP assistance does not fall within the definition of federal stimulus. And the receipt period is relevant to this discussion, also. And the receipt period ended December 31.

HEARING OFFICER CHESTNUT: I
thought we already discussed this. My understanding, Mr. Haver -- because Mr. Dasent is correct. LIHWAP -- those funds cannot be considered within the definition of federal stimulus funding as defined by the settlement.

I thought you were going to see what the impact if any adjustment is made. And that's why I didn't understand it. Any adjustment is going downward.

MR. HAVER: So, I have on the record what you just said, correct? Let me make sure I understood it.

You are saying that the LIHWAP revenues fall outside of the definition agreed to in the settlement; is that correct? Have I understood you?

HEARING OFFICER CHESTNUT: That's my understanding, yes.

MR. HAVER: Ms. LaBuda, is that your understanding?

MS. LABUDA: Yes. That's my understanding, as well, Mr. Haver.

MR. HAVER: Ms. LaBuda, I only have
a few more questions. I appreciate your patience with me.

Did you attend the City Council hearings yesterday?

MS. LaBUDA: Yes. This is outside the bounds of my testimony. But yes, I attended the hearings yesterday.

MR. HAVER: Was the hearing on the Philadelphia Water Department?

MR. DASENT: Just note our continuing objection. These questions have absolutely nothing to do with the proceeding unless in the next question we have something that ties to one of the two adjustments.

HEARING OFFICER CHESTNUT: I don't have a question. Again, I really don't see the relevance.

MR. HAVER: I will help you.

Ms. LaBuda, did your testimony at City Council yesterday talk about the federal stimulus programs?

MS. LaBUDA: During the Fiscal 23 Budget Testimony, I did discuss different
grants the Department has applied for, which are also detailed in the Board reports we submit on a monthly basis. And which, I believe, are also posted. I did review some of those same applications in Council testimony yesterday. Yes.

MR. HAVER: Did any Councilmember offer to help the Philadelphia Water Department get grants?

MR. DASENT: Just note our continuing objection. Thank you.

MS. LaBUDA: This is outside the bounds of my testimony. Yes, someone offered to provide -- a Councilperson did offer to provide additional information which I welcomed. Thank you, Mr. Haver.

MR. HAVER: Ms. LaBuda, had you asked that Councilperson previously for help getting stimulus dollars?

MS. LaBUDA: Outside of my testimony, the answer is no.

MR. HAVER: Thank you. That's all I have. I appreciate your patience.

HEARING OFFICER CHESTNUT: Okay. I
guess there is no further cross.

Do you want the opportunity to redirect, Mr. Dasent? Should we take a short break?

    MR. DASENT: Thank you, yes.

    HEARING OFFICER CHESTNUT: How about we resume -- it's 10:05. How about if we resume at 10:10.

    MR. DASENT: Okay.

    (Off the record at 10:05 a.m.)

    - - -

    (Back on the record at 10:13 a.m.)

    HEARING OFFICER CHESTNUT: Shall we resume?

    MR. DASENT: Ms. LaBuda, on cross-examination by Mr. Ballenger, you indicated that the stipulation's starting balance -- when you refer to the starting balance in the stipulation, I believe it's at paragraph six. Now that starting balance was agreed to.

    What is in controversy in this particular case?

    MS. LABUDA: The maximum adjustment
or the ending balance is what -- is --
we're discussing in this case.

MR. DASENT: Okay. So, there is no
controversy considering paragraph six of
the stipulation?

MS. LabUDA: There is no
controversy on paragraph six of the
stipulation.

MR. DASENT: Now, Mr. Ballenger
also raised the issue of the Capital Fund
transfer, 13.2 million roughly in Fiscal
2021. He indicated there was impact on
coverage from that particular transfer, and
you agreed.

But what's the impact on customer
costs in terms of the cost that customers
bear for our construction program?

MS. LabUDA: Sure. Any transfers
from revenues to the capital account
reduces the amount the Department needs to
borrow. If you borrow less money, your
debt service is lower. So, it would reduce
the debt burden to customers.

MR. DASENT: Okay. Now, Mr. Haver,
raised in his cross-examination, you know, whether we have gone back to the City Council after the settlement in the last case. Did the City indicate during the course of the last case, it's possession concerning the allocation or ARPA monies to the City as a whole as opposed to the Water Department Finance Director?

MS. LaBUDA: The Finance Director, yes.

MR. DASENT: That's -- that's all we have, Judge Chestnut.

HEARING OFFICER CHESTNUT: Okay.

Mr. Ballenger, do you have any recross based on the redirect?

MR. BALLenger: Just one quick question, and I appreciate the opportunity again. I just wanted to recognize and have you confirm, Ms. LaBuda, that the Department has filed monthly updates pursuant to the settlement which lists all of the efforts it's taking to pursue financial assistance from the Federal Government, hasn't it?
MS. LaBUDA: That's correct.

MR. BALLenger: And that list is growing?

MS. LaBUDA: Yes, it is. That's correct.

MR. BALLenger: Thank you, Ms. LaBuda.

MS. LaBUDA: Thank you.

HEARING OFFICER CHESTNUT: Okay.

Mr. Haver, do you have any recross based on the redirect?

MR. HAVER: I was going to ask a question.

HEARING OFFICER CHESTNUT: Go ahead.

MR. HAVER: Ms. LaBuda, the efforts that you list in the monthly reports, am I to understand that they've all been unsuccessful?

MS. LaBUDA: No.

MR. HAVER: So, you have received stimulus dollars?

MS. LaBUDA: We have received low cost loans to date, Mr. Haver. We have not
received any stimulus dollars. So when --
as detailed in the Board Report, we have
spent significant amounts of effort
applying for financial assistance with the
Commonwealth of Pennsylvania. And it has
all resulted, even in our most recent
award, in very low cost loans. The most
recent award was 1 percent for
125 million-dollar project.

MR. HAVER: How much did that save
rate payers?

MS. LaBUDA: I would have to get
back to you on that calculation, Mr. Haver.
I don't have that within reach.

MR. HAVER: Would that savings
count as under the definition that the
Public Advocate and the Water Department
agreed to in the settlement?

MS. LaBUDA: I believe it's outside
the definition, Mr. Haver.

MR. HAVER: I'm sorry?

MS. LaBUDA: It's my understanding
it's outside the definition, Mr. Haver.

MR. HAVER: So to be very clear,
the savings that -- the applications that you report monthly and the savings that are generated through those efforts do not count as stimulus dollars under the definitions that was agreed to by the Public Advocate and the Philadelphia Water Department; is that correct?

MS. LaBUDA: Definition didn't contemplate reduce debt service, so that is correct, Mr. Haver.

MR. HAVER: Thank you.

MS. LaBUDA: You're welcome.

MR. HAVER: Again, just to be clear, there are no other dollars that the Philadelphia Water Department was successful in obtaining in the last 24 months through the -- any of the stimulus packages; is that correct?

MS. LaBUDA: That's correct, Mr. Haver.

MR. HAVER: Thank you.

HEARING OFFICER CHESTNUT: Okay. I was a little remiss. Thank you, Ms. LaBuda, you are excused as are the
other two members of the panel.

I was a little remiss in starting here because I -- we don't -- it's not a formalized procedure the way PC Hearings are. So, we don't do voir dire. But I think I should have had you at least identify the members of the panel, Mr. Dasent. How about better late than never, if you can identify.

MR. DASENT: Sure. Ms. LaBuda, obviously our Chief Financial Officer at the Philadelphia Water Department, was our lead on the panel. Also present and participating are Ms. Katherine Clupper, who is a Managing Director at PFM Financial Advisors. And Peter Nissen, who is a Managing Director at Acacia Financial Advisors.

And so between those three, that was our panel. And they are identified in the resumes attached to their direct testimony in this case.

HEARING OFFICER CHESTNUT: Okay.

Thank you.
Shall we move on then to your next panel?

MR. DASSENT: Yes. The next panel would be the Black and Veatch panel. And included in that panel will be Ann Bui, Brian Merritt and Dave Jagt. All members of Black and Veatch.

HEARING OFFICER CHESTNUT: And do you have any additions to or corrections to the testimony other than what you've already indicated?

MR. DASSENT: No.

HEARING OFFICER CHESTNUT: Okay.

So I guess, Mr. Ballenger.

MR. BALLenger: Thank you.

Like to start off the Residual Fund and the discussion of the Residual Fund in your rebuttal.

And you criticized Mr. Morgan for calculating his adjustment based on the ending balance in the Residual Fund as well as the Rate Stabilization Fund, right?

MR. DASSENT: May I ask where you are referring, just to get a page
MR. BALLenger: I believe it's page 9.

MR. JAGT: That's in the rebuttal testimony?

MR. BALLenger: Correct.

MR. JAGT: Give us a second.

So our --

MR. BALLenger: I'm sorry. Just to be clear, it's Q&A 11 is what I am referring to.

MS. BUI: And so, Rob -- if you don't mind, Mr. Ballenger, could you repeat that question now that we found where you are referring to?

MR. BALLenger: Just trying to summarize your testimony and make sure I understand it correctly.

MS. BUI: Understood.

MR. BALLenger: And I believe what you are saying is that the -- you're criticizing Mr. Morgan's direct because he used the Residual Fund balance as a consideration in his testimony; is that
correct?

MR. JAGT: That is correct.

MR. BALLenger: Okay. And there on page 9 in Q&A 11, you state that the stipulation does not include the Residual Fund and its terms; similarly, the terms and conditions of the Joint Settlement position also do not contemplate and you say the adjustment there.

Is that a correct statement based on your testimony?

MR. JAGT: That's correct.

MR. BALLenger: Would you agree that the over-performance that Mr. Morgan calculates, around $10.7 million, is based solely on the amounts in the Rate Stabilization Fund?


MR. BALLenger: Okay. Would it be inconsistent with the settlement or the stipulation if Mr. Morgan testified that
all $10.7 million should be shared with customers, returning 100 percent of that amount in reduced rates?

MR. JAGT: I guess it would be subject to his interpretation of sharing. But Sharing would imply something less than a hundred percent, correct?

MR. BALLenger: Would it -- that's -- I'm not a witness, so I'm not going to answer it. But I am going to go down that line with you then.

So what if Mr. Morgan testified that 75 percent of the 10.7 should be shared? Would that be consistent with those documents you referenced, the stipulation in the settlement?

MR. JAGT: It would be his position regarding the -- the sharing.

MR. BALLenger: You wouldn't say that was inconsistent with those documents then? You would simply say you disagree with his testimony, right?

MS. BUI: If I could, Mr. Ballenger. I believe that the amount
of the sharing or the -- that distribution was to be determined as part of the proceeding, as well. It doesn't necessarily indicate it's inconsistent with the -- if that's Mr. Morgan's position.

MR. BALLenger: Okay. And is there any provision in the settlement or the stipulation that requires Mr. Morgan to ignore the Residual Fund Balance in calculating his proposed adjustment?

MR. JAGT: The settlement clearly leaves out the balance in the Residual Fund as the basis for the adjustments. It clearly indicates that the only balance that's going to be recognized is the Rate Stabilization Fund.

And whether you recognize it in your initial calculation or in the follow-up allocation of that amount, it -- recognizing it anyway, isn't appropriate within the bounds of the settlement which clearly indicates that it should be based on the Rate Stabilization Fund.

MR. BALLenger: And the
Department's position is that no adjustment should be made based upon the targeted -- you know, the financial metric of 135 million in the Rate Stabilization Fund.

Does that figure appear anywhere in the settlement or the stipulation?


MR. BALLenger: So although that's not included in either of those two documents, just like the Residual Fund is not included in either of those two documents --

MS. BUI: Can you give us clarification? What's "that"?

MR. BALLenger: The 135 million-dollar balance.

MR. JAGT: So, Mr. Ballenger, during the 2018 rate proceeding, it was established and also suggested or stated that the Board and the Department going forward will recognize the 135 million as a target for the Rate Stabilization Fund.
MR. BALLenger: And has that been a affirmed in subsequent rate determinations to your knowledge?

MR. JAGT: It's been continually recognized that the --

MR. BALLenger: By the Board? By the Board, Mr. Jagt?

MR. JAGT: In that the position of the rate -- or the Water Department continually supplying the -- as a target, we are going to try and maintain the 135 million. And that's always in our presentation and the -- for the rate case. Whether it's recognized in the determination is -- might not have been specifically identified.

But providing the revenues to maintain that level has been clear.

Plus --

MR. BALLenger: Yes.

MR. JAGT: -- per the 2018 decision, it was saying going forward, it will be recognized.

MS. BUI: Yeah. If I may, I
believe, Mr. Ballenger -- and I'm sure that we can have that subject to check from our legal counsel -- is that it has not been relitigated as to whether or not --

MR. JAGT: That's true.

MS. BUI: -- 135 is the -- was going to change. So to the best of our knowledge since the 2018 rate determination, that has been the target.

MR. BALLenger: And in the -- kind of going down a path I wasn't sure we would need to go down. I think it's important to note here.

The -- the statement from S&P regarding minimum Rate Stabilization Fund balance, was that described or discussed in the settlement or the joint petition?

MR. JAGT: No. The position of S&P was provided after that -- the date of the settlement. However, they have always expressed concerns regarding liquidity for the Department.

MR. BALLenger: Just want to make sure that we all understand that your --
the Department's witnesses are relying upon a bunch of stuff that's not in the settlement or the stipulation. And your testimony criticizes Mr. Morgan for the same thing basically.

MR. JAGT: Right. However, these references that we are providing are all relative to the Rate Stabilization Fund and not the Residual Fund.

MR. BALLenger: And you recognize that Mr. Morgan's proposed adjustment of 6.6 million is based on the balance in the Residual Fund, correct? I'm sorry, based on the balance in the Rate Stabilization Fund.

MR. JAGT: His initial amount, yes.

MR. BALLenger: Okay. And the proposed adjustment is less than the total difference he identifies in the Rate Stabilization Fund balance, correct?

MR. JAGT: Correct.

MR. BALLenger: Okay. So on pages 10 and 11, your Rebuttal Statement claims that -- your belief that the Fiscal 2021
Rate Stabilization Fund balance in the settlement results from projected revenues and expenses that were not agreed to.

Is that a correct summary of your testimony there?

MR. DASENT: Which question and answer are you referring to?

MR. BALLINGER: Page 15, I believe.

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. BALLINGER: I'm asking about your testimony. Am I correctly understanding your testimony as saying that the balance in the Rate Stabilization Fund 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. BALLINGER: Yeah, 23 and 24.

MR. DASENT: Yeah. That's what I thought.

MR. JAGT: That is correct.
MR. BALLenger: Okay.

MR. JAGT: The balance is reflected in the tables of the rate or the settlement. Those balances you end up at as a result of revenues, projected revenues and projected expenses which -- none of which were agreed to as this was a black box settlement.

MR. BALLenger: That's where I was going. You're intending to describe here the nature of black box settlement where specific adjustments to the revenues and expenses were not agreed upon, right?

MR. JAGT: That is correct.

Correct.

MR. BALLenger: Isn't it true that the settlement set forth the agreed upon final revenue requirements negotiated between the Department and the Public Advocate?

MR. JAGT: When you look at the settlement and it points out that it's a black box settlement and there are no agreements, the very next paragraph
establishes what the agreement was. And that identifies the additional revenues. The additional revenues for Fiscal Year 22 and 23 were the only fed numbers that we are agreeing to.

MR. BALLenger: And those -- so, we didn't agree upon the inputs. But you agree that we -- we agreed on the outputs then?

MR. JAGT: We agreed to the additional revenues for 22 and 23.

MR. BALLenger: Is that an output of the rate model?

MR. JAGT: So it's -- it's based on the -- based on the unagreed to adjustments, we adjusted them to achieve the additional revenues as reflected on those lines and tables U-1A to achieve the level or the -- to establish the rates to developed that level of additional revenues.

That's correct.

MR. BALLenger: Okay. And you would agree that there were additional
outputs from that model, including the balance shown in the Rate Stabilization Fund on page 13 of the Public Advocate exhibit hearing. That is also an output of that rate model, correct?

MR. DASENT: I'm scrolling there.


MR. JAGT: Of the settlement?

MR. DASENT: Of the C1 table on --

MR. BALLenger: Of the C1 table included in the rate determination.

MR. JAGT: Right. Which provides Fiscal Years 22 and 23?

MR. BALLenger: Yes.

MR. DASENT: And the end-of-year balance of the Rate Stabilization Fund is what you are asking the question about?

MR. BALLenger: Well, actually, I would start with the beginning of the year balance in line 39.

MR. DASENT: Okay.

MR. BALLenger: That's also an
output of the rate model based upon the Settlement Agreement.

MR. JAGT: Based on the additional revenues. So to understand this position, you are starting from a beginning balance of the Rate Stabilization Fund as of Fiscal Year 2000. We're projecting through 2001, 2002 and -- 2021, sorry. So, 2020. We project through Fiscal Year 2021, 2022 and 2023. However, the revenue requirements were not agreed to and neither are the revenues.

So to say that you agree to the outcome of that as a result of comparing the unagreed to revenues to unagreed to expenses and continue to add to the balance or deduct from the balance is -- we are acknowledging that that is not an agreed to number. We could have done those tables based on a different mix of the subjects.

So going back -- if we look at the decision, within the decisions from the Board -- sorry, it's probably the Hearing Officer's report, it recognizes that the --
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
numbers are not legitimate numbers to base a projection on them.

    MR. BALLEMBERG: That's interesting. Let me just ask, I mean, you are aware that the ordinance governing the Board requires it to determine appropriate levels of reserves to be maintained during the rate period, are you not?

    MR. JAGT: Yes.

    MR. BALLEMBERG: Okay. And you're suggesting that the funds shown in the rate determination as reserves for the Department for Fiscal Years 2022 and 2023 are not real numbers? They are made up numbers?

    MR. JAGT: They are --

    MR. BALLEMBERG: Made them up?

    MR. JAGT: They are one presentation of the possible outcome depending on how -- how we were going to get to that result.

    MR. BALLEMBERG: Okay. Excuse me. How you were going to get to that result.

I believe it's the Board's rate
determination. So, these numbers are in the rate determination. They are actually not in the settlement. I would correct you on that, Mr. Jagt.

The balances shown in the Rate Stabilization Fund and the Residual Fund are in rate determination for a reason. So if they are not legitimate numbers, then I suppose the Board violated the ordinance.

Is that your position?

MR. DASENT: Objection. I think you are mischaracterizing Mr. Jagt's testimony.

MR. BALLenger: I think I understand it pretty well. Let's just move on.

MR. JAGT: I would like to point out that there are a number of projections of the Rate Stabilization Fund balance on the record. The Board reviews or makes their decisions based on what's on the record.

MR. BALLenger: Okay. On page 13 of your rebuttal -- I'm getting there --
you state -- it's on lines 3 to 6. You
state that basically, Mr. Morgan's reliance
on the projected Rate Stabilization Fund
balance shown in the rate determination,
and you say it implies that the financial
metrics presented in the settlement tables
were sufficient, reasonable and represents
an acceptable financial position.

Do you see that statement?

MR. JAGT: Correct. Yes.

MR. BALLenger: So, I would like us
to take a look at Hearing Exhibit, page 14.
And this is a statement that's included in
the Water Department's statement in support
of the settlement. I have highlighted the
language there. Like to ask you to review
that. Let me know when you are done.

MR. DASENT: You mean on page 12 or
page 13?

MR. BALLenger: Page 14 of the
Public Advocate's hearing exhibit, the
highlighted language.

MR. DASENT: Got it.

MR. JAGT: So, it's not page 14 of
the PDF, right?


MR. DASEnt: Yeah. It's 15.

MR. BALLenger: I didn't number the cover page.

MR. DASEnt: But it's highlighted in yellow.

MR. JAGT: Right.

MR. DASEnt: Is there a question?

MR. BALLenger: Yes. I was asking Mr. Jagt to confirm when he's done reviewing that, please.

MR. JAGT: Okay. I have read it including the footnotes associated with that text.

MR. BALLenger: Okay. And doesn't this statement specifically acknowledge that the financial metrics produced by the settlement are reasonable and sufficient?

MR. JAGT: The footnotes clearly indicate that this is a limited -- we are presenting limited -- first of all, the projections are for '22 and '23 and not for
2021. We do not show the projection through Fiscal Year 2021. So, I want to point that out, that it was never included in the Rate Board or the settlement.

MR. BALLenger: And again, the question is whether or not the Department included in entering the settlement, that the proposed rates and charges should produce sufficient rates and revenues to provide appropriate levels of cash that service levels and other financial metrics.

That's the statement that is included here, correct?

MR. JAGT: Correct. And I would like to point out, it's pointing out to --

HEARING OFFICER CHESTNUT: Wasn't that a yes-or-no question?

MR. BALLenger: It was.

MR. JAGT: Yes.

MR. BALLenger: Moving onto page 16 of your rebuttal statement. And I think there's -- let me see if understand the statement here.

MR. DASENT: What's the question?
MR. BALLENGER: In Q&A 25.

MR. DASENT: Thanks.

MR. BALLENGER: And you criticize Mr. Morgan here and state that he's contradicted himself. Just want to make sure I understand.

Isn't it true that the Fiscal 2021 financial data used in the Black and Veatch model used to produce VB-4 is not identical to the financial results reported in response to PA-113?

MR. JAGT: That's incorrect.

MR. BALLENGER: I'm sorry.

MR. JAGT: In our -- VB4 we clearly state, we use the balances from 2021 as the starting point. In fact in the pages you provided us, it clearly states that.

MR. BALLENGER: And that's what is in the rate model that you provided?

MR. JAGT: That's correct. The fund balances are --

MR. BALLENGER: Oh, the fund balances.

MR. JAGT: Yes, sir.
MR. BALLENGER: What about the revenue?

MR. JAGT: VB-4 never presents Fiscal Year 2021.

MR. BALLENGER: Right.

MR. JAGT: However --

MR. BALLENGER: It's in -- and I'm asking about the model used to produce VB-4 which is why I'm going to repeat the question.

MR. DASENT: Objection. I don't believe he was allowed to answer the first part of the question.

MR. BALLENGER: Well, it's a yes-or-no question. And he answered that it was not. But again, I don't think that's accurate.

MR. DASENT: I don't think it's a yes-or-no question. Your Honor, please, note my objection.

HEARING OFFICER CHESTNUT: Excuse me. Mr. Dasent, let's let Mr. Ballenger see if he can clarify this.

MR. BALLENGER: Again, I'm talking
about the Fiscal 2021 data that was included in the proprietary and confidential Black and Veatch rate model is not identical to the actual -- I'm not going to call it an actual, going to call them -- the results shown in response to PA-113. The data is not identical.

Isn't that correct?

MR. JAGT: The data in the model, you will find that the data is input in the model. The section that your witness referred to a calculated result.

MR. BALLINGER: Okay. We're going to get to that.

HEARING OFFICER CHESTNUT: Is the answer to that yes?

MR. JAGT: Yes. I mean, the data for -- the actual data for 2021 is in the model.

HEARING OFFICER CHESTNUT: Sorry. Can I just ask a clarifying question here? I mean, it's calculated date. Is that the point of this?

Go ahead, Mr. Ballenger.
MR. BALLENGER: I think it's one point -- it's one point. I was going to talk a little bit more about that, as well.

Okay. So on page 17 of your rebuttal, you criticized Mr. Morgan again for using the Black and Veatch model, the information shown for Fiscal 2021 in the Black and Veatch model, instead of the response to data in PA-113.

Isn't that correct? Isn't that a fair summary of your testimony?

MR. JAGT: Can you repeat your statement again?

MR. BALLENGER: Yeah.

It's Q&A 25. And I take this statement to criticize Mr. Morgan for not using the data in PA-113; and instead, using the data that was in the rate model?

MR. JAGT: Correct. He presents it as an actual and it's tables.

MR. BALLENGER: Okay. Can we -- you recognize that the question PA-113 specifically asks for year-end results in the form of Table C1, correct?
MR. JAGT: Correct.

MR. BALLENGER: Okay. And I've included the response, if I can find my hearing exhibit. Give me one second. I think I closed my hearing exhibit.

HEARING OFFICER CHESTNUT: Are you looking at Table C-1 in your hearing exhibit?

MR. JAGT: Page 16 of the PDF?

MR. BALLENGER: Yeah. It's the second to last page. This is the -- and it says at the bottom of the page, says Response Attachment PA-113.

Do you see that?

MR. JAGT: Correct, yes.

MR. BALLENGER: Is this table in the format of Table C-1?

MR. JAGT: Yes, it is. And we provide the line numbers which match up.

MR. BALLENGER: They are not in order, are they? Have some of the lines been moved?

MR. JAGT: Yeah. The debt service coverage is out of order at the bottom.
MR. BALLENGER: And have some of the lines been consolidated?

MR. JAGT: Yes, sir.

MR. BALLENGER: Have some of the lines been omitted?

MR. JAGT: Yes, sir. For the -- some of the line items are, like, calculations within the model that developed the detail. The information that's available from the City's accounting system provides it at a summarized level. We provided it at the level that we had available to provide the response.

MR. BALLENGER: At the top of the page, doesn't it also state that this is preliminary?

MR. JAGT: Yes.

MR. BALLENGER: Okay. And in the executive summary to the financial plan report that was attached to your direct testimony, doesn't Black and Veatch specifically state that it's an updated forecast begins with preliminary final results from Fiscal Year 2021 including
that page?

MR. JAGT: Thank you. And it says:

As reflected in the 2022 starting balances.

MR. BALLenger: Okay. And it, also, I believe -- and doesn't the Black and Veatch model include Table C-1?

MR. JAGT: Yes, it does.

MR. BALLenger: Okay. And so, isn't it then correct that Black and Veatch in utilizing its model created a Table C-1 that reflected preliminary financial results for Fiscal 2021?

MR. JAGT: Calculated revenues and in Table C-1. Again, we did not present 2021 as part of the VB-4. We provided a model that supports what we presented our schedule VB-4. But within the table that you are pulling from the model, the table C-1A presents revenues which are calculated.

We use the model to -- as a test for itself. So we run the model based on actual billing data, the collection factors that we have, and all the actual data from
Fiscal Year 2021 and calculate the revenue to do a test on the accuracy of the model. And I believe we pointed out that we were within .5 percent of the actual 2021 total revenue.

MR. BALLenger: Yeah. I'm not -- I don't think I was asking that. So, let's stick with the questions, if we can, going forward.

On page 20 of your rebuttal, you again reiterate that Mr. Morgan is using what you claim to be the wrong data. And you say that Fiscal 2021 data in B and V's model is projected.

Do you see that statement?


MR. BALLenger: I think so, yes. Q&A 30. You said its financial results are projected; isn't that correct?

MR. JAGT: Correct. They are projected calculations of revenues.

MR. BALLenger: But again, going
back to ES-1, your report states that you projected revenues and financial data for the study period.

Isn't that what it states?

MR. JAGT: For the study period, Fiscal Year 22 through Fiscal Year -- I can't recall if we get VB-4 provided through '27.

MR. MERRITT: '27.

MR. BALLenger: It's 2022 to 2027 projected?

MR. JAGT: Yes.

MR. BALLenger: Okay.

MR. JAGT: And for VB-4, schedule VB-4 as presented. We are mixing what's scheduled VB-4 and the model for VB-4.

MR. BALLenger: Correct. We are talking about the model for VB-4.


So the model -- the model for the study period in the report is projected. Fiscal Year 21, which you are referring to
for revenues, is also calculated or
projected numbers.

MR. BALLenger: Okay. And it
doesn't say that in ES-1. It says
preliminary final results.

MR. JAGT: Yes. ES-1, correct. It
would not. It's relative to the scheduled
VB-4 --

MR. BALLenger: To VB-4.

MR. JAGT: -- we presented.

MR. BALLenger: Which was

generate -- which was -- for which the
model was developed, correct?

MR. JAGT: Yes, sir.

MR. BALLenger: Okay. So on page
21 of your testimony, you state that the
tables in the Settlement Agreement -- I
will get to it. The tables included in the
Settlement Agreement already reflect
updated pension costs.

Do you see that statement?

MR. DASENT: Tell me where you are
referring to, Mr. Ballenger.

HEARING OFFICER CHESTNUT: It's 31,
isn't it?

MR. BALLINGER: Q&A 31.

MR. DASENT: Thank you.

MR. JAGT: To be honest, I didn't have our testimony open yet. So, I will go back to that. Sorry, give me a few seconds.


MS. BUI: So while Mr. Jagt is pulling that up -- we need more screens -- yes. That particular statement, Mr. Ballenger, is correct.

MR. BALLINGER: Thank you, Ms. Bui. How is that so if it was a black box settlement?

MR. DASENT: How be -- Mr. Ballenger, how is what so?

MR. BALLINGER: How could updated pension costs have been included in a black box settlement?

MR. DASENT: They're in the box. I'm sorry.

MR. BALLINGER: Just open the box.
MR. JAGT: We can present -- we can provide as a follow up the calculation and the difference between our original formal notice and the O&M reflected in the settlement. The difference will be that -- the change that was identified during the proceeding. The lower costs that we were going to have for pensions as a result of information provided by the City during the proceeding.

MR. BALLINGER: We talked a little bit earlier about the black box and how there was all this stuff that wasn't in the black box and you didn't agree to it. And not you are saying that, in fact, the settlement reflects something specific?

An adjustment to pension expense?

Is that your testimony?

MR. JAGT: Like I said, the change in the O&M between the formal notice and the settlement reflects the only adjustment because both sides would have agreed that the City offered this lower amount as going forward, the Department was going to
MR. BALLenger: And you're saying that the tables included in the Settlement Agreement reflect this adjustment, which runs totally contrary to the notion of a black box settlement, doesn't it?

MR. JAGT: I said we didn't agree to the total O&M adjustments. As you may recall, your witness provided several adjustments for O&M. Because this was identified after his testimony, it's not reflected in that. But he proposed a number of adjustments which are --

MR. BALLenger: Which of Mr. Morgan's adjustments to O&M are included in the settlement tables?

MR. JAGT: None. We didn't agree to them.

MR. BALLenger: We didn't agree to your pension adjustment. It's a black box settlement.

MR. JAGT: It was based on known information provided by the City.
MR. BALLENGER: On the last page of your rebuttal, you state that the projected Fiscal Year 2023 ending balance -- I'm getting to the statement here -- is just barely above the level that would trigger a rating downgrade.

Isn't that what it states here?

MR. JAGT: So, we are referring to the projected --

HEARING OFFICER CHESTNUT: It's Q&A 33, isn't it?

MR. DASENT: Yes.

MR. BALLENGER: Yes.


MR. JAGT: Correct.

MR. BALLENGER: Just to be clear, there were a number of bases that S&P listed as potentially triggering downgrade, weren't there?

MR. JAGT: Yes, sir. But they clearly state that if the Department --

MR. BALLENGER: Getting there. I'm getting there. Hang on.

Did S&P state that if the Rate
Stabilization Fund were $119,999,999 that it would automatically trigger a downgrade? I just want to know whether I should pay my bills in advance, Mr. Jagt. I really want to help the Department here. Did it say that?

MR. JAGT: No.

MR. BALLenger: Okay. Isn't it true even if the Board accepts Mr. Morgan's recommendation, that the Water Department will receive an increase in rates?

MR. JAGT: That's correct. We still have additional revenues.

MR. BALLenger: In the interest of time, I am going to wrap there and we can move on. Thank you, Mr. Jagt, Mr. Merritt, Ms. Bui.

MS. BUI: Thank you, Mr. Ballenger.

MR. JAGT: Thank you.

MR. DASENT: Your Honor, please -- I'm sorry.

HEARING OFFICER CHESTNUT: I was going to ask Mr. Bachri if he had any cross. But I'm not sure if he is actually
involved in this.

Mr. Haver, do you have any questions?

MR. HAVER: Yes. I will attempt to be very brief. It appears I have to be directing my questions to Mr. Jagt; is that correct?

MR. JAGT: As a panel, that's fine.

MR. HAVER: Mr. Jagt, as Mr. Dasent is so fond of pointing out, I'm not an attorney. Perhaps Mr. Dasent can also point out that I'm not an expert on what black box means in the way that you are using it. So, could you help me understand that?

Does a black box allow for numbers to be allocated in different ways by different parties?

MR. JAGT: The black box does not -- the black box provides a method or an approach for establishing an agreement. We agree to the additional revenues. We agree to the rates as the output.

We do not agree on any specific
adjustments that get us to the end result of the additional revenues or the rates.

MR. HAVER: Does the purpose, in your opinion, of a black box settlement give the greatest latitude to the Water Department to allocate revenues in different ways?

MR. JAGT: I would not agree to that because we still have to have the parties agree to the resulting rates.

MR. HAVER: What's the advantage to the Water Department to accept a black box settlement then?

MS. BUI: If I may, Dave?

MR. JAGT: Sure.

MS. BUI: I do not know if you recall, Mr. Haver, but that particular rate proceeding was pretty long and drawn out. And I think that it is to both sides and all parties involved benefit that we reach a partial settlement via the black box.

It is a mechanism that allows us to get to an end point regardless of -- you know, without requiring that both parties
agree to every single line item type adjustment. So, I don't believe -- I think there was considerable negotiation and movement on both sides to get to that position.

MR. HAVER: Okay. Just to be clear, does that give some flexibility for the Water Department in how it allocates revenues?

MS. BUI: It allows the Water Department, no different than the -- Mr. Ballenger's CLS side -- to come up with different combinations as they so wish to get to this end result. But the end result is still the same in terms of what is agreed upon for the adjusted revenues.

MR. HAVER: I will try one more time. Thank you, Ms. Bui.

MS. BUI: You're welcome.

MR. HAVER: I will try one more time, and I will move on.

So the actual amount that is collected is defined. But how it's allocated and where it comes from is not;
is that correct?

HEARING OFFICER CHESTNUT: I'm sorry. Allocated? You mean, like, for bookkeeping?

MR. HAVER: Yes.

MR. JAGT: I wouldn't agree with that because we do agree to the rates that are included within the -- I mean, the rate -- the final rate schedules are attached as settlement. So, there is a recognition that those rates are based on an allocation of the cost.

MR. HAVER: Again, I'm at a loss to understand the advantage for the black box. But I don't want to belabor the point. I am sure you have done your best in explaining it. And I am sure it's just a deficiency in my intellect that stops me from understanding the advantages of being able to not be straightforward in saying what it means.

Mr. Jagt, was your firm hired, retained or in any way consulted to help PWD get stimulus dollars?
MR. JAGT: So, we do -- we do provide assistance in terms of the Department's efforts to obtain WIFIA funding.

MR. HAVER: What were those efforts, please?

MR. BALLenger: We provide information to fulfill or submit the application to WIFIA.

MR. HAVER: And how many applications did you help submit?

MR. JAGT: So, the one WIFIA application. There is one.

MR. HAVER: I'm sorry. Did you say one?

MR. JAGT: Yes, sir.

MR. HAVER: And how much was that for?

MR. JAGT: 500 million in capital project funding.

MR. HAVER: And who was it submitted to?

MR. MERRITT: The EPA, Environmental Protection Agency.
MR. HAVER: I'm sorry?

MR. MERRITT: The Environmental Protection Agency.

MR. HAVER: But you are defining that as stimulus dollars; is that correct?

MR. MERRITT: No.

MR. HAVER: Let me back up again and ask Mr. Jagt.

Mr. Jagt, were you -- was your firm retained to help the Water Department get stimulus dollars?

MR. JAGT: Are we defining stimulus dollars, like, in terms of the settlement?

MR. HAVER: I would do it broadly, but let's start with the settlement, yes.

MR. JAGT: In terms of the settlement, no.

MR. HAVER: More broadly -- more broadly, in terms of the CARE Act or ARPA, was your firm retained to help the Water Department get stimulus dollars?

MR. DASENT: Note our objection, Your Honor. This is beyond the scope of their testimony. But if they know the
answer.

HEARING OFFICER CHESTNUT: I will allow the question. I don't understand the point of it, but okay. I don't -- again, I don't see how their -- the extent or the nature of their input has anything to do with it.

MR. HAVER: Your Honor asking me to explain what it has to do with it?

HEARING OFFICER CHESTNUT: Yes.

MR. HAVER: Okay. So in the settlement, there is wording that suggests that the Water Department, it will make its best efforts -- and I'm paraphrasing because I don't have the exact line in front of me -- best efforts to get stimulus dollars.

I believe I have a right to examine what those efforts have been. And I am now doing so to ask the distinction between what the Water Department sought within the parameters that were agreed upon in the settlement versus the parameters outside of the settlement.
HEARING OFFICER CHESTNUT: You can ask that. I'm not sure these witnesses are helpful --

MR. HAVER: I understand that.

HEARING OFFICER CHESTNUT: -- in answering that issue.

MR. HAVER: I am putting on my case in the way that I wish.

MS. BUI: Mr. Haver --

MR. HAVER: Whether you think it's helpful or not doesn't really matter to me. What matters to me is I can put on my case in my way.

HEARING OFFICER CHESTNUT: No. As we've talked many times, you cannot -- you do not have unfettered ability here. It has to be within the scope of the proceeding. It has to be within the scope of these witnesses' testimony.

But I will allow the question. If you can answer it, fine. Again, I don't think that it advances the record much because I'm not sure they really can contribute a responsive answer -- a
substantive type of answer. If you want to try and answer it, go ahead.

MR. HAVER: Mr. Jagt --

HEARING OFFICER CHESTNUT: Ms. Bui seemed to indicate that she wanted to say something about this.

MS. BUI: So, I was going to say -- thank you, Judge Chestnut.

Mr. Haver, to the best of our ability, we do provide the Water Department with financial analyses and assessments. We are not currently aware beyond our work with WIFIA explicitly what else the Department has been doing. We do understand that the Department has other consulting firms on its books that are available to them to do research into the grants.

So if I may redirect, I think that that question would be better answered by the finance panel.

MR. HAVER: Thank you. But to be clear, you don't have a contract to help the Water Department -- you did not have a
contract during the last Fiscal Year to help the Water Department get stimulus dollars as defined in the Settlement Agreement; is that correct?

MS. BUI: Not explicitly to do that. But as part of general tasks, yes.

As I said, Mr. Haver, I would strongly suggest that Ms. LaBuda is better, far better suited to answer that question in terms of efforts with respect to the stimulus funding.

MR. HAVER: Thank you.

MS. LaBUDA: Mr. Haver, again, this is outside the bounds of my testimony. But I'm more than happy to answer your question.

Is that the Department does have a separate contract, specifically helping us as a Department pursue federal subsidies. And those efforts are detailed in the monthly Board Report. They have helped us apply to building resilient infrastructure communities, which is a grant program. 75 percent grant,
25 percent would be our contribution for a capital project. We have applied for two or three hazard mitigation grants.

Again, these are all detailed in the Board's Report. We are researching some other grants related to security and research now. But we do have another firm on contract that their specific scope is to research grant opportunities for the Department.

MR. HAVER: Who is that contract with, please, Ms. LaBuda?

MS. LABUDA: It's all in the public domain. The contract is with Arcadis.

MR. HAVER: I'm sorry?

MS. LAUDA: Arcadis.

MR. HAVER: Could you help me with the spelling of that, please?


MR. HAVER: Thank you.

MS. LAUDA: You're welcome.

MR. HAVER: And Ms. LaBuda, when
was that contract signed?

MS. LaBUDA: May I look -- do you mind if I look it up, Mr. Haver? Because I don't want to give you --

MR. HAVER: Please do so.

MS. LaBUDA: The contract start date was June 1, 2021.

MR. HAVER: When was the first deliverable received?

MS. LaBUDA: I don't have that information readily available, Mr. Haver. We submitted the Building Resilient Infrastructure Communities Grant for specific capital projects some time in the fall of 2022. But again, any of our efforts are detailed in the Board Report. That is definitely the best source for this information.

MR. HAVER: Sorry. I missed that. I was taking notes.

MS. LaBUDA: No, of course. The list of things we have submitted for financial assistance is all detailed in the monthly Board Report. There is a table in
the back that has the dates of the applications and memos. That is the best source for the activities.

MR. HAVER: Was there anything in the contract that specifically asked the consultant to help raise stimulus dollars as defined by the Settlement Agreement?

MR. DASENT: Please, note our continuing objection now because I think we are going very far afield of this particular subject.

HEARING OFFICER CHESTNUT: Again, I think the reports are the best source of the efforts made and the results of those efforts. But if you can answer it quickly or -- I think you should -- if you can direct Mr. Haver somewhere, go ahead.

Mr. Haver, this could have been done in discovery. You could have asked them prior to this. And they would have been able to probably give you a better response than waiting til now.

If you think you can answer it --

MS. LaBUDA: I can. I'll be happy
to. The -- the grant, the contract, the scope of services did not specifically cite the settlement. We did not want to be limited to just the settlement pursuit. We wanted as a City, as a Department, to pursue all the federal funding that we can given our 600 million-dollar Capital Program.

So the scope of services was much broader than just the settlement. It was to assist the Department in researching, applying and meeting all the compliance and complex terms related to pursuing federal financial assistance.

MR. HAVER: Thank you.

MS. LaBUDA: Thank you, Mr. Haver.

MR. HAVER: Going back to Mr. Jagt as opposed to Ms. Bui, although, I don't know who to direct it to. I am going to ask about the savings that Ms. LaBuda spoke about when she testified that the Water Department had successfully gotten low interest loan.

Should that question be directed to
Ms. Bui or Mr. Jagt or Mr. Merritt?

HEARING OFFICER CHESTNUT: Ask your question, and they will decide who to answer.

MR. HAVER: Thank you.

How much rate payer savings was generated by the reduction in the interest rate on that loan?

MR. JAGT: Can we clarify, like, which -- which loan?

MR. HAVER: Well, I will do my best. But Ms. LaBuda in testimony today said the Water Department had been very successful in getting a PennVest low interest loan that was part of the stimulus package. And when I asked her specifically about how much savings that was and what it meant in terms of debt service and saving for rate payers, she said she was not aware.

So I'm asking you, how much that savings was and its effect on rate payers.

MR. JAGT: In that it's not, like, part of her testimony in this proceeding, I
don't have it readily available right now.
I mean, that's something we could calculate
and provide you with the information.

    Again, it's probably -- that
capital dollars, the program that it's
providing is probably not going to provide
savings -- like, debt service savings to
the Department until Fiscal Year 2024 or
beyond. So -- but we can provide that
information to if you want.

    MR. HAVER: I would like to have
it. Thank you.

    Mr. Jagt, it's my recollection that
you participated in last year's rate case;
is that correct?

    MR. JAGT: That's correct.

    MR. HAVER: And it's my
recollection that you reviewed the
Settlement Agreement; is that correct?

    MR. JAGT: Yes, that's correct.

    MR. HAVER: And would you say the
Settlement Agreement was favorable for the
Water Department?

    MR. JAGT: As a rate consultant for
the Water Department, I would say no.

MR. HAVER: So, you oppose the Settlement Agreement?

MR. JAGT: Oppose? I mean, it's -- you know, as we stated, like, for a black box settlement, it was a settlement that was reached that provided some additional revenues for the Department without extended litigation. And from that point of view, it -- you know, there's a benefit of the Department to agree to that to get to that point.

But in the overall financial position and the level of additional revenues provided, I would say we are -- it's not providing a solid financial results for the Department.

MR. HAVER: Thank you, Mr. Jagt. Hearing Examiner, that concludes my questions for this panel.

HEARING OFFICER CHESTNUT: Okay.

MR. DASENT: Your Honor, please, we would like to request a break before we proceed with redirect.
HEARING OFFICER CHESTNUT: Okay.

MR. DASENT: Can we go just a little longer than that? Just because --

HEARING OFFICER CHESTNUT: Sure, 11:25.

MR. DASENT: I appreciate that.

HEARING OFFICER CHESTNUT: How about 11:25?

MR. DASENT: Thank you.

(Off the record at 11:14 a.m.)

- - -

(Back on the record at 11:28 a.m.)

HEARING OFFICER CHESTNUT: We are going to resume.

MR. DASENT: Thank you.

In response to Mr. Ballenger's questions to Black and Veatch, the minimum threshold was raised as an issue to be litigated in this case. What is the importance of the 135 million-dollar minimum threshold metric?

MS. BUI: Sorry. I was trying to unmute there. Go ahead, Dave.
MR. JAGT: Uh --

MS. BUI: Okay. So, I think in response to that, Mr. Dasent, is that the 135 is the only target metric that we have that has been agreed upon in the past rate proceeding in 2018. With respect to the importance of it and why we are looking to it, I am going to defer that question over to Ms. LaBuda and Ms. Clupper and Mr. Nissen.

MR. DASENT: Missy, can you help us there?

MS. LaBUDA: Sure. Good afternoon. I am going to look to my other participants, Ms. Clupper and Mr. Nissen to weigh in.

MS. CLUPPER: Thank you.

MS. LaBUDA: Go ahead, Kathy, please.

MS. CLUPPER: It's important to remember the financial metrics the Board agreed to and discuss in the 2018 hearing were what were viewed as sort of the minimal thresholds to have a strong
financial credit profile. And those were in addition to the liquidity, also debt service coverage of 1.3 and pay bill of 20 percent.

Those metrics were then shared with rating agencies. They were shared in the -- with the investor public. They are disclosed in the official statement. And they are -- I mean, just to put a point on it, actually, the minimum level compared to other peer rated water and sewer.

So when the last rating, the last bond issue that was done, the rating agencies, all three of them mentioned these. So in addition to the S&P concern about going below 120 -- understand, this was in the middle of COVID. They were giving most systems a bit of a pass. But they were concerned about it going below a certain threshold. They called out the 120.

But in addition to S&P, Moody's also cited as a reason for a downgrade would include, you know, the inability for
increase rates to commensurate with coverage requirements and in line with the Department's internal standard as a reference to the financial metrics agreed upon in 2018. Fitch, also, specifically mentioned having leverage ratios increase over ten times.

That's the debt-to-liquidity. They are already at an eight times leverage, which is higher than other peers. And a failure to secure rate increases is sufficient to maintain, quote, current financial profile as leading to a negative rating action.

So, it's not just S&P. All three rating agencies are concerned with the inability to increase rates to maintain minimum financial metrics. The 135 was called out in this last -- as one of the metrics that people could hang their hat on, in a sense. So, I -- I -- I don't thin it's an issue of going below 120 by a dollar. It's a bigger picture issue of not -- the Rate Board not increasing rates,
not providing rates in a way that this Department can continue to, you know, to move up to the financial ratios. Understanding that in the next couple years -- I mean, we are in the middle of a crisis here.

But clearly, the expectation going forward is that the Department and the Rate Board will, you know, manage to those minimum thresholds.

MR. DASENT: Back to the Black and Veatch panel -- unless, Missy, do you have anything more to add? Let me ask that question.

MS. LaBUDA: No, thank you. I think we covered it. Thanks so much.

MR. DASENT: Okay. Back to Black and Veatch. Mr. Ballenger discussed this Table C-1 and the final RSF balance that's shown in the settlement table.

Why do you think the RSF balance that's shown there is not a good metric for the minimum threshold?

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.
So you know, when we withdrew that, the '21 -- or the request for increases in '21, the result is the Department knew we were going below 135. But we tried to maintain that Fund Balance as much as we could without burdening the customers to go back up immediately to 135. So all along, the Department has communicated that the target is 135. But we were willing to forego it for the sake of COVID and putting pressure on the rate customers.

So, the turn -- all along consistent communication since the 2018 rate determination has been that the Department will maintain the 135. The reason why it's not in the settlement is because we couldn't come to an agreement in the time frame we had for the settlement. So, that's why it was put in there that we would have -- you know, each party would present their own opinion. And a determination would be made for what the threshold would be to establish that basis.

But the Department's always
communicated 135 million.

MR. DASENT: Mr. Jagt, in response to Mr. Haver's questions, you indicated the Department for Black and Veatch could calculate savings related to debt service or savings for Fiscal '24 and beyond.

Could you provide that as a written transcript request?

MR. JAGT: Yes, we can.

MR. DASENT: Okay. That's all we have, Your Honor.

HEARING OFFICER CHESTNUT:

Mr. Ballenger, did you want to do recross based on the redirect?

MR. BALLenger: Just one point of clarification. That the tables Mr. Dasent was referencing are in the rate determination, not in the settlement. There is no Rate Stabilization Fund balance shown in the table attached to the settlement. So just for the record, I want to make sure that's clear.

MR. DASENT: So noted. Thank you.

HEARING OFFICER CHESTNUT: Anything
else?

MR. BALLenger: Nothing further from me.

HEARING OFFICER CHESTNUT:

Mr. Haver, do you have any further questions based on the redirect?

MR. HAVER: I do not.

HEARING OFFICER CHESTNUT: Okay.

Hearing nothing further then, the witnesses are excused. Thank you very much for appearing.

MR. MERRITT: Thank you.

MS. BUI: Thank you, Judge.

HEARING OFFICER CHESTNUT: That takes us to our next witness who is Mr. Morgan I guess.

MR. BALLenger: Trying to find Mr -- there he is. Okay.

Just to start us off here, we have stipulated to the authenticity of Mr. Morgan's testimony. So, I will be very quick in just introducing Mr. Morgan.

Lafayette K. Morgan, Jr., who is a consultant for the Public Advocate, filed
pre-cert testimony on the record in this proceeding earlier. And he is he available for cross-examination.

HEARING OFFICER CHESTNUT: Thank you very much. Good morning, Mr. Morgan.

MR. MORGAN: Good morning.

HEARING OFFICER CHESTNUT: Mr. Dasent, do you have questions for Mr. Morgan?

MR. DASENT: Yes. We have a few questions. And, Mr. Morgan, I tried to forward to you the hearing exhibits, PWD Hearing Exhibit 2. And that will sort of guide us through the various questions. And hopefully, you will have that on your computer.

MR. MORGAN: Just a minute. Okay.

MR. DASENT: Now, Tab 2 of the PWD Hearing Exhibit, it's on page 20.

HEARING OFFICER CHESTNUT: I'm sorry. Mr. Dasent, I was getting myself organized here.

Would you restate that reference?

MR. DASENT: Sure.
HEARING OFFICER CHESTNUT: Am I looking at your hearing exhibit?

MR. DASENT: Yes, No. 2.

HEARING OFFICER CHESTNUT: Right.

And what page?

MR. DASENT: I'm scrolling to page 20. It's the first date of response at Tab 2.

HEARING OFFICER CHESTNUT: This page 20 of 79?

MR. DASENT: Yeah. As I scrolled, it says 20. And it's the date of response for the Public Advocate to PWD questions.

HEARING OFFICER CHESTNUT: Okay.

MR. DASENT: Okay.

Now, Mr. Morgan, you indicate that the recommendations in your testimony are intended to be consistent with the reconciliation procedures that are -- or the reconciliation procedure that was included in the settlement. And that's the joint petition.

Do you agree with that as --

MR. MORGAN: Yes.
MR. DASENT: -- stated in your Question 2? All right.

And this context, you also note your testimony is consistent with a stipulation negotiated between the Advocate and the Philadelphia Water Department; am I correct? That's also referenced in your test -- in your -- your answers.

Now, the stipulation covers a range of issues, some of which are raised by the Advocate and its motion to strike PWD testimony filed in this case.

Do you recall that?

MR. MORGAN: Yes.

MR. DASENT: And those issues specifically address the stipulation. And you can find that, also, if you scroll through the -- if you scroll through the Hearing Exhibit. You will find that it's Tab 3. It covers a range of issues. And these include the starting point, minimum threshold and sharing.

For the sake of it, let me sort of follow along also. Now, there are other
issues, as well, that are addressed in the stipulation which included FY23, Approved Revenue. Incremental Revenues must be sufficient to fulfill PWD's required covenants with bond holders and other legal requirements.

Do you remember that, as well?

That's Paragraph 9.

MR. MORGAN: Yes.

MR. DASENT: Turning your attention to Paragraph 2 of the stipulation for Fiscal 2021 Financial Performance. This particular adjustment is as stated in Paragraph 2?

MR. MORGAN: Yes.

MR. DASENT: Okay. And now, could you read that for the record? I believe it begins: The starting point for determining.

MR. MORGAN: Starting point for determining the 2021 financial performance adjustment will be the actual Rate Stabilization Fund, RSF balance, for the beginning of FY 2020, which is the same as
the ending balance for FY 2021. The starting point is hereafter referred to as the actual RSF balance.

MR. DASENT: And which, also -- directing your attention to Paragraph 3 of the stipulation.

Would you agree that it states there that the starting point or the actual RSF starting balance will be compared to a minimum threshold for the RSF as determined by each stipulating party?

Isn't that true?

MR. MORGAN: That's true.

MR. DASENT: Yup. Now directing your attention to your response of PWD discovery at Tab 2 of PWD Hearing Exhibit 2, Question F4. I give you time to get there. You have to go back.

HEARING OFFICER CHESTNUT: I'm sorry, Mr. Dasent. What was that hearing exhibit reference?

MR. DASENT: Hearing Exhibit 2. And it's at Tab 2, which are the discovery responses.
HEARING OFFICER CHESTNUT: Tabs aren't, like, helpful to me since I'm scrolling.

MR. DASENT: I know.

HEARING OFFICER CHESTNUT: Do you know the page? That would help.

MR. DASENT: Page 23.

HEARING OFFICER CHESTNUT: Oh, okay.

MR. DASENT: Okay.

Mr -- Mr. Morgan, directing your attention to the response of PWD Discovery Response, Question 4. The minimum threshold is not defined in the rate determination, correct?

MR. MORGAN: That is correct.

MR. DASENT: Okay. And as stated in your response to Question 3 just before --

MR. BALLINGER: Objection to the question. You referred to the rate determination. Wasn't your question whether it was defined in the settlement?

MR. DASENT: Well, I'm looking at
Question 4. Let me see what he says.

HEARING OFFICER CHESTNUT: I think it says in --

MR. BALLenger: Okay. It says it in the answer. Okay.

MR. DASENT: Yes. Yup.

MR. BALLenger: Withdrawn.

HEARING OFFICER CHESTNUT: And that wasn't -- that was just a misstatement, isn't it? I mean, it's not intended to be what the answer would be.

MR. DASENT: Well, it was not defined in the settlement and as a prude in the rate determination. You are correct. The answer may be in-artfully stated.

Now directing your attention, Mr. Morgan, to Question 3. The minimum threshold to be used for the Fiscal 2021 financial performance adjustment is an issue that must be litigated here.

Isn't that correct?

MR. MORGAN: As I responded, I acknowledged that in the stipulation, it lays out that it must be litigated.
MR. DASENT: Okay.

HEARING OFFICER CHESTNUT: Excuse me. Mr. Morgan, can you speak up a little bit? It's hard for me to hear you.

MR. MORGAN: Okay. I will get closer.

MR. DASENT: Okay. Now, Mr. Morgan, let's turn to sharing.

With respect to the issue of sharing, and that's addressed in the Hearing Exhibit, it's Tab 3, so that's the stipulation. You have to scroll back. And I will get there with you and help everyone. It's a stipulation, Paragraph 6.

MR. MORGAN: I'm there.

MR. DASENT: Okay. Now with regard to sharing, let us direct your attention to Paragraph 6.

Under the stipulation, assuming there is an amount to be shared, the parties can submit their respective positions, correct? It's literally what it says.

MR. MORGAN: Correct.
MR. DASENT: Yeah. And I take it you'd agree that the split or the amount of sharing each party proposes, whether it's 50/50 or some other percentage, should be consistently applied.

Would you agree with that?

MR. MORGAN: Not necessarily, no.

MR. DASENT: Okay. And explaining that, you are saying, basically, it could be 50/50. It could be 68 percent. It could be some other percentage?

MR. MORGAN: Could be -- yeah. It could be -- it could vary from 50/50, 70/30.

MR. DASENT: Now, let's turn to your adjustment in this case, your recommendation. Your initial adjustment was 5.35 million or half of the 10.7 million you characterized as Fiscal 2021 over-performance; am I right?

MR. MORGAN: Yes.

MR. DASENT: And that's an amount to reduce rates for Fiscal 2023.

MR. MORGAN: Correct.
MR. DASENT: Okay. That's your minimum adjustment. You have a second adjustment that's based upon other criterias. Let's say that for an additional 1.24 million; am I right?

MR. MORGAN: Correct.

MR. DASENT: Right. And in your testimony, you opine that 10.5 million should be available for sharing in light of 2021 financial performance. That's the total amount, correct?

MR. BALLENGER: I don't believe that's correct. I think you said 10.5, Mr. Dasent.

MR. DASENT: It's 10.7 in the testimony, but subject to check.

Do you accept that subject to check?

MR. MORGAN: Subject to check, yes.

MR. DASENT: Okay. And if that amount is shared equally, it results in a minimum adjustment of 5.53 million correctly -- correct?

MR. BALLENGER: Subject to check,
Mr. Morgan, if you prefer.

MR. MORGAN: Subject to check.

MR. DASENT: Okay. Now in addition, you identify 1.24 million for sharing based upon -- let me characterize the Residual Fund balance, which is higher than projected. You mentioned that in your testimony. But there's an additional 1.24 million. That's the point for me.

MR. MORGAN: That is correct.

MR. DASENT: And you add that amount to the 1 -- to the 5.35 million?

MR. MORGAN: Right.

MR. DASENT: Okay. Now a little more global question, Mr. Morgan. I take it you agree that PWD operation should be self-sustaining; am I right?

MR. MORGAN: Yes.

MR. DASENT: Okay. So the rate -- so rate revenue should cover the Department's expenses, and that's the whole idea?

MR. MORGAN: That is the whole idea.
MR. DASENT: Okay. Now, let's move a little more to the mundane in your testimony. At Tab 2, which is the Department's -- the Advocate's response to PWD Discovery. So, we have to scroll back. And it's at Question 14.

When you get there, please, let me know.

HEARING OFFICER CHESTNUT: Where is Tab 2? I'm sorry.

MR. DASENT: Tab 2, it's page 33.

HEARING OFFICER CHESTNUT: Okay.

MR. DASENT: As I scroll through. It's the answer to Question 14 --

MR. MORGAN: Yes.

MR. DASENT: -- of our PWD request to you.

MR. MORGAN: Right.

MR. DASENT: I take it from your answer to those discovery responses, we can agree that Hurricane Ida was in August 29, 2021 when it made landfall.

MR. MORGAN: This is what it shows.

MR. DASENT: Yeah.
MR. MORGAN: The -- I would say this in my testimony where I mention Hurricane Ida, this was in response to what was presented in ML-2 where ML-2 purports to discuss FY 2021 operations result. And Hurricane Ida is cited as one of the occurrences that occurred that is discussed, so.

MR. DASENT: Yeah -- my only point is -- sorry. My only point is, the date of the landfall is August 29, 2021.

MR. MORGAN: Right. Right.

MR. DASENT: Okay. And the Fiscal Year for 2022 begins July 1, 2021; am I right?

MR. MORGAN: Right.

MR. DASENT: Okay. Now, let me direct your attention to Discovery Responses again at Questions 12 and 13, so just a little above where you are now.

I take it --

MR. MORGAN: Did you say 13?

MR. DASENT: Twelve and 13.

MR. MORGAN: Okay.
MR. DASENT: Which is -- I am looking now at 31 as I scroll through.

Now, I take it the source of your information for Tables 9 and 12 of your testimony was VB-4. That's my takeaway from the answers to 12 and 13.

Am I right in assuming that?

MR. MORGAN: Yes.

MR. DASENT: Okay. And specifically, the electronic workbooks provided with the schedule?

MR. MORGAN: That is correct.

MR. DASENT: Okay. And I take it in making your comparisons in those tables, it's for illustrative purposes only because those are taken from VB-4?

MR. MORGAN: Correct. And I will point out that what really matters in -- in using VB-4 is the fact that the balance in the RSF is an amount that is equal to what is shown in Ms. LaBuda's testimony. And even Mr. Jagt earlier today acknowledged that those balances are correct.

MR. DASENT: Okay. But because
VB-4 consistent with the stipulation is to be used for illustrative purposes only, my point is that your schedules or tables on pages 9 and 12 are offered for that purpose for illustrative purposes?

MR. MORGAN: Yes. As to make a comparison, as well.

MR. DASENT: Okay.

Now, Mr. Morgan, you criticized PWD's discussion of cost pressures in the record for not including lower pension fund contributions. You do this in your testimony toward the end of pages 18 and 19.

Do you recall that?

MR. MORGAN: Yes.

MR. DASENT: Now, I take it you are referring there to pension fund contributions for Fiscal 22 as projected in the 2021 general rate case?

MR. MORGAN: I'm not certain that's -- but that information was provided in one of the initial data request that was --
MR. DASENT: But your testimony on pages 18 and 19 is referring to that time period, Fiscal 22 as projected in the last rate case.

MR. MORGAN: Yes.

MR. DASENT: And then toward the end of your testimony on beginning of page 19, PWD updated projections and scheduled VB-4 are also referred to.

Do you recall that? That would be the final paragraph -- I think page 19, lines 7 through 10.

MR. MORGAN: That is correct.

MR. DASENT: Okay. Now directing your attention to responses, PWD Discovery Requests 23, so that's pretty close to where we were a minute ago, give or take ten questions. And, Your Honor, that's on page 42 if you are scrolling.

HEARING OFFICER CHESTNUT: Yeah. I got that.

MR. DASENT: Okay.

Now, you indicate there in the response that you're unable to
affirmatively state whether lower pension funds contributions are reflected in VB-4; am I right?

MR. MORGAN: That's correct.

MR. DASENT: Okay. And I take it your answer is similar with regard to projections that are for the Fiscal 2021 rate case? That would be the next question.

MR. MORGAN: Can you repeat that?

MR. DASENT: Sure. I take it your answer is similar with regard to the projections from Fiscal 21, general rate case, reflecting the lower pension requirements as was the case was settled and it was a black box settlement?

MR. MORGAN: I'm sorry. When you say Fiscal 21, are you talking about what was presented in the rate case?

MR. DASENT: Well, I'm referring to the Question 23. And Question A of that, you denied any specific -- you denied that in the answer because the settlement was part of a black box. So I'm suggesting to
you, that you didn't know the lower pension fund requirements are reflected in the settlement because it was a black box settlement.

MR. MORGAN: In the settlement, I would say it's not black box. We don't know what the costs are that we are considering.

MR. DASENT: Directing your attention to schedule LKM-1, 3 of 3, which is appended to your testimony. The very last page, you know, shows the various tables, C-1 tables, that you prepared. And it shows the ending balance of 96.376 million for 2023; am I correct?

MR. MORGAN: Correct.

MR. DASENT: And this amount is well below the projected RSF balance shown in Table C-1 in the 2021 rate determination; am I correct?

That's 113.998 million.

MR. MORGAN: Again, these numbers are presented for illustration. They are -- yes. To answer you directly, yes.
But even in settlement, the amount that was agreed was less than the amount that PWD is now claiming to be the threshold.

MR. DASENT: Using your number, and with reference to this specific number, 96.376 million, if any -- assuming that was actually approved, if any significant unanticipated event occurs during Fiscal 2023, that would require utilization of the Rate Stabilization Fund like a storm event, all else being equal, that would result in an even lower RSF balance than you're showing here in LKM-1; isn't that true?

MR. MORGAN: No. These numbers -- to start off, these are numbers that or model, I should say, is not something that I generated from the beginning. The numbers in here starts off with PWD's revised model to reflect settlement.

And so, there are assumptions in here that we don't know what they are. And so, to say that these are the actual numbers that would be attained, I simply cannot say that. Again, what -- this is a
tool that we have been provided.

And essentially, what I'm trying to do here is to show that if the Board were to accept my proposal, there is an effect on the results that -- that are presented in this model.

MR. DASENT: Assuming the Board does accept your proposal, and the RSF balance is 96.376 million in Fiscal 23, safe to assume, all else being equal, if there was a storm event like Ida or any other emergency, that that would draw that number down even lower?

MR. BALLenger: Object to the assumptions and speculation. Mr. Morgan has testified about where this model came from. This model is not his.

HEARING OFFICER CHESTNUT: Your objection is overruled. Let's see if he can answer. I think it's been kind of asked already, but just to -- if there is some clarification, Mr. Morgan can provide.

MR. MORGAN: Again, to say that if my recommendations are accepted, that it
would result in this number is simply an assumption that I don't think I can except because the assumptions that went in this model are unknown.

What we do know is that PWD has had a history of over-performing. And even if to look at the rating reports, Fitch and Moody's talk about PWD having a strong financial profile. And that their performance was consistent with historical results. So based on that, I don't think we can expect to see a number like the 96.376.

MR. DASENT: Well, let's turn to the rating agency reports. If you look to 57 on PWD Hearing Exhibit 2, scrolling to that, you will see the S&P rating agency report.

MR. MORGAN: What tab is that?

MR. DASENT: That is Tab 4. But scrolling to it, you will see it's in red, S&P report. And it's 57 if you are looking at it on the computer.

MR. MORGAN: No, I have it.
MR. DASENT: Okay. Now, would you agree the rating agencies are monitoring PWD legal metrics, revenues, revenue requirements of PWD increasing need to utilize its RSF balance to meet its operating expenses? You'd agree, it's looking at all of this, correct?

MR. MORGAN: No. They are not -- they are not just looking at the RSF balance. That's for sure.

If you go through this, you will find that I think it's only S&P that talks about -- that measures the specific balance. But they, all look at several different factors in coming up with their rate increase. It's not all focused on the RSF balance.

MR. DASENT: But liquidity is a major concern for all the rating agencies. You would agree with that?

MR. MORGAN: And that's also consistent with my recommendation. At the end of the day, whether or not the -- the Board accepts -- if the Board accepts my
position, PWD still gets a rate increase and improves their liquidity.

MR. DASENT: But let's look at the S&P report.

MR. MORGAN: Okay.

MR. DASENT: And it's dated September 17, '21. It's at page 57.

MR. MORGAN: Yup.

MR. DASENT: And I think I've highlighted, you know, the areas that I am really focused on. But in looking at that report, doesn't it indicate that higher than planned use of liquidity could cause S&P to lower the rating for the Department?

MR. MORGAN: It says -- the highlighted section starts off with if. "If," I think, is the operative word there. This hasn't come to fruition because they would have lowered it if they are consistent with what they say.

But clearly, it says what it says. But if you look through just above, it tells you that the stable outlook is predicated on the City being able to obtain
a rate covenant compliance with
un-significant deviations in the year and
unmistaken cash in investment.

So just looking at the RSF
balances, it's kind of narrow. And if we
were to look through the rating agencies
reports, you will find that there are other
factors that are concerned.

MR. DASENT: Doesn't S&P, though,
explicitly state that depleting reserves
below 120 million will likely result in a
downgrade for the Department?

That is correct --

MR. MORGAN: That's what it says.
And no one -- and I'm not recommending that
we deplete the reserves below 120 million.

MR. DASENT: Okay. And S&P, in
effect, is drawing a red line there saying
basically ahead of time, here is what you
need to watch out for.

Isn't that true?

MR. MORGAN: Yes, that's true.

MR. DASENT: And Fitch is also, as
you scroll back, suggesting rate
adjustments to maintain PWD's current level of liquidity is important. And Moody's makes similar observations. But there are a landscape of things they are looking at, but liquidity is among them.

Isn't that true?

MR. MORGAN: Yeah. If you look at Fitch at the bottom, Fitch describes what drives the rating. And they talk about PWD being a monopolistic service provider. It has low operating risks. And it has strong financial profile.

If you go up to Moody's, you'll find that Moody's -- in fact, Moody's is the one that comes out and says that -- that PWD, while the financial challenges do not enforce an immediate risk to the Department credit profile, prolonged economic stress will cause -- will effect their rating. But in that case, they are responding to the idea that if the Department is unable to maintain its result.

So, I think the rating agencies
take a holistic approach to determining when to downgrade. And it's not again focused on the RSF funds -- fund balance.

MR. DASENT: Mr. Morgan, would you also agree with reference to the Moody's Report, they do indicate the inability to raise rates commensurate with coverage requirements and in line with the Department's internal standards could lead to a downgrade?

MR. MORGAN: Yes. And again, that's -- that's a scenario that they are presenting. Moody's states that they found PWD's financial performance to be satisfactory. That's right on the ratings rationale. So, it's not like they see a plane that's crashing.

MR. DASENT: But I think they are looking at things over a period of years and observing PWD in comparison to its peers. And indicating there are liquidity concerns as are all the rating agencies.

MR. MORGAN: That's correct.

MR. DASENT: Okay. Now, let's talk
about a black box settlement and see if we can conclude there.

Turning your attention to Tab 2, Question 15. Those are the Discovery Responses. And I am scrolling back so I can tell you where they are. They are not far away from where we are now.

MR. MORGAN: Tab 2, Question 15?
MR. DASENT: Yup.
MR. MORGAN: Okay.
MR. DASENT: And that's page 34 if you are scrolling to it on a computer.

Now in Question 15, you indicate that the rate determination dated June 16, 2021 was approved as a black box settlement; isn't that true?

MR. MORGAN: That is true.
MR. DASENT: The rate determination actually approved a black box settlement.
MR. MORGAN: And I confirmed the same.
MR. DASENT: Okay. And with respect to Question 16, the next one, you'd agree that the black box settlement
represents an agreement between the parties in which the components and derivation of the settlement amount are not disclosed?

MR. MORGAN: That's -- that's what I stated. But the revenue is disclosed.

MR. DASENT: Yes. The approved revenues, yes. And you indicate in response to PWD Discovery Question 17, which would be the next one, that a black box settlement only disclosed total additional revenues to be generated. That's your point. And from an agreed upon settlement.

So, we are in agreement on that, also?

MR. BALLenger: Objection to the question. Doesn't say "only."

MR. DASENT: I guess that's my editorial. The black box settlement discloses the total additional revenues. Let me see what it actually says.

Yes. It doesn't have "only" in there. Thank you.

Now toward the end of my hearing
exhibits we have -- I mean, it's literally
the last page. We have a table that sets
forth the -- the breakdown for 2021 rate
proceeding.

MR. BALLenger: I want to go ahead
and just object to this exhibit. This is
taking something from Mr. Morgan's
testimony in 2021, which has not been used
in this case. It's outside the scope of
his testimony in this case.

I would object to these exhibits.

HEARING OFFICER CHESTNUT: I think
it's appropriate to look at the record of
the underlying rate case. That's the
record established in that case. And I
think it can be referenced in this case.

Now, how useful that is, I don't
know. But I think it's appropriate to look
at what happened.

MR. BALLenger: Just in light of
the -- the Water Department's own counsel
asked that we limit cross to the four
corners of the bond testimony during the
prehearing conference. I'm more than
Mr. Morgan, looking at this table, the very last page of PWD Exhibit 2, does it show that the PWD ending balance for the Rate Stabilization Fund at the end of the year as in column one as you projected is 175,652,000?

Is that what the table says?

MR. MORGAN: Can you repeat the question, because I --

MR. DASENT: Sure.

Looking at the first column Schedule LKM-1, in that final page of PWD Exhibit 2, it shows a comparison of Fiscal 21 rate proceeding, LKM testimony, Schedule LKM-1 compared to actual results. And in the first column it shows for the Rate Stabilization Fund balance 175,652,000.
according to your testimony in the 2021 rate proceeding; is that correct? Subject to check.

MR. MORGAN: It is correct. And then, I will point out that that was without the rate increase.

MR. DASENT: Yes.

MR. MORGAN: So -- and there is several assumptions that may or may not be currently reflected.

MR. DASENT: Uh-huh. And how does that compare with Column 2 that shows the Rate Stabilization Fund balance under actual results 124,661,000? Is there a delta or something like 50 million?

MR. MORGAN: Roughly.

MR. DASENT: Okay. And that's all we have. Thank you very much, Mr. Morgan. I appreciate it.

MR. BALLenger: I think that's -- HEARING OFFICER CHESTNUT: Wait, wait, wait. Mr. Haver, do you have any questions for Mr. Morgan?

Mr. Haver, do you have any
questions for Mr. Morgan?

Okay. No response.

MR. BALLENGER: During prehearing conference, he said he had questions for the two panels. So absent a response --

HEARING OFFICER CHESTNUT: Okay. Make sure everybody has an opportunity here, but okay.

Do you want a break before you do redirect?

MR. BALLENGER: Yes. I would really appreciate about ten minutes. Maybe if we can come back at 12:25, round up a little bit.

HEARING OFFICER CHESTNUT: Okay. We will do that.

MR. BALLENGER: Thank you.

(Off the record at 12:12 p.m.)

(Back on the record at 12:25 p.m.)

HEARING OFFICER CHESTNUT: Are we ready to resume?

MR. BALLENGER: Yes, Judge. Thank you.
MR. DASENT: Yes.

MR. BALLenger: Okay. Thank you for the pause. I just had a couple of questions for Mr. Morgan on redirect. And --

MR. HAVer: Your Honor, I would like to have my opportunity for direct.

HEARING OFFICER CHESTNUT: I had asked you before, and you didn't respond.

MR. HAVer: I apologize. I must have had a computer glitch.

HEARING OFFICER CHESTNUT: All right.

MR. BALLenger: I'm sorry. Are you going to cross-examine Mr. Morgan, Mr. Haver?

MR. HAVer: I am happy to answer Judge Chestnut's questions.

HEARING OFFICER CHESTNUT: I don't have a question. I said you can go ahead if you have cross for Mr. Morgan.

MR. HAVer: Thank you.

Mr. Morgan, did you participate in a Fiscal Year 2022 rate case?
MR. MORGAN: Fiscal Year 2022 rate case? I participated in the TAP Reconciliation filing.

Is that what you are referring to?

MR. HAVER: No. I am referring to the case that we -- happened before this case, that the settlement resulted in this case.

MR. MORGAN: That was 22 -- fiscal 22/23, yes.

MR. HAVER: Okay. In preparing for the proceedings, preparing your testimony, did you have an opportunity to review the public notice that was posted on the Philadelphia Water Rate Board?

MR. MORGAN: Unfortunately, I am more focused -- in that proceeding, there was a separate cost of service for a designed witness. And so, my focus was on the total revenue requirement.

MR. HAVER: No, sir. Mr. Morgan, I am talking about the public notice for today's hearing.

MR. MORGAN: Oh, no, I didn't.
MR. HAVER: Mr. Morgan, would you know which witnesses the Public Advocate were responsible for reviewing the public notices?

MR. MORGAN: There is somebody rattling paper. And so, I couldn't hear what you were saying.

MR. HAVER: Your Honor, could you, please, ask the person to mute themselves if they are going to rattle paper?

MR. MORGAN: Okay. Go ahead.

HEARING OFFICER CHESTNUT: Ask the question, please.

MR. HAVER: Okay. Mr. Morgan, if you know, which witnesses of the Public Advocate are responsible for reviewing the public notices?

MR. MORGAN: I do not know.

MR. HAVER: Okay. Mr. Morgan, are you familiar with Section 8-600 of the Philadelphia Home Rule Charter?

MR. MORGAN: I have read it. I don't know it by section, but I have gone through it.
MR. HAVER: Okay. Are you familiar with the requirement that public notices are written in such a way that they are available and understood by people who have limited English proficiency?

MR. MORGAN: That's more of a legal question. I -- you know, I'm a numbers person. So, I don't know what the requirements are for that.

MR. HAVER: Thank you.

MR. LIANG: If I could interject really quickly. I am not --

MR. HAVER: I object, Your Honor. I have not asked the question --

HEARING OFFICER CHESTNUT: No, be quite, Mr. Haver.

What, Steven?

MR. HAVER: I have a right to object, Your Honor.

HEARING OFFICER CHESTNUT: No.

Mr. Haver, Steven needs to make an announcement.

MR. LIANG: I just wanted to clarify one --
MR. HAVER: I have a right to --

HEARING OFFICER CHESTNUT: Steven, what? Please mute Mr. Haver for a minute. And what were you going to say.

MR. LIANG: I was just going to say that the public notices -- I'm the one responsible for posting them. And I get approval from Board Counsel Daniel Cantu-Hertzler and Sonny Popowsky on the language, so.

HEARING OFFICER CHESTNUT: Fair.

MR. LIANG: I just wanted to clarify.

MR. HAVER: I object to that being part of the record, Your Honor.

HEARING OFFICER CHESTNUT: No. Your objection is overruled. You wanted information and you got it.

MR. HAVER: No. That's not what I wanted. I wanted to ask Mr. Morgan a specific question. And once again, you have showed your prejudice.

HEARING OFFICER CHESTNUT: Yes.

Okay. Go ahead.
MR. HAVER: Mr. Morgan, on line 10 -- on your direct testimony on page 10, line 3, you state -- if you don't have it in front of you, I will wait.

HEARING OFFICER CHESTNUT: Wait, wait. Page 10?

MR. HAVER: Page 10, line 3.

You state that in the Fiscal Year 2022/23 rate case, you recommended no increase for Fiscal Year 22; is that correct?

MR. MORGAN: On page 10, line 3? I don't see that. But I did recommend no increase in that rate case.

MR. BALLENGER: That discussion is at the top of page 8, the numbered page 8. It's page 10 if you're counting in your browser.

MR. MORGAN: Okay. Pdf page. I'm with you now.

MR. HAVER: Thank you. Under the Settlement Agreement, did the Water Department get a rate increase?

MR. MORGAN: Yes.
MR. HAVER: How many millions were they given?

MR. MORGAN: 10.4 million.

MR. HAVER: And that was even though you testified that no rate increase was necessary; is that correct?

MR. MORGAN: That's correct. The settlement is in negotiation. So, no party gets exactly what they want.

MR. HAVER: On the same document on my page 20, I don't know how it paginates for you. You state: In Philadelphia, there is an attempt to balance the interest of consumers and the utility.

Do you see where you said that?

MR. MORGAN: I remember making the statement. What was your page again? I'm sorry.

MR. HAVER: Again, on my pagination, it's page 20. I don't know how it translates to your computer.

MR. MORGAN: Okay. Go ahead. I don't have it but --

HEARING OFFICER CHESTNUT: Wait,
wait. Hang on.

MR. BALLenger: It's page 20 of the pdf, but the page is numbered 18. Lines 5 to 8.

HEARING OFFICER CHESTNUT: Got it.

Okay.

MR. HAVER: Mr. Morgan, who owns the Philadelphia Water Department?

MR. MORGAN: The City.

MR. HAVER: Understanding that you made the statement, my question is, what interest do you believe the utility has that are not consumer's interest?

MR. MORGAN: Can you -- I'm not sure I followed the question. Can you just repeat it?

MR. HAVER: Well, let me -- I will try and rephrase it to make it a little easier. So you were -- in your testimony, you are making the distinction between the consumers and the utility. The utility is owned by the consumers.

So I'm asking you, what is the distinction that you are making when you
are saying that there are two distinct interests?

MR. MORGAN: The distinction I was making in that paragraph is in response to the peer review. And when I went through the peer review, it was quite clear in some instances there's not an independent board that sets rates.

And in Philadelphia, what has been done, I believe, in 2012 in the past, the Rate Board was created so as to have an independent body that will listen to evidence both on the consumer side and the Water utility side. And at some point, determine what in the Board's view is a reasonable resolution.

And so, that's what I was saying.

Is that in Philadelphia, there has been this attempt to -- rather than have the utility have sole discretion of -- over setting rates, there's an attempt to have a body that will moderate the impact of rates on rate payers.

MR. HAVER: Are you suggesting that
the Water Department should have some other priority other than its water consumers?

MR. MORGAN: What I'm suggesting is that the water utility's focused on providing what I would consider to be good customer service -- safe and reliable service. I will put it that way.

And but -- how you get there, how they get there and how as the representative of the consumer, how I think they can get there are two different things. There are several ways to get to -- to providing safe and reliable service without hampering that service with too low rates or going to the extreme and having rates that are too high.

MR. HAVER: In your testimony today, you spent a fair amount of time talking about what the rating agencies are saying; is that correct?

MR. MORGAN: Correct.

MR. HAVER: Do you believe that the rating agencies play a significant role in setting rates for the Water Department?
MR. MORGAN: I don't think that they play a significant role in the sense that they have -- in this proceeding as an example, they have no representation. They present no evidence. They don't take sides in the rate proceeding.

The impact of their ratings is felt when the Water Department brings in information from the rating agencies to bolster their case.

MR. HAVER: Do you believe it's important to consider what the rating agencies say about the Philadelphia Water Department?

MR. MORGAN: I think one should listen to what the rating agencies have to say with a critical mind. And when I say critical mind, is to -- is to question and reason with the information that is presented in those reports.

MR. HAVER: Sir, are you aware that Philadelphia's in the process of establishing a public bank?

MR. MORGAN: No. I'm not aware of
that.

MR. HAVER: If there was a public bank controlled by the City that would replace the private banks that are loaning the Water Department money, would that have any impact at all on the importance of the rating agencies?

MR. BALLenger: Objection.

HEARING OFFICER CHESTNUT: Are you objecting, Mr. Ballenger?

MR. BALLenger: I -- you know, I thin he answered that he was unfamiliar with the public bank proposal. So, I was going to allow Mr. Morgan to answer if he knew or had an opinion about the matter.

HEARING OFFICER CHESTNUT: Okay. Because I think it's clearly outside the scope of this proceeding.

MR. BALLenger: I agree, Judge.

HEARING OFFICER CHESTNUT: It's clearly outside the scope of his testimony. If you want to try and have him answer it, go ahead.

MR. MORGAN: I indicated that I
don't know.

MR. HAVER: Thank you.

In your direct testimony on page 21 -- again, that's how it paginates on my computer -- line 14 through 18, you state that there is no reduction in rates -- no reduction in rates is warranted with respect to receipts of stimulus funds as established in the settlement.

Quote: PWD reports it did not receive federal stimulus funding in an amount sufficient to warrant an adjustment.

Is that your testimony?

MR. MORGAN: Yes.

MR. HAVER: Did you investigate on your own whether PWD received any stimulus dollars?

MR. MORGAN: Yes. We looked at source of -- we asked them outright. We looked at monies that came in. We even questioned them on something that we thought would qualify. And based on the definition as stated in the settlement, it did not apply.
MR. HAVER: What evidence did you review to examine whether P --

MR. MORGAN: We -- as I said, I -- I looked at responses to data requests. And --

MR. HAVER: Mr. Morgan, I'm asking a different question. But I'm happy to be quiet as you answer the question you think I'm asking.

MR. MORGAN: I thought I was answering the question.

MR. HAVER: I appreciate that.

What evidence did you review showing the applications or attempts that PWD made or is making to receive federal stimulus funding?

MR. MORGAN: There have been some monthly reports. And part of the settlement, PWD made a good faith effort or stated that they pursued federal stimulus funds.

MR. HAVER: Again, referring back to your testimony on page 22 -- on my page 22 -- you make a recommendation of a rate
increase. How much of a rate increase in dollars are you recommending?

MR. BALLENGER: I would object to the characterization. It's not Mr --

HEARING OFFICER CHESTNUT: First off, let me find that reference.

Mr. Ballenger, can you give me a hard copy page reference?

MR. BALLENGER: Well, I think he's referring to page 19, which would be pdf page 21 of Mr. Morgan's testimony. Lines, I'm guessing, 18 through 22 maybe. I don't know.

HEARING OFFICER CHESTNUT: Okay.

Mr. Haver, you got to give me a reference that I can look at.

MR. HAVER: I did.

HEARING OFFICER CHESTNUT: I'm looking at scrolling number 19 out of 43 or page 17.

MR. BALLENGER: Okay. It would be 21, the discussion under what do you recommend for this proceeding starting on pdf page 21.
HEARING OFFICER CHESTNUT: Okay.

Got that. All right.

Now, Mr. Haver, you are saying that Mr. Morgan is recommending what?

MR. HAVER: I'm asking him what he is recommending? How much of a rate increase in dollar amounts is he recommending?

HEARING OFFICER CHESTNUT: Wait, you got to clarify. He's not recommending. Let me ask Mr. Morgan to make sure I understand.

You're not recommending any rate increase, are you?

MR. MORGAN: Not recommending a rate increase.

MR. HAVER: Sir, forgive me if I'm wrong. What you are saying then is that you are recommending the entire amount that was included in the Settlement Agreement be erased, and that there been zero dollars added to the current rates?

MR. MORGAN: No. What I'm saying is that the rate increase that would come
into effect in FY 2023 has been decided. I'm not recommending that here.

What I am recommending is that there are some dollars that should be -- float back to customers. And that is what I'm recommending. That these dollars, $6.6 million, should go back to customers.

MR. HAVER: And I'm asking you to do a very simple calculation.

When you deduct what you believe is appropriate from the amount in the settlement, how much is left?

MR. BALLenger: We can take notice of mathematics. Mr. Morgan, if you care to respond, you may. But this not within the scope of your testimony.

HEARING OFFICER CHESTNUT:

Well, Mr. Haver, if he did the math, you can ask him subject to check.

MR. MORGAN: I would say it would be -- you know, I don't want to -- I can provide that data, but I don't want to. And the reason -- and it's not that I'm being evasive, the schedule on which I
have -- or the schedule on which the FY26 -- 23 rate increase is provided has ten months instead of twelve. And so, I don't think that's an actual amount. So -- and I don't want to misstate something here.

MR. HAVER: Let me back into it then. In the Settlement Agreement, how much was agreed upon for Fiscal Year 2023 as a rate increase?

MR. MORGAN: Just a second. 34.110 million.

MR. HAVER: 34.11 million?

MR. MORGAN: 11 -- yes.

MR. HAVER: Thank you. And how much are you recommending that be reduced by?

MR. MORGAN: 6.6 million.

MR. HAVER: So using a calculator, would it be fair to say if we subtracted 34.11 million, we subtracted 6.6 million from 31.1 million[sic], we would get 27,000,051?

MR. MORGAN: Yes.

MR. HAVER: Is that how much you
are recommending the rates go up?

MR. MORGAN: Again, the rates increase has been decided. And what I am recommending in this proceeding is the amount that those rates should be reduced by.

MR. HAVER: Again, sir, I am just asking you to do very simple calculation, which you just did with me. Said based on your testimony, the agreement says the Water Department, if there is no reduction, gets 34.11 million. You are making a recommendation that 6.6 million be reduced from that amount.

I'm saying, that means that you are recommending the rates be increased by 27.51 million; is that correct?

MR. MORGAN: Mathematically. Mathematically that is what happens. But if I were to be recommending an increase, I would have to look at the cost of service to come up with what I think it should be. At this point, I have not done that because it's beyond the scope of this proceeding.
So, I cannot accept the argument that I'm recommending that increase.

MR. HAVER: If you add the rate increase from last Fiscal Year, what remains after your deduction? What would the total rate increase be?

MR. MORGAN: When you say last year?

MR. HAVER: Yes. Fiscal Year 22/23. The amount that was included in the settlement.

MR. MORGAN: Be roughly 37.9 million.

MR. BALLINGER: And subject to check, Mr. Morgan?

MR. MORGAN: Yes.

MR. BALLINGER: I'm not sure what we're doing here. So there is a -- if it helps, Mr. Haver, there is a schedule attached to Mr. Morgan's testimony that has all of the numbers that I think you are talking about.

MR. HAVER: Mr. Morgan, for the purposes of these limited hearings and not
looking at anything else, what you are saying in your opinion and in your testimony is that it is fair and just for it to be in two years a $37.9 million rate increase; is that correct?

MR. BALLenger: Object here.

Again, that's not what he's testifying.

HEARING OFFICER CHESTNUT: He's not making any kind of recommendation concerning any kind of rate increase. What he's saying is that based on the terms of the settlement, that there was sufficient financial performance to justify a reduction in the already improved increase.

And I think that's a different issue.

MR. HAVER: That doesn't --

HEARING OFFICER CHESTNUT: -- what you agree to.

MR. HAVER: Doesn't that mean --

HEARING OFFICER CHESTNUT: I think you need to restate your question,

Mr. Haver.

MR. HAVER: No. I think I'm going
to leave it as it is with your comments.

HEARING OFFICER CHESTNUT: Okay.

MR. HAVER: I think that's sufficient to make my point. I'm once again glad that you are helping expose what's going on.

Mr. Morgan, going back to last year's proceedings, isn't it true that last year you recommended zero increase in 2022 and in 2023? And I will read you your testimony. This is from line -- page 7 and 8 in my pagination in Fiscal Year 2022 rate case.

Quote: I recommend the Board not approve the increase in rates as filed by the Department. Instead, I am recommending adjustments to the cost of service as presented by the Department to reduce costs that appear to be excessive and to reflect certain costs at a reasonable level. As a result of these adjustments, my analysis show that the Department's request to increase rates is unnecessary.

Do you remember testifying to that,
MR. MORGAN: I remember. I don't have the testimony before me. I will accept that subject to check.

MR. HAVER: And now you no longer have that opinion; is that correct?

MR. MORGAN: Mr. Haver, it's not -- it's not -- one has to be prudent when making statements. If this were a full rate case where I had the opportunity to look at the cost elements given today's environment, I'm likely to have a different opinion.

The rates have been settled. In this country we operate by the rule of law. And following the law, I have to accept what the Board has deemed to be the rates going forward. Yes, as the consumer advocate, I would like to see rates lower. But at the same time, you're not even giving me any credit for pursuing a rate decreases. It's as if there is no effort.

And so, I disagree with the premise of your question.
MR. HAVER: I'm not giving you credit or not credit. I'm just asking questions. It will be up to somebody else to decide whether you are doing a good job or bad job. It's certainly not something I have the privilege of deciding.

MR. MORGAN: Okay.

MR. HAVER: But again, is it the settlement itself that precludes you from looking at the rates and deciding whether a rate reduction is warranted?

MR. MORGAN: It's a legal process.

MR. HAVER: Is it the settlement that defines your inability to look at all of the rates?

MR. MORGAN: No. It's the legal process.

MR. HAVER: I don't understand what you mean by the legal process.

MR. MORGAN: It's not the settlement. The legal process less this proceeding, so to speak. And so, I have to abide by what has been decided and authorized by the Board. It's not up to me
to go out and do what I want to do.

MR. HAVER: Were these legal proceedings set up and limited by the Settlement Agreement?

MR. MORGAN: Which legal proceedings?

MR. HAVER: The ones we are at today.

MR. MORGAN: Can you repeat the question?

MR. HAVER: The proceedings which are taking place today, were they created and limited as a result of the Settlement Agreement?

MR. MORGAN: It is consistent with the Settlement Agreement.

MR. HAVER: In fact, sir, doesn't the Settlement Agreement call for these proceedings?

MR. MORGAN: You know, I -- again, we are getting into an area where it could be up to legal interpretation. What I can say is that this is consistent with the Settlement Agreement.
MR. HAVER: Going back to your testimony in the prior rate case.

In the prior rate case, you projected that the Philadelphia Water Department would be able to access Rate Stabilization Fund transfers and also be able to get stimulus dollars. And again, I'm quoting from your testimony which you've already said you don't have in front of you.

But on page 6 of my pagination, your testimony says, quote, I then summarize for the Board's consideration the likely receipt of federal stimulus funds.

Do you recall saying something like that, sir? I know you don't have access to the exact language.

MR. MORGAN: Yes. I recall saying something to that effect.

MR. HAVER: Are you disappointed that the Water Department did not receive within the parameters of the Settlement Agreement a single penny of federal stimulus dollars?
MR. MORGAN: At the time, I made those statements, the government, there were economic stimulus proposals. Proposals for infrastructure. There were several things. So to the extent that none of those dollars have come to the Water company or the Water Department, I should say, yes, it's a little disappointing.

MR. HAVER: Is it true, sir, that as a result of the settlement, the Philadelphia Water Department did not financially need any money from the stimulus package?

MR. BALLenger: Objection. I don't think Mr. Morgan --

HEARING OFFICER CHESTNUT: I don't think there's any basis for that question. I'm sorry. What did you say, Mr. Ballenger?

MR. BALLenger: I was saying, I don't think Mr. Morgan can testify on behalf of the Department as to what it needed.

HEARING OFFICER CHESTNUT: Yeah.
Mr. Haver, you know you can't -- we're not
going back and reexamining the settlement.
The settlement is done. The rate case is
over. So please, try to refocus your
questions.

MR. HAVER: I am focusing my
questions. Again, it's always amazing to
me. Prior to this, you said that looking
at the past record was fine when other
people questioned about former testimony
and former record, you said, quote, it's
appropriate to look at the past record.
Now when I raise those questions, you say
it's inappropriate.

I don't know what could be more
proof of prejudicial treatment then that.
It's all right for some people to look at
the prior record, but it's not all right
for me to look at the prior record?

HEARING OFFICER CHESTNUT:

Mr. Haver, I'm not going to get
into any argument with you because you,
obviously, don't listen. So --

MR. HAVER: Once again --
HEARING OFFICER CHESTNUT: I'm going to save my breath and will extend everybody the same effort here, and tell you to ask Mr. Morgan questions related to the testimony he presented in this case. You can't ask him about what -- you know, I'm going to back up.

Just ask your questions about his statement in this case.

MR. HAVER: Once again, prejudicial on your part. Other attorneys, other parties, other participants were allowed to ask about prior records. And you are telling me that I cannot.

HEARING OFFICER CHESTNUT: Go ahead. Ask your question.

MR. BALLenger: You've asked a number of questions -- you've asked a number of questions about 2021 rate case. And the one that you just asked wasn't about the rate case settlement or Mr. Morgan's --

MR. HAVER: Excuse me. I object to Mr. Ballenger testifying.
HEARING OFFICER CHESTNUT: He's not
testifying. Be quiet.

MR. HAVER: He is certainly
testifying.

HEARING OFFICER CHESTNUT:
Attorneys are allowed to speak.

MR. HAVER: Your Honor --

HEARING OFFICER CHESTNUT: It's not
testimony.

MR. HAVER: Once again, Your Honor,
your prejudicial nature is being shown. He
is not allowed to testify.

HEARING OFFICER CHESTNUT: He is
not testifying.

MR. HAVER: He is not a witness.

He can --

HEARING OFFICER CHESTNUT: Steven,
mute Mr. Haver for a few minutes.

MR. HAVER: You can rule me out of
order. He is not allowed to testify.

HEARING OFFICER CHESTNUT: Steven,
mute Mr. Haver so that Mr. Ballenger can
make a statement.

MR. BALLenger: We have allowed
Mr. Haver to ask questions about
Mr. Morgan's testimony in the 2021 rate
case just as we -- you know, Mr. Dasent
did. So, we haven't raised an objection to
talking about his prior testimony.

The last question that he asked was
about whether the Water Department somehow
was relieved of any need or urgency to
pursue stimulus dollars. That is just not
something Mr. Morgan can testify about. He
can't testify on behalf of the Water
Department. So, that's why I objected to
that question.

If Mr. Haver has more questions
that are even close to the subject matter,
I will continue to allow Mr. Morgan to
answer if he has an answer.

HEARING OFFICER CHESTNUT: Okay.

Thank you.

Mr. Haver, you can continue.

Steven, I think you need to unmute

Mr. Haver.

MR. LIANG: I asked him to unmute.

It's --
HEARING OFFICER CHESTNUT: Okay.

MR. HAVER: Mr. Morgan, under the Settlement Agreement, would the Water Department be able to pay its bills? Be able to meet its debt service? Be able to retain its credit worthiness according to the rating agencies even if it did not get a single stimulus dollar?

MR. MORGAN: I think it's stated in the Settlement Agreement that the rates that were determined from the settlement was just unreasonable. And so if that is the case, then the Water Department should have been -- is able to meet his obligations.

MR. HAVER: Without a stimulus dollar?

MR. MORGAN: Yes. Because at that time, the rates were not based on the deduction from stimulus dollars.

MR. HAVER: That con -- thank you very much, Mr. Morgan. That concludes my testimony.

I would like to raise for the
record, once again, the prejudicial nature of the Administrative Law Judge. And once again, go on record as complaining about her duplicitous behavior.

HEARING OFFICER CHESTNUT: You make whatever statements you want, Mr. Haver.

MR. HAVER: I just did.

HEARING OFFICER CHESTNUT:

Mr. Ballenger, do you need a few minutes?

MR. BALLenger: Maybe if you can just give me two minutes to call Mr. Morgan. We will back at 1:05.

HEARING OFFICER CHESTNUT: How about if we are back at 1:10.

MR. BALLenger: 1:10 is fine.

Thank you.

(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.
MR. BALLENGGER: Mr. Morgan, you were asked some questions about your testimony in the 2021 rate case. And in particular, I think Mr. Dasent asked you some questions about LKM-1, the tables at the end of your testimony.

Could you just describe your methodology and explain what LKM-1 is?

MR. MORGAN: LKM-1 is a product of a model that we used in determining our recommendation. It should be noted that that recommendation starts off with projections by the Water Department using a fairly complex model that we have been given the opportunity to use.

We do our best to go through and make adjustments as we see fit. And ultimately, it's a product of using their projections with our adjustment. And so, what we end up with is a representation of items we may not necessarily agree with. But as a part of a streamline process, we have used their projections with our adjustments.
MR. BALLenger: You talked about the adjustments that go into your methodology.

In a fully litigated case, a case that doesn't settle, wouldn't it be correct that the Board would decide whether or not it wanted to approve each sort of adjustment as opposed to approving your overall recommendation?

MR. MORGAN: Yes. I've been in this business for over 37 years, I think. And there's never been an instance where I provided testimony and have a commission Board, an authoritative body accept everything that I recommended.

It also bears mentioning that even in the instance of a settlement, you have to weigh the possibility that if we decide that we will dig in our heels and not accept a compromise, that the Board or the Commission might see otherwise. And so, we have -- as I said earlier, we have to be prudent and make decisions based on what we believe to a good decision for rate payers.
In this instance, the result of our compromise have saved rate payers over or roughly $85 million. And I think that's a -- something to mention because it's not like we just accepted everything that the Water Department has presented.

MR. BALLenger: Thank you, Mr. Morgan. That's all I have on redirect.

HEARING OFFICER CHESTNUT: Okay.

Mr. Dasent, do you have questions based on the redirect?

MR. DASENT: Nothing further.

Thank you.

HEARING OFFICER CHESTNUT:

Mr. Haver, do you have questions based on the redirect?

MR. HAVER: Mr. Morgan, in your experience that you just drew upon in your testimony just now, do utility companies often ask for more than what they expect?

MR. MORGAN: I -- my time with the utility was very short. It was three years. And what I can say is that they put together a package that they believe they
can justify. I don't think there's the idea that, let's ask for me just because we think we'll end up somewhere less.

MR. HAVER: To the best of your knowledge, has there ever been a rate case you worked on where the utility got every single cent of the rate increase it sought?

MR. MORGAN: No.

MR. HAVER: Would it be normal then for a utility to receive less than what it asked for?

MR. MORGAN: I think I would say yes.

MR. HAVER: And would you suggest that the people who run utilities are unaware of that fact?

MR. MORGAN: I -- I -- you know, that's generalization that I wouldn't want to make.

MR. HAVER: Okay. Do you believe that the majority of people who run utilities, whether the CEO, COO or CFO, are intelligent, smart and well-informed?

MR. BALLenger: Do you feel
comfortable with that, Mr. Morgan?

MR. MORGAN: For the most part.

MR. HAVER: And do you think they would be aware of the history of rate requests versus what was gift granted?

MR. MORGAN: If you are a utility executive and you are not aware of what has been granted and what has been requested, then there is an issue. So, the answer to your question is yes.

MR. HAVER: Thank you.

MR. BALLINGER: Is that it, Mr. Haver?

HEARING OFFICER CHESTNUT: Mr. Haver, you are muted.

MR. HAVER: Sorry.

Your Honor, yes, I'm done. Thank you very much, Mr. Morgan.

HEARING OFFICER CHESTNUT: Okay. Then I think that concludes this. Thank you very much, Mr. Morgan, you are excused.

I think we have come to the end of the witness presentation for today. Let's talk about schedule and the record.
According to the schedule, have you had settlement discussions?

MR. DASENT: We have talked on and off about the possibility of settlement. We sort of got distracted with TAP-R truthfully, and not much more. But you know if -- I will talk to Rob after.

HEARING OFFICER CHESTNUT: I would urge you to talk.

MR. DASENT: And I have transcript responses as next because we have a couple of those for today. Expect those by Monday, Your Honor.

HEARING OFFICER CHESTNUT: Okay.

MR. BALLINGER: I think there were -- I only heard one, Andre, but I am just confirming. I don't think there were any for Mr. Morgan.

MR. DASENT: No. We wrote down two. One had to do for Mr. Haver. And one had to do with household subject to shutoff.

MR. BALLINGER: Oh, yup. It's something else Mr. Jagt was going to get
MR. DASENT: Yeah.

HEARING OFFICER CHESTNUT: Okay.

MR. DASENT: And then briefs by May 10. I will reach out to Rob before then.

HEARING OFFICER CHESTNUT: I really do urge you to settle. I know that there is some strong feelings, especially on the utilities part. I -- there is a lot of reasons why you couldn't come to some agreements on this.

I will try and comply with this target date May 27. Can't guarantee it obviously. It depends on your briefing. I will give you a heads up again like I did before, which is I'm not going to spend a lot of time discussing and analyzing this. I think it's pretty straightforward. Should there be an adjustment, you know, what is it based on.

And what I'm looking at is -- you know, I'm not bound by your stipulation, but I think maybe it would help if I gave you a heads up.
One of the factors I am going to look at is the projection that the Water Department made in the rate case as to what the Rate Stabilization Fund would be. And compare that -- I'm not saying that that's definitely going to be my minimum threshold. But that certainly is one that I'm looking at.

So that's a -- just a heads up for you. I'm going to look to see if there could be any kind of rate reduction and the impact on utility if that happens. This could only be a rate decrease for the customers. That is the way that I am approaching it.

Now in terms of the record, the regs testify pretty much with the record is comprised of. Let me find my regs here. And that's going to be the advance and formal notices. I'm going to need an exhibit, a numbered exhibit from you, Mr. Dasent, about the advertising of the notifications.

MR. DASENT: Yes. We have started
it with the outreach exhibit, PWD Hearing Exhibit 1. But we need to supplement that with the state reg proofs of publication.

HEARING OFFICER CHESTNUT: Yes.

Obviously, written testimony and exhibits, the record of the hearings, my report and then it says and briefs, exceptions, written statements and argument, which I guess is testimony. What I don't see here -- oh, I take that back. I'm not clear about responses to discovery. Because that's not listed in the regs as a separate item. But it is listed under three, which is information accepted into the record by the Board and the Hearing Officer.

Now I know that in general cases, all discovery responses are automatically part of the record. But I think this is -- maybe you can tell me.

Does it have to be specifically identified in these types of limited cases?

MR. DASENT: That hasn't been our practice. We've let the posted information
be included in the record for your consideration.

HEARING OFFICER CHESTNUT: Okay. Then all discovery responses are included in the record, whether or not they've been included in the hearing exhibits.

MR. DASENT: Yeah. And we'd have to note generally objections, but not in this case.

MR. BALLenger: You anticipated what I was going to say, Andre. Yes, that's exactly right.

MR. HAVER: I want to add to the record, my objection to the Hearing Examiner referring to this case as a rate reduction. Consumers will end up paying more. That is not a reduction. They will pay more than what they are paying today even if the Public Advocate's numbers are accepted. To call it a rate reduction is to enter 1984.

HEARING OFFICER CHESTNUT: Whatever Mr. Haver, you know, you're wrong, but I'm not going to explain it again. You
can characterize it as you wish, but it's clear what the process is here. And the impact --

MR. HAVER: I just want the record --

HEARING OFFICER CHESTNUT: I'm not going to get into an argument with you.

MR. HAVER: I'm not arguing. I just want the record to show that I am objecting to the way that you are framing the issue. It is prejudicial for the public for you to refer as paying more as a rate reduction.

It is misleading. It is disingenuous. And it creates a tremendous disincentive for the public to participate.

HEARING OFFICER CHESTNUT: Okay. So let's -- I think we are finished talking about the record.

You do you want your hearing exhibits specifically identified as part of the record?

MR. DASENT: We request that, Your Honor.
MR. BALLenger: Please.

HEARING OFFICER CHESTNUT: Okay.

Then I guess, the only thing outstanding is the exhibit from you then, Mr. Dasent, right?

MR. DASENT: Yes.

HEARING OFFICER CHESTNUT: Are there any other procedural matters then that need to be addressed?

Mr. Ballenger?

MR. BALLenger: Just as a heads up, I was debating putting in an exhibit about our outreach. But I think what I would like to do is just include that as an appendix to the brief.

HEARING OFFICER CHESTNUT: I think it should be -- in fact, I think it should be required that you put on the record somewhere your outreach.

MR. BALLenger: Happy to do that.

HEARING OFFICER CHESTNUT: You want to make it an exhibit, attach it to your brief. As long as it's there.

MR. BALLenger: Why don't I put
together a post-hearing exhibit and submit it to Your Honor.

HEARING OFFICER CHESTNUT: Okay.
That's fine. Anything further from you, Mr. Dasent?

MR. DASENT: Nothing further.

Thank you.

HEARING OFFICER CHESTNUT:

Mr. Haver?

MR. HAVER: I made what objections on the record that I wanted. Thank you.

HEARING OFFICER CHESTNUT: Okay.

(At this time, brief discussion off the record with the stenographer.)

HEARING OFFICER CHESTNUT: All right. If nothing further then, thank you all very much. This hearing is adjourned.

(At this time, the Hearing adjourned at 1:30 p.m.)
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.

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ANGELA M. KING, RPR,
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WIFIA 111:3, 9, 12 115:13
will 130:9
wish 109:13
Withdrawn 139:7
withdraw 130:1
witness 26:9
witnessed 5:16
witnesses 2:22
word 16:7
d:4 155:17
wording 113:12
words 41:11
work 17:16
workbooks 146:10
worked 201:6
worthiness 196:6
wrap 106:15
write 54:19
written 45:11
Year 7:24
years 23:20, 18:19, 20 20:17
year-end 105:3 116:1
year's 58:7
Years 6:1
Yeats 9:2 18:3
yellow 90:8
yes-or-no 91:17 93:15, 19
yesterday 3:19
Yup 137:14
Yup's 139:6 155:8
159:9 203:23
Z 19:15 21:11
5:14 95:23
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