

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

In the Matter of the Philadelphia Water
Department's 2022 Special Rate Proceeding

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For: Fiscal Year 2023

HEARING OFFICER REPORT

Marlane R. Chestnut
Hearing Officer

May 24, 2022

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I. SUMMARY OF RECOMMENDATION

This report addresses the filing made by the Philadelphia Water Department (PWD or the Department) that initiated a Special Rate Proceeding regarding the potential downward adjustment of water, sewer and stormwater incremental rates and charges previously approved to take effect September 1, 2022 (FY 2023 Base Rate Incremental Increase), as provided by the [Rate Determination](#)¹ issued by the Water, Sewer and Storm Water Rate Board (Rate Board) on June 16, 2021, which discussed and approved without modification the [Joint Petition for Partial Settlement](#) which contained two limited conditions under which the FY 2023 Base Rate Incremental Rate Increase might be reduced. As discussed in more detail below, I recommend that the Rate Board find that the conditions regarding the first issue (the receipt of federal stimulus funding), have not been satisfied, thereby warranting no reduction to the FY 2023 Base Rate Incremental Increase. I further find that the second provision (PWD's FY 2021 financial performance as measured by the Rate Stabilization Fund balance as of June 30, 2021) has been satisfied, thereby warranting a potential reduction of no more than \$3 million to the FY 2023 Base Rate Incremental Increase. This allows PWD to retain the substantial majority of the FY 2023 Base Rate Increase authorized in the 2021 rate proceeding while sharing with its customers a portion of the better than projected financial performance experienced in FY 2021 as anticipated by the [Joint Petition for Partial Settlement](#).²

II. HISTORY OF THE PROCEEDING

In its June 16, 2021 [Rate Determination](#), the Rate Board discussed and approved without modification the [Joint Petition for Partial Settlement](#) (Joint Settlement Petition) entered into by the Department and the Public Advocate which, inter alia, provided for PWD to initiate a special rate proceeding pursuant to Sections II.A.2 and II.D of the Rate Board's [regulations](#)³ to determine whether certain conditions contained in the Settlement Petition had been satisfied so as to warrant downward adjustment of the incremental rates and charges approved to take effect in

¹ <https://www.phila.gov/media/20210618105014/2021-General-Rate-Determination-as-filed-with-Records-Dept-20210616.pdf>

² <https://www.phila.gov/media/20210505154832/Joint-Petition-for-Partial-Settlement.pdf>

³ <https://www.phila.gov/media/20220204155914/WRBRegulationsAmended20210908reaffirmed20211013.pdf>

FY 2023. These conditions were (1) the amount of specified federal stimulus funding in excess of \$2 million received by PWD between July 1, 2021, and December 31, 2021 (the federal stimulus funding adjustment); and (2) the amount in the Rate Stabilization Fund (RSF) at the end of FY 2021 above a “minimum threshold” to be shared between PWD and its customers up to a maximum of \$34.110 million (the financial performance adjustment). It was further agreed that the total of these adjustments must not exceed \$34.110 million, the amount of the FY 2023 Base Rate Incremental Increase.

On January 21, 2022, the Department filed an [Advance Notice](#)⁴ with the Philadelphia City Council and the Rate Board for initiation of this special rate proceeding; on February 21, 2022, it filed its [Formal Notice](#)⁵ with the City’s Department of Records, which included the statements and exhibits which had been provided in the Advance Notice, updated primarily to incorporate changes associated with projected increases in TAP⁶ enrollment, as well as the inclusion of one month of additional data (December 2021). To support its position that neither of the specified conditions had been satisfied and therefore, no adjustment was warranted or proposed, the Department presented the direct testimony, schedules and exhibits of a number of witnesses:

- (1) [PWD St. 1](#): Melissa La Buda, (PWD Deputy Water Commissioner for Finance);
- (2) [PWD St. 2](#): Katherine Clupper (Public Financial Management) and Peter Nissen, (Acacia Financial Group, Inc); and
- (3) [PWD St. 3](#): Ann Bui, Dave Jagt, and Brian Merritt (Black & Veatch Management Consulting LLC).

⁴ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2022-special-rate-proceeding/#advance-notice-of-filing>

⁵ <https://www.phila.gov/media/20220225145807/PWD-FY2023-Special-Proceeding-Formal-Notice.pdf>

⁶ TAP, the Tiered Assistance Program, is a customer assistance program, mandated by City Council, that allows low-income customers to pay reduced bills based upon a percentage of their household income.

The general public was notified through information made available on the Rate Board’s website and PWD’s website and e-notification system as well as publication in various Philadelphia newspapers and social media. See [PWD Hearing Exh. 1](#); [Public Advocate Post Hearing Exhibit](#). In addition, participants to PWD’s 2021 general rate proceeding were notified by e-mail of this proceeding and provided an opportunity to participate.

Along with PWD and the Public Advocate, participants included the City of Philadelphia Water Revenue Bureau⁷ (WRB), the Philadelphia Large Users Group (PLUG) and two individual customers, Michael Skiendzielewski and Lance Haver.

After the filing of the Advance Notice but prior to the filing of the Formal Notice, the Public Advocate on February 9, 2022, filed a [Motion to Strike](#)⁸ portions of the Advance Notice, alleging that they improperly enlarge the scope of the proceeding by containing new financial assumptions regarding future revenue requirements. On February 18, 2022, PWD filed a [Memorandum in Opposition to the Motion to Strike of the Public Advocate](#)⁹ requesting that the Motion be dismissed and denied. PWD asserted that the Motion should be dismissed as being both premature and procedurally improper, as the Advance Notice was provided as a “courtesy” and is subject to amendment or change when the Formal Notice is filed. It further alleged that the [Motion to Strike](#) was “misguided” and “would more appropriately be framed as a motion in limine” to clarify the use to which the financial statements, schedules and exhibits proffered by the parties could be put. On March 8, 2022, I issued an [Order](#) which granted in part and denied in part the Public Advocate’s Motion to Strike. PWD and the Public Advocate filed a [Stipulation](#)¹⁰ dated April 5, 2022, in which they agreed on a general methodology for calculating a possible FY 2021 financial performance adjustment, and the use of the updated financial information contained in the Formal Notice.¹¹

⁷ The Water Revenue Bureau, which is part of the City’s Department of Revenue, provides all billing and collection functions for the Department.

⁸ <https://www.phila.gov/media/20220215184351/Motion-to-Strike-Final-2022-02-09.pdf>

⁹ <https://www.phila.gov/media/20220224112952/PWD-Response-to-PA-Motion-FINAL.pdf>

¹⁰ <https://www.phila.gov/media/20220406195003/PWD-2022-SPECIAL-STIPULATION-FINAL.pdf>

¹¹ On April 8, 2022, Mr. Haver filed a document entitled “[Opposition to Stipulation](#),” in which he expressed his opposition to the Stipulation which had been entered into by PWD and the Public Advocate. By email dated April

Also after the filing of the Advance Notice but prior to the filing of the Formal Notice, Mr. Haver on February 16, 2022, filed a [Motion to Remove for Cause the Acting Public Advocate](#),¹² alleging that the Public Advocate¹³ had not been properly appointed in this special rate proceeding and in addition should be removed because of its failure to properly perform its duties in the underlying general rate proceeding which was the subject of the Rate Board's [June 16, 2021 Rate Determination](#). An [Answer in Opposition](#)¹⁴ (with an accompanying Memorandum of Law) to the [Motion to Remove](#) was submitted by the Public Advocate on February 22, 2022. The [Answer](#) specifically denied the various averments contained in the Motion. By [Order](#)¹⁵ dated February 25, 2022, I denied the Motion, finding that those issues were previously reviewed and decided in the 2021 proceeding, and further, are outside the scope of this limited, special rate proceeding, which is not to reexamine or reconsider the [Joint Settlement Petition](#) but to determine whether the conditions contained in the Settlement Petition had been satisfied so as to warrant downward adjustment of the FY 2023 Base Incremental Rates.

A prehearing conference to address preliminary procedural issues was held (remotely via Zoom) in this proceeding on March 9, 2022. All participants to the filing were invited to attend; in addition, notice of the prehearing conference was posted on the Rate Board's website at [Meetings & Hearings | Water, Sewer & Storm Water Rate Board | City of Philadelphia](#). At that prehearing conference, a schedule was adopted, and directives were issued regarding discovery and the holding of hearings. These determinations were memorialized in a [Prehearing Order](#) dated March 9, 2022.

On March 22, 2022, Mr. Haver submitted a document entitled "[Direct Appeal of Hearing Examiner's Order Denying Haver Motion to Remove Public Advocate](#)" alleging that both the Public Advocate and I have acted inappropriately and that counsel for the Public Advocate should be removed. Separate responses to this Direct Appeal were filed by [PWD](#) and the [Public](#)

12, 2022, I informed Mr. Haver that I would not consider his objections, as the Stipulation is not binding on other participants, and in fact does not need to be approved by the hearing officer.

¹² <https://www.phila.gov/media/20220217171233/Motion-to-Remove-Public-Advocate.pdf>

¹³ Community Legal Services, which had been previously selected by the Rate Board to provide services as the Public Advocate to represent the concerns of residential consumers and other small users.

¹⁴ <https://www.phila.gov/media/20220224112951/Answer-to-LH-Motion-to-Remove-PA.pdf>

¹⁵ <https://www.phila.gov/media/20220225145815/2022-TAP-R-LH-motion-final.pdf>

[Advocate](#). At its regular [meeting](#) on April 13, 2022, the Rate Board discussed and denied this Direct Appeal after hearing directly from Mr. Haver, the Department and the Public Advocate.

On March 23, 2022, two public hearings (at [1:00 p.m.](#) and [6:00 p.m.](#)) were conducted remotely, with the option to participate via Zoom online or telephonically. A stenographic transcript was produced of each public hearing.¹⁶

In accordance with the schedule contained in the [Prehearing Order](#), the Public Advocate on April 5, 2022, filed [PA St. 1](#), the direct testimony of Lafayette K. Morgan, Jr. (Exeter Associates), in which Mr. Morgan recommended that the FY 2023 Base Rate Incremental Increase be reduced by approximately \$6.6 million. In response, the Department submitted the rebuttal testimony of Melissa La Buda, Katherine Clupper and Peter Nissen ([PWD Rebuttal St. 1](#)) and Ann Bui, Dave Jagt, and Brian Merritt (Black & Veatch) ([PWD Rebuttal St. 2](#)).

A further prehearing conference was held on April 26, 2022, to address procedural items in connection with the scheduled technical hearing. The Department, the Public Advocate and Mr. Haver participated. A stenographic [transcript](#) was produced.

The technical hearing was held (remotely via Zoom) on April 28, 2022. PWD presented two panels of witnesses: (1) Melissa La Buda, Katherine Clupper and Peter Nissen (the financial panel); and (2) Ann Bui, Dave Jagt, and Brian Merritt (the Black & Veatch panel). Each panel was cross-examined by the Public Advocate and Mr. Haver. The Public Advocate presented its witness, Mr. Morgan, who was cross-examined by PWD and Mr. Haver. Mr. Haver did not testify or present any witnesses. A stenographic [transcript](#) of the technical hearing was produced. As discussed at the hearing, the Public Advocate on April 28, 2022, submitted [PA Post Hearing Exhibit](#), a log of the outreach it conducted in this proceeding.

¹⁶ A total of six individuals, including Mr. Haver, gave comments at the public hearings. Another six registered to speak but did not provide comments. <https://www.phila.gov/media/20220412114053/WRB-Public-Hearing-transcript-1-pm-2022-03-23.pdf>; <https://www.phila.gov/media/20220428173948/WRB-Special-public-hearing-6pm-2022-03-23.pdf>

On May 4, 2022, Mr. Haver filed a [Motion to Strike](#) the [Public Advocate's Post Hearing Exhibit](#), alleging that this exhibit, the Public Advocate's outreach log, was untimely and otherwise improper. The Public Advocate responded by [letter](#) dated May 9, 2022.

Pursuant to the schedule contained in the [March 9, 2022 Prehearing Order](#), Briefs were filed on May 10, 2022, by [PWD](#) and the [Public Advocate](#). By email dated May 10, 2022, Mr. Haver stated that he was not filing a brief: "As I was not included in any of the settlement discussions, I am not filing a brief now, but will be filing a reply brief."¹⁷

As provided in the Rate Board's regulations at [§ II.C.3.b](#), the record in this proceeding includes the [Advance Notice](#) (including Sts. [1](#), [2](#) and [3](#), and associated schedules and exhibits); the [Formal Notice](#); PWD Rebuttal Sts. [1](#) and [2](#); PWD Hearing Exhs. [1](#), [2](#) and [3](#); responses to written [discovery](#); [PA St. 1](#); [PA Hearing Exh. 1](#); [PA Post Hearing Exhibit](#);¹⁸ the stenographic transcripts of the [April 26, 2022 further prehearing conference](#), the [April 28, 2022 technical hearing](#), and the public hearings, [1:00 p.m.](#) and [6:00 p.m.](#); [PWD's Brief](#); the [Public Advocate's Brief](#); and this Hearing Report. All of these documents, as well as other pleadings and orders, are posted on the Rate Board's website, [2022 Special Rate Proceeding | Water, Sewer & Storm Water Rate Board | City of Philadelphia](#).¹⁹

III. DISCUSSION

As explained above, the [Joint Settlement Petition](#) was discussed and accepted by the Rate Board in its [June 16, 2021 Rate Determination](#). In addition to numerous other terms, it contained an agreement by the settling participants concerning two potential downward adjustments to the rates scheduled to take effect on September 1, 2022 (the FY 2023 Base Rate Incremental Increase). As originally filed by PWD in its 2021 [general rate proceeding](#), the proposed rate increases would have raised the Water Department's overall revenues by \$48.9 million in FY 2022 and by \$92.1 million in FY 2023 for a total increase of \$141 million. Under

¹⁷ Neither [the March 9, 2022 Prehearing Order](#) nor the Rate Board's regulations at [§ II.C.3.b](#)(6) provide for the filing of reply briefs.

¹⁸ As discussed further in this Hearing Report in Section III.C, Mr. Haver's Motion to Strike this exhibit is denied.

¹⁹ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2022-special-rate-proceeding/>

the Settlement approved by the Rate Board, the rates increased by \$10.4 million in FY 2022 and a maximum of \$47 million in FY 2023, or a maximum total increase of \$57.4 million. The incremental portion of the second year's rate increase (up to \$34.11 million, the FY 2023 Base Rate Incremental Increase) could be reduced in a subsequent special rate proceeding in early 2022 if PWD received certain federal funds that would reduce the Department's operating expenses or if its financial reserve funds as expressed by the Rate Stabilization Balance Fund exceed "a minimum threshold," provided that the total adjustments, if any, could not exceed that \$34.110 million. This limited proceeding was initiated by PWD to determine whether either of those conditions had been met and, if so, to determine the amount by which the incremental rates approved for September 1, 2022, should be reduced.

In making my recommendation, I have borne in mind the public comments in the record, all of whom asked that the Rate Board consider the impact of higher rates on PWD's customers. While some of these recommendations are outside the scope of this special rate proceeding, it is appropriate for the Rate Board to consider public comments to the extent it has discretion, and I have done so here.²⁰

²⁰ Representative public comments include the following:

[Public Hearing Transcript, March 23, 2022, 1 p.m.:](#)

- The Rate Board should impose the "maximum reduction in the rate increase that is allowable," because "people are really struggling," and those who make a bit too much to qualify for the Tiered Assistance Program still find it difficult to pay higher rates. (Mr. Chanin).
- The landlord raises rents every year and blames it on rising water bills. (Ms. Libbey)
- The Rate Board should "reject the rate increase" and require the Department to undertake several additional measures for the benefit of low-income families. (Ms. Ortiz, speaking for herself and the Philadelphia Worker Benefit Council, a group promoting the interests of people with low wages and the unemployed and disabled).

[Public Hearing Transcript, March 23, 2022, 6 p.m.:](#)

- Rate increases pose difficulties to "a population that is trying to recover from the myriad of problems generated by the COVID-19 crisis," and water shutoffs cause harm now "when we most need to clean up from the winter, water our garden and deal with the new norm of a warmer climate and hotter summers." (Mr. Skokan).
- A senior citizen who had unsuccessfully applied for a senior discount commented that she had always paid her bills in the past, but some couldn't due to the pandemic and inflation. (Ms. Panzano).

A. Federal Stimulus Funding Adjustment

The [Joint Settlement Petition](#) provided that the FY 2023 Base Rate Incremental Increase (increasing rates on September 1, 2022 to produce \$34.11 million in incremental revenue in FY 2023) would be reduced on a dollar-for-dollar basis (subject to the combined maximum reduction of \$34.11 million) if during the Receipt Period (July 1, 2021, through December 31, 2021) PWD directly received more than \$2 million of specified federal stimulus funding that could be applied to operating expenses. PWD's position is that no adjustment is warranted, as it did not receive in excess of \$2 million of stimulus funding during the Receipt Period. [PWD St. 1](#) at 8-13, the direct testimony of Ms. La Buda; [PWD Brief](#) at 8. The Public Advocate agreed that no adjustment was warranted as the conditions had not been satisfied. [PA St. 1](#) at 19. No other participant submitted written direct or rebuttal testimony on this potential adjustment. I agree that the conditions warranting this potential adjustment were not satisfied and therefore no adjustment should be made on the basis of federal stimulus funding.

B. Financial Performance Adjustment

The second potential reduction to the FY 2023 Base Rate Incremental Increase is directed to PWD's financial performance as measured by the balance in the RSF as of June 30, 2021 (the FY 2021 RSF balance). As set out in the [Joint Settlement Petition](#), paragraph II.A.(2)(a)(ii):

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

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

- **Adjustment, Mechanics:** The Department shall file a reconciliation request for FY 2023, setting forth the amount by which it requests the Rate Board reduce the FY 2023 Base Rate Incremental Increase to share with customers the benefit of FY 2021 amounts above a minimum threshold¹² in the Rate Stabilization Fund. The Department shall include the City's annual financial report for such fiscal year and a statement explaining the basis for the Department's requested

reduction (which may be any amount, including zero, up to \$34.110 million).

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

¹² The settling parties expressly agree that participants in the Special Rate Reconciliation Proceeding may propose different “minimum thresholds” and that a “minimum threshold” has not been established in connection with the Reconciliation Framework (Changes in FY 2021 Financial Performance) set forth in Paragraph II.A.(2)(a)(ii) above.

There can be no dispute that the scope of this limited proceeding is defined by the [Joint Settlement Petition](#), as displayed above. Both the “minimum threshold” and the sharing methodology were undefined, and remained contested in this special, limited proceeding. What was made explicit in the Joint Settlement Petition was that the metric used to measure whether PWD’s FY 2021 financial condition had improved so as to support a downward adjustment to the FY 2023 rates would be the balance in the Rate Stabilization Fund at the end of FY 2021. As I explained in my March 8, 2022 [Order](#) addressed to the Public Advocate’s Motion to Strike (Portions of the Advance Notice): “Again, the purpose of this limited, special rate proceeding is not to establish new rates or the appropriate revenue requirement for FY 2023 – it is to determine whether any actual, improved financial performance of the Department in Fiscal Year 2021, as reflected in the Rate Stabilization Fund balance, should result in some sharing with its ratepayers, and if so what the amount of that sharing should be.” Order at 6.

Therefore, the starting point of this analysis is the FY 2021 ending balance in the RSF (which is the same as the beginning balance for FY 2022) of \$124.661 million (rounded to \$124.7 million for purposes of discussion), as shown on [PWD St. 1](#) (La Buda) \at 16 and Schedule ML-4.²¹

PWD’s position is that no adjustment is warranted, as the appropriate minimum threshold to compare to the \$124.7 million RSF balance is \$135 million, thus resulting in no excess funds available for sharing with its customers. It explained that a \$135 million RSF balance was

²¹ PWD also maintains a separate Residual Fund of about \$15 million; this fund was not referenced in the Joint Settlement Petition and will not be considered here or included in the financial performance analysis.

a target established by the Rate Board in the [2018 Rate Determination](#)²² and is consistent with PWD’s liquidity goals that address concerns expressed by the various rating agencies. Further, even if a different minimum threshold is adopted by the Rate Board (thus making a portion of the RSF balance available), there should not be any sharing, i.e., zero reduction to the FY 2023 Incremental Base Rate Increase, given the Department’s current and anticipated financial difficulties and the possibility of downgrade to the PWD’s credit ratings if certain financial metrics are not achieved.

While the Public Advocate agrees that the \$124.7 million FY 2021 year-end RSF balance is the appropriate starting point, it asserts that the record supports a downward adjustment to the FY 2023 Base Rate Incremental Increase. It suggests that the Rate Board should consider the projected RSF balance at the time the Settlement was entered (\$113.988 million) as the minimum threshold for purposes of a possible adjustment, thus potentially making approximately \$10.7 million available for sharing. In terms of the actual sharing, the Public Advocate’s position is that the minimum adjustment that is warranted is \$5.35 million, but recommends an adjustment of \$6.6 million, which it states, “more appropriately reflects and shares the degree of outperformance demonstrated by PWD’s FY 2021 financial results.”

I recognize that the Rate Board in its [2018 Rate Determination](#) at 37-38 did set a combined target of \$150 million for the combined rate stabilization and residual funds on a “going forward basis,”²³ but I do not feel it is appropriate to use the target of a \$135 million RSF balance as the minimum threshold for the limited purpose of this special rate proceeding.²⁴ This level is considerably higher than even the projected RSF balance for fiscal year-end 2021 (\$109.188

²² <https://www.phila.gov/media/20180713144736/2018-RATE-DETERMINATION-TIMESTAMPED.pdf>. The Board stated at 38:

On a going forward basis, the Board adopts a combined target level of \$150 million for the rate stabilization and residual funds. At any given point in time, the Board recognizes that these funds may exceed or fall short of these levels. On the basis of the evidence presented by the parties in this proceeding, however, the Board concludes that a \$150 million combined target level for the rate stabilization and residual funds is adequate to ensure that the Department has adequate reserves to meet its financial needs, while not imposing an undue burden on customers.

²³ See also Appendix C, PDF p.113 (Rate Board voted 4-0 for “Combined \$150 million target for Rate Stabilization & Residual Funds”).

²⁴ PWD has consistently projected a Residual Fund balance of \$15 million through FY 2027; see Formal Notice, [PWD St. 1](#) (La Buda), Sch. ML-2, Table C-1. If the overall target is \$150 million, the target for the RSF is thus \$135 million.

million) contained in PWD's 2021 general rate filing (Formal Notice, [PWD St. 7A](#)²⁵), which I can only assume was a balance that the Department felt was adequate at that time, particularly since the Department was also projecting RSF balances of \$108.857 million at fiscal year-end 2022 and \$109.303 million at fiscal year-end 2023. In other words, while it may be beneficial ultimately for PWD to increase the RSF balance to the targeted \$135 million, the Department recognized at the time of the settlement that this must occur gradually.

Instead, the use in this limited proceeding of the FY 2021 ending RSF balance projected as of the date of the Rate Board's adoption of the Joint Settlement Petition is reasonable and consistent with the provision regarding this potential adjustment.²⁶ This amount - \$113.988 million - is reflected in the Rate Board's [2021 Rate Determination, Table C-1](#).

Although that would indicate a total amount available for sharing of approximately \$10.7 million (\$124.7 million - \$114 million), I do not recommend that the Rate Board adopt the Public Advocate's proposals that either \$5.35 million, or \$6.6 million be used to reduce the FY 2023 incremental rate increase. I recognize that while such a step may be beneficial to the customers in the short term by reducing the amount of the incremental rate increase in FY 2023, it is short-sighted and ultimately not in the interest of either PWD or its customers.

PWD presented its concerns of a possible downgrade to its credit rating, particularly if the Department's RSF balance falls below \$120 million as a consequence of a reduction in rates and resulting revenues for FY 2023. There is no question that a rating downgrade would be extremely harmful, and would result in higher water, sewer and stormwater rates to customers over time due to the increased cost of borrowing. The Department presented rating agency reports indicating ratings (A+ from Standard & Poor's and Fitch, A1 from Moody's), all with a stable outlook. [Formal Notice, PWD Statement No. 1, Sch. ML-3](#).²⁷ In its analysis dated September 17, 2021, S&P stated, "If we believe that future rate covenant compliance is likely to rely on unplanned

²⁵ <https://www.phila.gov/media/20210115162029/PWD-Statement-No.-7A-Direct-Testimony-and-Schedules-of-Black-and-Veatch.pdf> at 58.

²⁶ To be clear, I am recognizing this RSF balance only for the limited purpose presented here and am not recommending that it be adopted as a target or otherwise deemed appropriate for ratemaking or other purposes.

²⁷ <https://www.phila.gov/media/20220124131428/PWD-Statement-No.-1-Direct-Testimony-and-Schedules-of-Melissa-La-Buda.pdf> (beginning at PDF p.62).

additional rate increases to achieve revenue requirements, deplete the RSF below the targeted \$120 million indicated in its current projections, or require significant capital or COA project delays, we would likely lower the rating.” On that basis, the Department presented testimony that a Rate Stabilization Fund balance of less than \$120 million would cause a risk of ratings downgrades. [PWD St. 1 at 17](#) (La Buda); [PWD St. 2 at 5](#) (Clupper and Nissen); [PWD Rebuttal St. 1 at 25-26](#) (La Buda, Clupper and Nissen).

I recognize that PWD has taken substantial steps to reduce the revenue burden on its customers, first by voluntarily withdrawing its FY 2021 proposed rate increase proceeding entirely due to the COVID pandemic, and then by accepting a FY 2022 settlement that not only reduced the overall revenue requirement substantially but agreed to rate increases structured so as to provide for a much smaller first-year increase in order to make it easier for the customers to adjust to higher rates.

The fact remains, however, that PWD did agree in the [Joint Settlement Petition](#) to the concept of sharing with its customers at least some portion of the RSF balance above a minimum threshold. I find that the condition regarding PWD’s FY 2021 financial performance as measured by the Rate Stabilization Fund balance as of June 30, 2021, has been satisfied and therefore a sharing of a portion of this better than projected financial performance is warranted. I recommend that the Rate Board reduce the \$34.11 million base rate incremental increase scheduled to take effect on September 1, 2022, by no more than \$3 million.

This adjustment of no more than \$3 million is less than 0.4% of projected FY 2023 revenues of \$780,730,000, as shown on [PWD St. 1 \(La Buda\), Sch. ML-2, table C-1](#). This produces an allowed level of rates and charges that is sensitive to the required financial metrics while sharing with PWD customers the benefits of the financial performance (reflected in the RSF balance) experienced in FY 2021 as anticipated by the [Joint Settlement Petition](#).

It must be acknowledged, however, that even this modest reduction in the incremental base rate increase of \$34.11 million set for September 1, 2022, could leave the Water Department with less than \$120 million in the Rate Stabilization Fund by the end of FY 2023. It is clear from the various reports presented that the three rating agencies look at a myriad of factors; it is not certain that this recommendation alone would necessarily lead to a credit rating downgrade.

This recommended adjustment of no more than \$3 million is far less than the maximum adjustment of \$34.11 million referenced in the [Joint Settlement Petition](#),²⁸ but it cannot be denied that a risk of a credit downgrade is of particular importance. Therefore, at its discretion, the Rate Board could decrease this recommended sharing of no more than \$3 million or even eliminate it entirely, to help mitigate the risk of a downgrade or negative action by the rating agencies.

C. Other Issues

Although he registered as a participant, Mr. Skiendzielewski did not present written testimony and did not participate in the technical hearings. He sent numerous emails to the Rate Board, the Hearing Officer and the other participants questioning whether the Rate Board's legal counsel should be precluded from participating in this proceeding and questioning the legal/ethical obligations of the hearing officer but did not express an opinion on any of the issues presented in this proceeding. As the Rate Board has determined numerous times, these issues are not within its limited rate jurisdiction, are certainly outside the scope of this proceeding and therefore warrant no further consideration or discussion.

As explained above, Mr. Haver filed a [Motion to Strike](#) (the [Public Advocate's Post Hearing Exhibit](#)), alleging that this exhibit, the Public Advocate's outreach log, was untimely and otherwise improper. The Public Advocate responded by [letter](#) dated May 9, 2022.

This Motion is DENIED. The issue of how the Public Advocate performs its contracted activities is not within the scope of this proceeding. Even it were, the post-hearing exhibit was not untimely. This exhibit – both the contents and the form of submission – was discussed at the technical hearing held on April 28, 2022, and Mr. Haver raised no objection. See April 28, 2022 [transcript](#) at 209-210. Finally, this document contains no probative information regarding the substantive issues presented in this proceeding.

With regard to the substantive issues presented in this proceeding, it is impossible to determine what Mr. Haver's position is with respect to them. Although he made some general

²⁸ The rating agencies presumably were aware of the Joint Settlement Petition that was approved by the Rate Board in June 2021, and the possibility that the FY 2023 Base Rate Incremental Increase of \$34.11 million could be reduced, up to a maximum of \$34.11 million.

statements (many of which were based on misstatements and unsupported allegations) at the public hearing held on [March 23, 2022](#), and at the [April 28, 2022](#) technical hearing conducted cross-examination of the PWD and Public Advocate witnesses on a number of issues (the majority of his questions were directed to the underlying settlement or other issues outside the scope of this limited proceeding), he did not submit written testimony or file a timely brief. He has filed numerous motions directed at the performance of the Public Advocate, all of which have been fully examined by the Rate Board and none of which has been sustained.

During the technical hearing, Mr. Haver several times told me that he is entitled to interrogate other participants' witnesses freely to "put on his case in his way." I allowed him considerable latitude to do so, but at some point, he needs to inform me and the other participants what his case actually is. It is unreasonable to expect the other participants to somehow intuit what his substantive positions are so that they can respond appropriately.²⁹ By failing either to provide a statement of his position, or to file a timely brief, Mr. Haver has frustrated the intent of the Rate Board that its hearing process be open and transparent. It would be unfair to the other participants to allow Mr. Haver to take a position that they've had no opportunity to examine.

IV. CONCLUSION

1. As provided in the Rate Board's regulations at [§ II.C.3.b](#), the record in this proceeding includes the [Advance Notice](#) (including Sts. [1](#), [2](#) and [3](#), and associated schedules and exhibits); the [Formal Notice](#); PWD Rebuttal Sts. [1](#) and [2](#); PWD Hearing Exhs. [1](#), [2](#) and [3](#); responses to written [discovery](#); [PA St. 1](#); [PA Hearing Exh. 1](#); [PA Post Hearing Exhibit](#); the stenographic transcripts of the [April 26, 2022 further prehearing conference](#), the [April 28, 2022 technical hearing](#), and the public hearings, [1:00 p.m.](#) and [6:00 p.m.](#); [PWD's Brief](#); the [Public Advocate's Brief](#); and this Hearing Report. All of these documents, as well as other pleadings and orders, are posted on the Rate Board's website, [2022 Special Rate Proceeding | Water, Sewer & Storm Water Rate Board | City of Philadelphia](#).

²⁹ PWD in its Brief has attempted to respond to the various questions Mr. Haver asked during cross-examination; while understandable, this approach is not capable of determining what concerns of Mr. Haver's – if any – were in fact satisfied by the responses of the various witnesses or which he intended to pursue.

2. I recommend that the Rate Board find that the condition in the Joint Settlement Petition regarding the receipt of federal stimulus funding has not been satisfied, thereby warranting no reduction to the FY 2023 Base Rate Incremental Increase.

3. I recommend that the Rate Board find that the condition in the Joint Settlement Petition regarding PWD's FY 2021 financial performance as measured by the Rate Stability Fund balance as of June 30, 2021, has been satisfied, that the minimum threshold for potential sharing of the better than projected financial performance with customers should be set at \$113.988 million for this limited special rate proceeding, and that the Rate Board may reduce by no more than \$3 million the FY 2023 Base Rate Incremental Increase to reflect this sharing.

Marlane R. Chestnut
Hearing Officer

May 24, 2022