

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

In Re: Application of the :  
Philadelphia Water Department : Fiscal Years 2024-2025  
For Increased Rates and Charges :

---

**MAIN BRIEF OF THE  
PHILADELPHIA LARGE USERS GROUP**

---

Adeolu A. Bakare (Pa. I.D. No. 208541)  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
Fax: (717) 237-5300

Counsel to the Philadelphia Large Users Group

Dated: May 16, 2023

## Table of Contents

	<b>Page</b>
I. INTRODUCTION .....	1
II. SUMMARY OF ARGUMENT .....	2
III. ARGUMENT .....	3
A. The Board Must Deny the Public Advocate's Recommendation to Replace the Black & Veatch Class Cost of Service Study ("CCOSS") With Its Witness' Analysis For Purposes of Revenue Allocation.....	3
B. The Board Must Deny the Public Advocate's Recommendation to Modify the Allocation of Expenses For PWD's Stormwater Credits. ....	7
C. The Public Advocate's Proposals to Reallocate PWD's Late Fee Revenue are Not Cost-Based and Should Be Rejected.....	9
D. The Public Advocate's Proposals to Increase TAP Auto-Enrollment Highlight the Necessity for Continued Monitoring of the Impacts of TAP on Non-TAP Customers.....	11
E. Any Consideration of Retroactive Arrearage Forgiveness Should Be Subject to Review of Detailed Record of the Rate Impacts.....	11
F. The Public Advocate's Remaining Expense Adjustments Should be Approved Subject to a Proportional Scale-Back of Any Revenue Reductions.....	12
IV. CONCLUSION.....	13

## I. INTRODUCTION

On January 24, 2023, the Philadelphia Water Department ("PWD" or "Department") submitted a preliminary rate increase proposal to the Philadelphia Water, Sewer and Storm Water Rate Board ("Board"). On February 23, 2023, the PWD submitted a final proposed rate increase preserving the same rate proposal initially presented on January 24, 2023. PWD proposes to establish rates for water, sanitary sewer, and stormwater services, projected to increase its annual revenues by \$143 million over Fiscal Years ("FY") 2024 and 2025.

Pursuant to its Regulations, the Board appointed Marlane Chestnut as the Hearing Officer to preside over formal proceedings concerning the rate filing. In accordance with the Regulations, the Hearing Officer established a schedule for litigated proceedings, including intervention, testimony, technical hearings, and briefs. Consistent with the approved schedule, the Philadelphia Large Users Group ("PLUG")<sup>1</sup> intervened in the proceeding on February 21, 2023. Additional intervenors include Community Legal Services ("Public Advocate"), PECO Energy Company ("PECO"), and *pro se* intervenors Lance Haver and Michael Skiendzielewski.

PLUG the Public Advocate and Lance Haver submitted Direct Testimony on April 12, 2023, with PLUG submitting the Direct Testimony of Billie S. LaConte ("PLUG Statement No. 1"). On April 26, 2023, PLUG, the Public Advocate, and PWD submitted Rebuttal Testimony, with PLUG submitting the Rebuttal Testimony of Billie LaConte ("PLUG Statement No. 1-R").

The Hearing Officer presided over technical hearings from May 2, 2023, through May 5, 2023, at which PWD and the Public Advocate offered witnesses for cross-examination.<sup>2</sup>

---

<sup>1</sup> PLUG is an *ad hoc* group of Large Commercial & Industrial ("C&I") customers comprised of, for the purposes of this proceeding, Thomas Jefferson University, Temple University, Newman & Company, Inc., and Drexel University.

<sup>2</sup> PLUG Statements 1 and 1-R were admitted to the record without cross-examination, as both PWD and the Public Advocate waived cross, and no parties objected to admission of the testimony. Hearing Transcript, May 3, 2023, at 3-4, 275.

Pursuant to the approved procedural schedule, PLUG hereby submits its Brief addressing select issues from PWD's filing, other parties' testimony, and the technical hearings.

## **II. SUMMARY OF ARGUMENT**

PLUG's interests in this proceeding are as follows:

1. The Board should reject the Public Advocate's recommendation to replace the Black & Veatch Class Cost of Service Study ("CCOSS") with its witness's analysis for purposes of revenue allocation and approve PLUG's recommendation to address the Public Advocate's concerns regarding PWD's reliance stale capacity factors by requiring PWD to update its capacity factors prior to filing its next rate increase.
2. The Board should reject the Public Advocate's proposal to modify PWD's allocation of stormwater credit expenses.
3. The Board should reject the Public Advocate's Proposals to Reallocate PWD's Late Fee Revenue as arbitrary and not-cost based.
4. The Board should consider that the Public Advocate's Proposals to Increase TAP Auto-Enrollment Highlight the Necessity for Continued Monitoring of the Impacts of TAP on Non-TAP Customers.
5. The Board Should Find that Consideration of Retroactive Arrearage Forgiveness Must Be Subject to Review of Detailed Record of the Rate Impacts.
6. Consistent with PWD's as-filed CCOSS, the Board should proportionally scale back rates for all retail customers to reflect approved expense adjustments that reduce the as-filed revenue requirements.

Each of these matters is addressed in detail below.<sup>3</sup>

---

<sup>3</sup> Silence on any matter shall not be construed as support thereof. PLUG reserves all rights to address additional issues through exceptions as may be appropriate, following review of the Hearing Officer's Report.

### III. ARGUMENT

#### A. **The Board Must Deny the Public Advocate's Recommendation to Replace the Black & Veatch Class Cost of Service Study ("CCOSS") With Its Witness' Analysis For Purposes of Revenue Allocation.**

Public Advocate witness Jerome D. Mierzwa acknowledges that the extra-capacity factors used in the Black & Veatch CCOSS should be updated to reflect "recent actual experience," but recommends an "alternative" approach.<sup>4</sup> In effect, Mr. Mierzwa is requesting that the Board rely on incorrect data.

As explained in PLUG Statement No. 1-R, Black & Veatch's CCOSS used reasonable extra-capacity factors based on PWD's actual historical experience.<sup>5</sup> PWD's CCOSS utilized 2.09 as the system-wide maximum day extra-capacity factor and 1.39 as the system-wide maximum hour extra-capacity factor.<sup>6</sup>

Mr. Mierzwa expresses concern that PWD has not appropriately updated the capacity factors underlying its CCOSS. In response, Mr. Mierzwa's analysis "used class maximum day and maximum hour extra-capacity allocation factors that he determined based on actual, FY 2019 usage data, as compared to PWD, which used capacity factors used in its last rate case."<sup>7</sup> PLUG Witness Billie LaConte compiled the results of the Public Advocate's analysis in the below table:

---

<sup>4</sup> Public Advocate Statement No. 2, at 13-14.

<sup>5</sup> PLUG Statement No. 1-R, at 3-4.

<sup>6</sup> PWD Statement No. 7, Schedule BV-2 at 4-8.

<sup>7</sup> PLUG Statement No. 1-R at 5.

<b>Table 2 Comparison of Customer Class Extra-Capacity Factors PWD and Public Advocate</b>				
<b>Customer Class</b>	<b>PWD</b>		<b>Public Advocate</b>	
	<b>Max Day</b>	<b>Max Hour</b>	<b>Max Day</b>	<b>Max Hour</b>
<b>Residential</b>	200	360	205	340
<b>Commercial</b>	180	265	200	330
<b>Industrial</b>	160	200	330	440
<b>Public Utilities</b>	160	200	250	415
<b>Housing Authority</b>	190	313	255	425
<b>Charity &amp; Schools</b>	180	270	205	340
<b>Senior Citizens</b>	200	360	210	350
<b>Hand Bill</b>	180	270	230	380
<b>Hospital/University</b>	180	233	215	355

**Sources:** PWD Statement No. 7, Direct Testimony of Black & Veatch Management Consulting, LLC, Table 4-4; Public Advocate Statement No. 2, Direct Testimony of Jerome D. Mierzwa, Schedule JDM-1.

Mr. Mierzwa's proposal substantially modifies the capacity factors assigned for several customer classes. Mr. Mierzwa's criticisms of the PWD-developed extra-capacity factors should be rejected as Mr. Mierzwa relies on generic data that is not accurate or reflective of PWD's unique system characteristics.<sup>8</sup> As described by PLUG witness Billie LaConte:

The variation is due to errors in Mr. Mierzwa's estimation of the weekly usage adjustment and the hourly usage adjustment. The AWWA Methodology uses generic weekly and hourly adjustment factors which do not recognize PWD's unique operating characteristics. Because the actual weekly and hourly adjustments are not available, Mr. Mierzwa relied on AWWA's generic adjustments. Due to Mr. Mierzwa's incorrect weekly and hourly factors, the capacity factors he uses are incorrect and should not be relied upon.<sup>9</sup>

Ms. LaConte also discusses the failure of Mr. Mierzwa's capacity factors to account for PWD's unique operating characteristics, observing that PWD's urban system does not experience seasonal peaking typical of other water utility systems.<sup>10</sup>

<sup>8</sup> PLUG Statement No. 1-R at 7.

<sup>9</sup> *Id.*

<sup>10</sup> *See* PLUG Statement No. 1-R at 8.

The record in this proceeding lacks support for Mr. Mierzwa's developed capacity factors. Mr. Mierzwa attempts to address the concerns regarding PWD's system characteristics by claiming that the issue of seasonal peaking mostly impacts the residential class and can be disregarded because his alternative capacity factors "do not vary materially from the maximum day and maximum hour factors utilized by PWD in its CCOS study".<sup>11</sup> The premise is misguided as Mr. Mierzwa's calculated maximum hour capacity factor for the Residential class is 5.5% lower than PWD's.<sup>12</sup> When considering that the Residential customer class accounts for 56.5% of PWD's water billings, a 5.5% change to the maximum hour capacity factor can result in substantial intraclass cross subsidies.<sup>13</sup> Moreover, Mr. Mierzwa's analysis remains an academic estimation of PWD's capacity factors rather than capacity factors developed through a formal study in accordance with the AWWA M1 Manual's guidance.<sup>14</sup>

Mr. Mierzwa's recommendation that the Board adopt unsupported capacity factors would dramatically reallocate PWD's water revenue requirement among the various customer classes. The below table compiled by Ms. LaConte illustrates the interclass cost shifts resulting from adoption of Mr. Mierzwa's capacity factors:

---

<sup>11</sup> Public Advocate Statement No. 2 at 19.

<sup>12</sup> PLUG Statement No. 1-R at 8.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.* at 9.

<b>Table 3 PWD vs. Public Advocate Proposed Revenue Increases FY 2024</b>		
<b>Rate Class</b>	<b>PWD</b>	<b>Public Advocate</b>
<b>Residential</b>	18.7%	14.6%
<b>Senior Citizens</b>	17.6%	12.6%
<b>Commercial</b>	14.5%	22.4%
<b>Industrial</b>	2.8%	37.8%
<b>Public Utilities</b>	2.0%	33.6%
<b>Housing Authority</b>	22.1%	18.9%
<b>Charities &amp; Schools</b>	12.0%	20.5%
<b>Hospitals/Universities</b>	14.3%	34.2%
<b>Hand Billed</b>	36.6%	37.8%
<b>Private Fire Protection</b>	39.5%	37.8%
<b>Public Fire Protection</b>	8.8%	9.5%
<b>Wholesale</b>	38.2%	33.0%
<b>Total Water System</b>	18.9%	18.9%
<b>Sources:</b> PWD Statement No. 7, Table 4-12. Public Advocate Statement No. 2, Direct Testimony of Jerome D. Mierzwa at 22.		

The Board should not approve such drastic revenue allocation adjustments based on estimated capacity factors. As stated by Ms. LaConte, "Mr. Mierzwa's revenue allocation is based on his faulty CCOSS, which produces incorrect allocations and would result in distorted rates".<sup>15</sup>

However, PLUG agrees with the Public Advocate's general concern that PWD continues to rely on increasingly stale data to support its CCOSS.<sup>16</sup> In observing the above-system average rate increases proposed for large meter customers, PLUG witness Bille LaConte concluded as follows:

Again, without the proper, most recent usage data, it is impossible to determine if the allocated costs are appropriate. Without the most recent class maximum day and class maximum hour data, PLUG cannot properly review the CCOSS and the proposed rates to ensure that the proposed rate increases by size are cost-based and

<sup>15</sup> PLUG Statement No. 1-R at 11.

<sup>16</sup> PLUG Statement No. 1 at 5.



fair.<sup>17</sup>

In recognition of Ms. LaConte's comments as well as Mr. Mierzwa's accurate observation that PWD's extra capacity factors are based on stale data dating back to 2017, the Board should *prospectively* require PWD to use updated capacity factors in its next rate filing. While the Public Advocate's estimated capacity factors are not appropriate or accurate, PWD should not be permitted to continue to rely on the same state data across multiple rate cases. Specifically, as recommended by PLUG witness Billie LaConte: (1) the capacity factors used by PWD in the CCOSS for this rate case should be maintained; (2) PWD should be required to conduct a formal study of its class usage characteristics prior to its next rate case; and (3) PWD must certify that it has completed its study before filing its next rate proceeding, to ensure the data is current and reflective of PWD's current operating usage and characteristics.

**B. The Board Must Deny the Public Advocate's Recommendation to Modify the Allocation of Expenses For PWD's Stormwater Credits.**

As part of its rate filing, PWD proposed to an annual budget of \$20 million for its Storm Management Incentive Program ("SMIP") and Greened Acre Retrofit Program ("GARP").<sup>18</sup> SMIP and GARP were developed based on carefully considered policy initiatives and have proven to be an enormous benefit to the City's stormwater management compliance obligations. Here, the Public Advocate proposes to modify PWD's cost recovery mechanisms in an effort characterized as an equitable adjustment. In reality, the Public Advocate's proposal constitutes an unreasonable cross-subsidization that must be rejected by the Board.

Before addressing the details of the Public Advocate's proposal, it is critical to understand the fundamental purpose of PWD's SMIP and GARP programs. PWD is currently subject to a

---

<sup>17</sup>*Id.* at 4.

<sup>18</sup> PWD Statement No. 7 at 23.

DEP Consent Order and Agreement establishing various compliance benchmarks for infrastructure projects intended to reduce the utility's combined sewer overflow.<sup>19</sup> Importantly, failure to comply with the COA exposes PWD to extensive civil penalties ranging from \$100 per-day per violation to \$100,000 per-month per violation.<sup>20</sup> To avoid these penalties, PWD has implemented multiple programs to fund and implement stormwater mitigation measures to achieve the benchmarks in the COA. First, PWD implemented the stormwater fee to recover the costs of maintaining and upgrading its stormwater infrastructure on a cost-of-service basis through impervious area ("IA") and gross area ("GA")-based charges. Additionally, PWD developed the SMIP and GARP to, "provide financial and environmental incentives to eligible non-residential, condominium, and some multi-family residential customers to promote projects that manage stormwater runoff and help PWD meet its stormwater management goals."<sup>21</sup> PWD also offers a credit system, through which "[c]ustomers who install management measures to reduce their stormwater runoff are eligible for billing credits which reduce their stormwater charges."<sup>22</sup> These programs collectively encourage customers to install and maintain the infrastructure PWD depends on to meet its COA benchmarks.

The Public Advocate claims PWD's methodology for allocating the costs of stormwater credits creates inequities among the customer classes. Based on this errant premise that all customers are not already benefitting from the SMIP and GARP programs, Mr. Mierzwa recommends that PWD restructure its cost recovery model for these programs. Specifically, he "recommends that the GA and IA rates established in this proceeding be based on an average of

---

<sup>19</sup> See PWD Exhibit No. 7.

<sup>20</sup> *Id.* at 15-16.

<sup>21</sup> PLUG Statement No. 1-R at 11-12.

<sup>22</sup> *Id.* at 12.

the rates developed based on the current rate design and the rates which would result if no GA and IA credits were reflected in the design of rates."<sup>23</sup> The Public Advocate's proposal is a solution in search of a problem and should be rejected.

As discussed above, Residential customers already benefit tremendously from PWD's SMIP and GARP programs as the programs are instrumental in incentives buildout of the stormwater management measures needed to secure compliance with PWD's COA,<sup>24</sup> There is no basis for the Public Advocate's proposal to burden the Non-Residential customer classes by reallocating a portion of the costs of PWD's credit programs only to Non-Residential customers.

**C. The Public Advocate's Proposals to Reallocate PWD's Late Fee Revenue are Not Cost-Based and Should Be Rejected.**

The Public Advocate's Direct Testimony proposed to reallocate approximately \$6.9 million of PWD's revenue from late payment fees to various programs designed to benefit only Residential customers.<sup>25</sup> For the reasons advanced by PLUG witness LaConte, this proposal should be denied by the Board.

As summarized in Ms. LaConte's testimony, the PWD charges a late payment for unpaid bills.<sup>26</sup> The total revenue from PWD's late payment fees totaled \$22.3 million for FY 2022<sup>27</sup>. The late payment fees are recorded as "other revenue" which reduces PWD's overall revenue requirement for all customers. The Public Advocate claims PWD's late payment fees are not cost-based and recommends that \$6.9 million of revenue from late fees be allocated to existing and proposed programs benefitting Residential customers, including the Utility Emergency Services

---

<sup>23</sup> Public Advocate Statement No. 2 at 27.

<sup>24</sup> PLUG Statement No. 1-R at 15.

<sup>25</sup> Public Advocate Statement No. 3 at 80; *see also* PLUG Statement No. 1-R at 15.

<sup>26</sup> PLUG Statement No. 1-R at 15.

<sup>27</sup> *Id.*

Fund, the low-income water conservation program, the low-income usage reduction program, and a pilot internal plumbing repair program.<sup>28</sup> The Public Advocate further claims that PWD "has no basis upon which to conclude that its late payment charge serves as an incentive to pay, either for Residential customers as a whole or for low-income customers."<sup>29</sup> For this reason, the Public Advocate finds it appropriate to reallocate \$6.9 million of late fee revenues from "other revenues" to fund various programs benefitting only the Residential customer class. As discussed below, the Public Advocate predicates its proposal on an unfounded basis and therefore has failed to provide a record of support for its proposal.

The Public Advocate inappropriately finds that the late payment fees lack functionality because they do not incentivize timely payment. However, the sole evidentiary basis underlying this statement is a series of discovery question where the Public Advocate asks PWD to furnish commissioned studies or reports showing the impact of late payment fees upon customer payments.<sup>30</sup> In response to these questions, PWD advises that it has not conducted such studies.<sup>31</sup> However, the absence of studies affirming correlation between late payment fees and more timely payments is not evidence of the contrary. As the concept of applying late payment fees to incentivize timely payment is a longstanding generally-accepted practice in the utility industry, the weight of the preponderance of evidence must favor a finding that late payment fees do incentivize timely payment.<sup>32</sup>

The Public Advocate also claims the late payment revenues are not cost-based and therefore should be reallocated in part to benefit the customer class from which the majority of

---

<sup>28</sup> *Id.*

<sup>29</sup> Public Advocate Statement No. 3 at 78.

<sup>30</sup> *See id. citing* PWD Response to PA-1-52, PA-1-53(c), and PA-1-54(c).

<sup>31</sup> *Id.*

<sup>32</sup> *See* PLUG Statement No. 1-R at 16.

late fee revenue is believed to be derived from.<sup>33</sup> The Public Advocate bases this claim on a discovery response where PWD affirms the late payment charge is set by Ordinance.<sup>34</sup> However, as discussed in Ms. LaConte's testimony, the Public Advocate's proposal to reallocate late payment fees to various programs also is not cost-based. To the extent there are concerns with the cost-basis for PWD's late fees, that issue should be addressed directly through a cost study. The Public Advocate's proposal to reallocate a portion of PWD's late fee payment revenues to Residential customers is arbitrary and should be denied.

**D. The Public Advocate's Proposals to Increase TAP Auto-Enrollment Highlight the Necessity for Continued Monitoring of the Impacts of TAP on Non-TAP Customers.**

The Public Advocate proposes various changes to PWD's TAP that collectively would increase auto-enrollment in the program.<sup>35</sup> As discussed by PLUG Witness Billie LaConte, PLUG is not taking a position on the merits of the Public Advocate's proposals other than to encourage the Board to consider that the important policy benefits of TAP do not come without cost. As stated by Ms. LaConte, "every discounted TAP bill produces a corresponding increase for the non-TAP customers."<sup>36</sup> Accordingly, TAP has the potential to generate substantial and potentially unreasonable rate increases for non-TAP customers. The Board should monitor the program and continually assess the potential need for cost controls.

**E. Any Consideration of Retroactive Arrearage Forgiveness Should Be Subject to Review of Detailed Record of the Rate Impacts.**

In addition to its enrollment recommendations, the Public Advocate asks the Board to direct PWD to submit reporting on TAP customer billing/arrearage forgiveness and issue

---

<sup>33</sup> Public Advocate Statement No. 3 at 78.

<sup>34</sup> *See id.* citing PWD Response to PA-1-38.

<sup>35</sup> Public Advocate Statement No. 3, 31-34.

<sup>36</sup> PLUG Statement No. 1-R at 17,

retroactive arrearage forgiveness credits for any customers that were eligible, but were not awarded arrearage forgiveness.<sup>37</sup> While PLUG takes no position on the Public Advocate's call for further reporting and review of PWD's administration of the arrearage forgiveness procedures, PLUG is concerned that the Public Advocate's proposal to award retroactive arrearage forgiveness does not address the rate impacts to non-TAP customers.<sup>38</sup> Consistent with the Board's authority to review and approve adjustments to PWD's rates, PLUG submits that any rate adjustments resulting from the requested reporting and investigation should be subject to further stakeholder review and Board approval prior to recovery through the TAP surcharge or any other means.<sup>39</sup>

**F. The Public Advocate's Remaining Expense Adjustments Should be Approved Subject to a Proportional Scale-Back of Any Revenue Reductions.**

In its Direct Testimony, the Public Advocate proposed several expense adjustments.<sup>40</sup> Other than as set forth above with regards to the proposed reallocation of late payment revenues, PLUG recommends that the Board give due consideration to the proposed expense adjustments and further requests that the associated revenue adjustments approved by the Board be proportionally scaled-back for *all* retail water, sewer, and stormwater service rates, consistent with PWD's as-filed CCOSS.<sup>41</sup>

---

<sup>37</sup> Public Advocate Statement No. 3 at 24.

<sup>38</sup> PLUG Statement No. 1-R at 18.

<sup>39</sup> See PWD Statement 2A, Schedule FP-2.

<sup>40</sup> See PWD Cross Exhibit No. 1; see also Public Advocate Statement No. 1.

<sup>41</sup> See PLUG Statement No. 1-R at 3-4.

**IV. CONCLUSION**

**WHEREFORE**, the Philadelphia Large Users Group respectfully requests that the Philadelphia Water, Sewer, and Storm Water Rate Board:

- (1) Deny the rate increase request proposed by the Philadelphia Water Department; or
- (2) Grant modified relief consistent with this Main Brief.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

---

Adeolu A. Bakare (Pa. I.D. No. 208541)  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
Fax: (717) 237-5300

Counsel to the Philadelphia Large Users Group

Dated: May 16, 2023