

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

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In the Matter of the Philadelphia Water	:	
Department's Proposed Changes in Water,	:	
Wastewater and Stormwater Rates and Related	:	For: Fiscal Years 2024-2025
Charges	:	

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**HEARING OFFICER REPORT**

Marlane R. Chestnut  
Hearing Officer

May 30, 2023

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## I. INTRODUCTION

This report addresses the rate filing (the [2023 General Rate Proceeding](#)<sup>1</sup>) made by the Philadelphia Water Department (PWD or the Department<sup>2</sup>) with the Philadelphia Water, Sewer and Storm Water Rate Board (Rate Board or Board<sup>3</sup>) for approval to increase rates and charges for water, sewer, and stormwater service effective for service rendered on and after September 1, 2023 (FY 2024), and September 1, 2024 (FY 2025). PWD is a City department, with responsibility for provision of water, sewer, and storm water services in the City of Philadelphia.<sup>4</sup>

In November 2012, Philadelphia voters approved an amendment to Section 5-801 of the Philadelphia Home Rule Charter to allow The Council of the City of Philadelphia (City Council) to establish, by ordinance, an independent rate-making body responsible for fixing and regulating rates and charges for water and sewer services. Under the Rate Ordinance (effective January 20, 2014), [Chapter 13-100 of the Philadelphia Code](#),<sup>5</sup> City Council replaced PWD with the Rate Board as the entity responsible for setting those rates, and established standards for the Board to consider when doing so. In order to fulfill the mandate in the ordinance, that an “open and transparent process” be used in setting the rates and charges, the Rate Board promulgated [regulations](#),<sup>6</sup> revised most recently in November 2022, regarding both substantive and procedural requirements.

The [current rates](#),<sup>7</sup> in effect since September 1, 2022, are based on the Rate Board’s [2021 General Rate Determination](#)<sup>8</sup> dated June 16, 2021. Following consideration of a [Joint](#)

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<sup>1</sup> <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2023-rate-proceeding/>

<sup>2</sup> Throughout this Hearing Report, PWD includes the Philadelphia Water Revenue Bureau (WRB), to the extent required by the context.

<sup>3</sup> As of the date of this Report, the members of the Rate Board (nominated by the Mayor and approved by City Council) are Board Chair Sonny Popowsky, Tony Ewing, Abby Pozefsky, McCullough Williams III and Debra McCarty. Short biographies of each board member, as well as relevant legal authority and regulations, are available at the Rate Board’s website (<https://www.phila.gov/departments/water-sewer-storm-water-rate-board/about/>).

<sup>4</sup> The Department also makes wholesale water sales to neighboring communities and conveys, treats and disposes of wastewater for certain outside-of-City customers. The rates for such off-system sales were not part of this filing, as the Rate Board does not determine rates for such off-system sales.

<sup>5</sup> [https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-286499#JD\\_13-101](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-286499#JD_13-101)

<sup>6</sup> <https://www.phila.gov/media/20230120160159/WRB-regulations-restated-with-amendments-2022-11-09.pdf>

<sup>7</sup> <https://www.phila.gov/media/20220901140346/rates-and-charges-2022-09-01.pdf>

<sup>8</sup> <https://www.phila.gov/media/20210618105014/2021-General-Rate-Determination-as-filed-with-Records-Dept-20210616.pdf>

[Petition for Partial Settlement](#)<sup>9</sup> (Joint Petition, Settlement Petition) presented by the Department and the Public Advocate, the Rate Board approved an incremental rate increase of \$10.411 million in FY 2022, and an incremental revenue increase of \$34.110 million in FY 2023 which, pursuant to the terms of the Settlement Petition, was subject to potential reduction. No appeal was taken of that determination.

Pursuant to the [2021 General Rate Determination](#), the Rate Board conducted a [Special Rate Proceeding](#)<sup>10</sup> pursuant to Sections II.A.2 and II.D of the Rate Board's [regulations](#) 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 FY 2023. After both public and technical hearings, the Rate Board in its [June 15, 2022 Special Rate Determination](#)<sup>11</sup> found that the incremental rate base increase of \$34.11 million scheduled to take effect for service rendered on and after September 1, 2022, should be reduced by \$3 million, finding that this allowed 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](#).

In the current proceeding, the Department filed its [Advance Notice](#)<sup>12</sup> with City Council and the Rate Board on January 24, 2023, and its [Formal Notice](#)<sup>13</sup> with the Rate Board and the Records Department on February 23, 2023, containing proposed changes to the rates and related charges for water, sewer and storm water service effective September 1, 2023, and September 1, 2024, along with supporting statements and exhibits.<sup>14</sup> The Department stated that

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<sup>9</sup> <https://www.phila.gov/media/20210505154832/Joint-Petition-for-Partial-Settlement.pdf>

<sup>10</sup> <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2022-special-rate-proceeding/>

<sup>11</sup> <https://www.phila.gov/media/20220622164351/2022-Special-Rate-determination-06-15.pdf>

<sup>12</sup> <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2023-rate-proceeding/#advance-notice-of-filing>

<sup>13</sup> <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2023-rate-proceeding/#formal-notice>

<sup>14</sup> Also on January 24, 2023, the Department filed its annual TAP-R Reconciliation, Advance Notice. These rates are the subject of a separate proceeding.

these increases are intended to generate additional first year revenues of approximately \$80.41 million in FY 2024 and total additional revenues of approximately \$162.131 million in FY 2025.<sup>15</sup>

An extensive, open, and transparent examination of PWD’s filing (which included substantial discovery, four public hearings, four days of technical hearings, the submission of written briefs, and the receipt of numerous public comments) was conducted. After thorough consideration of the record produced in this proceeding, which includes the written and oral statements, exhibits, transcripts, discovery responses, orders, public comments, and briefs, it is my recommendation that the Rate Board permit the rates and charges to go into effect as set forth below, resulting in a base rate revenue increase of \$56.752 million in FY 2024 compared to revenues under existing rates (rather than the \$80.412 million requested by PWD) and a total FY 2025 revenue increase of \$126.770 million over current rates<sup>16</sup> rather than the \$162.131 million requested by PWD.<sup>17</sup> I further recommend that the Rate Board approve the uncontested tariff language changes, and uncontested changes to the miscellaneous rates and charges.

I recognize that the unprecedented conditions in terms of both human and economic suffering – caused by the COVID-19 pandemic and still ongoing, exacerbated by difficult economic conditions – make it difficult to entertain the idea of any increase in rates and charges at this time. The comments and statements offered by the Department’s customers were compelling in making clear the challenges faced by many. The record, however, does establish the need for rate relief at some level. As discussed in more detail below, City Council requires<sup>18</sup>

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<sup>15</sup> The FY 2025 revenue increase of \$162.131 million reflects \$99.154 million arising from the FY 2024 increase (annualizing the \$80.412 million revenue from 10 months of FY 2024 to reflect 12 months of revenues in FY 2025) and \$62.977 million in additional revenues from the first 10 months of the additional rate increase proposed to begin in FY 2025. See Table C-1A, line 10, attached to this Report.

<sup>16</sup> Pursuant to the Rate Board’s [Regulations](#) at § I (1.1) and II.B.7, the recommended revenue requirement contained in this Hearing Officer Report was calculated utilizing the Simple Model, a financial spreadsheet model owned by the Rate Board and provided to the participants to calculate the effect on revenue requirements of potential revenue adjustments. Its use by the Rate Board is mandated by Section II.B.7(b): The Board shall utilize the Model in its Rate Determination to calculate the overall effects of its decision on revenue requirements authorized to be sought from retail customers via Water Department rates and charges.”

<sup>17</sup> My proposed revenue increase for FY 2025 reflects \$69.996 million arising from the FY 2024 increase (\$56.752 million annualized to reflect 12 months of revenue) and \$56.774 million in additional revenues in FY 2025 from the 10 months of the rate increase that begins September 1, 2024. See Table C-1A, line 10a, attached to this Report. Lines marked “a” in the tables represent my adjustments to PWD’s filing.

<sup>18</sup> [Phila. Code, § 13-101\(4\)](#),

[https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-286499#JD\\_13-101](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-286499#JD_13-101)

the Rate Board to set rates and charges sufficient for the Department to produce a level of revenue to cover its expenses and debt service, and satisfy applicable financial metrics in order to access the capital market at reasonable rates (as well as other requirements and mandates), in order to provide the safe and adequate service its customers are entitled to, while still ensuring that the rates and charges are just, reasonable, and equitably apportioned.

## II. HISTORY OF THE PROCEEDING

As noted above, PWD filed its [Advance Notice](#) on January 24, 2023, and its [Formal Notice](#) on February 23, 2023. In compliance with the Rate Board's mandate for an open and transparent examination of the Department's proposed rates and charges, the Board [regulations](#)<sup>19</sup> at II.A(c) require the submission of certain technical information, including (1) all financial, engineering and other data upon which the proposed rates and changes are based; (2) evidence demonstrating that the proposed rates were developed in accordance with sound utility rate-making practices, and are consistent with the current industry standards for water, wastewater and storm water rates and with the Department's bond covenants and other legal requirements; and (3) any material required by order of the Board in the last rate case. To support its proposed rates and charges, PWD presented the direct testimony, schedules, and exhibits of a number of witnesses:

- Randy E. Hayman, Esq. (PWD Water Commissioner) ([PWD St. 1](#)<sup>20</sup>);
- The Financial Panel, consisting of the testimony and exhibits of Lawrence Yangalay, Lawrence Rich, and Patricia Rogalski ([PWD St. 2A](#)<sup>21</sup>) and the Financial Advisors, Peter Nissen and Charles Matthews ([PWD St. 2B](#)<sup>22</sup>);
- The Capital Panel, consisting of the testimony and exhibits of Stephen Furtek, Trisha Grace, Vahe Hovsepian, and William Dobbins ([PWD St. 3](#)<sup>23</sup>);

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<sup>19</sup> <https://www.phila.gov/media/20230120160159/WRB-regulations-restated-with-amendments-2022-11-09.pdf>

<sup>20</sup> <https://www.phila.gov/media/20230124163833/PWD-Statement-1-Direct-Testimony-and-Schedules-of-the-Water-Commissioner.pdf>

<sup>21</sup> <https://www.phila.gov/media/20230124163836/PWD-Statement-2A-Direct-Testimony-and-Schedules-of-the-Financial-Panel.pdf>

<sup>22</sup> <https://www.phila.gov/media/20230124163834/PWD-Statement-2B-Direct-Testimony-and-Schedules-of-the-Financial-Advisors.pdf>

<sup>23</sup> <https://www.phila.gov/media/20230124163837/PWD-Statement-3-Direct-Testimony-and-Schedules-of-the-Capital-Panel.pdf>

- The Operations Panel, consisting of the testimony and exhibits of Benjamin Jewell, Brendan Reilly, Linda Kramer, and Stephen Junod ([PWD St. 4](#)<sup>24</sup>);
- The WRB (Water Revenue Bureau) Panel, consisting of the testimony and exhibits of Susan Crosby, Esq. ([PWD St. 5](#)<sup>25</sup>)<sup>26</sup>;
- The Raftelis Financial Consultants Panel, consisting of the testimony and exhibits of Jon Pilkenton Davis, Henrietta Locklear, and Jennifer (Fitts) Tavantzis ([PWD St. 6](#)<sup>27</sup>);
- The Black & Veatch Panel, consisting of the testimony and exhibits of Ann Bui, Dave Jagt, and Brian Merritt ([PWD St. 7](#)<sup>28</sup>); and
- The Communications and Engagement Panel, consisting of the testimony and exhibits of Glen Abrams, Laura Copeland, and Paul Fugazzotto ([PWD St. 8](#)<sup>29</sup>).

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. In addition, participants to PWD’s 2021 general rate proceeding as well as the 2022 special rate proceeding were notified by e-mail of this proceeding and provided an opportunity to participate.

At its [August 10, 2022 meeting](#),<sup>30</sup> the Rate Board authorized the renewal for additional one-year terms of the contracts with Community Legal Services to act as Public Advocate to represent the concerns of small user customers (all residential customers and small business customers, typically with 5/8 inch meters), Amawalk Consulting to provide technical services, and me to serve as Hearing Officer.

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<sup>24</sup> <https://www.phila.gov/media/20230124163838/PWD-Statement-4-Direct-Testimony-and-Schedules-of-the-Operations-Panel.pdf>

<sup>25</sup> <https://www.phila.gov/media/20230124163839/PWD-Statement-5-Direct-Testimony-and-Schedules-of-the-Water-Revenue-Bureau.pdf>

<sup>26</sup> This statement and Sch. BV-2 (attached to PWD St. 6) were later revised.

<sup>27</sup> <https://www.phila.gov/media/20230124163840/PWD-Statement-6-Direct-Testimony-and-Schedules-of-Raftelis.pdf>

<sup>28</sup> <https://www.phila.gov/media/20230124163844/PWD-Statement-7-Direct-Testimony-and-Schedules-of-Black-and-Veatch.pdf>

<sup>29</sup> <https://www.phila.gov/media/20230124163846/PWD-Statement-8-Direct-Testimony-and-Schedules-of-the-Communications-and-Engagement-Panel.pdf>

<sup>30</sup> <https://www.phila.gov/media/20221025173415/8.10.2022-Meeting-Recording.mp3>



The [Rate Ordinance](#) (Phila. Code § 13-101(4)(b)(.4)) provides that the decision by the Board to approve, modify, or reject the proposed rates and charges shall be made in a timely manner, but “no later than 120 days from the filing of notice of any proposed change in rates and charges.”<sup>31</sup> See also, the Rate Board’s [regulations](#) at Section IIA.1(b): “Consistent with Section 13-101, the Rate Proceeding shall be conducted within 120 days of the filing of the Formal Notice and shall address only rates and charges and topics directly related thereto.” The schedule adopted in this proceeding was in compliance with this deadline, together with other timing requirements specified in the Board regulations.

In addition to the Department and the Public Advocate, participants included the Water Revenue Bureau (WRB),<sup>32</sup> PECO Energy Company (PECO), the Philadelphia Large Users Group (PLUG)<sup>33</sup>, and two individual customers, Lance Haver and Michael Skiendzielewski.

The Council of the City of Philadelphia (City Council) on February 2, 2023, adopted [Resolution No. 230061](#),<sup>34</sup> which authorized the Committee on Transportation and Public Utilities to hold hearings to examine the Philadelphia Water Department’s request to increase water, sewer, and storm water rates and charges and its impact on the citizens of Philadelphia.<sup>35</sup> On February 13, 2023, State Representative Darisha Parker sent a [letter](#)<sup>36</sup> to the Rate Board expressing her concern about the impact of any rate increase.

Fourteen members of the City Council signed and sent to PWD a [letter](#) dated February 14, 2023, expressing their concerns and recommending that the Department look for alternatives to increasing rates:

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<sup>31</sup> “If the Board is unable to act on proposed rates and charges in the time required herein, the Water Department may establish emergency rates and charges on a temporary basis pending a final determination by the Board.” Phila. Code § 13-101(8).

<sup>32</sup> The Water Revenue Bureau, which is part of the City’s Department of Revenue, provides all billing and collection functions for charges by the Department.

<sup>33</sup> PLUG is an ad hoc group of large volume customers who receive water, sewer, and storm water service from the Department pursuant to the Industrial and Hospital/University Rate schedules. [PLUG St. 1](#) at 1.

<sup>34</sup> <https://phila.legistar.com/LegislationDetail.aspx?ID=6014906&GUID=58749A65-F235-4DFF-B187-90F8734FCD18&Options=ID%7CText%7C&Search=>

<sup>35</sup> This hearing, conducted via Zoom, was held on May 8, 2023.

<sup>36</sup> <https://www.phila.gov/media/20230303132419/Darisha-Parker-Public-Input.pdf>

[We] recommend the utilization of the funds the City received from the American Rescue Plan Act (ARPA), a plan which specifically authorized municipalities to use funding to support infrastructure needs. The City has over \$800 million in ARPA funds remaining that are waiting to be spent and run the risk of being recollected. Philadelphia will also be receiving \$500 million in newly allocated federal funding for water infrastructure improvements, which will allow for lead pipe replacement. These funds take off some of the burden and need for additional resources to pay for improvement and repairs.

An on-the-record prehearing conference to address preliminary procedural issues was held via Zoom (a teleconferencing software platform) in this proceeding on March 7, 2023. All participants to the rate filing were invited by e-mail to participate; in addition, the notice of the prehearing conference and the code to participate were posted on the Rate Board's [website](#). 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 Conference Order](#)<sup>37</sup> dated March 7, 2023.

On March 20, 2023, I issued an [Order Denying Haver Motion To Disclose](#),<sup>38</sup> finding that Mr. Haver's [Motion To Require the Public Advocate To Disclose It Doesn't Have a Client Relation With the Public or Any Member of the Public and Is Under Contract To Serve as a Legal Advisor to the Philadelphia Rate Board](#)<sup>39</sup> was inappropriate and unnecessary, and contained numerous incorrect statements, many of which had been previously addressed and refuted.

Four public hearings were held. All were conducted with the option to participate via Zoom online or telephonically. The Rate Board, the Department and the Public Advocate worked together to ensure that outreach and notice were provided to provide maximum awareness of the scheduled hearings was provided to the public. See, [PA Outreach Report](#).<sup>40</sup> These hearings were held in the afternoons (3:00 p.m.) and evenings (6:00 p.m.) of March 22 and March 23, 2023. The testimony presented at these hearings, as well as other submissions made by customers to the

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<sup>37</sup> <https://www.phila.gov/media/20230308091818/PHC-Order-2023-03-07.pdf>

<sup>38</sup> <https://www.phila.gov/media/20230321094244/Order-Haver-Motion-Disclose-2023-March-20.pdf>

<sup>39</sup> <https://www.phila.gov/media/20230321094243/Motion-to-disclose.pdf>

<sup>40</sup> <https://www.phila.gov/media/20230502184431/Outreach-Report-Exhibit-2023-Rate-Case-Final.pdf>

Rate Board, is posted on the Rate Board's website and discussed below. In all, 30 members of the public provided testimony, which included comments and suggestions. PWD later submitted a [Response](#)<sup>41</sup> that provided further information addressed to specific issues raised at the public hearings.

By [Order](#)<sup>42</sup> dated March 26, 2023, I sustained the Public Advocate's [Objections](#)<sup>43</sup> to certain [information requests](#)<sup>44</sup> served by pro se participant Lance Haver, as they were directed to how CLS performs its role as Public Advocate, including its internal decision-making process. I found that those information requests were overly broad, sought irrelevant information, were unreasonably burdensome, and/or had been answered responsively.

Direct testimony was filed by Mr. Haver, PLUG and the Public Advocate on March 22, 2023. Mr. Haver submitted his own direct statement ([Haver St. 1](#)<sup>45</sup>). PLUG submitted the statement and exhibits of Billie LaConte (J. Pollock, Incorporated) ([PLUG St. 1](#)<sup>46</sup>). The Public Advocate submitted the joint direct testimony of Lafayette K. Morgan, Jr. and Jennifer L Rogers (Exeter Associates, Inc., [PA St. 1](#)<sup>47</sup>), Jerome D. Mierzwa (Exeter Associates, Inc., [PA St. 2](#)<sup>48</sup>), and Roger D. Colton (Fisher Sheehan & Colton, [PA St. 3](#)<sup>49</sup>), each with accompanying schedules and/or exhibits.

A [Motion to Exclude from Technical Review and Designate as Public Input](#)<sup>50</sup> (Motion to Exclude), accompanied by a Memorandum of Law, was filed by the Public Advocate on April 20, 2023, addressed to the written testimony of Mr. Haver. The Water Department by email indicated its support for the Motion. In this Motion, the Advocate requested that the written testimony submitted by Mr. Haver be designated public input rather than considered at the

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<sup>41</sup> <https://www.phila.gov/media/20230413155908/PWD-Public-Input-Hearing-Responses-APR10.pdf>

<sup>42</sup> <https://www.phila.gov/media/20230331130819/Order-Haver-Discovery-2023-March-26-FINAL.pdf>

<sup>43</sup> <https://www.phila.gov/media/20230317170203/PA-Objections-and-Responses-to-LH-I.pdf>

<sup>44</sup> <https://www.phila.gov/media/20230315091600/Discovery-LH-Interrogatories-CLS.docx>

<sup>45</sup> <https://www.phila.gov/media/20230412173301/Lances-Direct-Testimony.pdf>

<sup>46</sup> <https://www.phila.gov/media/20230412173305/PLUG-Direct-Testimony-B.-LaConte-A9574581.pdf>

<sup>47</sup> <https://www.phila.gov/media/20230418152235/PA-St-1-Morgan-Rogers.pdf>

<sup>48</sup> <https://www.phila.gov/media/20210324163526/PA-St-2-Mierzwa.pdf>

<sup>49</sup> <https://www.phila.gov/media/20210324163618/PA-St-3-Colton.pdf>

<sup>50</sup> <https://www.phila.gov/media/20230421153608/Motion-to-Exclude-and-Designate-as-Public-Input.pdf>

scheduled technical hearings, given the nature of the testimony. Mr. Haver submitted an [Answer](#)<sup>51</sup> to the Motion. While I agreed with the Public Advocate’s characterization of much of this testimony as being irrelevant to the issues in this proceeding, on April 25, 2023, I issued an [Order](#)<sup>52</sup> that denied the Motion to Exclude, holding that to the extent that this testimony was competent, material, and relevant, it could be considered at the scheduled technical hearings or by the Rate Board.

Rebuttal testimony responding to participants’ direct testimony was filed by PWD, the Public Advocate, and PLUG. PWD submitted [Rebuttal St. 1](#)<sup>53</sup> (addressed to PA witnesses Morgan and Rogers), [Rebuttal St. 2](#)<sup>54</sup> (addressed to PA witness Mierzwa), [Rebuttal St. 3](#)<sup>55</sup> (addressed to PA witness Colton), [Rebuttal St. 4](#)<sup>56</sup> (addressed to PLUG witness LaConte) and [Rebuttal St. 5](#)<sup>57</sup> (addressed to participant Haver). The Public Advocate submitted [PA St. 1-R](#)<sup>58</sup> (addressed to Mr. Haver), and PLUG submitted [PLUG St. 1-R](#)<sup>59</sup> (addressed to PA witnesses Mierzwa/Colton).

PWD Objected ([Objections to Set I](#)<sup>60</sup>, [Objections to Set II](#)<sup>61</sup>) to [information requests](#)<sup>62</sup> that had been propounded to it by pro se participant Michael Skiendzielewski. Mr. Skiendzielewski [responded](#)<sup>63</sup> to the Objections. On May 1, 2023, I issued an Order sustaining the Objections, finding that the information requests sought information on issues outside the scope

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<sup>51</sup> <https://www.phila.gov/media/20230425203102/Haver-answer-to-CLS.pdf>

<sup>52</sup> <https://www.phila.gov/media/20230425203059/Order-PA-Motion-Exclude-final.pdf>

<sup>53</sup> <https://www.phila.gov/media/20230429143008/PWD-REBUTTAL-STATEMENT-1-MORGAN-AND-ROGERS.pdf>

<sup>54</sup> <https://www.phila.gov/media/20230429143008/PWD-REBUTTAL-STATEMENT-1-MORGAN-AND-ROGERS.pdf>; <https://www.phila.gov/media/20230429143009/PWD-REBUTTAL-STATEMENT-2-MIERZWA.pdf>

<sup>55</sup> <https://www.phila.gov/media/20230429143003/PWD-REBUTTAL-STATEMENT-3-COLTON.pdf>

<sup>56</sup> <https://www.phila.gov/media/20230429143004/PWD-REBUTTAL-STATEMENT-4-LACONTE.pdf>

<sup>57</sup> <https://www.phila.gov/media/20230429143005/PWD-REBUTTAL-STATEMENT-5-HAVER.pdf>

<sup>58</sup> <https://www.phila.gov/media/20230429143006/PA-St-1-R-Morgan-Rogers.pdf>

<sup>59</sup> <https://www.phila.gov/media/20230509161349/Rebuttal-Testimony-LaConte-2023.04.27.pdf>

<sup>60</sup> <https://www.phila.gov/media/20230508093249/PWD-Objections-and-Response-to-Skiendzielewski-Discovery-Set-1.pdf>

<sup>61</sup> <https://www.phila.gov/media/20230508093248/PWD-Objections-and-Response-to-Skiendzielewski-Discovery-Set-2.pdf>

<sup>62</sup> <https://www.phila.gov/media/20230429143753/WRB2023petitionNEW.pdf>

<sup>63</sup> <https://www.phila.gov/media/20230508093251/Skiendzielewski-email-response-to-PWD-Objections.pdf>

of the Rate Board’s jurisdiction in this proceeding, and/or were unduly burdensome. [Order Sustaining Objections to Discovery: Skiendzielewski](#).<sup>64</sup>

After proper notice and publication, technical review hearings were held as scheduled on May 2-5, 2023. All hearings were conducted via Zoom, were open to the public and advertised consistent with Rate Board regulations. The first day was addressed to the discussion of procedural issues, with the remaining days (May 3-5, 2023) devoted to the presentation for cross-examination of the various witnesses who had submitted written testimony.<sup>65</sup> The transcripts of each day’s hearing are posted on the Rate Board’s website. [May 2, 2023](#)<sup>66</sup> [May 3, 2023](#)<sup>67</sup> [May 4, 2023](#)<sup>68</sup> [May 5, 2023](#).<sup>69</sup>

Written briefs were timely filed by the [Department](#),<sup>70</sup> the [Public Advocate](#),<sup>71</sup> [PLUG](#),<sup>72</sup> [Mr. Haver](#),<sup>73</sup> and [Mr. Skiendzielewski](#).<sup>74</sup>

Pursuant to the Rate Board’s [regulations](#), Section II.B.6(b), the record consists of (1) the [Advance Notice](#) and [Formal Notice](#), including any supporting documents and any documents incorporated by reference as part of the documents submitted with the Advance Notice or Formal Notice.; (2) [responses to discovery](#); (3) [participant testimony](#); (4) [public input](#) (comments and correspondence, including letters from City Council and the State Representative); (5) [transcripts of the public hearings](#) (March 22, 2023, 3:00 p.m. and 6:00 p.m.; March 23, 2023, 3:00 p.m. and 6:00 p.m.) and [technical review hearings](#) (May 2-5, 2023); (6) [motions and procedural orders](#); (7) further statements the participants have included in the record, including the

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<sup>64</sup> <https://www.phila.gov/media/20230508093249/PWD-Objections-and-Response-to-Skiendzielewski-Discovery-Set-I.pdf>; <https://www.phila.gov/media/20230508093258/Order-Skiendzielewski-Discovery-2023-FINAL.pdf>

<sup>65</sup> PLUG witness LaConte was excused from appearing, as no participant had cross-examination for her.

<sup>66</sup> <https://www.phila.gov/media/20230525122452/PWD-WRB-prehearing-conf-transcript-2023-05-02.pdf>

<sup>67</sup> <https://www.phila.gov/media/20230509134429/Technical-Hearing-Transcript-2023.05.03-General-Rate-Proceeding.pdf>

<sup>68</sup> <https://www.phila.gov/media/20230510193057/Technical-Hearing-Transcript-2023.05.04-General-Rate-Proceeding.pdf>

<sup>69</sup> <https://www.phila.gov/media/20230510193058/Technical-Hearing-Transcript-2023.05.05-General-Rate-Proceeding.pdf>

<sup>70</sup> <https://www.phila.gov/media/20230516185419/PWD-Main-Brief-final.pdf>

<sup>71</sup> <https://www.phila.gov/media/20230516185423/Public-Advocate-Brief-Final.pdf>

<sup>72</sup> <https://www.phila.gov/media/20230519074732/Brief-PLUG.pdf>

<sup>73</sup> <https://www.phila.gov/media/20230516135328/2023-Water-Rate-brief-Haver.pdf>

<sup>74</sup> <https://www.phila.gov/media/20230516135325/wrb-brief-May-16-Skiendzielewski.pdf>

Department's request for [federal funding and City Council briefing](#); (8) exhibits ([PA May 3, 2023 Hearing Exhibit](#), [PA Outreach report](#), [PWD Cross-Examination Exhibit 1](#), [PA May 5, 2023 Hearing Exhibit](#)); (9) [Sequestration Stipulation](#); (10) [briefs](#); (11) this May 30, 2023 Hearing Officer Report.; and (12) any timely exceptions to this Report.

### **III. RATE DETERMINATION STANDARDS**

As explained above, the Rate Board was established to determine whether the rates and charges for water, sewer, and storm water service proposed by the Water Department should be accepted, rejected, or modified, after an open and transparent review process. The Rate Ordinance that established the Rate Board contains standards that the Board must consider in making its rate determinations. See, the [Rate Ordinance](#), Philadelphia Code § 13-101(4), which provides that:

(4) Standards for Rates and Charges.

(a) Financial Standards. The rates and charges shall yield to the City at least an amount equal to operating expenses and debt service, on all obligations of the City in respect of the water, sewer, storm water systems and, in respect of water, sewer and storm water revenue obligations of the City, such additional amounts as shall be required to comply with any rate covenant and sinking fund reserve requirements approved by ordinance of Council in connection with the authorization or issuance of water, sewer and storm water revenue bonds, and proportionate charges for authorization or issuance of water, sewer and storm water revenue bonds, and proportionate charges for all services performed for the Water Department by all officers, departments, boards or commissions of the City.

(b) The rates and charges shall yield not more than the total appropriation from the Water Fund to the Water Department and to all other departments, boards or commissions, plus a reasonable sum to cover unforeseeable or unusual expenses, reasonably anticipated cost increases or diminutions in expected revenue, less the cost of supplying water to City facilities and fire systems and, in addition, such amounts as, together with additional amounts charged in respect of the City's sewer system, shall be required to comply with any rate covenant and sinking fund reserve requirements approved by ordinance of Council in connection with the authorization or issuance of water and sewer revenue bonds. Such rates and charges may provide for sufficient revenue to stabilize them over a reasonable number of years.

(.1) In fixing rates and charges the Board shall recognize the importance of financial stability to customers and fully consider the Water Department's Financial

Stability Plan. In addition, the Board shall determine the extent to which current revenues should fund capital expenditures and minimum levels of reserves to be maintained during the rate period. When determining such levels of current funding of capital expenditures and minimum levels of reserves, the Board shall consider all relevant information presented including, but not limited to, peer utility practices, best management practices and projected impacts on customer rates. ...

(.2) Rates and charges shall be developed in accordance with sound utility rate making practices and consistent with the current industry standards for water, wastewater and storm water rates. Industry standards include the current versions of American Waterworks Association (AWWA) Principles of Rates, Fees and Charges Manual (M-1) and Water Environment Federation's Wastewater Financing & Charges for Wastewater Systems.) ...

(c) The rates and charges shall be equitably apportioned among the various classes of consumers.

(d) The rates and charges shall be just, reasonable and nondiscriminatory as to the same class of consumers.

In addition, the [Rate Ordinance](#) provides for other types of special rates and charges, including those for service provided to charitable institutions, places of worship, public and private schools, public housing and the determination of various sewer charges. See, Philadelphia Code §§13-101(4) – (6).<sup>75</sup>

Further, § 13-101(2) of the Rate Ordinance provides that the Water Department:

... shall develop a comprehensive plan (“Financial Stability Plan”) which shall forecast capital and operating costs and expenses and corresponding revenue requirements. It shall identify the strengths and challenges to the Water Department’s overall financial status including the Water Fund’s credit ratings, planned and actual debt service coverage, capital and operating reserves and utility service benchmarks. It shall compare the Water Department to similar agencies in peer cities in the United States. A Financial Stability Plan shall be submitted to Council every four (4) years and updated prior to proposing revisions in rates and charge.<sup>76</sup>

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<sup>75</sup> The full text of the relevant ordinances and regulations are posted on the Rate Board’s website, at the section entitled “Regulations & Relevant Legal Authority.” [About | Water, Sewer & Storm Water Rate Board | City of Philadelphia](https://www.phila.gov/departments/water-sewer-storm-water-rate-board/about/) (https://www.phila.gov/departments/water-sewer-storm-water-rate-board/about/)

<sup>76</sup> The updated Financial Plan is included with [PWD St. 2A](#), Schedule FP-1.

Reduced to its essentials, this standard requires that rates be set at a level that produces revenue sufficient for the Department to meet its expenses and debt service. Other factors to be considered include the impact of its rate decisions on customers as well as the Department, industry standards applicable to water, wastewater and storm water rates, recognition of the parameters set forth in the Financial Stability Plan required by City Council and that rates be just, reasonable, nondiscriminatory and equitably apportioned among the various classes of consumers.

As described above, PWD's rates must also be set at a level that produces sufficient revenue to ensure compliance with the covenants made by the City pursuant to the 1989 General Bond Ordinance, which are described in PWD's [Brief](#) at 20-22, and the statements and schedules noted there. As explained in [PWD St. 2A](#), Sch. FP- 5 at 3-4:

In the 1989 General Bond Ordinance, the City covenanted with the bondholders that it will impose, charge and collect rates and charges in each fiscal year sufficient to produce annual net revenues which are at least 1.20 times the debt service requirements, excluding the amounts required for subordinated bonds (as defined in the 1989 General Bond Ordinance). In addition, the City's covenants to its bondholders require that net revenues in each fiscal year must be equal to 1.00 times (A) annual debt service requirements for such fiscal year, including the amounts required for subordinated bonds, (B) annual amounts required to be deposited in the debt reserve account, (C) the annual principal or redemption price of interest on General Obligation Bonds payable, (D) the annual debt service requirements on interim debt, and (E) the annual amount of the deposit to the Capital Account (less amounts transferred from the Residual Fund to the Capital Account).

Further, pursuant to the 1989 General Bond Ordinance, the City will, at a minimum, impose, charge and collect in each fiscal year such water and wastewater rents, rates, fees and charges and shall yield Net Revenues (defined for purposes of this covenant particularly, calculated to exclude any amounts transferred from the Rate Stabilization Fund to the Revenue Fund in, or as of the end of, such fiscal year) which will be equal to at least 0.90 times Debt Service Requirements for such fiscal year (excluding principal and interest payments in respect of Subordinated Bonds and transfers from the Rate Stabilization Fund). In this testimony, the above covenants are referred to collectively as the "Rate Covenants."

In the [2018 Rate Determination](#), the Rate Board set forth targets for several financial metrics to be considered by the Department in its future operations and by the Board in its future rate decisions. These targets included a 1.3x senior debt service coverage ratio; a \$150



million combined reserve balance in the Department's Rate Stabilization Fund (RSF, \$135 million) and Residual Fund (\$15 million); and 20% cash financing for capital expenditures. The reasons for setting such targets for the 2018 rate proceeding included the need to support the credit ratings for the Department's bonds as higher credit ratings make it easier and less expensive to borrow money, providing interest savings for all customers for many years to come. See, [2018 Rate Determination](#) at 18-33.<sup>77</sup>

These financial metrics were to some extent discussed by the Rate Board in the recent [2022 Special Rate Proceeding](#), a limited 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), as provided by the [Rate Determination](#)<sup>78</sup> issued on June 16, 2021. That Rate Determination discussed and approved without modification a [Joint Petition for Partial Settlement](#)<sup>79</sup> entered into by the Department and the Public Advocate. One of the issues addressed was whether PWD's better than projected FY 2021 financial performance, as measured by the Rate Stabilization Fund balance as of June 30, 2021, warranted any reduction to the already-approved FY 2023 incremental revenue increase. While the Rate Board did authorize a \$3 million reduction to the FY 2023 base rate incremental increase, it made it clear that it the decision to use a lower RSF balance as the minimum threshold in that limited proceeding did not represent any indication that the RSF target of \$135 million on an ongoing basis had been changed or lowered.

The appropriate financial metrics for the Rate Board to consider in this proceeding are discussed below in Section VI.

#### IV. PUBLIC INPUT

To fulfill the mandate in the [Rate Ordinance](#), that an "open and transparent process for public input and comment on proposed water rates and charges" be used, the ordinance requires that "prior to fixing and regulating rates, the Board shall hold public hearings." Phila. Code §§

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<sup>77</sup> The Board noted in its Order that those financial targets "are not mandated requirements and should not be considered to be either strict ceilings or floors." [2018 Rate Determination](#) at 23.

<sup>78</sup> <https://www.phila.gov/media/20210618105014/2021-General-Rate-Determination-as-filed-with-Records-Dept-20210616.pdf>

<sup>79</sup> <https://www.phila.gov/media/20210505154832/Joint-Petition-for-Partial-Settlement.pdf>

13-101(3)(e) and (f). To accomplish that, the [Rate Board's regulations](#) at Section II.B.(a)-(h)<sup>80</sup> describe the number and timing of such hearings, how they are to be conducted and the use of the information, comments and suggestions received:

#### 4. Public Hearings.

(a) The Board, or a designated member or Hearing Officer on its behalf, shall hold public hearings for the following purposes: (1) to ensure an open and transparent Rate Proceeding; (2) to make Departmental personnel available to answer relevant questions about the proposed changes in rates and charges; (3) to permit the Department and any person or entity affected by the proposed rates and charges to provide information to the Board regarding any change in rates or charges as proposed by the Department; and (4) to assist the Board in the collection of information relevant to the Department's proposed changes in rates and charges.

In this proceeding, four public hearings were conducted, in the afternoons (3:00 p.m.) and evenings (6:00 p.m.) of March 22 and March 23, 2023. All hearings were conducted with the option to participate via Zoom or telephonically. Outreach and notice were provided to ensure that maximum awareness of the scheduled hearings was imparted to the public. Notices and guidelines about participation were posted on the various websites (Rate Board, PWD and CLS/Public Advocate), social media, a flyer in in both English and Spanish, newspaper notices, blast emails to various groups of customers and interested parties such as community energy agencies and offices of elected officials. See [PA Outreach Report](#), May 3, 2023; [PWD St. 8](#). In addition, there was an article about the hearings in the *Philadelphia Inquirer*. The stenographic records of these public hearings, as well as audio recordings of each session, are posted on the Rate Board's website, under the [Public Hearing tab](#) of the [2023 Rate Proceeding](#) section.<sup>81</sup> Attached to [PWD's Brief](#) as Appendix C is a summary of the testimony given at each session.

At each of these public hearings, the Department, the Public Advocate and pro se participant Haver made presentations and I described my background and the process used by the Rate Board to evaluate the proposed rates, so that the customers could be assured that PWD's filing was being thoroughly examined. Every attempt was made to answer questions that were

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<sup>80</sup> <https://www.phila.gov/media/20230120160159/WRB-regulations-restated-with-amendments-2022-11-09.pdf>

<sup>81</sup> <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2023-rate-proceeding/#public-hearings>

raised, either right then or by a later response from PWD. Also, customers with specific affordability, billing or service concerns were connected directly with PWD or Public Advocate representatives to assist them privately.

Each public hearing lasted from one to two hours; all were very well attended. Over 30 customers commented on the proposed increase in rates or asked questions, in addition to many more observers who attended without offering comments.<sup>82</sup> Virtually everyone expressed concerns about the affordability of water service, especially during this challenging time, as well as the necessity of any rate increase in light of possible other funding sources. Several people referenced the availability of federal funding, alluding to the [February 14, 2023, letter](#)<sup>83</sup> sent to PWD by City Council members which encouraged PWD to look for alternatives to increasing rates, including potential ARPA funding.

For example, at the [March 22, 2023, 3:00 p.m. hearing](#), Tr. 31-36, Adam Nagle on behalf of Citizens for Pennsylvania’s Future (PennFuture, a statewide environmental advocacy non-profit organization) explained that while PennFuture supports investment in water systems, there is no need for a rate increase in light of federal funding that the City has available from the American Rescue Plan Act (ARPA) passed by Congress in 2021 (Tr. 35): “PWD needs more funding to ensure Philadelphians have clean water, and there is funding available to accomplish that. They are monies designed to be invested in our infrastructure, create jobs, and deliver the quality water Philadelphians deserve. We request that the Rate Board seek clear answers from the Kenney administration on its cautious approach to investment in our residents. PennFuture strongly supports significant and sustainable funding for the Philadelphia Water Department, but we believe that the current request to increase rates is the wrong approach.”

Affordability concerns were expressed by many, both generally and with specific reference to particular groups of customers such as seniors (e.g., Joi Neal, [March 22, 2023, 3:00 p.m.](#), Tr. 48-51; Alice Wright, [March 22, 2023, 6:00 p.m.](#),<sup>84</sup> Tr. 25-28; and Katherine Lupton,

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<sup>82</sup> The total number of participants (which includes me, as well as representatives of the Rate Board, PWD and the Public Advocate) for *each* session ranged from 75 to 130.

<sup>83</sup> <https://www.phila.gov/media/20230315091559/Council-Water-Rate-Letter.pdf>

<sup>84</sup> <https://www.phila.gov/media/20230405151302/wrb-public-hearing-6pm-3.22.23.pdf>

[March 23, 2023, 6:00 p.m.](#), Tr. 24-28), renters (Lola Muhammed, [March 22, 2023, 3:00 p.m.](#), Tr. 40-44; and Antonia Batts, [March 23, 2023, at 3:00 p.m.](#),<sup>85</sup> Tr. 86-88) as well as young people just starting careers and trying to build equity for their futures (Jemirah Johnson, [March 22, 2023, 6:00 p.m.](#), Tr. 55-58). The impact of rising utility rates on the quality of life of low-income children and those with special needs were movingly described by Harvey Chanin, [March 23, 2023, 3:00 p.m.](#) (Tr. 33-36).

Relevant and compelling testimony of the impact of higher rates was given by many of the other customers. Several members of the Workers Benefit Council (WBC, which represents low-income working families in Philadelphia) described the impact of higher rates on lower-income workers, such as Terence Chambers ([March 23, 2023, 6:00 p.m.](#), Tr. 29-31): “I have no problem with my water services whatsoever. However, working people in Philadelphia are going through tremendous financial hardships due to various factors for job security, job loss, the state of the economy, and the pandemic, chief among them. And, you know, adding insult on a wound is that the program citizens are received due to the pandemic have been discontinued altogether.” On behalf of the WBC, he requested that rates not be raised, that service shutoffs be prohibited and rates capped as a percentage of income for those earning at or under 300% of the federal poverty level, in addition to other forms of debt relief. Tr. 30-31. Also at that session, Angela Christine Foster, another WBC member and special needs advocate, spoke on behalf of special needs children. Tr. 47-53.

In addition to the public hearings, the Rate Board received more than 40 written comments from concerned customers regarding the proposed rate increase, all of which are made part of the record and posted on the Rate Board’s website at the [2023 Rate Proceeding, Public Input](#) section.<sup>86</sup> All of the comments opposed the proposed rate increase and/or complained of the poor service provided by PWD. For example, [Danny Chau](#)<sup>87</sup> wrote:

PWD’s notice about increasing water bills by over 20% is very concerning because many families in my community and throughout Philadelphia are already

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<sup>85</sup> <https://www.phila.gov/media/20230412170033/PWD-03.23.23-3.00-pm.pdf>

<sup>86</sup> <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2023-rate-proceeding/#public-input>

<sup>87</sup> <https://www.phila.gov/media/20230321193607/D.-Chau.pdf>

having a difficult time keeping up with bills due to inflation and low wage increases. Philadelphia, being the poorest big city in America, would not be able to sustain such a large increase in price. As of December 2022, food prices were up already 11%, which is higher than the national average of 10.4%. The compounding effects of the higher prices and static wages put a heavier and crushing amount of financial weight on Philadelphia's poorest citizens. PWD must reconsider increasing its water bills.

After the conclusion of the public hearings, PWD provided a document, [2023 Public Input Hearing Responses](#),<sup>88</sup> providing further information on a number of issues raised at these sessions: safe drinking water, federal assistance (loans and grants), cost-cutting and efficiency measures, rate affordability, strategic partnerships, stormwater management, and office renovations. PennFuture later submitted a written [statement](#)<sup>89</sup> that expanded on the testimony provided by Mr. Nagle at the March 22, 2023 (3:00 pm) hearing, specifically addressing in more detail storm water management options and financing.

I must thank those customers who were able to take the time to attend one of the public hearings or who sent a comment. This information was thoughtful, helpful, sincere and compelling and serves to remind us all that the Rate Board's rate determination is not made in a vacuum. The decision about the rates and charges for water service, an essential utility, has a direct impact on the lives of the Department's customers. I know that I was very affected by these testimonies and have considered them in making my recommendations concerning the Water Department's proposed rates and charges.

## V. NECESSITY FOR RATE RELIEF

As set out in its [Brief](#) (at 32-34) and testimony ([Sts. 2A, 7](#)), PWD asserted that the revenue produced by the existing rates will not be sufficient during the prospective rate period, FYs 2024 and 2025, for it to perform its "primary mission" as set out by Water Commissioner Hayman in his direct testimony, [PWD St. 1](#) at 3: "(i) to plan for, operate, and maintain both the infrastructure and organization necessary to purvey high quality drinking water; (ii) to provide an adequate and reliable water supply to meet all household, commercial and community needs; and,

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<sup>88</sup> <https://www.phila.gov/media/20230413155908/PWD-Public-Input-Hearing-Responses-APR10.pdf>

<sup>89</sup> <https://www.phila.gov/media/20230429151346/Penn-Future-Written-Comments.pdf>

(iii) to sustain and enhance the region’s watersheds and quality of life by managing wastewater and stormwater effectively.” The Department noted that operating costs are projected to increase by \$73.3 million from FY 2023 to FY 2024 and to increase by another \$82.2 million from FY 2024 to FY 2025, as the result of rising costs for labor, chemicals, materials, supplies and regulatory compliance, combined with capital program needs.<sup>90</sup>

The Financial Panel explained in [PWD St. 2A](#) at 6:

Revenues at current rates are not projected to pay all of the projected expenses in the Rate Period. Operating costs are projected to increase from FY 2023 to FY 2024. The overall capital program budget for FY 2023 to FY 2028 is also higher than previously estimated.

In FY 2024, without rate relief, the Department would not be able to meet the 90% test (Senior Debt Coverage from Current Revenues). PWD would not be able to maintain cash reserve targets in FY 2024 and would be required to make a substantial withdrawal from cash reserves to meet obligations and minimum debt service coverage requirements. The depletion of cash reserves would leave the Department with few options on a going-forward basis to fulfill its mission of providing high-quality, reliable service to its customers. Without rate relief, it is projected that the Department would not be able to meet the 90% test in FY 2025 and could deplete the Rate Stabilization Fund (“RSF”) balance by the end of FY 2025.

The Department’s revenues and revenue requirement for the FY 2024 and FY 2025 rate period were derived from the cost-of-service study utilizing six years of data forecasting revenues, expenses, debt service and other commitments over the period from FY 2023 to FY 2028 (the “study period”) performed by Black & Veatch and set out in [PWD St. 7](#). As a part of that analysis, the costs of providing service to various customer types are matched with their associated service demands. This was done in reliance upon general ratemaking principles and industry standards, including the AWWA’s “Principles of Water Rates, Fees, and Charges Manual of Water Supply Practices M1” (the AWWA Manual or the M1 Manual); and the Water Environment Federation’s (WEF) “Financing and Charges for Wastewater Systems,” Manual of Practice M27 (MoP 27); and, WEF’s “User Fee Funded Stormwater Programs” as required by the Rate Ordinance, [§ 13-101\(4\)\(b\)\(2\)](#).

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<sup>90</sup> [PWD St. 2A](#), Schedule FP-1.

The Public Advocate thoroughly scrutinized the Department’s filing and recommended that the Rate Board make a number of adjustments to the revenue requirement requested by PWD, listed in its [Brief](#), Appendix A. It did, however, recognize that some amount of rate relief is necessary, although in its [Brief](#) at 13 it did not quantify this amount: “However, on the basis of [the PA witnesses’] review, the Public Advocate does not disagree that PWD’s projections indicate that revenues under existing rates are inadequate. The question remains, however, for the Board to determine the extent of such inadequacy. As set forth in the sections that follow, the Public Advocate submits that significant downward adjustments to PWD’s requested rate increases should be approved.” In their direct testimony, PA witnesses Morgan and Rogers quantified the effect of their analysis to recommend that the requested revenue increase should be reduced to \$47.147 million in FY 2024 and \$45.410 million in FY 2025, to “reduce costs that appeared to be excessive and to reflect certain costs at a more reasonable level.” [PA St. 1 at 5-6, Sch. LM JR-1](#).

Pro se intervenor Haver recommended that the Rate Board deny the proposed rate increase entirely, based on what he described as PWD’s failure to adequately control costs and/or seek additional sources of funding from external sources, rather than from PWD’s ratepayers. [Haver Brief](#), throughout.

The record produced in this proceeding makes it clear that the revenue produced at the current level of rates and charges is simply inadequate for PWD to continue to provide safe and adequate service to its customers at a reasonable cost, including the ability to finance infrastructure improvements. Certainly, there is no disagreement that PWD should attempt to reduce expenses (including the costs of borrowing) as much as possible, and to seek alternative funding from sources other than its customers. There was no showing, however, that these measures are available beyond those already included in the filing or would result in savings during the rate period that would obviate the need for any incremental revenues. To deny the requested rate increase entirely would be irresponsible, and possibly a violation of the [Rate Ordinance](#) (and the bond covenants, should PWD fail to sustain the required coverages) if PWD were denied sufficient revenues to meet its FY 2024 and FY 2025 expenses and debt obligations.

In addition, there is no legal authority for the Rate Board to set rates and charges that do not recover reasonably forecasted expenses, simply to force PWD to undertake certain actions that are proposed by a participant. While the Rate Board can – and does – make adjustments to PWD’s rate filings in order to reflect its judgment as to more appropriate projections of revenue requirements, it likely would be a violation of the Rate Ordinance to not allow recovery of reasonably incurred costs.

No participant rebutted PWD’s testimony ([PWD St. 5R](#) at 2-3) that,

[W]ithout sufficient rate relief, the Department will not satisfy the 90% test in FY 2024 or in FY 2025 and could deplete the Rate Stabilization Fund (“RSF”) balance by the end of FY 2025. Neither outcome is reasonable. The first outcome (violation of the 90% test) would trigger a default under the General Bond Ordinance. The second outcome would trigger a downgrade of the Department’s rating or outlook.

Mr. Haver wrongly assumes that the Department can make withdrawals from the cash balances (the RSF or RF) during the Rate Period without consequences. That is not true. The credit rating agencies have been clear that pushing the RSF reserves below \$120 million will result in a downgrade to the utility. In fact, as noted above, the RSF would be depleted in FY 2025. Mr. Haver also wrongly assumes that outperformance or cost savings or both are sufficient to cover any increased costs in the Rate Period. Nothing in the record shows that outperformance or cost savings could realistically cover the increased expenses projected for FY 2024 and FY 2025.

Similarly, no participant presented any evidence to rebut the testimony of the PWD Operations Panel, which in [PWD St. 4](#) at 3-4 explained that:

Rate relief is needed to meet increasing costs related to the operation of the water and wastewater systems. Inflation is widespread throughout the economy, and is significantly increasing costs for operations, for upgrades, repairs, improvements and for maintenance activities.

While price increases were limited initially to just a few items (such as chemicals), the Department is experiencing rapid rises in prices on most everything – including operation and maintenance “staples,” like electricity, materials and supplies (pipes, valves, manhole covers, etc.) as well as gasoline. The speed and severity of price increases in FY 2023 is much higher than anticipated in the 2021 General Rate Proceeding. In fact, the Department is experiencing price increases in



FY 2023 that are higher than generally reported inflation rates. See, Schedule BV-5, WP:1 (Inflation and Cost Escalation Pressures).

One issue that received much attention, and was referenced by a number of customers either at the public hearings or through comments sent to the Rate Board, was the possibility of external sources of funding, such as from ARPA (American Rescue Plan Act) or WIFIA (Water Infrastructure Finance and Innovation Act), as suggested by City Council in its [February 14, 2023 letter](#) and at the hearing held by the Committee on Transportation and Public Utilities on May 8, 2023, as well as expanded use of PennVEST grants or loans.<sup>91</sup>

PWD, by [memorandum](#)<sup>92</sup> dated February 27, 2023, responded to the Rate Board's request for further information regarding these sources of funding. It explained that WIFIA and PennVEST loans were already reflected in the filing. It also provided its [March 2023 City Council Rate Update presentation](#).<sup>93</sup> Subsequently, the Department sent a letter to the City's Finance Director dated March 23, 2023, requesting that the City allocate to PWD funds to address increasing costs from ARPA or other available sources. PWD also requested additional funding from the City to support customer assistance programs. PWD was informed by the Finance Director (by letter dated April 24, 2023) that the ARPA funds were already allocated by the City for other uses and declined to provide support from the General Fund to help offset the need for rate increases. [PWD St. 5-R at 3-4](#), Sch. GA-1.

Again, the testimony of the customers who commented on the proposed rate increase was compelling. They are struggling. I agree that every effort should be made to keep the water, wastewater and storm water rates as low as possible by ensuring that the rates ultimately approved by the Board are based on reasonable cost projections and allocations, by encouraging PWD to seek out non-ratepayer sources of funding and by supporting the efforts of both the

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<sup>91</sup> WIFIA and PennVEST provide low interest loans for capital projects. PWD is not currently eligible for PennVEST grants. See, [City Council Rate Update](#) (March 2023), <https://www.phila.gov/media/20230324162200/City-Council-Briefing-March-2023.pdf>

<sup>92</sup> <https://www.phila.gov/media/20230228103526/Rate-Board-Information-Request-Response-2023-02-27.pdf>

<sup>93</sup> <https://www.phila.gov/media/20230324162200/City-Council-Briefing-March-2023.pdf>

Department and the Public Advocate to improve access to affordable water services for those most at risk.

## VI. FINANCIAL PLAN AND METRICS

As discussed above, the rate determination standards contained in the [Rate Ordinance](#) require the Rate Board to take into account the financial impact of rates on both customers and the Department:

In fixing rates and charges the Board shall recognize the importance of financial stability to customers and fully consider the Water Department's Financial Stability Plan. In addition, the Board shall determine the extent to which current revenues should fund capital expenditures and minimum levels of reserves to be maintained during the rate period. When determining such levels of current funding of capital expenditures and minimum levels of reserves, the Board shall consider all relevant information presented including, but not limited to, peer utility practices, best management practices and projected impacts on customer rates. The Board shall set forth any such determinations in the Board's written report pursuant to this Chapter.

In addition, the [Rate Ordinance](#) (Phila. Code § 13-101(2)) requires the Department to develop a comprehensive plan (Financial Stability Plan) which “. . . shall forecast capital and operating costs and expenses and corresponding revenue requirements. It shall identify the strengths and challenges to the Water Department's overall financial status including the Water Fund's credit ratings, planned and actual debt service coverage, capital and operating reserves and utility service benchmarks. It shall compare the Water Department to similar agencies in peer cities in the United States.”

In this proceeding, PWD's Financial Panel in its direct testimony sponsored the FY 2023 Summary & Five-Year Financial Projection Plan in the Advance Notice at [PWD ST. 2A](#), Sch. FP-1, updating its Financial Stability Plan as required. The Financial Panel explained that the Water Department is requesting that the Rate Board affirm its approval of the specific financial metric targets authorized in the 2018 general rate proceeding, which were incorporated in the Department's updated Financial Plan and include the following: (i) targeting pay-go funding of 20% of the Department's capital program from current revenues; (ii) targeting a Senior Debt

Service Coverage Ratio of 1.30x; and, (iii) maintaining \$150 million as the combined target for cash reserves in the Rate Stabilization and Residual Fund. [PWD St. 2A at 14-15](#).

In the FY 2023 Financial Stability Plan (Sch. FP-1), PWD set out five “key financial policies” that it is focused on achieving:

1. Capital Funding from Current Revenues: Transition to 20% funding of capital program from current revenues.
2. Debt Service Coverage: Maintain 1.30x debt service coverage for senior debt.
3. Debt Issuance: Relieve cash flow pressure and better align debt payments, over the lifetime of assets, through strategic debt amortization.
4. Cash Reserves: Maintaining and replenishing cash reserves to absorb future costs and offset the level of rate increases.
5. Federal Assistance: Secure \$100M annually of federal assistance for Capital program.

Although it is requesting that the Rate Board maintain the financial metric targets established in the 2018 Rate Determination, PWD contended that even with the proposed rate relief, it will not meet all of the targets in FY 2024 and FY 2025. It therefore proposes to target 1.25x senior debt service coverage in FY 2024 and 2025, while maintaining approximately \$149 million in combined Rate Stabilization Fund (RSF) and Residual Fund (RF) year-end reserves. [PWD St. 2A](#), Sch. FP-1. It also proposed to employ “strategic debt amortization” to “relieve cash flow pressure and better align debt payments, over the lifetime of assets” and maintain the annual Capital Account Transfer at 1%, the minimum required by the 1989 General Ordinance, which requires an annual deposit of at least 1% “of the depreciated value of property, plant and equipment of the System” into the Capital Account to finance water and wastewater capital improvements. [PWD St. 7](#) at 29.

The [Public Advocate’s Brief](#) at 12 (and the references cited therein), noted that PWD consistently outperforms its revenue projections and has done so in each of the last four fiscal years, recognizing that the Department is extremely conservative in its financial projections: “As discussed during the technical hearings, PWD’s January 2021 projection of its financial

condition for FY 2022 indicated a total senior debt service coverage ratio of 1.20x and year end RSF balance of \$109 million. Just over a year later, PWD projected it would attain 1.20x senior debt service coverage for FY 2022, but that it would have an approximately \$17 million higher, or \$126 million, closing RSF balance. Finally, when PWD reported its actual results from FY 2022, it was revealed that PWD attained total senior debt service coverage of 1.29x and a closing RSF balance of \$139 million.”

For purposes of this proceeding, PWD has set an interim goal of 1.25x senior debt coverage, midway between the minimum 1.2x and the targeted metric of 1.3x, which it claims shows “a reasonable commitment of working toward the targeted goal of 1.30 times coverage and of having adequate funds to mitigate unforeseen expenses or shortfalls in expected revenue.” [PWB Brief](#) at 30.

I agree with PWD that this represents a reasonable balance, and for the sole purpose of calculating the allowable revenue requirement in this proceeding, I will utilize 1.25x as the appropriate senior debt coverage ratio.

As stated by the Rate Board in its 2018 adoption of financial metrics, they are merely targets: “The Board submits that it is important to all parties and, in certain cases, required by the enabling legislation, see Philadelphia Code Section 13-101(4), for the Board to establish certain financial metrics as part of its Order in this proceeding. These metrics approved by the Board are not mandated requirements and should not be considered to be either strict ceilings or floors, except and to the extent required by City Council or applicable bond covenants. Rather, the Board’s determinations in this regard should be viewed as targets to be considered by the Department in its future operations and by the Board in determining the need for future rate increases.” [2018 Rate Determination](#) at 23.

I recommend that the Rate Board maintain the financial metric targets developed in the [2018 Rate Determination](#). In light of the Department’s recent and projected financial performance, they are reasonable, comply with applicable legal requirements and will assist the Department to maintain its current credit rating.

## VII. REVENUE REQUIREMENT

### A. Overview

The Department's revenue requirements are set by determining the appropriate levels of cash, debt service coverage and other financial metrics necessary to enable PWD to pay its bills and maintain efficient access to the capital markets at reasonable rates. PWD claims that since the 2021 general rate proceeding it has experienced and continues to experience an increased level of expenditures related to materials, supplies, equipment, chemicals, services, workforce costs, and other expenses, compared with final 2021 rate case projections for FY 2023. The Department's Financial Panel addressed this in their Direct Testimony, [PWD St. 2A at 11](#):

The Department needs higher rates (increased additional revenues) so that it will have additional cash-in-hand to pay its bills when due and to maintain efficient access to the capital markets at reasonable cost. As explained above, the Department's FY 2023 financial results, as compared to the prior rate case projections, demonstrate a pattern of increased expenses above prior rate case levels which are continuing into FY 2024, FY 2025 and beyond. Absent rate relief, the Department's financial results will continue to deteriorate and financial reserves could be depleted by the end of FY 2025. This approach (running a deficit with rates not high enough to meet revenue requirements and using limited financial reserves to make up the difference) is unsustainable. The Department has no choice but to request that rates be raised. As always, the Department's financial condition is a major concern to rating agencies and investors. It is particularly concerning for FY 2024 and FY 2025, given the Department's needs to access the capital markets to finance its sizeable and increasing Capital Improvement Program as well as the need for revenues to pay for increased operating and maintenance expenses.

The revenue amount determined by PWD to be necessary for it to continue to provide service was determined through the cost-of-service study (COSS) performed by Black & Veatch, using a proprietary model that has been used by the Department for many years. The cost-of-service analysis provides the basis for designing a rate structure that allows the utility to recover costs from its customers equitably. As a part of this analysis, the costs of providing service to various customer types are matched with their associated service demands. The first step in the COSS, Revenue & Revenue Requirements, establishes how much money the utility needs to meet its fiscal year operating and capital obligations; this step includes a review of operations and maintenance (O&M) expenses, debt service payments, funding for specific deposits and reserves,

and the cost of capital improvement projects that the utility does not fund via debt or contributions from third parties. [PWD St. 7](#) at 7, [Sch. BV-2](#).

Specific adjustments to PWD’s claimed revenue requirement were proposed by the Public Advocate<sup>94</sup> and a number of suggestions (unquantified) were made by pro se participant Haver. They are evaluated and discussed below. It is, however, important to understand the effect of any such adjustment accepted by the Rate Board. As the Board noted in its [2018 Rate Determination](#) at 38, “It is important to understand that if the Board approves a proposed downward adjustment to the revenue requirements, that does not mean that the Board has set the revenue requirement below the cost to the Department (or lower than its target for financial stability). Rather, it means that the Board is persuaded by the participant offering the adjustment that the expenses in the two rate years will be lower. The Board has not “disallowed” any of these expenses and has approved a revenue requirement and associated rates that covers the level of revenues required by the Department under the Home Rule Charter, the Rate Ordinance, and the General Bond Ordinance.”

## **B. Operating Revenues**

### **1. Average Sales Volumes**

Operating revenues include retail water and sanitary sewer service and quantity charges, stormwater management service charges, and extra-strength surcharge, as well as wholesale contract customer water and sewer charges. For the retail operating revenues, PWD projects gross billings and then applies collection factors. To project water and sewer gross billings, for each fiscal year of the Study Period, the Department applied the FY 2023 schedules of water and sewer services to the projections of number of accounts, and billed water and sewer volumes. It also applied the FY 2023 schedules of stormwater services to projections of the number of accounts, billable impervious area, and billable gross area associated with the services. For applying collection factors, the Department estimated the operating retail cash receipts by applying receipt factors to the corresponding gross billings. Regarding wholesale operating

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<sup>94</sup> The quantifiable adjustments recommended by the Advocate are included in its [Brief](#) at Appendix A.

revenues, the only wholesale water customer at present is Aqua Pennsylvania. Wholesale water revenues are projected using billed water volume estimated based on the historical three-year average for Aqua Pennsylvania. For wastewater, the Department projected revenues for wholesale customers by applying the contracted rates per the latest agreements to estimated wastewater billed volumes and loadings based on the historical three-year average for each customer. Revenues under existing rates were adjusted to reflect hydraulic and hydrologic modeling. [PA St. 1](#) at 15-16; [PWD St. 7](#) at 11-2; Sch. BV-2, Table C-1A.

PA witnesses Morgan and Rogers adjusted how the projection of operating revenues is calculated by “adjusting the billed volume per account values for water customers. The Department has used a one-year period (FY 2022) to determine the sales volume per account. We have instead revised the calculation of the sales volume per account to reflect a three-year average covering FY 2020, FY 2021, and FY 2022. The use of a single year is too short a period to develop the normalized volume going forward through FY 2023.” [PA St. 1](#) at 16; [PA Brief](#) at 14-15.

PWD in its rebuttal ([PWD Rebuttal St. 1](#) at 5) asserted that use of this 3-year average presents an overly optimistic projection, in that it “defies the trend of decreasing use per customer observed over the last five years. In fact, applying the Advocate’s proposed adjustment results in total sales levels that the Department has not seen since FY 2018, most notably for Residential and Commercial customers.”

As shown on the table included in [PWD Rebuttal St. 1-R](#) at 5, it is simply not correct that sales volumes have declined steadily every year, either by rate class or on a system basis, although the overall trend is downward. For example, actual total retail system sales (in Mcfs) decreased from 5,833,763 (FY 2020) to 5,681,907 (FY 2021) and increased to 5,820,175 (FY 2022). While using a 3-year average may result in an optimistic projection, it is not unreasonable given the fluctuating levels of demand. Generally, it is advisable to use a multi-year period to normalize revenues or expenses, and it is appropriate to do so here.

I therefore recommend that the Rate Board accept this adjustment and increase the proposed PWD revenues under existing rates (thereby reducing PWD’s incremental revenue requirements) by \$5,610,000 in FY 2024 and \$5,871,000 in FY 2025.<sup>95</sup>

## **2. Increased Revenue Attributable to TAP**

The Public Advocate submits that the Board should adopt two additional revenue adjustments to reflect the improved collectability of TAP billings and TAP Rider revenue, as set forth in Mr. Colton’s testimony. As discussed below in Section VII (Revenue Requirement), I recommend that the Rate Board reject the first part of the Public Advocate’s proposal but accept the second component, thus reflecting increased revenues (and reduced required additional revenue requirements) by \$4,927,000 in both FY 2024 and FY 2025.

## **C. Capital Improvement Program Budget**

The Operations Panel in [PWD St. 4](#) at 20 explained that:

Operational changes are necessary because PWD cannot continuously engage in chronic maintenance of aging infrastructure. We need to replace plant and equipment during its service life. Delays in renewal and replacement have created certain scenarios where our equipment is so old that replacement parts are unavailable. When confronted with this situation, temporary solutions and/or custom fabricated parts are sometimes used, but such an approach is considerably more expensive and time consuming compared to routine maintenance. PWD submits that these circumstances have to change to achieve optimal performance levels. The projects identified for FY 2024 and FY 2025 and the Capital Improvement Program (“CIP”) projects for the Rate Period must be supported through new rates to break the cycle of redundant maintenance for plant/equipment which is beyond its service life.

The largest initiatives in the Capital Improvement Program include: (i) the Green City, Clean Waters Program; (ii) the Drinking Water Revitalization Plan; and (iii) the Renewal

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<sup>95</sup> An additional reason presented by PWD for rejecting use of a 3-year average is the anticipated loss of sales volumes associated with Vicinity Energy, which is building its own water treatment facility, although it would continue to be a wastewater customer, and who may or may not remain as one of the Department’s top 10 customers. [PWD Exh. 5](#) at 24, and official statement for its bonds (Series 2022C). There is simply insufficient information on the record to rely upon this in making a recommendation.



and Replacement of Other Older Infrastructure, all of which are discussed below. Capital Panel, [PWD St. 3](#) at 9; [Sch. BV-1, Table C-7](#).

The Black and Veatch Panel explained that the CIP budget is appropriation-based. The FY 2023 CIP costs reflect the Water Department's adopted FY 2023 budget appropriation, and the FY 2024 CIP costs reflect the proposed FY 2024 budget appropriation. The figures for FY 2025 to FY 2028 reflect the Water Department's submitted capital program and do not include any allowance for inflation. For this proceeding, it added an inflation factor of 4% to the years beginning with FY 2025, based on their review of industry cost indices, including the Engineering News Record Construction Cost Index and the Handy-Whitman Construction Cost Index. [PWD St. 7](#) at 25-26.

As set forth in Mr. Morgan and Ms. Rogers' testimony<sup>96</sup> ([PA St. 1](#) at 16-17), the Public Advocate made two recommendations regarding PWD's CIP expenditures during the forecast years. The first adjustment, eliminating proposed inflation escalation of FY 2025 CIP amounts by \$30,188,000 reduces the amount of PWD's bond sizing, thus reducing debt service expense. The second adjustment, modifying the carry forward (or roll forward) of CIP amounts (\$82,940,000 in FY 2024 and \$56,614,000 in FY 2025) likewise reduces the amount of PWD's bond sizing, thus reducing debt service expense. Taken together, the reduced bond issue amounts projected as a result of these adjustments reduce debt service expense by \$3,092,000 in FY 2024 and \$8,088,000 in FY 2025.

With respect to the first recommendation, the Public Advocate witnesses explained that the inflation adjustment applied to the FY 2025 budget should be removed: "It is unreasonable to include an allowance for inflation because when establishing the budget for a future year, consideration is given to the fact that costs in the future period will be higher than the current year. The inclusion of an inflation allowance is also inconsistent with the Department's FY 2024 claims which do not include an inflation escalation." They also noted that to include an inflation adjustment is inappropriate because, as required by the [Rate Ordinance](#), PWD is required to present

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<sup>96</sup> PWD refers to these witnesses as the Exeter Panel.

its budget annually for City Council approval and that to approve the inflation adjustment for FY 2025 would be inconsistent with that. [PA Brief](#) at 30.

Upon consideration, I recommend that the Rate Board not accept the Public Advocate's proposal to remove the inflation adjustment. PWD's FY 2025 CIP budget is based on FY 2024 dollars, and therefore should be adjusted to reflect additional inflation which is likely to occur between now and when the final version of the FY 2025 CIP is adopted. The development of a budget for annual City Council review is not quite the same as developing a normalized level of revenues and expenses for determining the appropriate revenue to be recovered through rates throughout a prospective multi-year period.

The second adjustment proposed by the Public Advocate is that the budget should be adjusted downward in the amount of the roll forward adjustments of \$82,940,000 in FY 2024 and \$56,614,000 in FY 2025. This does not directly impact revenue requirements, but indirectly reduces debt service expense. The witnesses explained the basis for their recommendation, [PA St. 1](#) at 17: "According to PWD, about a third of the FY 2023 CIP appropriations are likely to be rolled over. However, the intent of our adjustment is to normalize the annual amount that is rolled over. We considered a one-third amount to be too high relative to the amounts presented as prior period rollover amounts in FY 2024 and FY 2025. Therefore, we have used an average of the amounts to be rolled over from prior years into FY 2024 and FY 2025." See [PA Brief](#) at 16-18.

In its rebuttal, PWD noted that the effect of accepting this proposal would be to eliminate completely the carry-forward adjustments for FY 2024 and FY 2025, which would result in insufficient funding for the planned projects in the capital program. It further noted that there are other impacts. For example by eliminating the Department's \$82,940,000 carry-forward adjustment in FY 2024, the Exeter Panel has also removed a portion of the Department's planned spending associated with the PennVEST-supported Baxter Clearwell Basin project. [PWD Rebuttal St. 1](#) at 9.

In its [Brief](#) at 19, the Public Advocate stated that while the proposed adjustments are in the same amount as the carry forward amounts, that is because PWD has typically carried over more than it estimates, and that the adjustments are not tied to specific projects, but instead

are “supported by the documented experience regarding PWD budgets and appropriations, including the historical roll forward from one budget year to following years for capital expenditure. If these amounts are not removed, the rates would be established as if all appropriations are expended in each budget year.”

Upon consideration of the arguments presented on this issue, I recommend that the Rate Board not accept this adjustment. I recognize that the Public Advocate is not proposing to eliminate the carry-over adjustments, but that it is the result of using an average derived from prior years. While some adjustment may have been appropriate, the record does not support this particular proposal.

#### **D. Escalation Factors**

PWD’s future operating and maintenance (O&M) expenses have been escalated by differing percentages among and between the various cost categories, such as labor, pension, power, gas, chemicals, etc. As set out in [PWD St. 7](#) at 20-25, Black & Veatch’s escalation factors for the various cost categories identified in the FY 2023 budget are based upon the Department’s historical experience and recognized cost indices, including the Producer Price Index (PPI) for Industrial Chemicals and Construction Equipment and Machinery and the Consumer Price Index (CPI) for the Philadelphia Area. These escalation factors are applied to the projected FY 2023 expenses (for each of the respective cost categories) beginning in FY 2024. Escalation factors used in projecting operating and maintenance (O&M) expenses are discussed in the Cost-of-Service Report (Schedule BV-2)<sup>97</sup> and further information is provided in the white paper entitled “Inflation and Cost Escalation Pressures” (Schedule BV-4: WP-1).

Explaining that “past inflation is not a good predictor of future inflation rates,”<sup>98</sup> the Public Advocate recommended instead utilizing the March 22, 2023 Federal Open Market Committee (FOMC) Core Personal Consumption Expenditures (PCE) median inflation projections over the rate period. These projections are 2.6% and 2.1% for 2024 and 2025, respectively. [PA St. 1](#) at 21. As explained by the Public Advocate’s witnesses, the core PCE “is an economic

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<sup>97</sup> [PWD Statement 7](#), Schedule BV-2 at pages 1-15 to 1-17.

<sup>98</sup> [PA St. 1](#) at 19.

indicator that measures inflation by tracking the changes in prices of goods and services purchased by consumers in the United States” and “is a more reasonable basis upon which to estimate future inflation.” It proposed adjustments to the escalation factors applicable to the categories of Services, Materials and Supplies, Transfers, Chemical Costs, and Equipment. [PA. St. 1](#) at 19-21.

The Department disagreed with the use of the PCE, asserting that it is not a good predictor of prospective inflation, as it is the result of a survey by the Federal Reserve members for the purpose of regulating monetary policy.<sup>99</sup> In addition, it is inappropriate to use one index across multiple cost classes.

I agree that it may be problematic to rely on the past for future predictions. As the Public Advocate pointed out in its [Brief](#) at 21-22, recent high rates of inflation have in fact been decreasing. The Public Advocate witnesses were particularly critical of PWD’s use of recent historic increase in the CPI for certain categories of expense, noting that the CPI includes such items as food and energy and is known to be much more volatile than other inflation measures. [PA St. 1](#) at 19. Based upon its application of recent historical CPI growth in the Philadelphia area, PWD projected increases of 7.77% in FY 2024 and 6.70% in FY 2025 in services, materials and supplies, and transfers. [PA. St. 1](#) at 18.

Of course, projecting costs into the future requires some degree of speculation. I agree with Ms. Rogers ([May 4 Tech. Hrg.](#), Tr. at 113-115) that “[T]he point of an inflation adjustment is not to recover past costs; it’s to project inflation that has yet to come.”

However, I cannot recommend that the Rate Board accept the Public Advocate’s uniform application of PCE inflation rates of 2.6% for FY 2024 and 2.1% for FY 2025 to all of the categories it specified (services, materials and supplies, transfers, chemical costs and equipment). While the Federal Reserve’s monetary policy obviously has some impact on the experienced and prospective levels of inflation, these various cost categories are subject to

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<sup>99</sup> As stated in [PWD’s Brief](#) at 47: “PWD maintains that using an index of inflation (PCE projection of 2.6% and 2.1% for FY 2024 and FY 2025, respectively) that is, at its core, tied to monetary policy and reflects the optimism of the Federal Reserve to manage inflation, is not indicative of reality (actual levels of inflation facing PWD during FY 2024 and FY 2025). The PCE indicates where the Federal Reserve would like the inflation level to be over time.”

different market factors and conditions, and it therefore makes sense to use different indexes. As stated in PWD’s [Brief](#) at 47 (citing [PWD St. 1-R](#) at 13-15): “Using one index to measure cost impacts for such diverse cost classes (e.g., chemicals, equipment, services, materials and supplies) is inappropriate and does not reflect the Department’s actual experience. Each cost area has unique factors to consider. For example, with chemical costs, escalation factors will be driven by market conditions and input (chemical contract) costs. Equipment costs will be driven by market conditions (manufacturing capacity) as well as input materials costs. Other forces, such as the cost of labor, healthcare costs, labor availability, etc., will drive service costs.”

I agree that these different accounts are not uniformly subject to inflation. For the reasons noted by the Public Advocate witnesses, however, use of the PCE to predict inflationary increases is more appropriate for several accounts (Services, Materials and Supplies, and Transfers) than the generic, historic Consumer Price Index (CPI) used by PWD. On the other hand, I would use PWD’s proposed escalation rates for chemicals and equipment, which are based on the Producer Price Index for those cost categories. Therefore, I recommend that the Rate Board should approve the following adjustments, as shown on the [PA Brief](#), Appendix A: (1) forecast O&M for Services, utilizing the PCE inflation rates of 2.6% for FY 2024 and 2.1% for FY 2025.<sup>100</sup> This adjustment reduces PWD O&M by \$7,765,000 in FY 2024 and \$15,606,000 in FY 2025, with corresponding reductions to PWD’s overall revenue requirement; (2) forecast O&M for Materials and Supplies, utilizing the PCE inflation rates of 2.6% for FY 2024 and 2.1% for FY 2025. This adjustment reduces PWD O&M by \$1,298,000 in FY 2024 and \$2,570,000 in FY 2025, with corresponding reductions to PWD’s overall revenue requirements; and (3) forecast O&M for Transfers, utilizing the PCE inflation rates of 2.6% for FY 2024 and 2.1% for FY 2025. This adjustment reduces PWD O&M by \$323,000 in FY 2024 and \$640,000 in FY 2025, with corresponding reductions to PWD’s overall revenue requirements.

#### **E. Construction Fund Balance**

The Public Advocate’s witnesses recommended the FY 2023 Construction Fund balance be updated to reflect the FY 2022 ending balance, reducing the FY 2023 balance by

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<sup>100</sup> [PA St. 1](#) at 19.

\$8,662,000 as shown in its [Brief](#), Appendix A, line 9. PWD’s witnesses, in rebuttal, accepted this proposal which does not impact the revenue requirements in this proceeding.

I recommend that the Rate Board accept this recommendation.

#### **F. Debt Interest Rate**

PWD utilized assumed revenue bond interest rates of 5.5% for FY 2024 and FY 2025. Following the rate period, PWD expects bond interest rates to continue to rise, reaching 6% in FY 2026 and beyond. Although the Public Advocate’s witnesses recognize that interest rates have recently risen, they nonetheless believe PWD’s projections are overstated and specifically submit “that it is speculative at this time to assume that interest rates will grow at the pace the Department has reflected in its cost of service.” As a result, the Public Advocate recommended that the assumed interest rate future revenue bond issuances be reduced for ratemaking purposes to 5.0% for FY 2024 and 2025. [PA Brief](#) at 24.

PWD’s witnesses contended the projected interest rates “are not speculative and appropriately reflect market changes and recent history.” [PWD Rebuttal St. 1](#) at 19. During the technical hearings, PWD clarified that, were it to have issued revenue bonds between January 2022 and April 2023, the interest rates would have been between the range of 1.8% and 3.97%. [May 3 Tech. Hrg. Tr.](#) at 40-41. According to the Advocate, this demonstrates that PWD’s projection, that bond interest rates in FY 2024 and 2025 will be 5.5%, represents rates between 40% and 300% higher than what would have applied to recent bond issuances.

The Public Advocate’s witnesses convincingly established that PWD’s projected bond interest rate is overstated. A more moderate increase, utilizing a 5.0% interest rate for FY 2024 and FY 2025 bond issuances, is an appropriate reflection of current economic conditions and should be approved by the Rate Board. Approving this adjustment reduces PWD’s revenue requirements by \$1,917,000 in FY 2024 and \$3,748,000 in FY 2025.<sup>101</sup>

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<sup>101</sup> Given my recommendation that the Board not accept the Public Advocate’s proposed CIP adjustments, it is unnecessary to address the bond sizing arguments contained in [PWD’s Brief](#) at 53-54.

## **G. Interest Reserves**

Non-Operating Income of the Water Department consists primarily of interest earnings on the amounts within certain funds and accounts. [PWD St. 7](#), Schedule BV-1, Table C-3 contains projections of interest income on balances held by those funds and accounts. PWD has assumed a 1.0% rate of interest income on these fund balances. The Public Advocate's witnesses submit that a higher rate of interest income, 1.5%, should be assumed for the rate period reflecting consistency between the moderately increasing interest on borrowing and the increasing rate of interest earned by institutional funds.<sup>102</sup> On rebuttal, PWD submits that the Board has previously utilized a 1.0% rate of interest income in recent proceedings and that its actual earnings will reflect the market performance of various investments.<sup>103</sup>

I agree that this recommendation is reasonable, for the reasons set out in the [Public Advocate's Brief](#) at 25-26. Interest income changes should be consistent with increases in interest expense. Therefore, I recommend that the Rate Board should adopt this proposal, which has the effect of reducing PWD's revenue requirements by \$1,821,000 in FY 2024 and \$1,999,000 in FY 2025.<sup>104</sup>

## **H. Other Issues**

Pro se intervenor Lance Haver submitted [testimony](#) and a [Brief](#) in which he asserted that the entire rate increase should be denied to in order to force PWD "to make cost cutting, operational savings and lowering of purchasing costs [a] priority." He specifically alleged that PWD is not focused on cutting costs because it has not conducted an operational audit, has no benchmarks, does not have a specific program to reward employees for cost cutting suggestions, has failed to seek political support for external funding, and has not examined other specific actions

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<sup>102</sup> [PA St. 1](#) at 22.

<sup>103</sup> [PWD Rebuttal St. 1](#) at 20-21.

<sup>104</sup> [PA Brief](#), Appendix A, line 11.

he has recommended, such as combining operations with the other City-owned utility, Philadelphia Gas Works.<sup>105</sup>

At the outset, I have to say – as I have done throughout – that of course PWD should be focused on keeping its expenses (and therefore rates) low as possible. No one, including the various PWD witnesses cited by Mr. Haver, including Commissioner Hayman, disagrees with that as a general statement. Indeed, the whole point of this proceeding is to ensure that the revenue requirement is based on the recovery of expenses likely to be incurred during the rate period.

But as correctly noted by PWD in its [Brief](#) at 69, the Rate Board is not a super board of directors, a term that was used in reference to the Public Utility Commission (which in contrast to the Rate Board, does have broad oversight authority over the jurisdictional utilities it regulates) and cannot direct how PWD conducts its business. The Rate Board cannot direct the Department to implement an employee reward system or to undertake a management audit, and it cannot take action against the Department by denying a needed revenue increase for its failure to do so.

What is clear on the record through the testimony of numerous PWD witnesses from Commissioner Hayman on down is that the Department is in fact aggressive in its budgeting. As stated by PWD in its [Brief](#) at 71: “Second, the Department has cost control protocols in place as a part of its budgeting process. PWD has a vigorous budget process through which all program managers submit and justify their budget to senior management. During the year, PWD Finance produces monthly budget monitoring reports that evaluate budget performance.” Or, as the Operations Panel responded on cross-examination ([May 3, 2023 technical hearing transcript](#) at 233-34) by Mr. Haver:

MR. JEWELL: I will echo the message that Deputy Commissioner Yangalay offered, which is that we are constantly looking at our operations and our operational efficiency and seeking cost savings where they are available; working

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<sup>105</sup> I am not going to address the portions of Mr. Haver’s Brief that are not addressed to the proposed rates, as those baseless assertions have been refuted and rejected numerous times by the Rate Board. I will note, however, that contrary to Mr. Haver’s apparent belief, CLS was not selected to represent the interests only of low-income customers in this proceeding. [Haver Brief](#) at 8: “Because the only people who can be clients of Community Legal Services and the only organizations Community Legal Services may legally represent are low income, the Water Department Public Advocate does not have clients or client groups with income ranging from 30,000 to 85,000.” As Public Advocate, it is charged with advocating for **all** residential and small commercial customers.



on process optimization, both within and outside the treatment plants. And much of that work happens with our PWD internal personnel, working together across divisional boundaries, trying to leverage the knowledge and expertise that one unit might have for research, planning and research, for example. And bring that into an operational realm. So while I have not specifically reviewed a proposal responding to a request for proposals issued by the Water Department, we are constantly engaged and seeking out operational efficiencies and cost-saving measures where we see them.

While it may not have a formalized system of rewarding employees for savings suggestions, the unrebutted testimony by Commissioner Hayman was that such activities are considered as part of annual employee evaluations: “Not a specific program, but we do evaluate and have performance reviews. And should someone do something that is outstanding, that highlights and benefits the organization, that would be considered.” [May 4, 2023 technical hearing transcript](#) at 13.

There has been no showing on the record of this proceeding that PWD failed to appropriately seek out external funding, either from the City, from PennVEST or from federal funds. Mr. Haver seems to suggest that PWD should be more assertive in getting political figures to advocate for it, but there has been no testimony that those actions are appropriate or even possible.

As discussed above, the need for some level of rate relief is clear. To disallow the entire rate request, putting service to customers at risk and jeopardizing the Department’s credit rating, would be irresponsible and in violation of the [Rate Ordinance](#) (Philadelphia Code § 13-101(4)), which mandates that rates be set at a level that produces revenue sufficient for the Department to meet its expenses and debt service.

I urge the Department, however, to be sensitive to the substantive issues raised by Mr. Haver in his [Brief](#) and to explore these (or other) suggestions as appropriate.

## VIII. COST OF SERVICE / RATE DESIGN

### A. Water: Extra Capacity Factors

Generally, a cost-of-service study (COSS, or Class Cost of Service Study, CCOSS) for a water utility assigns to each class of customers its proportionate share of the utility's total cost of service. The primary purpose of a cost-of-service study is to allocate a utility's overall revenue requirements to the various classes of service in a manner that reflects the relative costs of providing service to each class. Utilities perform cost of service studies to determine what it costs to serve its customers, both in total and by individual rate class. A cost-of-service study is one of the most effective analytic tools that a utility can rely on for designing rates that equitably assign cost responsibility to each customer rate class. Cost-based rates that generate revenue from each class of customer in proportion to the cost to serve each customer class will avoid cross-class subsidies.

Here, a cost-of-service study was performed by Black & Veatch and discussed in [PWD St. 7](#) at 6-45, and the attached Schedules BV-1 (summary tables relating to the comprehensive COSS, including the projection of combined revenue and revenue requirements, customer bill impacts, and associated rate schedules for water, sanitary sewer, and stormwater service) and BV-2 (Cost of Service Report presenting the detailed cost-of-service analysis, including projection of revenue and revenue requirements, underlying assumptions, allocation of costs to the water and wastewater systems, projection of stormwater billable units of services, supporting wholesale analyses, and rate design).

The Black & Veatch Panel explained that it conducted the COSS in accordance with the guidelines contained in the [American Water Works Association's \(AWWA\) Principles of Water Rates, Fees, and Charges, Manual of Water Supply Practices M1- 7th Edition](#)<sup>106</sup> (M1 Manual), the Water Environment Federation's (WEF) Financing and Charges for Wastewater

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[https://www.awwa.org/Portals/0/files/publications/documents/M1Ed7LookInside.pdf?\\_gl=1\\*1eicxhl\\*\\_ga\\*MjM1NTgwNjYzLjE2ODQ2ODIxMjQ.\\*\\_ga\\_V6LK6LPN9V\\*MTY4NDY4MjEyMy4xLjEuMTY4NDY4MjI3NC4zMj4wLjA.&\\_ga=2.214379025.74063475.1684682124-235580663.1684682124](https://www.awwa.org/Portals/0/files/publications/documents/M1Ed7LookInside.pdf?_gl=1*1eicxhl*_ga*MjM1NTgwNjYzLjE2ODQ2ODIxMjQ.*_ga_V6LK6LPN9V*MTY4NDY4MjEyMy4xLjEuMTY4NDY4MjI3NC4zMj4wLjA.&_ga=2.214379025.74063475.1684682124-235580663.1684682124)

Systems, Manual of Practice M27 – 4th Edition (MoP 27), and the WEF’s User Fee Funded Stormwater Programs.

Those guidelines provide for a three-step process, employed by Black & Veatch here: (1) **Revenue Requirement**: Compares the revenues of the utility to its operating and capital costs to determine the adequacy of the existing rates to meet its obligations; (2) **Cost-of-Service Analysis**: used to functionalize, allocate, and equitably distribute the revenue requirements to the various customer classes of service (e.g., residential, commercial) served by the utility for the prospective rate period. Black and Veatch ([PWD St. 7](#) at 8-9) explained that this analysis involves multiple levels of cost allocation, namely: (ii) Allocation of identified costs (e.g., O&M expense debt service, reserves, cash funded capital) to functional cost centers and then to cost components, (iii) Calculation of unit cost for each cost component, and (iv) Determination of the cost for each customer type by multiplying the unit cost of each component by the number of units of service associated with each customer type; and (3) **Rate Design**: uses the results from the revenue requirement and cost-of-service analysis to establish cost-based rates designed to collect the distributed revenue requirements from each class of service.<sup>107</sup> [PWD St. 7](#) at 6-9; Sch. BV-2.

Black & Veatch used the base extra-capacity method to allocate costs to the various customer rate classes according to their respective service requirements. The base-extra capacity method considers base costs (O&M expenses, capital costs), extra capacity costs (additional costs for maximum day and maximum hour demands), customer costs (meter maintenance and reading, billing, collection, accounting), and fire protection costs (hydrants, water towers, oversized mains, pumps). Once investment and costs are classified to these primary cost categories, they are then allocated to customer classes. Base costs are allocated according to average water use, and extra capacity costs are allocated on the basis of the excess of peak demands over average demands. Meter- and service-related customer costs are allocated on the basis of relative meter and service

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<sup>107</sup> Black & Veatch noted that because the Water Department uses receipts to calculate revenues, its “collection lag factor” must be evaluated. The lag factor reflects a final adjustment to the cost-of-service rates to recognize the fact that there will be a proration of billings between the existing and proposed rates during the first month following the effective date of the rate increase, as well as the fact that not all the fiscal year billings are fully collected within that fiscal year.

investment. Account-related customer costs are allocated in proportion to the number of customers or the number of bills. Sch. BV-2.

No participant disagreed with the use of this methodology, although both the Public Advocate and PLUG expressed concern with the age of the data used to derive the extra capacity factors and recommended that the extra capacity factors should reflect more recent data than that used by Black & Veatch in the COSS. They both note that the extra capacity factors reflected in PWD's water COSS study<sup>108</sup> have been used by PWD since PWD's 2016 rate proceeding and includes data going back to FY 2012. [PA Brief](#) at 32; [PA St. 2](#) at 12-13; [PLUG Brief](#) at 6-7.

PLUG's recommendation is that 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 stale 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." [PLUG Brief](#) at 7.

The Public Advocate's proposal is that the Rate Board should adopt the revised extra capacity factors for each general retail class developed by its witness Mierzwa and discussed in his testimony at [PA St. 2](#) at 14-15, which utilized customer billing records from FY 2019 (July 2018 – June 2019) to develop retail customer class extra capacity factors using the AWWA Methodology, as FY 2019 represented the year (after FY 2018) with the second highest ratio of system maximum day demand to system average demand for which data is available. [PA Brief](#) at 33-36.

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<sup>108</sup> PWD's COSS utilized 2.09 as the system-wide maximum day extra-capacity factor and 1.39 as the system-wide maximum hour extra-capacity factor. Sch. BV-2 at 4-8.

Both PWD and PLUG opposed the use of the Public Advocate’s adjusted extra capacity factors. PWD asserted that (1) Mr. Mierzwa did not base his analysis on data from the year of system peak demand (FY 2018); and (2) he failed to recognize that there are variations between the customer class specific weekly and hourly usage adjustment factors reflected in PWD’s COSS Study and those derived from the calculations presented in the AWWA M-1 Manual, as the AWWA Methodology uses generic assumptions for the weekly and hourly usage adjustments to represent a *typical* water utility.<sup>109</sup> [PWD Brief](#) at 82-82.; [PLUG St. 1-R](#) at 5.

PLUG recommended that the Rate Board not rely on Mr. Mierzwa’s proposal, as it “... relies on generic data that is not accurate or reflective of PWD's unique system characteristics,” in that it fails to account for PWD’s “unique” operating characteristics (as a primarily urban system, PWD does not experience seasonal peaking) and would “dramatically” reallocate PWD's water revenue requirement among the various customer classes based on estimated data. [PLUG Brief](#) at 3-6.

The Public Advocate in response noted that it was reasonable for Mr. Mierzwa to base his extra capacity factors on data from FY 2019, rather FY 2018, the year of system peak demand, as PWD had indicated that FY 2018 billing data was inaccurate and overstated customer demands, and that he had used the AWWA Method weekly and hourly adjustments to develop class maximum day extra capacity factors for residential, commercial and industrial customers. It further noted that while the lack of seasonal peaking (due to irrigation requirements) would primarily affect the residential class, “Mr. Mierzwa’s calculated maximum day and maximum hour factors for the Residential class do not vary materially from the maximum day and maximum hour factors utilized by PWD in its CCOS Study.” [PA Brief](#) at 32-36.

Upon consideration of the arguments presented by the participants, I am reluctant to recommend that the Rate Board accept the Public Advocate’s proposal to utilize the adjusted extra capacity factors developed by its witness. As noted by PLUG in its [Brief](#) at 4, 6 (Tables 2 and 3), this will result in a substantial shifting in class cost responsibility (and therefore revenue

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<sup>109</sup> [PWD St. 2R](#) at 2.

recovery from each class<sup>110</sup>), and I am hesitant to make a recommendation based on estimated extra capacity factors rather those developed from actual or current data.

I agree that while gradualism (the concept of avoiding large rate increases by adjusting rates in smaller increments over time so that consumers and businesses are better able to adapt to changing prices gradually) and affordability are not explicit COSS factors, they are important considerations for the Rate Board in its rate determinations and are beneficial both for the Water Department and its customers.

I fully agree with the Advocate and PLUG that it is no longer appropriate for PWD to utilize data dating back to FY 2012 (and which includes a peak year that is based on incorrect billed volumes), and urge the Rate Board to require PWD in its next base rate proceeding to base the COSS either on actual data (produced by the Advanced Metering Infrastructure, as PWD asserted<sup>111</sup> that its current metering system does not provide the data or ability to establish estimates of actual maximum day and maximum hour demand factors) or updated data that does not rely on FY 2018, which by PWD's own admission was inaccurate. I further recommend that the Rate Board adopt PLUG's other suggestions, that PWD should be required to conduct a formal study of its class usage characteristics prior to its next rate case and 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. Water: Cost Allocation to Public/Private Protection Service**

PWD assigned no average day usage volumes (which serve as the basis to allocate base functional costs) to Public or Private Fire Protection service.<sup>112</sup> The Public Advocate submitted that Public and Private Fire Protection service should be allocated base functional costs, which are costs that tend to vary with the quantity of water used, plus the costs associated with supplying, treating, pumping, and distributing water to customers under average load conditions.

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<sup>110</sup> For example, the Industrial class max day/max hour capacity factor increases from 160/200 to 330/440 using the PA adjusted capacity factors. Table 2, [PLUG Brief](#) at 4.

<sup>111</sup> [PWD Brief](#) at 84.

<sup>112</sup> [PWD St. 7](#), Sch. BV-2, Table 4-4, which identified the actual annual use of water to provide Public and Private Fire Protection as 0 gallons.

Based on the response to PA-IV-14, the annual water usage associated with Public Fire Protection service was estimated to be 55,000,000 gallons, or 7,400 Mcf. Based on the response to PA-IV-15, the estimated annual water usage to provide Private Fire Protection service has averaged 6,600 Mcf during the period FY 2020 – FY 2022. [PA St. 2](#) at 15; [PA Brief](#) at 37.

PWD in its [Brief](#) at 87-88, claimed that this adjustment is inconsistent with the methodology reflected in AWWA’s M1 Manual, that the Total Test Year Water Use units presented in Table 4-4 of Schedule BV-2 reflect the estimated billed volume for the metered Private Fire accounts in recognition of the volume charge revenue received from these accounts. Increasing the Total Test Year Water Use units to reflect an estimate of unmetered annual water use for fire protection (basically, standby service) would be inconsistent with the methodology reflected in AWWA’s M1 Manual.<sup>113</sup>

The Department is correct, this is a standby-by service and the Public Advocate’s proposal to reflect an estimate of unmetered annual water use for fire protection is not consistent with the methodology used in AWWA’s M1 Manual. I recommend that the Rate Board not accept this proposed adjustment.

### **C. Water: Revenue Increase Allocation**

In its [Brief](#) at 27-30 (citing [PA St. 2](#) at 20-22), the Public Advocate discussed the concepts of affordability and gradualism and recommended a revised distribution of any revenue increase that the Rate Board may approve for FY 2024 and FY 2025. While it agreed that rates established in this proceeding should be based on the COSS (as adjusted by Mr. Mierzwa), the Advocate noted several exceptions ([PA Brief](#) at 28-29):

In this proceeding, PWD is proposing a system average increase in rates for water service of 18.9%. As previously indicated, one of the principles of a sound rate design is gradualism. While there is no hard and fast rule to applying the concept of gradualism, an increase of 1.5 to 2.0 times the system average increase would generally be considered consistent with the principle of gradualism.

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<sup>113</sup> In addition, PWD noted that Mr. Mierzwa’s proposed cost of service analysis (presented in Table 1 of his testimony), would need to be adjusted to reflect this proposed adjustment. In order to maintain the basis of the Private and Public Maximum Day demand, the proposed adjustment to the base demand would need to be subtracted from the Maximum Day Extra Capacity demand.

Increasing the current rates of the Industrial, Hand Billed, and Private Fire Protection classes to the indicated cost of service would result in rate increases which are more than two times the system average increase requested by PWD. Therefore, the Public Advocate is proposing increases for each of these classes equal to two times the system average increase. For the Public Housing Authority class, the Public Advocate is proposing an increase in rates equal to the system average increase. This is consistent with the increase proposed by PWD. Increasing Public Fire Protection rates to the indicated cost of service would result in an increase of 3.5% which is significantly less than the system average increase of 18.9%. To assist in providing for gradualism in the rate increase for the Industrial, Hand Billed, and Private Fire Protection customer classes, the Public Advocate is proposing an increase for Public Fire Protection which is 50% of the system average increase. Finally, the Public Advocate is proposing an increase for the Residential class which recovers the indicated cost of service, plus the difference between PWD's total cost of service and the revenues to be recovered from the other customer classes.

PLUG, through the testimony of its witness LaConte, recommended that any revenue adjustments approved by the Board be allocated consistent with PWD's COSS. [PLUG Brief](#) at 12. As PLUG noted in its Brief with respect to the Public Advocate's proposed revenue allocation: "The Board should not approve such drastic revenue allocation adjustments based on estimated capacity factors." [PLUG Brief](#) at 6.

As I am not recommending that the Rate Board accept the Public Advocate's proposed COSS extra capacity adjustment, any revenue increase approved by the Rate Board should be allocated consistent with PWD's COSS. In the event the Rate Board determines that the record supports a revenue requirement less than that requested by PWD, then the increase should be scaled back proportionally among the customer classes.

**D. Stormwater: Allocation of SMIP/GARP Credits, Building Type Charges, Credits for Rain Barrels**

Generally, all properties in the City of Philadelphia are assessed a monthly stormwater charge (the Stormwater Management Services charge, SWMS) to recover the cost the



City incurs for managing stormwater.<sup>114</sup> The amount charged for stormwater on a monthly bill depends on the type of property. The stormwater charge for residential customers is a flat fee based on the average property size and impervious area; condominiums are billed like non-residential properties, based on the specific total and impervious areas of the property, divided equally among all water accounts on the property; and commercial properties are billed based on the specific square footage of impervious area covering the property and the total square footage of the property. There are discounts and exemptions for parcels that meet certain criteria regarding green spaces. The charge is based on the square footage of Gross Area (GA) and Impervious Area (IA). This is a component of the strategy known as Green City, Clean Waters.

PLUG explained the background of these programs, [PLUG Brief](#) at 8:

PWD is currently subject to a DEP Consent Order and Agreement establishing various compliance benchmarks for infrastructure projects intended to reduce the utility's combined sewer overflow. 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. 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." 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." These programs collectively encourage customers to install and maintain the infrastructure PWD depends on to meet its COA benchmarks.

In his testimony ([PA St. 2](#) at 26-30, PA witness Mierzwa found that while PWD's stormwater COSS and analysis is generally reasonable, he had three proposals concerning the stormwater rates and credits: First, he recommended that the stormwater rates adopted in this proceeding be designed so that all customers share in the Stormwater Management Incentive

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<sup>114</sup> Stormwater or stormwater runoff refers to water that flows into the sewer system when it rains in an urban, developed environment such as Philadelphia. In a natural, undeveloped environment, rain falls on the ground and evaporates or is absorbed into the soil. [PWD St. 7](#), Sch. BV-2, Section 6.1.

Program (SMIP) and Greened Acre Retrofit Program Grants (GARP) (collectively SMIP/GARP Program) billing credits which are currently assigned only to those customers that participate in the SMIP/GARP Program. Second, he recommended that the Department modify the residential rate design to provide for charges based on residential building type, rather than the current flat fee. Finally, he recommended that PWD be directed to evaluate whether a rate discount should be provided to residential customers that agree to have PWD install a 24-inch rain barrel on their property.

**SMIP / GARP:** PWD utilizes a parcel-based stormwater rate design methodology under which stormwater costs other than billing and collection costs are allocated and recovered based on a combination of gross and impervious areas (80% of total stormwater-related costs, excluding customer billing and collection costs, is assigned to IA and 20% is assigned to GA). These assigned costs are then allocated to Residential and non-Residential customers based on the GA and IA of each class, with the GA and IA of non-Residential customers adjusted to reflect certain credits. The SMIP/GARP programs offer grant funding to non-residential customers for the design and construction of projects to reduce stormwater runoff. They do not consider affordability but are premised on the system-wide benefit of reducing runoff. Once completed, the customer who has received the grant is also eligible to receive credits that reduce their overall stormwater charges. Approximately 60% of SMIP/GARP program costs are recovered from stormwater customers. The Public Advocate recommended that since all stormwater customers are responsible for funding SMIP/GARP Program costs, they should also receive a direct financial benefit from the programs: “Non-Residential customers receive funding financed by all customers’ bills to improve their properties and then earn additional cost savings as a result of the improvement. [PA Brief](#) at 39.<sup>115</sup>

**Residential Building Type Charges:** Mr. Mierzwa recommended that once the necessary upgrades to the Water Department’s billing system are completed, the Department

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<sup>115</sup> The Public Advocate stated in its [Brief](#) at 39 that it is willing to consider alternative designs which would provide for more equitable sharing of the financial benefits of SMIP/GARP.

modify the residential rate design to provide for charges based on residential building type, rather than the current flat fee. [PA Brief](#) at 40.

**Credits for Rain Barrels:** Mr. Mierzwa also recommended that PWD evaluate whether a rate discount should be provided to residential customers that agree to have PWD install a 24-inch rain barrel on their property.<sup>116</sup> [PA Brief](#) at 40-41.

While it opposes the adoption of these proposals in the current proceeding, PWD explained that in accordance with the [2021 Rate Determination](#),<sup>117</sup> it is in the process of evaluating both alternative residential rate structure designs and cost recovery approaches for stormwater credits and expressed its willingness to engage in a comprehensive discussion of potential changes to stormwater cost recovery. It noted that stakeholder involvement and billing system upgrades are necessary to accomplish any proposed rate structure changes, but that it has already begun engaging in stakeholder discussions. [PWD Brief](#) at 94-100.

I therefore recommend to the Rate Board that it direct PWD to continue to evaluate these proposals as part of a broader discussion, with stakeholders, of the design and recovery of costs related to the stormwater credits and incentives programs, to report on the progress of these discussions, and to be prepared to present specific proposals in its next general rate proceeding.<sup>118</sup>

#### **E. Stormwater: External Funding**

The Public Advocate requested that the Board should explicitly recognize that the costs of stormwater overflow remediation projects and their maintenance represent financial challenges to PWD's customers, and therefore direct PWD to actively seek revenues from non-ratepayer sources to fund, at least in part, stormwater overflow remediation projects and to report to the Board quarterly on the status and activities undertaken in pursuit of such non-ratepayer

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<sup>116</sup> PWD currently offers to install rain barrels on residential properties at no cost "for purposes of reducing stormwater flows and sewer overflows during precipitation events." [PA St. 2](#) at 29.

<sup>117</sup> The 2021 Rate Determination accepted the [Joint Settlement Petition](#) that contained the following term: "Cost of Service: (1) Cost and Benefit Allocations. PWD will convene stakeholder meetings to evaluate alternative ways of sharing the costs/benefits of ratepayer-funded non-residential stormwater overflow remediation projects. PWD will develop proposals prior to the next base rate proceeding."

<sup>118</sup> In light of this recommendation, it is unnecessary to address PLUG's opposition to this proposal.

funding. [PA St. 1](#) at 10; [PA Brief](#) at 26-27. It acknowledged that PWD Commissioner Hayman had affirmed that PWD would accept and spend capital funds for stormwater infrastructure projects from sources other than customer revenues or debt supported by revenue, and he had further testified that that he testified recently before the United States Senate “pushing for additional money for water utilities, especially in Philadelphia.” [May 4 Tech. Hrg.](#) Tr. at 9-10.

Although not addressed in its Brief, PWD apparently did not oppose this suggestion. In its rebuttal testimony ([PWD St. 1-R](#) at 31):

[I]f Exeter is advocating that outside support (either in the form of outside revenues or direct investments) be provided to aid in addressing the requirements of the Consent Order Agreement (“COA”), such support would be welcome. The Water Department has vigorously pursued alternative funding sources from state and federal grants and low interest loans and welcomes any outside support which could be leveraged to mitigate some of these costs to our customers. PWD acknowledges the significant cost of these programs and investments to its customers and the potential impact it may have now and in the future.

I agree that every effort should be made to lessen the burden on PWD’s customers. Therefore, I recommend that this proposal be adopted by the Rate Board, and that it direct PWD to actively seek revenues from non-ratepayer sources to fund, at least part, stormwater overflow remediation projects and to report to the Board quarterly on the status and activities undertaken in pursuit of such non-ratepayer funding. This should be a priority for the Department.

## **IX. TIERED ASSISTANCE PROGRAM (TAP)**

TAP (Tiered Assistance Program) is a low-income customer assistance program, mandated by City Council, that allows low-income customers (and others suffering certain special hardships) to pay reduced bills based upon a percentage of their household income, not water usage.<sup>119</sup> The TAP-R surcharge is charged to customers who do not receive the discount, and revenue losses associated with the program are reconciled annually.<sup>120</sup> This program makes monthly bills more affordable and consistent for eligible residents. It was very clear from the

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<sup>119</sup> Philadelphia Code, § 19-1605 (calling the program “TWRAP”).

<sup>120</sup> The [2023 TAP-R reconciliation proceeding](https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2023-annual-rate-adjustment/) can be found at <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2023-annual-rate-adjustment/>

compelling testimony presented by numerous customers at the public hearings that bills for this essential service – even at the current rates and charges – are simply not affordable for many people. It is essential that as many people as possible enroll in the program in order to maintain their service. In addition, as discussed in the testimony presented by Public Advocate witness Roger Colton (and addressed below), PWD’s revenue collections improve when TAP enrollment increases. The Public Advocate has presented a number of specific proposals relating to the TAP program, [PA St. 3](#).<sup>121</sup>

#### **A. Enrollment**

The Public Advocate asserted that 15,032 households are actively enrolled in TAP.<sup>122</sup> It claimed that this enrollment is unreasonably low, given Mr. Colton’s estimate that PWD serves roughly 170,000 customers who would be income eligible for TAP based on US Census data ([PA St. 3](#) at 28); it also noted the testimony presented by PWD witness Susan Crosby (Deputy Commissioner for Water Revenue) that identified 107,119 households who had received Medicaid or homeless prevention services within the previous 12 months, although it was not possible to determine how many of those households were TAP-income eligible. [PA Brief](#) at 42.

PWD asserted that Mr. Colton has overstated the number of eligible TAP participants, and understated the number of TAP participants, or customers receiving other assistance, explaining that as of February 20, 2023, the number of unique customers who had been TAP participants was 28,578. The Department also offers the Senior Citizen Discount program (which provides a 25% discount for eligible seniors) which is separate from TAP, and represents an additional population of approximately 21,000 customers, thus showing that PWD provides “financial assistance for over 48,000 customers.”<sup>123</sup>

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<sup>121</sup> PLUG notes that while it is not taking a position on the merits of the Public Advocate's proposals to enhance TAP enrollment, it urges the Rate 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>121</sup> [PLUG Brief](#) at 11.

<sup>122</sup> [PA St. 3](#) at 28; PA-I-56 (response).

<sup>123</sup> [PWD St. 3-R](#) at 5; [PWD Brief](#) at 104.

In addition, PWD noted that researchers have found that water assistance programs generally have “disappointing” subscription rates in general, but that PWD is “a leader in the field.” A 2021 nation-wide study of 20 of the largest water utilities in the nation by Sridhar Vedachalam and Randall Dobkin from the Environmental Policy Innovation Center (EPIC) found that “although enrollment data are hard to obtain from utilities, typical enrollment rates (number enrolled as a fraction of those eligible) in water CAPs are around 10-15 percent. Philadelphia’s tiered assistance program boasts a participation rate of 25 percent, which might be among the higher end of participation rates.” [PWD St. 3-R](#) at 6-7.

Regardless of the actual participation rate, it is clear that TAP enrollment is likely to increase substantially as the result of specific steps that are being undertaken. Ms. Crosby testified<sup>124</sup> that there is progress on development of a process intended to allow increased use of data-sharing among the City’s Owner Occupied Payment Agreement (OOPA) program<sup>125</sup>; the City’s Office of Integrated Data for Evidence and Action (DEA within the Managing Director’s Office;) and the Pennsylvania Department of Human Services (which administers the Low Income Household Water Assistance Program, LIHWAP), with the goal of cross enrollment/precertification, so that information does not need to be provided to PWD by applicants based on other City administrative data that verifies eligibility:<sup>126</sup> “Our design is to have the information from . . . outside data sources put into our CAMP application processing system to prepopulate all of the necessary fields in order to make the decision. And then, just as we do with all of our applications, we’re going to have our applications, we’re going to have our staff review that information in a double-blind fashion to approve the appropriate program. So we’re not going to change our QA/QC process as part of this program. We want to ensure that we’re doing the best and most accurate work. So it’s better to say prequalification, because it is going to have a human touch.”

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<sup>124</sup> [May 5 Tech. Hrg.](#) Tr. at 17-18.

<sup>125</sup> The Revenue Department underwent a two-year upgrade and conversion of its taxpayer and customer data to a new accounting and billing system. OOPA agreements are administered through this system, so the City worked with developers to establish a data connection to make enrollment from OOPA into TAP possible. However, the conversion process was not able to replicate the existing flow of information, so enrollment from OOPA into TAP will continue to require a degree of manual review and approval until the development is completed. [PWD Brief](#) at 105.

<sup>126</sup> Ms. Crosby confirmed that the ultimate goal would be that nothing would be needed from the customer to complete the enrollment.

The Department ([PWD Brief](#) at 106) explained that, “The process with the Commonwealth has taken longer than expected, but earlier this year, the parties finalized a data-sharing agreement and began to share data for use in the program. Preparation in various areas is underway to realize LIHWAP to TAP pre-qualification, including technology changes, staff training, and communications materials. The City estimates that all necessary processes will be completed in this calendar year to enroll the first group of prequalified LIHWAP customers into TAP.”

The Public Advocate also recommended that this data sharing include PGW, the Philadelphia Gas Works. While it recognizes that PGW is not a City department like PWD and is subject to the jurisdiction of the Public Utility Commission, it still serves many of the same low income households PWD serves. PWD should take reasonable steps to discuss whether and how data-sharing between the two utilities could work. I agree and recommend that the Rate Board accept this proposal.

In addition to the information data sharing, PWD has changed its internal review policies to reduce burdens on TAP applicants. Prior to April 1, 2023, the customer assistance program required customers to submit two proofs of residency, and one proof of income per household member with income with their application. In some cases, one proof would require two documents, and some documents were required to be dated in the last six months. In consideration of concerns regarding the complicated and numerous requirements, the Department adjusted its review policy to allow fewer and older documents to be submitted. As of April 2023, customers only need to submit proof of residency in addition to proof of income. Only one copy of any document is required, and all documents may be dated within the last 12 months. Written materials – the customer service application, regulations, and guidance materials – are currently being updated to reflect the change in policy. Another policy change is that PWD is implementing an extended recertification time period to 3 years, which will keep more customers in TAP longer.<sup>127</sup>

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<sup>127</sup> [PA St. 3](#) at 37.

The Public Advocate recommends that “Given the possible impact these policy changes could have, the Board should require continued reporting on the number of TAP applications and denials, disaggregated by reason for denial. To reduce the administrative burden of monthly reporting, the Public Advocate believes quarterly reporting of monthly data would be appropriate going forward. PWD should also report on the impact of this policy change at its RCAS meetings.” I agree and recommend that the Rate Board accept this proposal.

Failure or inability to recertify has been a well-documented obstacle to continued participation in TAP, limiting the overall participation rate in the program. The Public Advocate suggested that PWD be directed to develop and test a text-based recertification program to remind TAP participants of the need to recertify as well as a text-based system for allowing customers to submit necessary recertification documents, citing the increased use of e-commerce (including the online payment of PWD bills) in today’s world and the “clear customer preference” that customers have in using electronic communications.<sup>128</sup> [PA Brief](#) at 51.

PWD has opposed the use of text messaging, saying that this is not practical at the present time: “Significant effort and expense would need to be put toward programming, testing, and ongoing technical support, in addition to training for Department representatives to provide support to customers, auditing, and communication with customers.” [PWB Brief](#) at 107-108.

This suggestion is reasonable on its face and should be carefully considered. Texting has become a commonly used format for all kinds of communications and activities. Given the evident benefits of increased TAP Enrollment, removal of barriers to recertification should be given more consideration.

Therefore, I recommend that the Rate Board direct PWD to address this proposal in the next general rate case, by providing a specific plan for the design and possible implementation of a text-based pilot TAP notification and/or recertification program.

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<sup>128</sup> Currently, customers who need to recertify receive a paper copy of the application and an email notification. [PWD Brief](#) at 107.



## **B. Increased Revenue Attributable to TAP**

Enrollment in TAP benefits not only the individual customers (by ensuring access to water service based on income not usage) but the Department as a whole. As explained above, the record establishes that as the result of the efforts undertaken by PWD (and WRB), TAP enrollment is likely to increase during the rate period at issue here. As extensively discussed in Mr. Colton's testimony ([PA St. 3](#) at 40-48) and in the [PA Brief](#) at 43-48, this will result in improved collection of TAP billings, due to the higher collectability rates of TAP participants compared to non-TAP low-income customers, as well as the higher collectability factor of non-TAP customers who are subject to the TAP-R rider (which is essentially, a surcharge to recover the revenue loss attributable to the TAP customers as they do not pay for the full cost of service). Therefore, based on its contention that neither the payments received from TAP participants (the TAP billed revenue), nor the revenue received from non-TAP participants (the TAP surcharge revenue) are reflected in the COSS, the Public Advocate proposed two adjustments.

As explained in the Advocate's 's [Brief](#) at 44-45,

There are two different ways PWD collections improve when a low-income customer enrolls in TAP. First, the collection rate on the amount billed to the TAP customer improves, as compared to the collection rate for non-TAP low-income customers. In FY 2022, TAP participants had a 72.5% collection rate, while non-TAP low-income customers had a 34.3% collection rate – a difference of 38.2%. In addition, the collection rate for all customers (who pay for discounts through the TAP rider) is 84.13%, versus the 34.3% collected from non-TAP low income customers – a difference of 49.83%.

Using the average usage for TAP customers of 0.7 MCF and the projected increase in rates as well as the agreed upon TAP participation rate from the TAP-R proceeding of 16,479, Mr. Colton estimates that the total TAP billing in FY24 would be \$20,328,494 – of which \$9,887,400 are TAP credits collected through the TAP rider, and \$10,441,094 are billed to TAP participants. Based on these numbers, and the difference in collections rates between all customers, TAP customers, and non-TAP low-income customers, Mr. Colton estimates the following increased revenues not accounted for by PWD:

- \$3,988,000 based on increased collections from TAP customers compared to non-TAP low-income customers (38.2% of \$10,441,094).

- \$4,927,000 based on increased collections through the TAP rider compared to non-TAP low-income customers (49.83% of \$9,887,400).

It is the Department's position that this adjustment (shown on [PA St. 1](#) at 23), should be rejected. As discussed in [PWD St. 3-R](#), 11-18, the Department's position is that the improved collection of TAP billings suggested are (1) overstated and (2) any "improved collections" under TAP bills associated with TAP customers is already reflected in the collection factors utilized in this proceeding. It did not, however, object to the proposition that revenue collections improve when TAP enrollment increases. Therefore, since it is probable that there will be increased TAP participation, then an adjustment may need to be made to reflect that.

PWD claims its projections already account for current TAP participants and so any increased collections should only reflect the increase in TAP participation (the projected number of FY 2024 TAP customers of 16,470 less the current enrollment of 15,032), not the full TAP participation, and suggests two additional adjustments to Mr. Colton's proposed framework. First, PWD submits that because the average TAP credit is based on average TAP billings during calendar year 2022, it is more appropriate to use existing rates than proposed rates.<sup>129</sup> Second, PWD argues that the Collectability factor should be based on the average system-wide payment pattern over FY 2020-2022. [PWD Brief](#) at 56-60.

At the outset, let me say that I accept the basic assumptions that underlay the Advocate's position here, as well as the FY 2022 collection rates utilized by Mr. Colton (72.5% for TAP participants, 34.3% for non-TAP low-income customers, 84.13% for all customers).

To some extent, PWD is correct, and the Public Advocate's recommendation rests on an incorrect premise. While it is clear that the TAP surcharge revenue has been removed from the COSS, I'm not convinced that the revenue from TAP billings (i.e., the revenue derived from the rates paid by the TAP participants themselves) has been. As explained in [PWD's Brief](#) at 57: "The Collectability Factors are based on the average collections of system billings experienced during FY 2020 to FY 2021 (PWD Statement 7 at 14, Schedule BV-2 at 1-13 and 1-14), which

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<sup>129</sup> [PWD St. 3R](#) at 13.

reflect the average TAP enrollment of 15,036.” I assume this means that the collectability factors therefore include the revenue received from TAP customers, while excluding the revenues derived through the TAP-R Rider (the surcharge included in the bills of non-TAP customers).

I agree with the Public Advocate, however, that it is not appropriate to use existing, FY 2022 rates (or, by extension, credits) to calculate the TAP collectability improvement PWD will experience in future fiscal years. As stated in the [PA Brief](#) at 47: “PWD’s argument disregards the entire projection methodology utilized to determine base rates in this proceeding, which fully forecasts two future test years to project revenue requirements. The use of the rates in effect over the two forecast years is necessary to calculate the improved collectability associated with TAP over the corresponding period.”

I also agree that the TAP Revenue Collectability Factor should be based on the FY 2020 – FY 2022 average to be consistent with the collectability factors used in the filing to project system revenue collection, rather than the most recent experience, resulting in TAP billings (30.48%) and TAP Credits (42.54%). [PA Brief](#) at 47.

With respect to the collection of the TAP revenues collected through the TAP-R surcharge from the customers who do not participate in the program (also referred to as the TAP Credit), Mr. Colton’s proposed adjustment is appropriate. The Department admits that TAP discounts are not included as a revenue requirement in base rates and suggests that they should be handled in the separate TAP-R annual reconciliations. [PWD Brief](#) at 59.

This suggestion is flatly rejected. As correctly noted by the Public Advocate in its [Brief](#) at 48, the TAP-R proceedings do not address collectability. They are administrative in nature, seeking only to reconcile the projected TAP discount revenue with actual TAP discount revenue and establish reasonable expectations of future TAP credits. Collectability has never been an issue in TAP-R reconciliation proceedings, but has, in fact, been a subject of PWD base rate proceedings.

At page 46 of its [Brief](#), the Public Advocate contended that based on PWD's statements and exhibits, it is clear that TAP discounts and credits are excluded from the cost-of-service analysis for the purpose of determining base rates. As stated by the Public Advocate:

However, as PWD clarified, "TAP discounts and TAP-R surcharge billings are excluded from the cost-of-service analysis." Furthermore, according to PWD witnesses: "For the purposes of determining Base Rates, TAP revenue loss is not included. Table C-1A: Base Rates (Schedule BV-1) excludes revenue loss associated with TAP discounts and revenues associated with TAP-R surcharge rates. The TAP discounts' exclusion from the Base Rates analysis is also shown on Line 13 of Table C-3: Projected Revenue Under Existing Rates (Schedule BV-1)." These statements confirm that the improved collectability associated with TAP, identified by Mr. Colton, has never been taken into considered in estimating PWD's projected revenues.

While I agree with the Public Advocate regarding TAP surcharge revenues collected through the TAP Rider as not being included in PWD's COSS, I do not think this is correct with respect to the revenue derived from the TAP customers through their discounted bills, which are in fact, included in base rates, as discussed above. As TAP customers pay a larger share of their discounted bills than non-TAP low-income customers, that fact should already be reflected in PWD's base rate collectability factors.

Therefore, I recommend that the Rate Board reject the first part of the Public Advocate's proposal (regarding TAP participant billings) but accept the second component (regarding TAP-R surcharge revenue), thus reflecting increased revenues under existing rates (and therefore reduced required additional revenue requirements) by \$4,927,000 in both FY 2024 and FY 2025.

### **C. Tap Reports and Account Audits**

Mr. Colton recommends in his testimony that PWD be required to start reasonable data tracking as a means of controlling costs associated with nonpayment and to promote participation in low-income affordability programs. He explained that the untracked data include: basic billing and payment data disaggregated by zip code; information regarding arrears and payment difficulties; and, information regarding collections and the impact of collections

activities.<sup>130</sup> The Public Advocate explained in its [Brief](#) at 53-54 that, based on Mr. Colton's experience, these types of metrics are critical to measuring PWD's performance when it comes to billing, collections and controlling costs. It therefore recommended that the Rate Board direct PWD to collect and report the following data, by zip code, tracked on a monthly basis:

- The dollars of billed revenue to residential customers;
- The dollars of receipts actually collected from residential customers;
- The number of bills rendered to residential customers;
- The number of payments received by or on behalf of residential customers;
- The mean and median residential customer bill;
- The aggregate dollars of residential arrears;
- The number of residential accounts in arrears.
- The percentage of residential accounts in arrears;
- The average residential arrears of residential accounts in arrears;
- The number of residential accounts with a \$0 balance by month;
- The number of shutoff notices issued to residential accounts;
- The average arrears on residential accounts to whom a shutoff notice was issued;
- The number of residential nonpayment disconnections;
- The average arrears on residential accounts disconnected for nonpayment;
- The aggregate dollars of arrears on disconnected residential accounts
- The number of residential reconnections after a nonpayment disconnection;
- The number of residential accounts in arrears more than 30 days not on agreement;
- The dollars of residential arrears (older than 30 days) not on agreement;
- The average arrears of accounts in arrears (more than 30 days) not on agreement;
- The number of residential accounts in arrears (more than 30 days) on agreement;

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<sup>130</sup> [PA St. 3](#) at 51-54.

- The dollars of residential arrears (older than 30 days) on agreement; or the average arrears of accounts in arrears more than 30 days on agreement.

The Department has opposed this proposal, citing the resources that would be required to accomplish this additional reporting. It pointed out that it (with the WRB) already engages in various types of reporting and data tracking and all non-urgent enhancements were previously and continue to be on hold until the infrastructure and software upgrades to the water accounting and billing system known as Basis2 is to take place in the coming months. [PWD Brief](#) at 108-109.

I agree that as a general matter, tracking these metrics will be helpful to the Department so that it can measure its performance and evaluate the reasonableness of policies/practices that impact customer rates and charges. However, I agree that these new reporting obligations should not be imposed while the upgrades are taking place.<sup>131</sup>

Therefore, I recommend that, as requested by the Public Advocate, the Rate Board require PWD to report quarterly on the specific work done to upgrade accounting and billing systems, the extent of work remaining to be done, an estimated timeline for completion, and, once upgrades are completed, monthly billing and collection data, after consultation with WRB and the Public Advocate as to what information can reasonably be compiled.

#### **D. TAP Arrearage Forgiveness**

The Public Advocate, through the testimony of Mr. Colton, identified several concerns with how PGW is implementing preprogram arrearage forgiveness for TAP participants. The first is addressed to “ratable forgiveness.”<sup>132</sup> The Department’s regulations<sup>133</sup> provide that as of July 2022, all customers “maintaining enrollment in TAP” were to receive lump sum retroactive

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<sup>131</sup> I suggest that the Department and the Public Advocate consult to determine how best to accomplish this reporting, and the format of the reports themselves, to make the various reporting requirements less burdensome for PWD while still providing sufficient data to properly evaluate and administer the TAP program.

<sup>132</sup> “Ratable forgiveness” refers to the monthly proration of arrearage forgiveness. Each month a TAP participant makes a complete payment, 1/24th of their pre-program arrearage is vested.

<sup>133</sup> “As of July 1, 2022, all Customers maintaining enrollment in TAP will receive a one-time lump sum forgiveness of Pre-TAP arrears, in an amount calculated by multiplying the amount of the Customer’s Pre- TAP arrears by 1/24 and then by the number of full monthly payments of TAP Bills issued on or after September 1, 2020.” PWD Regulations, Section 206.7(c). See also Philadelphia Code § 19-1605(3)(h.2).

forgiveness proportional to the number of full monthly payments of TAP Bills issued on or after September 1, 2020. The regulations further provide that after July 2022, for each full monthly payment made, PWD forgives 1/24th of the principal balance. However, according to analysis by Mr. Colton, PWD may be improperly implementing this arrearage forgiveness, given the small number of TAP customers who qualified for forgiveness.

His analysis showed that while more than 90% of customers newly enrolling in TAP brought pre-program arrearages into the program, only about 60% of TAP participants received arrearage forgiveness in July 2022. Thereafter, the percentage of AP customers receiving arrearage forgiveness dropped from 60% to between 31% (Sept. 2022) to 19% (Jan, Feb. 2023). According to Mr. Colton “. . . [G]iven that the regulations specifically provide that it is not necessary for a TAP participant to make a “timely” payment in order to qualify for arrearage forgiveness, it simply would not be possible for between 50% and 60% of all TAP participants to be making full and timely payments each month, while having fewer than half that percentage qualify for arrearage forgiveness.” [PA St. 3](#) at 59, 61.

The Public Advocate requested that the Rate Board require “an account-specific audit of TAP participation to ensure that each customer who should have received arrearage forgiveness has received that forgiveness. To the extent that TAP customers who are making full TAP payments are not being granted forgiveness as they complete their full payments, irrespective of whether those payments are timely, they are being denied rate benefits to which they are entitled under both City ordinance and City regulations. The Board should require PWD to provide an accounting of TAP participants by month starting on July 1, 2022, and ending June 30, 2023 . . . Because TAP is a rate, the payment of which entitles the TAP customer to forgiveness of pre-TAP arrears, the Board may reasonably require PWD to ensure that customers are receiving the legally required benefits associated with payment.” [PA Brief](#) at 56.

PWD disputed that there is a problem with the manner in which it implements the arrearage forgiveness component of the TAP program, saying that “forgiveness of pre-program arrears is currently taking place in accordance with the City’s Regulations,” and that “Mr. Colton has provided no specific example of arrearage forgiveness not operating as required . . . but instead, only makes broad assumptions based on his own interpretation of data.” It further noted

that there are some arrearages not eligible for forgiveness, such as balances in dispute or in bankruptcy, and that since approximately 1/5 of all-time TAP approvals have been associated with an account balance at the time of approval of less than or equal to \$100, as demonstrated in the “TAP Approval by FPL and Arrears” report. A TAP customer’s pre-TAP arrears may simply be the most recent bill issued, but not yet paid. [PWD Brief](#) at 110. “Because there is no evidence to support Mr. Colton’s assertion that some TAP customers are not receiving ratable arrearage forgiveness as they are entitled, no refunds or credits should be approved as a part of his recommendation.” [PWD Brief](#) at 112.

I find the analysis presented by Mr. Colton to be persuasive and compelling. It is not necessary for the Public Advocate to produce an actual individual who had difficulty getting arrearage forgiveness to establish that there may be issues that require attention. Therefore, I recommend that the Rate Board direct PWD to provide an accounting of TAP participants by month starting on July 1, 2022, and ending June 30, 2023, as recommended by Mr. Colton, and to provide arrearage forgiveness for those customers who had earned such forgiveness but not received it.<sup>134</sup>

The second issue identified by Mr. Colton concerns arrearage forgiveness for TAP re-enrollees. In August 2021, PWD implemented a “TAP Pause,” which it defined as: “A change to the forgiveness process whereby a customer’s 24-month progress towards arrearage forgiveness is “paused,” rather than lost, if they leave TAP for any reason, and the customer can resume their progress upon returning to TAP, rather than starting over.” [PWD Brief](#) at 112.

According to Mr. Colton, customers who were removed from TAP due to a failure to recertify before July 2022, but who subsequently re-entered TAP under the TAP Pause program, should have received “a one-time lump sum forgiveness of Pre-TAP arrears, in an amount

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<sup>134</sup> For each account, PWD should report: (1) the total dollars of pre-program arrears existing on each TAP account in each month; (2) the total dollars for current service appearing on bills for each account beginning with July 2022 and continuing until the accounting is complete; (3) the total dollars paid on behalf of that account beginning with July 2022 and continuing until the accounting is complete; (4) the total dollars of arrearage forgiveness that have been credited to the account beginning in July 2022 and continuing until the accounting is complete. To the extent that this accounting reveals arrearage forgiveness that had been earned, but had not been granted, that arrearage forgiveness should be credited to the customer’s account irrespective of whether the customer remains a TAP participant. [PA St. 3](#) at 63-64.



calculated by multiplying the amount of the Customer's Pre-TAP arrears by 1/24 and then by the number of full monthly payments of TAP Bills issued on or after September 1, 2020. Only in that fashion will these customers, as provided by the regulation, “pick back up where they left off, with the amount of forgivable pre-TAP arrearage fixed at the time of their first enrollment in TAP.” [PA St. 3](#) at 65.

The Department opposes this recommendation, stating that there is no evidence to support it. It also expressed concern about providing customer-specific information. [PWD Brief](#) at 113.

I find the testimony and analysis presented on this issue to be sufficient to support a finding that it is appropriate to recommend that the Rate Board require PWD to supply the report, to ensure that all TAP participants receive the benefits of any arrearage forgiveness to which they may be entitled. These reports can be redacted so that no personally identifiable information is provided.

The final issue with respect to arrearage forgiveness has to do with the treatment and tracking of “occupant” accounts. Mr. Colton pointed out that PWD Regulation Section 206.1 was updated in July 2022 to include the definition of “Pre-TAP Arrears” to be “for owners and occupants, the sum of all unpaid service, usage, and stormwater charges at the property, calculated at the time of first enrollment in TAP; or, for tenants, the sum of all unpaid service, usage, and stormwater charges at the property accruing during the period the tenant has been responsible to pay for water service pursuant to the terms of their lease, calculated at the time of first enrollment in TAP.”

Mr. Colton observed that although the regulation defines the arrearages differently for owners/occupants than for tenants, PWD does not track occupants separately but includes them in the same category as tenants.

Although the regulation is clear, and the reasons for grouping occupants and owners and treating them differently from tenants was recognized by PWD, it merely alleges that no relief should be granted because Mr. Colton’s are “speculative. It bears emphasis that he did not provide

any evidence (not one example) of issues with forgiveness tied to a particular account to demonstrate that an actual problem exists.” [PWD Brief](#) at 114.

The regulation is clear. Occupants should not be grouped with tenants but tracked separately (or with owners) for the purpose of calculating arrearage forgiveness. Therefore, I recommend that the Rate Board adopt the Public Advocate’s proposal, as set forth in its [Brief](#) at 60: “The Rate Board should require PWD to again do an account-specific audit of occupant customer TAP participants for July 2022 until present. Specifically, this auditing should include: (1) the total dollars of arrears on the occupant’s property existing at the time the occupant became a TAP participant; (2) the total dollars of arrears that were included on the occupant’s TAP account as a “pre-TAP arrears” subject to forgiveness; and (3) the proportion of pre-TAP arrears that have been forgiven to date. To the extent that the dollars of arrears on the occupant’s property are more than the dollars of arrears deemed to be “pre-TAP arrears” subject to forgiveness, the amount of pre-TAP arrears should be adjusted to include the larger amount and the customer’s account should be retroactively credited with arrearage forgiveness based on that larger amount.”

## **X. CUSTOMER SERVICE ISSUES**

### **A. Municipal Liens**

Based on the testimony of its witness Roger Colton, the Public Advocate made two recommendations concerning the Department’s practice of filing municipal liens<sup>135</sup> relating to balances that include TAP pre-program arrearages and showing the associated court filing fee on the customers’ bills. The Public Advocate proposed that PWD should discontinue filing liens to secure these arrearages by applying a “lien blocker” so that frozen pre-program arrears cannot be considered as claims due to the City or considered to be unpaid, as long as the customer remains on TAP. [PA Brief](#) at 62-63. It also proposed a disallowance calculated by Mr. Colton of the expenses associated with these liens (a reduction in projected O&M by \$565,000 in FY 2024 and \$565,000 in FY 2025, [PA St. 3](#) at 104): “Because these preprogram arrearage balances are subject to earned forgiveness, this cost is “totally avoidable and simply serves to increase the rates and

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<sup>135</sup> A municipal lien is a claim made by the City of Philadelphia against a property for unpaid debts, such as taxes or (in this case) water service.

charges billed to non-TAP customers. Indeed, as the City recognizes, when a debt is forgiven, as is the case with pre-TAP arrears, the associated water lien is vacated. Unlike when a lien and associated filing fees are paid in full, resulting in satisfaction of the claim, pre-TAP debt forgiveness results in the liens becoming null and void without payment of the underlying debt or the lien fees. As a result, the entire filing fee associated with the City’s liens is a cost that is never intended to be repaid by the TAP customer.”

In addition, the Public Advocate asserts that the filing of these liens is contrary to the Ordinance that established IWRAP (TAP’s predecessor assistance program,) which provided that participants would “be required to make no additional payment in respect to any [pre-TAP] arrears to maintain service” and that “standards be adopted to discontinue pending enforcement actions after a customer enrolls in TAP.”<sup>136</sup>

PWD opposed both these suggestions. With respect to the proposal to utilize lien blockers on TAP participant account, it noted that the City established its lien policy in conjunction with its collaboration with the First Judicial District and as implemented by the City’s Law Department, and the Rate Board cannot change that policy. Further, it noted that although these fees do appear on the monthly bill, they are never included in the calculation of a TAP bill required monthly payment amount. With respect to the proposal to disallow the court filing fees associated with these lines, the Department’s position is that these fees are a necessary expense set by the First Judicial District to maintain compliance with the Municipal Claim and Tax Lien Act<sup>137</sup> and as such are a reasonable cost of doing business. [PWD Brief](#) at 115-117.

It is clear that the Rate Board has no authority to direct the use of lien blockers or to alter the existing lien policy, so I cannot recommend their adoption by the Rate Board. The Advocate’s suggestion regarding lien blockers on TAP accounts represents what seems to be a reasonable approach to recognizing the existence and impact of arrearage forgiveness. It would avoid the necessity of treating the preprogram arrearages – which are not subject to collection action – as debts for which liens are applied. Although I find that the Rate Board cannot require

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<sup>136</sup> Phila. Code §19-1605(3)(h), (m).

<sup>137</sup> Act of May 16, 1923, P.L. 207, No. 153 Cl. 53, as amended, 53 P.S. Sections 7101 et seq.

PWD to code TAP customers' accounts as recommended, PWD presented no reason why it could not do so, and thus avoid the placing of liens on TAP arrearages that are subject to earned forgiveness. I also recommend that the Rate Board permit the recovery in rates of the municipal lien filing expenses, as they are incurred expenses.

## **B. Late Fee Revenues**

The Public Advocate proposed that the Rate Board direct that a portion of late fee revenues be used to fund specific programs that will help reduce residential bad debt or residential arrears and keeping households connected to water service, alleging that these fees are not cost-based and lack “functionality,” as PWD was unable to provide evidence that they serve as an incentive to pay or reduce residential bad debt. [PA St. 3](#) at 79. “Mr. Colton is not challenging PWD’s imposition of late payment charges but is proposing PWD’s rates be set including costs for programs specifically intended to benefit customers by avoiding additional late fees.” [PA Brief](#) at 65. These programs include (1) additional support for water conservation efforts by increasing funding for LICAP (Low Income Conservation Assistance Program) and adding a water conservation component to LIURP (Low Income Usage Reduction Program);<sup>138</sup> (2) implementation of an internal plumbing repair program;<sup>139</sup> and (3) expanded support for hardship grants provided through the UESF.<sup>140</sup>

Both PWD and PLUG opposed this recommendation. As correctly noted by PLUG, there has been no showing that late payment charges have “no functionality because they do not incentivize timely payment” and that while late payment charges are not cost-based, neither are the Public Advocate’s proposals. [PLUG Brief](#) at 10-11.

PWD explained that the late payment charges are set by the [Rate Ordinance](#) (Philadelphia Code, § 19-1606(2)) and that earmarking revenue for specific programs would be in conflict with the 1989 General Ordinance: “The 1989 General Ordinance provides that as Project Revenues come in, if they are not used for Operating Expenses, they go next to pay debt service,

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<sup>138</sup> [PA Brief](#) at 65-67.

<sup>139</sup> [PA Brief](#) at 67-69.

<sup>140</sup> [PA Brief](#) at 69-70.

and then on to the next bucket in the flow of funds. That is what Bondholders contracted for when they purchased the City’s water and wastewater revenue bonds; and it is what the City has represented in its bond disclosure would happen. The City cannot change those rules after the fact. This recommendation should be rejected.” [PWD Brief](#) at 117-118. It also noted that there are similar programs in place to assist PWD customers.<sup>141</sup>

Although it is possible that PWD and its customers would likely benefit from the proposal, I cannot recommend its adoption. Clearly, while the Rate Board is empowered to evaluate the expenses and other elements that comprise the Department’s cost of service projected to occur during the prospective rate period to ensure that there will not be an under or over recovery, and to set rates that equitably recover those costs, the Rate Board has no jurisdiction to direct how the Department provides that service, or how it utilizes the revenue it receives.

In its [2018 Rate Determination](#), the Board cited a memorandum from the Law Department provided to the Board during the [2016 rate](#) (Appendix B) case, upon the Board’s request for advice regarding the scope of Board authority to direct the Water Department (and by extension the Water Revenue Board [WRB]) to take specific actions to take certain actions to improve customer service, such as improving call center operations and program intake. The Law Department advised that the Rate Board does not have the power to direct how the Water Department (and WRB) provide service.

### **C. Sequestration**

The City is permitted by the Municipal Claims and Tax Liens Law (MCTLL) to petition the Court of Common Pleas to appoint a sequestrator to collect “rents, issues, and profits” to satisfy outstanding municipal liens associated with water and wastewater service. This legal

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<sup>141</sup> For example, there are a number of City and non-profit agencies that provide assistance, funds or loans: “The Basic Systems Repair Program (“BSRP”) provides free repairs to correct electrical, plumbing, heating, limited structural and carpentry, and roofing emergencies in eligible owner-occupied homes in Philadelphia. Restore, Repair, Renew is an initiative of the City of Philadelphia to help local homeowners access low-interest loans to invest in their properties. Loans can fund a range of home repairs that focus on health, safety, weatherization, accessibility, and quality of life. The Philadelphia Corporation for Aging PCA’s Senior Housing Assistance Repair Program (“SHARP”) provides minor repairs and modifications to make homes safer and more secure for income-eligible Philadelphia homeowners.” [PWD Brief](#) at 121.

remedy is provided through the City’s Sequestration Program that targets properties with rental income, including commercial mixed-use, tenant-occupied and multi-unit properties.<sup>142</sup> At one of the public hearings, Roxane Crowley, Esq., an attorney who represents low-income Philadelphians who contact the “Save Your Home Philadelphia” hotline, testified about her clients’ experiences with the City’s water sequestration program, in that sequestration was being sought for ineligible properties and that the City is pursuing sequestration against homeowners and occupants where the customer is enrolled in TAP and an outstanding balance has not been transferred into pre-TAP arrears as it should have.<sup>143</sup>

The Public Advocate and the Department entered into a [Stipulation on Sequestration Issues](#). Pursuant to the proposed stipulation, PWD and the Public Advocate recognize that efforts are ongoing to ensure that balance transfers occur in a timely fashion but are currently accomplished manually. Additionally, the City agrees to promptly discontinue sequestration proceedings upon learning that an occupant customer resides in the property and does not pay rent. In such instances, the City will timely effectuate any balance transfers and ensure that earned arrearage forgiveness is credited if the customer enrolls in TAP. The stipulation contains similar assurances regarding balance transfers for tenant customers who enroll in TAP.

The Public Advocate in its [Brief](#) at 72 noted, “Although PWD and the Public Advocate were not able to agree upon specific steps PWD should take to resolve any ongoing issues regarding sequestration involving occupant customers, the stipulation reflects a commitment to doing so. Counsel for the Public Advocate anticipates continuing to discuss with counsel for PWD those reasonable steps to be taken to protect PWD customers and avoid the unnecessary expense associated with pursuing the Court appointment of a sequestrator where no rents may be collected. The Board should approve the proposed stipulation.”

The Department indicated its agreement: “The City and the Advocate will continue to discuss the most feasible way to review accounts in Sequestration and identify improvements to the process. In view of the above, PWD requests that the Rate Board approve the Stipulation

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<sup>142</sup> 53 P.S. §7275.

<sup>143</sup> [March 22, 2023, 3:00 p.m., Transcript](#) at 25-28.

and take no further action concerning Mr. Colton's recommendations in connection with Sequestration issues." [PWD Brief](#) at 124.

I therefore recommend that the Rate Board approve the Stipulation and urge the Department and the Public Advocate to continue to work together to resolve these issues.

#### **D. Compliance with 2021 Settlement Agreement**

The [2021 Joint Settlement agreement](#), approved by the Rate Board in its [2021 Rate Determination](#), contained a number of commitments on the part of the Department to work with community groups, and to provide monthly reports to the Rate Board concerning TAP enrollment and turnover. The Public Advocate noted that while PWD has been filing the monthly reports,<sup>144</sup> they do not contain sufficient information (such as information on the amount of pre-TAP arrears that were not forgiven due to the TAP participant's failure to recertify or the extent to which program turnover is occurring) to allow insights into the extent to which program turnover is occurring. The Public Advocate therefore requested that the Rate Board direct PWD to continue its reporting as required by the 2021 Rate Case, with adjustments to provide the data described above regarding program turnover, TAP recertification, and TAP arrearages. To reduce the burden of producing reports monthly, the Public Advocate submits that quarterly reporting of monthly data is appropriate.

I have reviewed the monthly reports and believe that while they contain sufficient data concerning TAP enrollment to constitute compliance with the 2021 Settlement Agreement, any conclusions or suggestions for improvements to be drawn from the operation of the TAP program do require the type of data specified by the Advocate (program turnover, TAP recertification, and TAP arrearages). I recognize that there are additional metrics that will need to wait for the on-going upgrades to the PWD/WRB systems to be able to be reported, but I feel that continued reporting of the current metrics and data (supplemented to include data concerning

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<sup>144</sup> These [Reports](#) can be found at the Rate Board's website, under the [2021 General Rate Proceeding](#) section.

program turnover, TAP recertification, and TAP arrearages) is not burdensome, especially when provided on a quarterly basis. Therefore, I recommend this change to the TAP reporting.

The Public Advocate also alleged that PWD has failed to engage in community outreach, as required by the [2021 Settlement Agreement](#) at 8:

To improve outreach for TAP, PWD will evaluate new approaches to inform PWD customers of this program and other assistance programs that PWD offers. This will include outreach to customers restored since the start of COVID-19 and greater outreach in the Black community in concert with community organizations. PWD will organize and participate in community meetings, summits, or other gatherings where PWD can effectively communicate the availability of assistance for PWD customers. PWD will actively engage in meetings, summits and other gatherings where the availability of assistance can be communicated to PWD customers. PWD will also consider proposals raised at such outreach meetings. PWD will organize and participate in community meetings concerning TAP participation, including meetings with Black community leaders and Black grassroots community members to discuss what aspects of processes related to TAP application, enrollment, and recertification can be improved upon.

Indeed, Mr. Colton is absolutely correct (in [PA St. 3](#) at 112), that for 13 months (September 2021 – August 2022), the reports contained the statement: “PWD is currently planning community meetings, summits and other gatherings, including meetings with Black community leaders and black grassroots community members.” This statement was removed after the August 2022 report, and no actual community meetings were reported, although PWD did participate in several virtual utility fairs, and partnered with Community Resource Corps (an organization based on the Mayor’s Office) and several Black churches in May 2022.

I agree that while PWD has failed to comply with its commitment to report on its engagement with “Black community leaders and Black grassroots community members,” it has participated in a number of events held to communicate to members of the Black community the availability of assistance. While I urge PWD to do a better job of demonstrating its commitment to engage with the Black community leaders and Black grassroots community members, I do find



that the specific outreach suggested by the Public Advocate to be unreasonably burdensome at this time,<sup>145</sup> and therefore recommend against its adoption by the Rate Board.

## **XI. OTHER ISSUES**

### **A. Housekeeping Changes / Miscellaneous Fees and Charges**

Other than the changes shown in the proposed rates and charges ([PWD Exh. 3](#)), the Department did not propose any material language changes. None of the participants commented on or objected to these language or housekeeping changes, they appear reasonable and therefore they should be permitted to go into effect.

None of the participants commented on or objected to the updated miscellaneous fees and charges ([PWD Exh. 3](#), Section 6; [PWD St. 7](#), Sch. BV-3). They appear reasonable and therefore they should be permitted to go into effect.

### **B. Objections by Mr. Skiendzielewski**

A [Brief](#) was filed in this proceeding by pro se participant Michael Skiendzielewski.<sup>146</sup> He did not discuss or take a position on the proposed rates which are before the Rate Board. Rather, the sole issue in his Brief is addressed to an order I issued sustaining PWD's Objections to information requests he had served on the Department, [Order Sustaining Objections to Discovery: Skiendzielewski](#) (May 1, 2023 Order). He contended that this Order allegedly violated my directive in the [Prehearing Conference Order](#) which directs participants to attempt to resolve discovery disputes prior to the filing of written objections, in that I had "preempted" any such discussion by issuing the May 1, 2023 Order, thus resulting in a "significant" procedural violation. This argument is without merit.

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<sup>145</sup> It would require the Department to analyze hundreds of census tracts in the City for race, poverty, and TAP participation.

<sup>146</sup> On May 24, 2023, he supplied a [supplemental brief](#) that contained additional attachments. Although I have reviewed them, these have not changed my decision. Regardless of the many pieces of correspondence, emails or photographs he supplies, it does not change the nature of his issue or the scope of the Rate Board's jurisdiction.

First, Mr. Skiendzielewski has misread the [Prehearing Conference Order](#). While I did direct the participants confer to resolve discovery disputes prior to the filing of objections, that duty to confer arises when an objection is communicated (orally or via email) to the propounder of the information requests; it ceases upon the filing of written objections. Here, PWD filed both general and specific objections ([Objections to Set I](#), [Objections to Set II](#)) separately to [Sets I](#) and [II](#) (Set II was actually addressed to me) on April 28, 2023, well before issuance of my Order (or the email in which I indicated that I would be issuing it).<sup>147</sup>

More importantly, my actions were well within the scope of my authority to “make all procedural rulings necessary to conduct a fair, impartial and expeditious hearing process, including the exclusion of irrelevant or redundant testimony or evidence.” See Rate Board [Regulations](#), II.b.1(B). As I explained in the [May 1, 2023 Order](#), the information requests were clearly improper, in that they were overbroad and unduly burdensome (especially considering the late stage of the proceeding at which they were propounded) and were not designed to elicit information relevant to the instant general rate proceeding, as required by the Rate Board’s regulations at the [Rate Board regulations](#) at II.B.5(b).<sup>148</sup> “Since the Rate Board lacks jurisdiction – and therefore can take no action - over these issues, it would be a fruitless exercise and a misuse of scarce resources of time and money to allow Mr. Skiendzielewski to continually raise issues which he has been explicitly and repeatedly told are not within the Rate Board’s jurisdiction.” [May 1, 2023 Order](#) at 2.

Although not raised in his Brief (but based on countless emails, including the two written [comments](#) and [memorandum](#), he submitted in this proceeding), I do feel it important for the Rate Board to recognize that Mr. Skiendzielewski’s focus is how the HELP loan associated with his lateral replacement in 2016 was handled, compared to a neighbor’s similar project: “The primary objective and understanding in presenting and pursuing these matters is that this homeowner is simply and only asking for fair, equitable and reasonable treatment regarding the expenses involved in lateral replacements in relation to the processing of a similar request for

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<sup>147</sup> Mr. Skiendzielewski submitted an email [Response](#) to the Objections on May 1, 2023. It should be noted that despite its Objections, PWD did supply responses to a number of these information requests.

<sup>148</sup> <https://www.phila.gov/media/20230120160159/WRB-regulations-restated-with-amendments-2022-11-09.pdf>

reconsideration of lateral expenses at the adjoining property and neighbor of this homeowner.”  
[Comment](#) at 1.

Mr. Skiendzielewski tried to connect his concerns about PWD’s past and present management of lateral repairs (and associated HELP loans) by making the following statement in his most recent [submission](#), “In summary, the records request is related to the PWD operational procedures and processes that monitor, control, investigate, review, follow-up and critique the street excavation procedures that make up a great deal of PWD human resources, equipment, time and consequently expense IMPACTING THE SETTING OF WATER AND SEWER RATES FOR PWD CUSTOMERS.”

This statement again shows Mr. Skiendzielewski’s refusal to recognize the scope of the Rate Board’s jurisdiction. Of course, any activity undertaken by PWD incurs expenses that are reflected in rates; but reviewing past expenditures or evaluating the service provided by PWD is not the purpose of this proceeding nor within the scope of the Rate Board’s jurisdiction. What is relevant in this proceeding is not how PWD has performed those repairs, or the expenses already incurred, but to what extent the projected costs associated with them should be prospectively recovered during the period the rates established in this proceeding will be in effect.

To be clear, information concerning the forecasted prospective cost of such Water Department expenses as lateral repairs or HELP loans may be pertinent to a rate proceeding. However, Mr. Skiendzielewski’s particular requests for information did not reference either the [Advance Notice](#) or [Final Notice](#) (or any participant testimony), were served at the very end of the discovery period, after the filing of all direct and rebuttal testimony, and clearly had nothing to do with the prospective rates for FY 2024 and FY 2025 that are the subject of this proceeding.<sup>149</sup>

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<sup>149</sup> Certainly, participants in future rate proceedings might provide and seek information making it clear that the levels of such expenditures should be at issue. But to enable the participants and the Rate Board to consider this, information material to the proposed rates should be presented in time to be addressed by other participants, by being the subject of testimony, which could be tested and evaluated.

He has been told numerous times, by the Rate Board, by the previous Hearing Officer<sup>150</sup> and me that the Rate Board is not able to address his issue of “fair, equitable and reasonable treatment” in terms of the HELP program, or “PWD operational procedures and processes that monitor, control, investigate, review, follow-up and critique the street excavation procedures.” For example, in the [2021 Rate Determination](#) at 7, the Board affirmed a ruling that stated “The Rate Board does not have the authority to investigate, administer or enforce public integrity laws or ethical codes. Therefore, discovery or testimony intended to address allegations of misconduct in connection with administration of the HELP loan program will be excluded from the scope of this rate proceeding.” The Rate Board addressed Mr. Skiendzielewski’s [Exceptions](#) at 29-30, 32 (emphasis supplied):

We welcome the opportunity for PWD customers to share their concerns and suggestions with us about the proposed rates, and the impact that those rates may have on them. Of course, these issues need to fall within the scope of the particular proceeding before us, otherwise the result is to waste valuable resources having to address irrelevant or immaterial matters. **While we do not doubt Mr. Skiendzielewski’s sincerity, the fact remains that he has raised his concerns about PWD’s administration of the HELP loan program previously in our proceedings, and it should have been clear that rate proceedings are not a proper venue to address these concerns.** . . . This statement shows that Mr. Skiendzielewski still fails to acknowledge the limits of our jurisdiction. We do not have subject-matter jurisdiction over the Department, in the manner that the Public Utility Commission has over the rates and service of jurisdictional utilities. It is not correct that the Rate Board “review[s] facts and information that impact water rates” without limitation. Our jurisdiction is limited to the authority to “fix and regulate rates” before us in proceedings to set rates prospectively. See, Philadelphia Code § 13-101(3). We welcome Mr. Skiendzielewski’s participation in future rate proceedings; **we reiterate, however, that we will not permit him to bring up issues that he has repeatedly been told are beyond our jurisdiction.**

\* \* \*

**In addition, as noted above, the Rate Board does not have jurisdiction to examine how PWD administers its HELP loan program, regardless of any allegations of improper discounting. The sole issues in this proceeding are the rates and charges proposed for FY 2022 and 2023 as contained in the Advance and Final Notices, and in the Proposed Partial Settlement Agreement. The Rate Board expressly recognized the limits of our jurisdiction to examine the operation of**

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<sup>150</sup> In the [2018 Rate Proceeding Hearing Officer Report](#) at 111, the Hearing Officer stated “Mr. Skiendzielewski was not able to support requests for what would have been a fishing expedition of discovery concerning Department handling of HELP loans for lateral repairs, evidently his primary concern. He was not able to marshal a presentation that related his own situation to that of ratepayers generally, nor to revenue requirements analysis in particular.”

**the Department’s programs** in our 2018 Rate Determination at 9: “As set forth more fully below, the Board recognizes its limitations with respect to service issues as opposed to rate issues.”

Most recently, in the [May 1, 2023 Order](#), I tried to make clear to Mr. Skiendzielewski what the lack of jurisdiction on the part of the Rate Board means in terms of being able to address his concerns:

The Rate Board has no jurisdiction over the service provided by PWD – this means that **THERE IS NO ACTION THE RATE BOARD CAN TAKE** to address Mr. Skiendzielewski’s concerns about the excavations undertaken by PWD (or its contractors) or the administration of the HELP loan program.

In its simplest terms, jurisdiction relates to the competency of a particular court or administrative body to determine controversies. To decide a controversy, the court or tribunal must have subject matter jurisdiction to decide the matter at issue. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Commwlth. 1992).

Since the Rate Board lacks jurisdiction – and therefore can take no action - over these issues, it would be a fruitless exercise and a misuse of scarce resources of time and money to allow Mr. Skiendzielewski to continually raise issues which he has been explicitly and repeatedly told are not within the Rate Board’s jurisdiction.

Since the Rate Board has already stated that “we will not permit him to bring up issues that he has repeatedly been told are beyond our jurisdiction,” the same result should occur here.

## **XII. CONCLUSION**

For the reasons stated above, I recommend that the Rate Board adopt the FY 2024 and FY 2025 revenue requirement set out in the attached Table C-1A, and direct PWD to prepare and file a tariff consistent with this Hearing Officer Report. In addition, I recommend that the Rate Board adopt the further recommendations discussed herein including but not limited to adoption of the Sequestration Stipulation, additional reporting requirements, TAP arrearage audits, and those items to be addressed in the next general proceeding such as the cost-of-service study,

recommendations concerning various elements of the residential stormwater programs, and possible implementation of a pilot text-based TAP notification and/or recertification program.

Marlane R. Chestnut  
Hearing Officer

May 30, 2023

## **APPENDIX: TABLES**

**TABLE C-1A: PROJECTED REVENUE AND REVENUE REQUIREMENTS  
BASE RATES EXCLUDING TAP-R SURCHARGE  
(in thousands of dollars)**

**Summary to Accompany the Hearing Officer Report**

Line No.	Description	2023	2024	2025			
<b>OPERATING REVENUE</b>							
1	Water Service - Existing Rates	294,038	296,093	298,680			
<b>1a</b>	<b>Water Service - Existing Rates</b>	<b>294,038</b>	<b>306,630</b>	<b>309,477</b>			
2	Wastewater Service - Existing Rates	472,292	476,637	478,997			
<b>2a</b>	<b>Wastewater Service - Existing Rates</b>	<b>472,292</b>	<b>476,637</b>	<b>478,997</b>			
3	Total Service Revenue - Existing Rates	766,330	772,731	777,677			
<b>3a</b>	<b>Total Service Revenue - Existing Rates</b>	<b>766,330</b>	<b>783,268</b>	<b>788,474</b>			
	Calc %						
	Months						
	Year	Increase	Effective				
4	FY 2023						
<b>4a</b>	<b>FY 2023</b>						
5	FY 2024	12.75%		80,412	99,154		
<b>5a</b>	<b>FY 2024</b>	<b>8.88%</b>	<b>9.794</b>	<b>56,752</b>	<b>69,996</b>		
6	FY 2025	8.80%		-	62,977		
<b>6a</b>	<b>FY 2025</b>	<b>8.10%</b>	<b>9.794</b>		<b>56,774</b>		
7	FY2026						
<b>7a</b>	<b>FY2026</b>						
8	FY2027						
<b>8a</b>	<b>FY2027</b>						
9	FY2028						
<b>9a</b>	<b>FY2028</b>						
10	Total Additional Service Revenue Required	-	80,412	162,131			
<b>10a</b>	<b>Total Additional Service Revenue Required</b>	<b>-</b>	<b>56,752</b>	<b>126,770</b>			
11	Total Water & Wastewater Service Revenue (a)	766,330	853,142	939,807			
11x	Other Income (a)						
<b>11a</b>	<b>Total Water &amp; Wastewater Service Revenue</b>	<b>766,330</b>	<b>840,019</b>	<b>915,244</b>			
11xa	Other Income (a)						
12	Other Operating Revenue	29,601	29,664	29,713			
<b>12a</b>	<b>Other Operating Revenue</b>	<b>29,601</b>	<b>29,664</b>	<b>29,713</b>			
13	Debt Reserve Fund Interest Income	-	-	-			
<b>13a</b>	<b>Debt Reserve Fund Interest Income</b>	<b>-</b>	<b>-</b>	<b>-</b>			
14	Operating Fund Interest Income	1,882	1,982	2,023			
<b>14a</b>	<b>Operating Fund Interest Income</b>	<b>1,882</b>	<b>3,803</b>	<b>4,022</b>			
15	Rate Stabilization Interest Income	1,365	1,339	1,336			
<b>15a</b>	<b>Rate Stabilization Interest Income</b>	<b>1,365</b>	<b>1,339</b>	<b>1,336</b>			
16	Total Revenues	799,178	886,128	972,880			
<b>16a</b>	<b>Total Revenues</b>	<b>799,178</b>	<b>874,826</b>	<b>950,316</b>			
<b>OPERATING EXPENSES</b>							
17	Total Operating Expenses	(564,671)	(611,326)	(654,537)			
<b>17a</b>	<b>Total Operating Expenses</b>	<b>(564,671)</b>	<b>(601,940)</b>	<b>(635,721)</b>			



**TABLE C-1A: PROJECTED REVENUE AND REVENUE REQUIREMENTS  
BASE RATES EXCLUDING TAP-R SURCHARGE  
(in thousands of dollars)**

**Summary to Accompany the Hearing Officer Report**

Line No.	Description	2023	2024	2025			
<b>NET REVENUES</b>							
18	Transfer From/(To) Rate Stabilization Fund	5,000	100	600			
<b>18a</b>	<b>Transfer From/(To) Rate Stabilization Fund</b>	<b>5,000</b>	<b>100</b>	<b>600</b>			
19	NET REVENUES AFTER OPERATIONS	239,507	274,902	318,943			
<b>19a</b>	<b>NET REVENUES AFTER OPERATIONS</b>	<b>239,507</b>	<b>272,986</b>	<b>315,195</b>			
<b>DEBT SERVICE</b>							
20	Outstanding Bonds	(187,747)	(185,847)	(183,090)			
<b>20a</b>	<b>Outstanding Bonds</b>	<b>(187,747)</b>	<b>(185,847)</b>	<b>(183,090)</b>			
21	Pennvest Parity Bonds	(10,935)	(12,031)	(16,329)			
<b>21a</b>	<b>Pennvest Parity Bonds</b>	<b>(10,935)</b>	<b>(12,031)</b>	<b>(16,329)</b>			
22	Projected Future Bonds	-	(21,083)	(53,880)			
<b>22a</b>	<b>Projected Future Bonds</b>	<b>-</b>	<b>(19,167)</b>	<b>(50,132)</b>			
23	Commercial Paper	(900)	(900)	(900)			
<b>23a</b>	<b>Commercial Paper</b>	<b>(900)</b>	<b>(900)</b>	<b>(900)</b>			
24	WIFIA		(17)	(956)			
<b>24a</b>	<b>WIFIA</b>		<b>(17)</b>	<b>(956)</b>			
25	Total Senior Debt Service	(199,582)	(219,878)	(255,154)			
<b>25a</b>	<b>Total Senior Debt Service</b>	<b>(199,582)</b>	<b>(217,961)</b>	<b>(251,406)</b>			
26	TOTAL SENIOR DEBT SERVICE COVERAGE (L19/L25)	1.20	1.25	1.25			
<b>26a</b>	<b>TOTAL SENIOR DEBT SERVICE COVERAGE (L19a/L25a)</b>	<b>1.20</b>	<b>1.25</b>	<b>1.25</b>			
27	Subordinate Debt Service	-	-	-			
<b>27a</b>	<b>Subordinate Debt Service</b>	<b>-</b>	<b>-</b>	<b>-</b>			
28	Transfer to Escrow	-	-	-			
<b>28a</b>	<b>Transfer to Escrow</b>	<b>-</b>	<b>-</b>	<b>-</b>			
29	Total Debt Service on Bonds	(199,582)	(219,878)	(255,154)			
<b>29a</b>	<b>Total Debt Service on Bonds</b>	<b>(199,582)</b>	<b>(217,961)</b>	<b>(251,406)</b>			
30	CAPITAL ACCOUNT DEPOSIT	(23,383)	(24,295)	(25,242)			
<b>30a</b>	<b>CAPITAL ACCOUNT DEPOSIT</b>	<b>(23,383)</b>	<b>(24,295)</b>	<b>(25,242)</b>			
31	TOTAL COVERAGE (L19/(L25+L27+L30))	1.07	1.13	1.14			
<b>31a</b>	<b>TOTAL COVERAGE (L19a/(L25a+L27a+L30a))</b>	<b>1.07</b>	<b>1.13</b>	<b>1.14</b>			

**TABLE C-1A: PROJECTED REVENUE AND REVENUE REQUIREMENTS  
BASE RATES EXCLUDING TAP-R SURCHARGE  
(in thousands of dollars)**

**Summary to Accompany the Hearing Officer Report**

Line No.	Description	2023	2024	2025			
<b>RESIDUAL FUND</b>							
32	Beginning of Year Balance	16,102	15,095	15,079			
<b>32a</b>	<b>Beginning of Year Balance</b>	<b>16,102</b>	<b>15,095</b>	<b>15,079</b>			
33	Interest Income	155	150	150			
33x	Plus:						
<b>33a</b>	<b>Interest Income</b>	<b>155</b>	<b>150</b>	<b>150</b>			
<b>33ax</b>	<b>Plus:</b>						
34	End of Year Revenue Fund Balance	16,542	30,729	38,547			
<b>34a</b>	<b>End of Year Revenue Fund Balance</b>	<b>16,542</b>	<b>30,729</b>	<b>38,547</b>			
<b>34x</b>	<b>Additional Rev Req Needed</b>	<b>0</b>	<b>0</b>	<b>(1)</b>			
35	Deposit for Transfer to City General Fund (b)	1,945	1,999	2,026			
35x	Less:						
<b>35a</b>	<b>Deposit for Transfer to City General Fund (b)</b>	<b>1,945</b>	<b>1,999</b>	<b>2,026</b>			
<b>35ax</b>	<b>Less:</b>						
36	Transfer to Construction Fund	(16,600)	(29,800)	(34,400)			
<b>36a</b>	<b>Transfer to Construction Fund</b>	<b>(16,600)</b>	<b>(29,800)</b>	<b>(34,400)</b>			
37	Transfer to City General Fund	(1,945)	(1,999)	(2,026)			
<b>37a</b>	<b>Transfer to City General Fund</b>	<b>(1,945)</b>	<b>(1,999)</b>	<b>(2,026)</b>			
38	Transfer to Debt Service Reserve Fund	(1,105)	(1,096)	(4,298)			
<b>38a</b>	<b>Transfer to Debt Service Reserve Fund</b>	<b>(1,105)</b>	<b>(1,096)</b>	<b>(4,298)</b>			
39	End of Year Balance	15,095	15,079	15,078			
<b>39a</b>	<b>End of Year Balance</b>	<b>15,095</b>	<b>15,079</b>	<b>15,078</b>			
<b>RATE STABILIZATION FUND (Including the effects of TAP-R)*</b>							
40	Beginning of Year Balance (c)	138,989	137,760	133,625			
<b>40a</b>	<b>Beginning of Year Balance (c)</b>	<b>138,989</b>	<b>137,760</b>	<b>133,625</b>			
41	Deposit From/(To) Revenue Fund	(5,000)	(100)	(600)			
<b>41a</b>	<b>Deposit From/(To) Revenue Fund</b>	<b>(5,000)</b>	<b>(100)</b>	<b>(600)</b>			
42	Deposit From/(To) TAP-R	3,771	(4,036)	476			
<b>42a</b>	<b>Deposit From/(To) TAP-R</b>	<b>3,771</b>	<b>(4,036)</b>	<b>476</b>			
43	End of Year Balance	137,760	133,625	133,501			
<b>43a</b>	<b>End of Year Balance</b>	<b>137,760</b>	<b>133,625</b>	<b>133,501</b>			

\* The Deposits From/To TAP-R shown in lines 42 and 42a reflect the figures provided by PWD in its filing for this Proceeding. Based on the results of the 2023 TAP-R Proceeding, these figures and the End of Year Balances may change somewhat from the amounts shown above.