

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

In Re: Philadelphia Water Department :
Proposed FY 2026 TAP-R Rates And : **Formal Notice Filed March 19, 2026**
Charges :

**Public Advocate’s Answer to PWD Objections
And Motion to Compel Responses to Discovery Requests**

The Public Advocate submits this Answer and Motion to Compel Responses to Discovery Requests (Motion), requesting that the Hearing Officer deny the Philadelphia Water Department’s (PWD) Objections and compel PWD to respond to the Public Advocate’s Interrogatories and Requests for Production of Documents, PA-TAP-2-1 through PA-TAP-2-6, served electronically on March 25, 2026. Despite the Public Advocate’s informal conference with PWD’s counsel in advance of submitting this Motion, during which the Public Advocate explained the basis for its discovery, PWD maintains its objections. The Public Advocate respectfully requests that the Hearing Officer direct PWD to fully respond, finding that the Public Advocate’s discovery requests are clearly and directly relevant to this proceeding. The discovery requests are duplicated below, together with the basis for granting this Motion.

Updated Actual Data (January – March, 2026)

(PA-TAP-2-1)

The Public Advocate submitted its request, PA-TAP-2-1, in order to obtain the most recent three months actual data concerning TAP participation, discounts, and usage volumes, all of which are directly relevant to the projection of future TAP-R rates. The Public Advocate submitted:

PA-TAP-2-1. Please update Rate Rider Reconciliation Workbook to incorporate actual data (participants, discounts, non-tap volumes, etc.) for January, February and March 2026.

PWD objects to PA-TAP-2-1, submitting that the requested data will not be available until late April, and that it will supply the information at that time. PWD does not raise any substantive objection; rather, PWD intends to respond and produce the requested data, but objects in order to have more time to do so.¹ PWD's delay is unreasonable and unsupportable.

The Public Advocate's request, PA-TAP-2-1, was submitted on March 25, 2026, with an expectation of response within seven days. Accordingly, response was anticipated on April 1, after the conclusion of the three-month period for which data was requested. PWD provides no explanation for why such data, in whole or in part, cannot be supplied until late April. Indeed, PWD, by Advance Notice on February 17, 2026, was able to submit its TAP-R Reconciliation Workbook including data through the conclusion of December 2025. Thus, PWD's filing, submitted 47 days after December 31, 2025, contained actual data for December 2025. The Public Advocate submits that such data was finalized earlier, likely before the end of January 2026, in order for PWD to complete the other portions of the Advance Notice by its February 17, 2026 filing date.

In contrast, as of the date hereof, 64 days have transpired since the conclusion of January 2026 and 36 days have transpired since the conclusion of February 2026. Yet, PWD submits it cannot produce any data, from January, February or March, until late April, after the Public Advocate's deadline for producing testimony (April 17). PWD has not explained, much less justified, its desired delay, which unfairly impedes the Public Advocate's preparation of witness testimony. The Hearing Officer should order PWD to provide, at a minimum, January and

¹ PWD Objections at 1.

February data *immediately*. PWD has presented no explanation for why such data should be delayed until late April. March 2026 data should be required to be provided prior to the Public Advocate's due date for testimony, and in no event later than April 15, 2026.

Low Income Conservation Assistance Program Data

(PA-TAP-2-2 through PA-TAP-2-4)

There are three main assumptions utilized to determine the estimated TAP discounts for the period beginning September 1, 2026.² In order to forecast those estimated TAP discounts, PWD's methodology projects (1) the number of participants in TAP, (2) the average discount required to make a TAP participant's bill affordable, and (3) the usage or volume of water and wastewater service by TAP participants. There is no express or implied limitation on the factors PWD or the Public Advocate can consider in estimating the number of participants, the amount of discounts, or the usage volumes projected in setting TAP-R rates for a future period.

In this proceeding, and in the discovery requests set forth below, the Public Advocate seeks to understand how PWD's Low Income Conservation Assistance Program (LICAP) may affect the average usage of TAP participants. PWD responses to Public Advocate discovery indicate a significant percentage, as much as 30% of TAP participants, receive monthly bills reflecting usage that is in excess of 6 CCF per month.³ Given the average residential usage reported by PWD (4.3 CCF/month⁴), understanding TAP participant usage is essential to projecting TAP-R rates in the future. Furthermore, PWD operates LICAP to provide free conservation assistance to low income customers who participate in TAP. As discussed during

² See Proposed Reconciliation Statement at 3 of 54 (listing the following TAP Assumptions: TAP Participants, TAP Billing Loss, and TAP Billed Volumes). See also, Rate-Rider-Reconciliation-Workbook-2026, Assumptions and Inputs Tab (listing TAP Program Inputs: Average Monthly Discount, Average Monthly Usage, Estimated TAP Participants).

³ Response to PA-TAP-1-4.

⁴ Schedule PWD -2 (Proposed Reconciliation Statement at 13 of 54).

the last General Rate Proceeding, PWD undertook efforts to deliver LICAP services to more TAP participants after successfully expanding the program.⁵ PWD likewise increased the annual budget from \$750,000 to \$900,000, effective in FY 2026 (PWD's current fiscal year).⁶

In order to evaluate LICAP's impact on TAP customer usage, and determine whether or not an adjustment to usage projections should be made in this proceeding, the Public Advocate submitted the following discovery requests:

PA-TAP-2-2. Please provide the following information by Year.

- a. For each of the past three most recent fiscal years, the actual LICAP expenditures disaggregated by water conservation and leak repair assistance.
- b. For the current fiscal year (Year-to-date), the budgeted and actual LICAP expenditures disaggregated by water conservation and leak repair assistance.

PA-TAP-2-3. Please provide the total actual LICAP FY 2026 expense disaggregated by water conservation and leak repair assistance components.

PA-TAP-2-4. Please provide the budgeted LICAP expense for FY 2026 and FY 2027 disaggregated by water conservation and leak repair assistance components.

PWD objects to PA-TAP-2-2 through PA-TAP-2-4 based on its incorrect assertion that LICAP data is not relevant to the TAP-R rates.⁷ PWD mistakenly attributes to the Public Advocate the motivation to modify the TAP-R rider and/or the LICAP in this proceeding.⁸ However, as discussed above, the Public Advocate's intention is to determine whether or not LICAP services have historically reduced TAP participant usage in order to evaluate whether the

⁵ 2025 General Rate Proceeding, PWD St. 3R at 17-18

⁶ 2025 General Rate Proceeding, PA-VIII-6; PA-VIII-8.

⁷ PWD Objections at 2.

⁸ PWD Objections at 2-3.

increased budget for LICAP, being expended in the current fiscal year, warrants an adjustment to estimated future usage used in forecasting TAP-R rates and charges.

In rate proceedings before the Philadelphia Water, Sewer and Storm Water Rate Board (Board), the conduct of discovery is governed by Board regulations. Pursuant thereto, the Hearing Officer is instructed to employ procedural standards analogous to those utilized in utility ratemaking proceedings at the Pennsylvania Public Utility Commission (PUC).⁹ Although the Board's regulations permit additional flexibility in TAP-R proceedings, they nonetheless preserve the rights of participants to receive and exchange nonprivileged and relevant information concerning the calculation of the proposed TAP-R.¹⁰

In Pennsylvania utility rate proceedings, such as this one, a party is permitted to seek discovery of such matters as may be relevant to the subject matter, so long as they are not privileged, even though such evidence may be inadmissible.¹¹ PWD does not dispute this applicable standard.¹² There must be some connection between the information sought and the action itself before it becomes discoverable. The Public Advocate's request is directly related to PWD's rate filing, as that filing includes an assumption regarding the amount of TAP participant usage that should be forecast in setting TAP-R rates effective September 1, 2026. Indeed, usage is one of three main assumptions utilized in forecasting TAP-R expenses recovered through the rate rider. In order to assess PWD's estimate, and prepare alternative usage estimates, if desired, the Public Advocate seeks to gain better understanding of how PWD has, in operating its LICAP program, impacted TAP participant usage. Given PWD's increased investment in LICAP

⁹ Board reg. §II.B.5(b)(5).

¹⁰ Board reg. §II.C.2(b).

¹¹ 52 Pa. Code §5.321(c).

¹² PWD Objections at 3 (identifying the need for requests to be "reasonably calculated to lead to the discovery of admissible evidence.")

services in the current fiscal year, the Public Advocate submits that its discovery is relevant, appropriate, and narrowly tailored to enable it to conduct its required analysis in this proceeding.

TAP Participant Monthly Usage

(PA-TAP-2-5 through PA-TAP-2-6)

As discussed above, TAP participant usage is one of three core assumptions that must be developed in order to project the discounts provided to TAP participants in a future year and subject to recovery through the TAP-R rate rider. As set forth below, the Public Advocate seeks historical information regarding TAP participant usage in connection with, and as a necessary component of, its assessment of the potential impact that LICAP services may be expected to have on future TAP expenses. Accordingly, for the same reasons discussed above, PWD's objections should be denied and the Hearing Officer should order PWD to provide the requested data.

In order to further understand TAP participant usage, and to evaluate how PWD's investment in conservation assistance for TAP customers may be expected to impact future usage, the Public Advocate submitted the following discovery requests:

PA-TAP-2-5. For the three most recent fiscal years, please provide the following:

- a. Please provide the monthly usage for TAP customers broken down by the categories shown in PA-TAP-1-4.
- b. Please provide the monthly number of TAP customers broken down by the categories shown in PA-TAP-1-4.

PA-TAP-2-6. For the three most recent fiscal years,

- a. Please provide the number of high usage TAP customers that were referred for conservation outreach based on "high usage."
- b. Please provide the number of high usage TAP customers that were referred for conservation outreach and whose high usage was determined to be caused by leaks.

- c. Please provide the number of high usage TAP customers that were referred for conservation outreach and whose high usage was determined to be caused by something other than leaks.
- d. For high usage TAP customers that were referred for conservation outreach, and whose high usage was determined to be caused by something other than leaks, please identify the strategies and/or solutions that are provided to reduce usage and encourage conservation.

PWD objects to these discovery requests, arguing that they are not reasonably calculated to lead to the discovery of admissible evidence. PWD asserts that the information sought by the Public Advocate will not assist in determining TAP-R rates and charges to be effective September 1, 2026. PWD also contends that no nexus exists between these requests and the assumptions utilized in determining TAP-R rates.¹³ Yet, the nexus is abundantly clear: TAP participant usage is a core assumption utilized in projecting TAP expenses, and so efforts to reduce such usage should be considered in making meaningful projections. In other words, the Public Advocate’s requests are designed to obtain reasonable, historical TAP participant usage information to identify the extent to which it has or may be curtailed through conservation assistance. Importantly, City Council, in adopting the ordinance mandating the establishment of TAP was clearly cognizant of the nexus between conservation assistance and program costs, requiring TAP participants to “accept and reasonably maintain any free conservation measures offered to the customer by the Water Department.”¹⁴ Accordingly, TAP participant usage information is clearly relevant and subject to discovery in this proceeding.

PWD submits that, without waiving its objection, it will provide responses to PA-TAP-2-5 and PA-TAP-2-6(a) and (d) “as they relate to the time period at issue in this proceeding.”¹⁵ It

¹³ PWD Objections at 3.

¹⁴ Phila. Code §19-1605(3)(q).

¹⁵ PWD Objections at 3.

is unclear what period PWD proposes, however the Public Advocate nonetheless maintains that three fiscal years is an appropriately limited period of time. Primarily, it is important to recognize that, although participant usage may fluctuate, the objectives of conservation assistance services, such as those provided by LICAP, are to achieve long-term savings by reducing water usage. Accordingly, to predict the potential impacts of increased LICAP expenditures on TAP participant usage, a reasonable period (e.g., three fiscal years) is appropriate and necessary.

* * * * *

WHEREFORE, the Public Advocate requests the Hearing Officer issue an order denying PWD's Objections and granting the Public Advocate's Motion to Compel PWD to provide complete responses to PA-TAP-2-1 through PA-TAP-2-6 forthwith.

Respectfully submitted,

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