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

In the Matter of the Philadelphia Water Department's Proposed Tiered Assistance Program Rate Rider Surcharge Rates	**:**	**TAP-R Rates to Become Effective September 1, 2026**

PUBLIC ADVOCATE RESPONSE
TO PHILADELPHIA WATER DEPARTMENT MOTION TO COMPEL RESPONSES
TO PWD-TAP-I-8, I-10, I-11 and I-12

On April 23, 2026, the Public Advocate issued Objections to Philadelphia Water Department (PWD) Information Requests, Set I, Nos. 8, 10, 11, and 12[1] (Interrogatories) which were submitted via email on April 20, 2026. PWD submitted its Response and Motion to Compel (Motion) on April 27, 2026. PWD's Motion was partially mooted by the Public Advocate's withdrawal of its Objection to PWD-TAP-I-8 and subsequent response to that Interrogatory.[2] The Public Advocate submits that, as discussed in its Objections, PWD-TAP-I-10 and I-11 are irrelevant, seeking to engage the Public Advocate's witness in speculation regarding hypothetical scenarios, and impermissibly attempt to shift the analysis of PWD's proposed TAP-R rates toward post-hac justifications which were not the basis for, and, indeed, not even mentioned in, PWD's filing. Importantly, not only is such evidence impermissible under analogous and applicable authority of the Pennsylvania Public Utility Commission (PUC), but it would circumvent the binding requirements of the Philadelphia Code obligating PWD to include the data supporting its rate request in its filing.

The Public Advocate further submits that, as discussed in its Objections, PWD-TAP-I-12 is irrelevant and a response would unduly burden the Public Advocate without the prospect of

[1] Referred to herein as PWD-TAP-I-8, I-10, I-11 and I-12.
[2] As a consequence, the Public Advocate does not respond to PWD's Motion to the extent it addresses PWD-TAP-I-8 and the withdrawn Objection thereto.

producing probative information to inform the Board in setting reasonably scientific TAP-R rates for the next rate period. Since the Public Advocate objected to PWD-TAP-I-12 on the basis of irrelevance and undue burden, the Public Advocate is disregarding PWD's discussion of PWD-TAP-I-12 in the context of the prohibition on introduction of evidence inconsistent with, or that should have been included in, PWD's case-in-chief.[3]

The Hearing Officer should deny the Motion and sustain the Public Advocate's remaining Objections.

PWD-TAP-I-10, I-11

The Hearing Officer should deny PWD's Motion to compel the Public Advocate to respond to PWD-TAP-I-10 and I-11 for the reasons set forth in the Public Advocate's Objections (incorporated herein) and this Response. The Public Advocate notes that PWD does not accept the Public Advocate's proposed stipulations to PWD-TAP-I-10 and I-11.[4] The Public Advocate hereby withdraws the proposed stipulations.

The Public Advocate objected to PWD-TAP-I-10 and PWD-TAP-I-11 (both questions concerning proposed City Council legislation regarding TAP) as irrelevant, having not been the subject of discussion in PWD's filing, discovery responses, or the Public Advocate's testimony. Furthermore, as discussed below, the proposed legislation's irrelevance is proven by the very language of the ordinance it amends. Indeed, the proposed legislation cannot impact the TAP-R rates in this proceeding because further Board action would be required for its implementation, if it is ultimately passed.[5] Moreover, the Public Advocate maintains that the potential impact of

[3] See Motion at 11-12.
[4] Motion at 1.
[5] PWD's Motion references discussion of the proposed legislation occurring on April 17, 2026. Motion at 7. PWD omits that this discussion included not just PWD and its counsel, but also the proposed legislation's sponsor (Councilmember Gauthier) and a CLS representative that expressly acknowledged the necessity of further Board action to determine how to calculate TAP bills (affordable percentage of income) for newly-eligible customers.

proposed legislation is purely speculative. PWD's reliance on the proposed legislation to support PWD's proposed TAP-R rates directly contradicts its case-in-chief: namely, its assertion that its proposed TAP-R rates are based on the most recent actual data available.[6] In its Motion, PWD admits the pending legislation did not form any part of its justification for the proposed TAP-R rates.[7] Yet, after reviewing the Public Advocate's testimony, PWD now seeks to introduce this new evidence to show its proposal is "more reasonable and reliable than the [Public Advocate's] projection."[8] PWD's Motion must be denied.

PWD moves to compel the Public Advocate's witness to respond to the hypothetical possibility that City Council legislation "*could* significantly increase TAP participation."[9] Accordingly, by its own Motion, PWD acknowledges its desire to engage the Public Advocate in speculation inappropriate for discovery in this proceeding. PWD attempts to assert its discovery is relevant on the theory (disproven below) that, if passed, the legislation could directly impact TAP participation levels during the rate period at issue in this proceeding.[10] Thus, although the legislation did not influence PWD's or the Public Advocate's proposed TAP-R rates, PWD is belatedly seeking to rely upon the proposed legislation to justify its proposal. PWD's desired tactic is precisely that which PUC regulations prohibits – introducing evidence in rebuttal that is not in PWD's case-in-chief or contradicts its case-in-chief.[11]

PWD presents the proposed legislation as though its passage and impact are imminent. The facts (as well as the law, discussed below) do not support this conclusion. As a reminder,

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PWD disregards the content of that discussion, attempting instead to confuse the effective date of the proposed ordinance with the implementation of changes in TAP. Motion at 7. They are not the same, as discussed below.

[6] PA-TAP I-2.

[7] Motion at 7.

[8] Motion at 8.

[9] Motion at 5.

[10] Motion at 6 (emphasis added).

[11] See Objections at 2-3.

Bill No. 251021 was introduced on November 20, 2025, referred to committee, and has not moved since.[12] No hearing on Bill No. 251021 has occurred or is currently scheduled. The potential passage of Bill No. 251021 will not even be considered by City Council until after the proposed legislation advances from committee. As the Public Advocate has previously expressed, "neither PWD nor the Public Advocate can predict the impact of proposed City Council legislation that may or may not become law and has not even been the subject of Committee hearing, much less potential amendments if advanced."[13]

PWD complains that granting the Public Advocate's Objection would be unreasonable and unfair but fails to acknowledge that PWD had more than ample opportunity to consider the proposed legislation and develop projections of TAP-R participation PWD believes respond to it. PWD did not do so and, in fact, explicitly acknowledges the proposed legislation is not the basis for PWD's proposed TAP-R rates.[14] Allowing PWD to create a post-hac justification for its proposed TAP-R rates through discovery of the Public Advocate's witness at this stage of the proceeding would violate the Public Advocate's due process rights. Furthermore, allowing such evidence as support for PWD's proposed TAP-R rates would directly contradict PWD's filing which, pursuant to the Philadelphia Code, is required to contain the "financial, engineering and other data upon which the proposed water, sewer and storm water rates and charges are based."[15] This statutory requirement for PWD to provide supporting data for its rate requests in its filing is meant to encourage careful and thorough review in the short period authorized by City Council

[12] Objections at 5.
[13] Objections at 5.
[14] Motion at 7 ("the proposed legislation was not the Department's justification for growth in TAP Participation [sic].").
[15] Phila. Code §13-101(7).

ordinance, and prohibits PWD from delaying disclosure of, or changing the basis for, its rate request.

Furthermore, as a matter of law, the proposed legislation, standing alone, cannot have an impact on TAP participation. As an amendment to existing ordinance, proposed changes to income-based eligibility cannot be read in isolation but must be read as part of the entire statutory scheme authorizing TAP. The TAP income eligibility provision of the Philadelphia Code, as it would be amended by the proposed legislation, reads as follows:[16]

> (a) Monthly IWRAP bills shall be affordable for low-income households, based on a percentage of the household's income and a schedule of different percentage rates for (i) households with income up to fifty percent (50%) of FPL, (ii) households with income from fifty percent (50%) to one hundred percent (100%) of FPL, and (iii) households with income from one hundred percent (100%) to [one hundred fifty] *two hundred percent* ([150]*200*%) of FPL, and shall be charged in lieu of the Department's service, usage, and stormwater charges. That goal shall be achieved through a discount on generally-applicable residential rates or other bill calculation mechanism based upon each Customer's actual income and, if practicable, historical usage, in a manner consistent with applicable federal law. **The percentage of income limitations to be imposed at each level by the first sentence shall be determined by the Water, Sewer and Storm Water Rate Board**, which also shall have discretion to establish more, but not fewer, Low-Income tiers. Bills issued pursuant to this IWRAP program shall be deemed to comply with Philadelphia Code subsection 13-101(4)(d). The Department shall have discretion to offer more favorable terms than the standard rates upon an individualized finding of Special Hardship. Historical usage shall not include significant usage attributable to leaks or activities not customary to a residential setting.[17]

A Board determination of the percentage of income limitations to be imposed in calculating TAP bills is an absolute precondition to any potential increase in participation that may be associated with the proposed legislation's effectiveness, even if it were to be unanimously passed

[16] Bracketed language would be omitted; italicized language would be added.
[17] Proposed Bill No. 251021, available at: https://phila.legistar.com/LegislationDetail.aspx?ID=7759063&GUID=8500C552-5039-4E32-BB87-81EC25E535DC&Options=ID|Text|&Search=251021 (emphasis added).

tomorrow.[18] In such event, the Board would be required to oversee further proceedings, consistent with its regulations, during which the participants would have ample opportunity to advance their views on the applicable percentage of income to be used for TAP bills for customers with household incomes between 151-200% FPL, as well as any cost-recovery modifications associated with such changes. There is simply no scenario in which projections based on the proposed legislation can assist the Board in assessing PWD or the Public Advocate's positions at this time, nor in this narrow proceeding.

For the reasons set forth above, and the Public Advocate's Objections, the Hearing Officer should deny PWD's Motion and sustain the Objections.

PWD-TAP-I-12

The Hearing Officer should deny PWD's Motion to compel the Public Advocate to respond to PWD-TAP-I-12 for the reasons set forth in the Public Advocate's Objections (incorporated herein) and this Response. The Public Advocate notes that PWD imposed conditions upon its acceptance of the Public Advocate's proposed stipulation to PWD-TAP-I-12 (withdrawal of the Public Advocate's Objection or a Hearing Officer order overruling the Public Advocate Objection).[19] The Public Advocate will not withdraw its Objection. Rather, it hereby withdraws the proposed stipulation.

The Public Advocate objected to PWD-TAP-I-12 (requesting the Public Advocate estimate the "maximum number" of eligible TAP participants in the following groupings: 0-150% FPL, 151-200% FPL, and 201-250% FPL) on the basis that an estimate of the maximum

[18] Pursuant to Pennsylvania's Statutory Construction Act, the effectiveness of a change in income eligibility must be read *in pari materia* with the Board's obligation to determine affordability thresholds. 1 Pa. C.S. §1932. Since the statute does not supply affordability thresholds for customers between 151-200% FPL, the legislative intent expressed is clearly for the Board to make this determination. 1 Pa. C.S. §1922. Pennsylvania's rules of statutory construction apply equally to Philadelphia ordinances. See City of Philadelphia v. Litvin, 235 A.2d 157, 159 (1967) ("In construing a city ordinance, the same rules are applied as those which govern the construction of statutes.").
[19] Motion at 1.

number of eligible participants is irrelevant because TAP-R rates are based upon actual participation and projections of future participation. Even if the Public Advocate were to unnecessarily expend the significant resources needed to meaningfully estimate the maximum number of households who could participate in TAP, this information would not assist the Board in making a reasonable projection of the number of households who will actually participate in TAP. PWD falsely suggests that PWD-TAP-I-12 asks for the basis and rationale for the Public Advocate's witness's opinions,[20] when in fact it asks for the Public Advocate to undertake a significant, multi-faceted analysis of multiple potential data sources, some of which are exclusively available to PWD. Ultimately, PWD's Motion fails to directly respond to the Public Advocate's Objection, making no assertion that maximum TAP enrollment is relevant or that a meaningful estimate is possible.

It bears mention that PWD's Motion is predicated upon a significant falsehood. Specifically, PWD repeatedly asserts that the Public Advocate's methodology projects "zero growth" in TAP participation.[21] As set forth in the Public Advocate's response to PWD-TAP-I-9, the Public Advocate's methodology projects average participation that is 2,890 households higher than the average enrollment level over the most recent 12 months. Response to PWD's request would not help PWD understand the Public Advocate's projection of "zero growth" because that is not what the Public Advocate has projected.

PWD's Motion inadequately addresses the substance of the Public Advocate's Objection.[22] Contrary to PWD's Motion, PWD-TAP-I-12 does not, in any way, illuminate the

[20] Motion at 10.
[21] See Public Advocate response to PWD-TAP-I-9 (the Public Advocate's methodology projects average participation that is 2,890 households higher than the average 12-month enrollment level available based on PWD actual data).
[22] Confusingly, PWD's Motion, in responding to the Public Advocate's Objection to PWD-TAP-I-12 (estimated maximum TAP participation), suggests that proposed legislation is somehow relevant to this request. Motion at 10. PWD-TAP-I-12's requested estimate of maximum enrollment makes no mention of proposed legislation.

data Mr. Morgan relied upon in calculating his projected TAP-R rates. PWD gestures toward the Public Advocate's projections, suggesting that having come up with a different number than PWD, the Public Advocate can be required to conduct a new analysis without regard to the associated burden the Public Advocate has articulated.[23] Although such analysis would be irrelevant, the Public Advocate's Objection has laid out precisely why such study would be unduly burdensome and is not simply a census-based determination, as PWD erroneously claims.[24] PWD fails to recognize that not all census "households" are individually metered, single-family home residents who are likely to qualify to be customers (a primary obstacle to TAP),[25] nor are all tenant "households" capable of being customers even if they are individually-metered since PWD regulations authorize landlords to deny tenants customer status.[26] Furthermore, PWD fails to acknowledge the limitations on participation in its own program, which requires a finding of Special Hardship for customers with income in excess of 150% FPL,[27] and then only allows participation if TAP (set at 4% of household income[28]) produces the most affordable bill.[29] PWD-TAP-I-12 asks far more than for "the Advocate to opine on estimates of its own constituents."[30]

[23] Motion at 9-10.
[24] Motion at 9.
[25] Indeed, "Residential Rental Properties" may have as many as four dwelling units, meaning a single PWD residentially metered customer could comprise four census "households." See PWD Regulation 101.1(a)(1), available at: https://water.phila.gov/wp-content/uploads/files/pwd-regulations-chapter-1.pdf.
[26] See PWD Regulation 100.2(d) (requiring notice to owner; opportunity for owner to object to tenant customer application), available at: https://water.phila.gov/wp-content/uploads/files/pwd-regulations-chapter-1.pdf.
[27] See PWD Regulation 206.2(a)(2), available at: https://water.phila.gov/wp-content/uploads/files/pwd-regulations-chapter-2.pdf.
[28] See PWD Regulation 206.4(b).
[29] Phila. Code §19-1605(a)(3)(c) ("Prior to enrolling a customer in IWRAP and upon each recertification of eligibility, the Department shall determine whether, on the basis of such customer's monthly bills, the customer would receive more affordable bills under another available payment agreement or rate discount.")
[30] The Public Advocate represents the shared interests of all residential and small commercial customers served by PWD and does not have independent access to customer data in PWD's possession. More importantly, in this proceeding, the relevant portion of the Public Advocate's constituents whose interests are affected are those who are not in TAP.

The Public Advocate maintains that a response to PWD-TAP-I-12 would not assist the Board in determining TAP-R rates on a reasonably scientific basis for the next rate period since maximum Participation estimates are simply irrelevant. Requiring the Public Advocate to respond would require diverting the limited resources available to represent the small user customers away from the core concerns the Public Advocate aims to address and would be unreasonably burdensome, causing unnecessary time and expense without producing information of probative value. The Hearing Officer should deny PWD's Motion and sustain the Public Advocate's Objections.

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For all of the foregoing reasons, the Public Advocate respectfully requests that the Hearing Officer deny PWD's Motion and sustain the Public Advocate's Objections, to the extent the same are not moot at this time.

Respectfully submitted,

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