

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

In the Matter of the Philadelphia :
Water Department's Proposed : **2026 TAP-R Reconciliation**
Tiered Assistance Program Rate : **Proceeding**
Rider Surcharge Rates :

MAIN BRIEF OF THE PUBLIC ADVOCATE

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May 22, 2026

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I. INTRODUCTION, BACKGROUND AND PROCEDURAL HISTORY

The Philadelphia Water Department (PWD), on February 17, 2026, filed its Advance Notice of Proposed Changes in Rates and Charges for the Annual Adjustment of Tiered Assistance Program (TAP) Rate Rider Surcharge Rates (TAP-R), requesting the Philadelphia Water, Sewer and Storm Water Rate Board (Board), approve increased TAP-R rates effective September 1, 2026. On March 19, 2026, PWD filed its Formal Notice, incorporating no substantive changes to its Advance Notice. Community Legal Services, Inc. (CLS), was appointed to serve as Public Advocate in this proceeding, representing the shared interests of residential and small commercial customers (small users) of PWD.

Hearing Officer Kathryn Sophy presided over the April 2, 2026, prehearing conference and issued the Prehearing Conference Order on April 6, 2026, establishing the procedural review schedule for this proceeding, rules for discovery and objections, and ordering that hearings be held on a hybrid (in-person and virtual) basis. Lance Haver¹ filed a motion, treated as an appeal to the Board, requesting reversal of the Hearing Officer's determination to conduct hearings in hybrid format. PWD and the Public Advocate filed responses explaining why Haver's request should be denied. The Public Input Hearing was held on May 7, 2026, in hybrid format, and the Technical Hearing was held on May 14, 2026, in hybrid format. The Board denied Haver's request at its May 13, 2026 public meeting.

Although well-attended, the Public Input Hearing elicited testimony from one member of the public, with others apparently attending to hear more information.² Ten members of the

¹ Although Haver has been treated as a participant in this proceeding, it does not appear that Haver provided notice of his desire to participate pursuant to Section I(m) of the Board's Regulations.

² Six people signed up to give public input statements but did not ultimately do so.

public submitted written comments via email to the Board,³ several expressing gratitude and support for TAP, others expressing opposition to higher rates and charges, and some expressing concerns about data centers and PWD infrastructure.

The Public Advocate commenced discovery regarding PWD's proposed TAP-R rates on February 18, 2026. A discovery dispute arose with respect to several requests made by the Public Advocate, all of which were resolved by the Hearing Officer's April 13, 2026, order. PLUG submitted discovery requests on April 8, 2026, to which PWD objected, in part, but ultimately provided responses (and supplemental responses) following discussions between the parties. Haver commenced discovery on April 23, 2026, submitting virtually identical discovery requests to PWD and the Public Advocate, to which both objected. The Public Advocate supplied responsive information, while maintaining its objections.⁴

The Public Advocate filed the testimony of Lafayette K. Morgan, Jr., regarding PWD's proposed TAP-R rates on April 17, 2026. PWD propounded several discovery requests regarding Mr. Morgan's testimony on April 20, 2026. A discovery dispute arose with respect to several requests made by PWD, all of which were resolved by the Hearing Officer's May 1, 2026, order. PWD filed its rebuttal testimony, PWD Rebuttal Statement 1, on April 30, 2026.

PWD and Public Advocate witnesses were examined on the record at the Technical Hearing, producing a 121-page transcript. On May 18, 2026, PWD supplied a response to two Transcript Requests that remained open at the close of the hearing. Based upon this discussion, the Public Advocate submits that the extensive record of this proceeding is adequate for the Board's consideration of the two proposals regarding TAP-R rates that have been set forth:

³ This includes two statements submitted directly to the Public Advocate and shared with the Board (with permission from the customer).

⁴ See Section III.f., infra.

PWD’s proposed combined TAP-R of \$13.55/MCF and the Public Advocate’s proposed combined TAP-R of \$11.97/MCF. As set forth below, the Board should approve the Public Advocate’s TAP-R rates for the rate period beginning September 1, 2026.

II. OVERVIEW OF TAP-R RATES

As set forth in the 2018 Rate Determination of the Board,⁵ the TAP-R rider was established to track revenue losses resulting from application of the TAP rate and permit annual reconciliation of such costs in order to prevent either over or under-recovery.⁶ As explained by Mr. Morgan,⁷ TAP-R rates are determined by the following equation:

$$\text{TAP-R} = \frac{(\text{C})-(\text{E}+\text{I})}{\text{S}}$$

For purposes of this proceeding, “C” is equal to the projected number of monthly TAP participants for the 12-month period beginning September 1, 2026, multiplied by the average discount per TAP participant. “E” represents the actual discounts provided in the twelve-month period beginning September 1, 2025, minus the TAP-R revenues collected during such period. As discussed during the technical hearing, “E” attempts to adjust prior period (but not current period) billings to subtract TAP-R surcharges embedded in PWD’s calculated discounts.⁸ “I” represents the interest rate on any over- or under-recovery of TAP-R revenues reflected in the “E” factor. “S” represents the projected non-TAP customer sales volumes for the twelve-month period beginning September 1, 2026.

⁵ The 2018 Rate Determination was the subject of extensive appellate review with regard to matters that are irrelevant to the calculation of TAP-R rates. TAP-R rates have been subject to annual reconciliation pursuant to the 2018 Rate Determination since 2019.

⁶ 2018 Rate Determination at 81.

⁷ PA St. 1 at 7.

⁸ Tr. at 47-48.

TAP-R rates are adjusted annually in order to take into consideration past TAP revenues and discounts, as well as expectations for future rate periods.

III. ARGUMENT

A. PWD Proposed TAP-R Rates Are Unreasonable

As set forth in PWD's Advance Notice, PWD's proposed TAP-R rates are based on short term actual TAP participation data. PWD utilizes the months September 2025 through December 2025,⁹ to the exclusion of all other TAP participation data. It then applies a 0.25% monthly growth factor starting in January 2026 and extending for each month through the next rate period (September 1, 2026 through August 31, 2027). Utilizing these limited data points, PWD projects that all TAP participants will, on average, have 661 CF of monthly usage, require a \$62.82 monthly discount on their bills, and that average participation will be 70,318. As discussed below, these assumptions are unreasonable and not supported by the larger trend in TAP participation data.

B. PWD's Reliance On Four Months' Actual Data Is Unsupported

As discussed during the technical hearing, when the TAP-R rider formula was adopted, PWD and the Public Advocate agreed that PWD would utilize nine or ten months of actual TAP participation data, and two to three months of projected data, in projecting TAP costs for future periods.¹⁰ Indeed, PWD and the Public Advocate agreed, at that time, that using actual data over

⁹ It is important to recognize that PWD's subsequent months' actual data, provided in response to PA-TAP-2-1 (update to Advance Notice, Sch. PWD-5), was not the basis of its projected TAP-R rates, nor does it adequately capture the full annual usage trend, which demonstrates considerable seasonality, utilized by Mr. Morgan.

¹⁰ Tr. at 20-21. As set forth in the Board's 2018 Rate Determination:

PWD will use actual TAP revenues and expenses data from approximately the first 9 to 10 months of the current period, and annualized/projected revenues and expenses for the remaining months of the current period in order to estimate the full 12-month period of TAP revenue loss and surcharge revenues....

an extended period of months would provide a more reasonable foundation for projecting future TAP-R rates.

In this proceeding, as in the 2025 TAP-R proceeding, PWD has failed to propose TAP-R rates that comply with the Board-approved methodology. This is a troubling departure which the Public Advocate criticized in the 2025 TAP-R proceeding, contrasting it with prior TAP-R proceedings. For example, in the 2024 TAP-R proceeding, PWD proposed to calculate the average discount based on a twelve-month period, January 2023-December 2023, which included eight months of actual data.¹¹ In the 2023 TAP-R proceeding, PWD proposed to calculate the average discount based on an eleven-month period, January 2022-November 2022, which likewise included eight months of actual data.¹²

PWD asserts that its use of four months data is appropriate since it more accurately reflects impacts of current base rates.¹³ As discussed below, however, it also inaccurately embeds TAP-R surcharge rates in the “C” factor, artificially increasing the TAP-R surcharge. More importantly, however, PWD has not actually formulated a methodology to capture the potential impact of base rate increases on TAP-R discounts, nor has it applied such a methodology to its projections in this proceeding. Rather, as PWD admits, it has simply relied upon a truncated period of actual data, reflecting higher usage, discounts and participation data than is supported based on a longer-term view, and assumed that, by doing so, its “C” factor would be adequate. PWD has not, in fact, adjusted TAP discounts to remove TAP-R surcharges and then recalculated based on the impact of higher rates in the projection period.¹⁴

¹¹ 2024 TAP-R Advance Notice, Sch. RFC-3 at 3, available at: <https://www.phila.gov/media/20240305095150/TAP-R-Advance-Notice-2024-02-28.pdf>.

¹² 2023 TAP-R Advance Notice, Sch. RFC-3 at 3: <https://www.phila.gov/media/20230124153640/TAP-R-Reconciliation-Proceeding-Advance-Notice-2023-01-24.pdf>

¹³ PWD St. 1-R at 14.

¹⁴ Tr. at 45-46.

As the Public Advocate has previously demonstrated, reliance on a short period of water usage data has the potential to overstate actual annual water usage.¹⁵ The same is true in this case. As shown below, monthly average usage data for six of the eight months January through August is lower than PWD’s calculated average of 661 CCF based on September through December usage.

Description	January	February	March	April	May	June	July	August	September	October	November	December
TAP Program												
	Actuals (Reconciled Period)							Most Recent Period (Actuals)				
Participants (#)												
Totals	60,481	59,037	64,283	64,762	65,114	65,257	65,853	66,393	66,827	67,155	56,281	67,815
Water - Monthly Billed Water Volume (CCF)												
TAP Participants	433,104	364,141	379,057	382,353	395,758	419,696	423,997	450,076	444,157	466,827	340,206	453,729
AVERAGE MONTHLY USAGE	7.16	6.17	5.90	5.90	6.08	6.43	6.44	6.78	6.65	6.95	6.04	6.69

Relying solely on four months usage data overstates TAP participant actual historical usage. PWD has not provided any basis for disregarding average TAP participant usage, nor shown that the four months it selected for use in its Advance Notice reliably predict average usage for the 12-months beginning September 1, 2026.¹⁶ Accordingly, at a minimum, Mr. Morgan’s recommendation to utilize 12-month historical average usage warrants an adjustment to PWD’s proposed TAP-R rates.

C. “C” Factor Overstates TAP Program Costs, And Erroneously Drives Up TAP-R Rates

One reason PWD’s projections appear to indicate PWD is under-collecting, or falling behind in recovering, discounts provided to TAP participants relates to the manner in which PWD calculates the “C” factor. As discussed during the Technical Hearing, PWD’s billing system captures as the “TAP discount” the difference between the usage-based bill, including TAP-R surcharges, and the discounted TAP bill based upon household income. As a

¹⁵ See 2025 TAP-R Proceeding PA M.B. at 4-5.

¹⁶ PWD’s objection/partial response to PA-TAP-3-1 does not alter this conclusion. PWD documents increasing numbers of TAP participants with higher usage, but fails to demonstrate that *average usage* for all TAP participants is increasing. Indeed, due to IDEA prequalification efforts, average TAP participant usage was declining in the 2025 TAP-R proceeding. See 2025 TAP-R Proceeding PA M.B. at 5.

consequence, for each MCF of usage attributable to TAP participants, the current TAP-R surcharge of \$8.66 is included in the calculated discount that is used to develop the “C” factor. Through a simple demonstration, the Public Advocate showed that the embedded TAP-R charges artificially increase calculated program costs.¹⁷ Furthermore, as PWD acknowledged, increasing enrollment causes the embedded TAP-R rates to “ramp up...the factor by the number of participants.”¹⁸

Although PWD’s witness suggested that the “E” factor adjusted the TAP-R rider for the effect described above,¹⁹ that is not the case. The “E” factor adjusts recovery of *past* TAP-R surcharges based on collections experience,²⁰ leaving the artificially inflated “C” factor in full effect for the rate period. The Public Advocate submits that this erroneous practice is contributing to PWD’s perception that TAP cost recovery is falling behind, when in fact, the “C” factor is simply overstated due to the inclusion of TAP-R surcharges. PWD’s “E” factor cannot compensate for the real-world impacts of billing TAP-R rates, the majority of which are based upon the “C” factor, that overstate the cost of providing discounts to low-income TAP participants who are not responsible for payment of TAP-R rates.

PWD claimed it would take a full week to recalculate the “C” factor to exclude TAP-R surcharges because PWD wanted to reexamine billing data. However, since monthly TAP usage is reported in the Advanced Notice, and the TAP-R surcharge is usage-based, the amount of embedded TAP-R surcharges in the “C” factor can easily be calculated. For the next rate period, the Advance Notice projects 12-month TAP participant water volumes of 5,574,417 CCF.²¹

¹⁷ PA Hrg. Ex 1 at 10; Tr. at 38-45.

¹⁸ Tr. at 44-45.

¹⁹ Tr. at 46.

²⁰ Tr. at 48.

²¹ Advance Notice Sch. PWD-5 (“Next Rate Period” Total TAP Consumption, marked PDF Pages 31-33 of 54)).

Accordingly, the embedded TAP-R discounts in the “C” factor in PWD’s Advance Notice are calculated as: $[\$5.65 \text{ (water TAP-R)} + \$7.90 \text{ (wastewater TAP-R)}] * 557,441.7$.²² In total, PWD’s Advance Notice artificially inflates the “C” factor by \$7,553,335.04 of embedded TAP-R rates.

It is worth noting that PWD has, in its own model, used this exact methodology to calculate the adjustment to its “E” factor, as shown in Table 3-W and Table 3-WW of Schedule PWD-1. There, PWD multiplies TAP usage by the prior year’s TAP-R rate to determine “Total TAP-R Billed to TAP Participants.”²³ The Public Advocate reiterates the disbelief expressed at PWD’s claimed need for seven days to calculate the TAP-R rates included in the “C” factor, given PWD’s use of the same methodology described above for purposes of the “E” factor.

Although a change to the TAP-R calculation methodology is clearly warranted, there is no specific proposal from PWD or the Public Advocate to modify the TAP-R in this proceeding.²⁴ Nonetheless, the Board should not ignore that the “C” factor, developed based upon PWD data, erroneously attributes TAP-R rates to the usage of TAP participants. In setting future TAP-R rates in this proceeding, the Board should weigh this practice against PWD’s projected TAP-R rates and, instead, approve the lower TAP-R rates projected by the Public Advocate’s witness.

D. Average Participation: PWD’s Growth Factor Is Unsupported

As discussed during the Technical Hearing, PWD’s projected 0.25% monthly growth factor in TAP participation is used to escalate the number of each month’s TAP bills starting

²² Total projected usage is divided by 10 to convert to MCF.

²³ Advance Notice Sch. PWD-1 (marked PDF Page 7 of 54).

²⁴ It appears likely that a modification to the C factor to remove embedded TAP-R rates would warrant simplification of the E factor (deferred one year to account for recovery associated with a revised C factor).

January 2026. For purposes of the TAP-R rates, this means that PWD is projecting starting the rate period with 69,356 TAP participants and ending the rate period with 71,110 TAP participants. On average, PWD submits that these projections would result in 70,318 participants in the next rate period (averaging the results of its monthly projected increases).²⁵ PWD's projections are overstated and inconsistent with its methodology of calculating average discounts based on the four months from September 2025 through December 2025.

TAP participation, measured in the number of bills issued in each month, is not static, nor is it linear.²⁶ Rather, TAP participation fluctuates from month to month, experiencing gains in some months and reductions in others. Indeed, in February and November, TAP participation routinely decreases. While PWD appears to submit that this is due solely to the number of billing days in the applicable month, this cannot be correct. As discussed during the technical hearing, TAP participation dropped by almost 9,000 in November 2025. Yet, contrary to PWD's expectation, October and December 2025 TAP participation rates do not reflect accelerated or deferred billing adequate to support a conclusion that TAP enrollment did not actually decline. Indeed, from September 2025 to December 2025, TAP expanded by fewer than a thousand total TAP participants, meaning there was an actual, substantial decrease in TAP participation in November that is not accounted for in prior or subsequent months' billings.²⁷ PWD's failure to account for downward fluctuation in TAP participation clearly overstates average TAP participation for the next rate period. Accordingly, a projection of 0.25% growth in each month starting January 2026 is not supportable.

²⁵ See, e.g., Tr. at 14-15 (confirming that projected monthly escalated participation levels are averaged for purposes of the "C" factor).

²⁶ Tr. at 32.

²⁷ Tr. at 17-18; see Advance Notice, Sch. PWD-5 (reporting 66,827 participants in September and 67,815 in December, a difference of 988).

Furthermore, as discussed above, PWD uses the four months from September through December to calculate projected average discounts used in its “C” factor. Yet, were PWD to use average participation during this period for projection purposes, it would derive a starting point of 64,520 participants. Rather than using the same, consistent methodology, at least as a starting point, PWD picks and chooses which methodology to use – selecting four months billings to calculate discounts and relying upon other factors, including *subjective judgment*, to project a 0.25% monthly growth rate.²⁸ Remarkably, although the Advance Notice indicates PWD’s position is premised on the continued facilitated enrollment process utilizing information from the City’s Office of Integrated Data for Evidence and Action (IDEA),²⁹ PWD’s position is not based upon any projections supplied by that office.³⁰

The Public Advocate submits that PWD’s growth factor is not reflective of recent participation trends, omits downward fluctuation in TAP participation, and thereby overstates likely TAP participation levels. As discussed more fully below, the Public Advocate’s projected average, which takes into account historic growth, while also relying on known data, is more reasonable and appropriate for estimating future TAP-R participation.

E. The Public Advocate’s TAP-R Projections Are Sound, Reliable, And Based On Known And Measurable Data

In this proceeding, the only issues of disagreement between PWD and the Public Advocate pertain to the assumptions to be used in determining the “C” factor³¹ – namely, average monthly discounts, average usage, and projected TAP participation utilized to determine total

²⁸ Tr. at 26-27, referencing PA-TAP-4-1.

²⁹ Advance Notice, Sch. PWD-4 (marked PDF Page 21 of 54).

³⁰ Tr. at 29.

³¹ Changes in “C” factor assumptions for months prior to September 2026 impact the “E” factor.

TAP discounts for the future rate period. In each instance, the Public Advocate’s proposals rely on actual, historical PWD data, while providing for participation levels that are, on average, higher than historical participation. Although it has not been possible, due in part to PWD’s claimed inability to provide a timely transcript response, to have PWD project TAP-R rates that omit embedded TAP-R discounts, the fact that PWD and the Public Advocate’s projections both include those amounts militates toward approving the Public Advocate’s lower assumptions in the short term, in advance of modifying the TAP-R rider formula. For this reason, the Public Advocate’s “C” factor is more reasonable for use in this proceeding.

As set forth in Mr. Morgan’s testimony,³² the Board should calculate the “C” factor utilizing the following assumptions:

- Average monthly discount of \$59.47 per TAP participant.
- Average monthly usage per TAP participant of 654 CF.
- Average number of TAP participants for the next rate period of 68,405.
- Estimated Total TAP discount of \$48,814,756.³³

When combined with resulting adjustments to the “E” factor associated with these assumptions, Mr. Morgan calculates total Net Recoverable Costs of \$59,516,828, an overall reduction of \$7,822,463 to the \$67,339,391 in Net Recoverable Costs projected by PWD.³⁴ Although PWD claimed at the Technical Hearing that the Public Advocate’s errata prejudiced its ability to put on its case,³⁵ each of the assumptions above was clearly stated in the Public Advocate’s witness testimony, filed on April 17, 2026. In other words, the errata did not alter any of the underlying

³² An errata to Mr. Morgan’s testimony was supplied on May 13, 2026.

³³ PA St. 1 at 9.

³⁴ Compare PA St. 1 at 7 (errata page) with Advance Notice, Sch. PWD-1 (marked PDF Page 5 of 54). Notably, the Public Advocate’s adjustment is comparable to the embedded TAP-R rates included in PWD’s “C” factor, discussed in Section III.c, supra.

³⁵ See, generally, Tr. at 51, 103-104.

assumptions articulated by the Public Advocate's witness, it merely corrected some of the outputs of the rate model that were incorrectly incorporated into that testimony. Accordingly, PWD has had more than an adequate opportunity to rebut Mr. Morgan's testimony.

Using average participation over a 12-month period, Mr. Morgan is able to easily calculate the actual average TAP participant's discount over a known, measurable period.³⁶ PWD's opposition to Mr. Morgan's average discount is premised upon the putative impact of higher base rates.³⁷ Yet, as discussed above, PWD has not prepared any methodology to identify that impact, nor to project TAP discounts based upon it. Furthermore, even if higher base rates affect TAP discounts for some participants, it is not the rates themselves that necessarily impact TAP discounts, but the extent and magnitude of usage to which such higher rates would otherwise apply. As the information PWD provided in response to Public Advocate discovery clearly indicates, a substantial portion, approximating 50% of TAP participants, have usage levels below the level of "typical" residential customer (4.3 CCF per month).³⁸ Yet, actual average TAP participant usage of 654 CCFs indicates that total TAP discounts are heavily influenced by a subset of TAP participants whose usage is abnormally high. Targeting those households for usage reduction services will be vital to controlling and even reducing TAP-R surcharges in future periods.

Utilizing the same 12-month period, Mr. Morgan determines actual average TAP participant usage.³⁹ Importantly, while PWD criticizes Mr. Morgan's assumed average discount, it makes no effort to rebut the assumption that average usage among TAP participants will remain the same in the future rate period. PWD's rebuttal does not even express specific

³⁶ PA St. 1 at 8-9.

³⁷ See, generally, Tr. at 57-58.

³⁸ See PA-TAP-2-5.

³⁹ PA St. 1 at 9.

disagreement with the use of 12-months historical data for projecting average usage. Rather, as discussed above, PWD simply prefers to utilize a four-month period for certain assumptions, which, when applied over an extended period, fails to take into account downward fluctuation in participation rates that PWD has actually experienced.⁴⁰

As to average participation levels, Mr. Morgan utilizes the level of enrollment as of March 2026 for projection purposes removing PWD's projection of 0.25% monthly growth.⁴¹ Mr. Morgan's use of the single highest rate of participation experienced according to PWD data for projection purposes produces a conservative estimate. Primarily, utilizing that rate reflects an increase in average participation of 2,890 over the actual average TAP participation experienced for the preceding 12-month period.⁴² Although PWD's rebuttal testimony mischaracterizes Mr. Morgan's position as providing for no growth in TAP participation, it conceded at the Technical Hearing that Mr. Morgan's projection was higher than actual, historical participation and reflected growth from the enrollment data PWD provided.⁴³ As discussed above, TAP participation fluctuation goes in both directions, which does not support a steady rate of growth as submitted by PWD. Furthermore, the TAP-R rate calculation is based on an annual average of participants, meaning that even when PWD projects monthly growth, to determine the "C" factor, a simple average must be determined.

As set forth above, Mr. Morgan's recommendations produce TAP-R rates that are just and reasonable, based on known and measurable data. Mr. Morgan's TAP-R rates accurately align with experienced TAP monthly usage and conservatively estimate increased participation over

⁴⁰ PWD conceded that "often" it is the case that using more historical data in making a projection of future conditions is preferable. Tr. at 29-30.

⁴¹ PA. St. 1 at 9-10.

⁴² PWD-TAP-I-9.

⁴³ Tr. at 14.

the next rate period that is reasonable in light of historical fluctuation shown. Finally, because both PWD and Public Advocate utilize the existing methodology, which embeds TAP-R rates in the “C” factor, which heavily influences TAP-R rates, the Board should approve the Public Advocate’s lower estimate. Doing so partially accounts for the artificially increased costs the current methodology creates.

F. The TAP-R Is A Rate, Not A Tax

The only substantive assertion Haver has made in this proceeding, that the TAP-R is a tax on water, is demonstrably false. In discovery, Haver asked the Public Advocate how the TAP-R rates are different from a sales tax.⁴⁴ Although the Public Advocate objected to this request and maintained its objection to the same line of questioning at the Technical Hearing,⁴⁵ the Public Advocate nonetheless provided a response explaining that TAP-R is definitively not a tax. First, the Public Advocate explained that TAP is not an anti-poverty program:

Without waiving its objection, the Public Advocate recognizes that TAP provides clear and measurable benefits to Philadelphians enduring poverty, but submits that TAP is not an anti-poverty program. Rather, TAP, like Customer Assistance Programs (CAP) first developed by the Pennsylvania Public Utility Commission state-wide in 1992, serves several purposes, including decreasing utility uncollectible accounts, reducing utility collection costs, and assisting low-income customers in maintaining their service.⁴⁶

Then the Public Advocate explained that TAP-R is a rate mechanism, not a tax:

Without waiving its objections, the Public Advocate submits that, like PUC-regulated CAPs which are statutorily-required to be adequately funded through non-bypassable rate mechanisms for all large natural gas and electric utilities in Pennsylvania, the TAP-R is cost based and imposed for the limited and specific purpose of recovering TAP discounts. In contrast, “[t]axes are defined as being the enforced proportional contribution of persons and property, levied by the authority of the state for the support of the government, and for all public needs.”

⁴⁴ The same question was asked of PWD.

⁴⁵ Tr. at 110.

⁴⁶ Haver-PA-TAP-I-15.

Thomas M. Cooley, *Treatise on the Law of Taxation Including the Law of Local Assessments*, 1 (1876).⁴⁷

Haver's expressed preference that TAP be funded from the City's operating budget,⁴⁸ an extension of his erroneous view that TAP-R is a tax, raises different concerns. As the Public Advocate explained, "the City Department of Finance has expressed that grants that are treated as project revenues may adversely impact PWD's bond ratings."⁴⁹ For this reason, CLS, PWD, and others, are actively working to obtain non-ratepayer funding (grants made to fund capital projects) that are not considered project revenues and so bypass the flow of funds utilized to determine revenue sufficiency.⁵⁰ Finally, even if there was no obstacle to tax-based funding of TAP, there's no guarantee that such funding would be adequate to ensure affordable bills for all TAP participants.⁵¹

IV. CONCLUSION

The Public Advocate respectfully submits that the Hearing Officer should recommend, and the Board should approve TAP-R rates consistent with the Public Advocate's recommendations set forth in this Main Brief, to ensure just and reasonable rates for the Small User Customers.

⁴⁷ Haver-PA-TAP-I-19.

⁴⁸ Tr. at 116.

⁴⁹ Haver-PA-TAP-I-9.

⁵⁰ See 2023 General Rate Proceeding, PA-X-21.

⁵¹ One need only look to the Trump administration's efforts to zero-out funding for the Low Income Home Energy Assistance Program to recognize the political risk associated with tax-based funding Haver prefers.