

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

Philadelphia Water Department Proposed Changes in Rates and Charges	2024 TAP-R Reconciliation Proceeding
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**MAIN BRIEF OF THE
PHILADELPHIA WATER DEPARTMENT**

Andre C. Dasent, Esquire
Commerce Square
2001 Market Street, 25th Floor
Philadelphia, Pennsylvania 19103
(267) 624-3503

Kevin Birriel, Esquire
Neal Sellers, Esquire
Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102

Carl R. Shultz, Esquire
Sarah C. Stoner, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

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Counsel to Philadelphia Water Department

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I. INTRODUCTION

A. Statement of the Proceeding.

The Philadelphia Water Department (“PWD” or “Department”)¹ submits this Brief in support of its proposals in the Formal Notice, as amended by the Joint Petition for Partial Settlement (“Joint Petition” or “Settlement”) (collectively, the “2024 TAP-R adjustment”), to implement the annual reconciliation adjustment to the Tiered Assistance Program Rate Rider (“TAP” or “TAP-R”). As stated in this Brief, PWD proposes to revise TAP-R surcharge rates based upon proposed inputs and projections in the Settlement and in accordance with the rider approved by the Philadelphia Water, Sewer and Storm Water Rate Board (“Rate Board” or “Board”).

The Department’s position is that the proposed rates contained in the 2024 TAP-R adjustment (i) provide a fair, just and reasonable TAP-R reconciliation adjustment; (ii) are supported by the record; (iii) are in compliance with all applicable ordinances; and (iv) are in the best interest of the Department and its customers. Specifically, the Department proposes that the Rate Board accept, without modification, the proposed TAP-R rates contained in the Settlement for service rendered on and after September 1, 2024. The effect is an increase in water and wastewater TAP-R surcharges, as described in the Settlement and summarized in Table 1 below.

¹ The Department and Water Revenue Bureau are referred to collectively in this brief, unless the context indicates otherwise.

Table 1: Current TAP-R Rates and Settlement TAP-R Rates		
	Current 2023 TAP Rate Determination	Proposed Settlement 2024 TAP Adjustment
Water TAP-R Surcharge	\$0.15/MCF	\$3.08/MCF
Wastewater TAP-R Surcharge	\$0.24/MCF	\$4.40 /MCF

The increase in the TAP-R rates is the upshot of the Department’s efforts to include more income eligible households in TAP through data sharing with other City agencies. As explained in the record, the Department recently started using data provided by the City’s Office of Integrated Data for Evidence and Action (“IDEA”) to identify “pre-qualified” candidates for TAP. More specifically, IDEA provided the Water Revenue Bureau (“WRB”) with a data set of candidates pre-selected by IDEA for enrollment in TAP and pre-matched to the WRB billing system. Enrollment of initial candidates from IDEA began on February 13, 2024 and sparked a rapid increase in TAP enrollment. PWD originally projected 34,280 new TAP enrollments during the Next Rate Period. In fact, 35,386 of pre-qualified candidates from IDEA were **enrolled**² as of May 3, 2024.³

² Please note that enrollment is different than participation. “Enrollment” means that the customer has been enrolled in TAP. “TAP Participation” means that the customer has been enrolled and has received a “TAP Bill.”

³ PWD Discovery Response Attachment PA-TAP-3-1; PWD Hearing Exhibit 3 at Document 2.

B. Procedural History.

On February 28, 2024, the Philadelphia Water Department filed Advance Notice⁴ of its proposed changes to TAP-R rates, proposed to become effective for the period September 1, 2024 to August 31, 2025 (“Next Rate Period”). Formal Notice⁵ of the proposed reconciliation adjustments was filed with the Department of Records on April 1, 2024. Both Notices contained supporting statements, schedules, and exhibits as required by the regulations (Sections II.A.2 and II.C.1) promulgated by the Rate Board.⁶

The general public was notified of the 2024 TAP-R filing through information made available on the Rate Board’s website,⁷ and legal notices related to the Advance and Formal Notices published in local newspapers.⁸ In addition to the foregoing, participants in PWD’s 2023 TAP-R proceeding and 2023 General Rate Proceeding were notified by e-mail of the instant proceeding and provided an opportunity to participate.

The participants in the 2024 TAP-R proceeding included the Department; the Public Advocate (represented by Community Legal Services, selected by the Rate Board to represent the concerns of residential consumers and other small users); the Philadelphia Large Users Group

⁴ <https://www.phila.gov/media/20240305095150/TAP-R-Advance-Notice-2024-02-28.pdf>

⁵ <https://www.phila.gov/media/20240401131232/2024-TAP-R-formal-notice-final.pdf>

⁶ The Advance Notice and Formal Notice referenced above are sometimes collectively referred to as the “2024 TAP-R filing.”

⁷ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2024-tap-r-reconciliation-proceeding/>

⁸ See PWD Hearing Exhibit 1.

(“PLUG” or “Large Users Group”);⁹ and, two separate (*pro se*) individual customers, Lance Haver and Michael Skiendzielewski.

The Public Advocate submitted written discovery requests by e-mail on (a) March 15, 2024 to which PWD responded on March 27, 2024 and on April 29, 2024; (b) April 3, 2024 to which PWD responded on April 10, 2024; and (c) May 8, 2024 to which PWD responded on May 9, 2024. PLUG submitted written discovery requests to the Department by e-mail on April 23, 2024 to which PWD responded on April 30, 2024. Mr. Haver submitted written discovery requests to the Department by e-mail on May 2, 2024 to which PWD responded on May 8, 2024 and on May 17, 2024. Mr. Haver submitted written discovery requests to the Public Advocate by e-mail on (a) May 3, 2024 to which the Public Advocate responded on May 6, 2024; and (b) May 7, 2024 to which the Public Advocate objected and said objections were sustained. No other participant conducted discovery. Copies of the discovery requests and responses are posted on the Rate Board’s website.

The schedule¹⁰ for the proceeding provided that written testimony in response to the Department’s proposed annual adjustment, if any, would be submitted by April 29, 2024. On that date, the Public Advocate filed testimony (PA Statement 1) stating its disagreement with the Department’s projections. In PA Statement 1, the Public Advocate’s witness Lafayette Morgan, recommended a lower projected number of TAP participants for the Next Rate Period than the Department’s corresponding projection. Mr. Morgan also recommended that (a) the average

⁹ The Philadelphia Large Users Group is an *ad hoc* group of large volume customers receiving water, sewer, and stormwater service from the Department under the Industrial and Hospital/University Rate Schedules.

¹⁰ <https://www.phila.gov/media/20240411142155/TAP-R-PHC-Order-2024-April-10-FINAL.pdf>

discount per TAP Participant be reduced to \$20.91 for IDEA participants; and (b) the average monthly consumption per IDEA participant be reduced to 536.65 CF. No other participant in this proceeding submitted written testimony on April 29, 2024.

On April 29, 2024, the Department filed an update to Schedule RFC-3. The updated Schedule RFC-3 demonstrated that the City had reached 49,658 TAP participants (out of the 55,974 total TAP participants projected). Also, PWD had exceeded its projected **enrollment** of new TAP Participants based on IDEA pre-qualification (34,280). In fact, 35,386 of pre-qualified candidates from IDEA were enrolled as of May 3, 2024.¹¹

Written rebuttal testimony was due by May 6, 2024. On that date, the Department filed rebuttal testimony (PWD Rebuttal Statement 1) stating disagreements with the Public Advocate's recommendations. Notably, PWD rebuttal testimony explained that actual TAP enrollment was higher than originally projected. No other participant submitted written rebuttal testimony.

On May 10, 2024, upon proper notice being provided, a technical hearing and a separate public input hearing were convened to allow PWD customers the opportunity to express their concerns or opinions concerning the proposed TAP-R adjustment. These hearings were conducted remotely via Zoom online.

Regarding public input, the Rate Board received written comments from approximately twenty-four (24) different persons. Their written comments are posted on the Rate Board's website. Nine (9) customers provided comments at the public input hearing.¹² Their (oral)

¹¹ PWD Discovery Response Attachment PA-TAP-3-1; PWD Hearing Exhibit 3 at Document 2.

¹² Two of the nine had filed written comments or emails with the Rate Board.

comments and questions were transcribed and are part of the record. The Department supplied written responses to questions raised during the public input hearings on May 17, 2024.

The Department, Public Advocate, PLUG and Mr. Haver participated in the technical hearing. The witnesses for the Department that were tendered for cross-examination included Raftelis Financial Consultants (“Raftelis” or “RFC”), Black & Veatch Management Consulting LLC (“Black & Veatch” or “BV”) and Susan Crosby, the Deputy Revenue Commissioner in charge of the WRB. The witness presented by the Public Advocate, Lafayette Morgan, was also available for cross-examination.

During the technical hearing, the Department notified the Hearing Officer and the other Participants that settlement discussions between the Department and the Public Advocate had been initiated. It was agreed that PLUG would be included in the settlement discussions.

On May 20, 2024, an executed copy of the Settlement was provided to the Hearing Officer and the other participants. The agreed upon TAP-R surcharge rates and supporting documentation including PWD Exhibit 1 – Proposed Settlement TAP-R Reconciliation Calculations (Tables 1, 2, 3(W), 3(WW), 3(W-A), 3(WW-A), 4(W), 4(WW), 4(W-A), 4(WW-A) and 5 are incorporated by reference with the Settlement and are submitted for Rate Board approval.

The Hearing Officer indicated (per the schedule) that any participant could submit a Reply Brief or statement in opposition to the Settlement on or before May 24, 2024.

PWD submits this Brief in support of the 2024 TAP-R adjustment.

II. LEGAL STANDARDS

The TAP-R rates must be fair and reasonable and consistent with the Philadelphia Home Rule Charter¹³ and with relevant ordinances¹⁴ and regulations.¹⁵ The governing legal standards are discussed more fully in the Department’s Brief in the 2021 General Rate Proceeding,¹⁶ which is incorporated herein by reference.

Consistent with the foregoing and the Rate Board’s 2018 General Rate Determination¹⁷ (which set forth the basis for calculating and adjusting the TAP-R rates), PWD reviews and proposes adjustments to the TAP-R rates annually to account for changes in actual and projected TAP costs (as defined in the 2018 Rate Determination) and the extent to which those costs were over- or under-recovered during a prior period.¹⁸

The program and rider¹⁹ have been described as follows:

TAP is a customer assistance program that allows low-income customers to pay reduced bills based upon a percentage of their household income. The TAP-R rider tracks revenue losses resulting from application of the TAP discount, to permit annual reconciliation if they are greater or less

¹³ Sections 5-800 and 5-801 of the Charter.

¹⁴ Philadelphia Code, Sections 13-101 (Fixing and Regulating Rates and Charges) and 19-1605 (Limitation on Action to Enforce Collection; Income-Based Water Rate Assistance Program).

¹⁵ Rate Board Regulations; Water Department Regulation 206.0 (Income-Based Water Rate Assistance Program); Water Department Rates and Charges, 10.0 (Provisions for recovery of TAP costs).

¹⁶ <https://www.phila.gov/media/20210513093206/Brief-May-11-2021.pdf>.

¹⁷ <https://www.phila.gov/media/20180713144736/2018-RATE-DETERMINATION-TIMESTAMPED.pdf>.

¹⁸ TAP was approved by the Rate Board as part of PWD’s 2016 rate filing. The TAP-R rate rider and the means of its calculation were approved as part of PWD’s 2018 rate filing. The Rate Board adjusted the TAP- R rates and charges in the 2019, 2020, 2021, 2022 and 2023 TAP-R annual reconciliation proceedings.

¹⁹ The terms “rider” or “tariff” refer to Water Department Rates and Charges, 10.0 (Provisions for recovery of TAP costs).

than projected. The TAP-R surcharge is charged to customers who do not receive the discount.²⁰

The formula within the rider has been generally described as follows:

The cost of the program (in other words, the lost revenue resulting from the discount) is affected by several factors, such as the number of enrolled customers [(i.e., the projected number of TAP Participants)], water and sewer service usage levels, changes in PWD's non-discounted rate and the level of discount needed to provide affordable bills to the customers enrolled in the program. The TAP-R Rider tracks revenue losses resulting from application of the TAP discount, in order to permit annual reconciliation if they are greater or less than projected.²¹

Annual adjustment proceedings, such as this year's proceeding, are limited to the application of the formula. Changes to TAP and TAP-R rider are proposed, reviewed and authorized in general rate proceedings.²²

III. THE PROPOSED TAP-R ADJUSTMENT

The purpose of this proceeding is to permit an annual reconciliation of the revenue impacts associated with TAP-R by comparing PWD's actual experience to the projections used to set the TAP-R rates for the Next Rate Period. Some costs, such as the TAP costs (defined in 2018 Rate Determination), are recovered outside the general rate case by means of a separately-administered rider that provides for a reconciliation of revenues and expenses. This is not a general rate case. Rather, it is a TAP-R reconciliation or annual adjustment.

²⁰ 2021 TAP-R Determination, at p.1.

²¹ 2021 TAP-R Adjustment Proceeding, Hearing Officer Report, at pp. 4-5.

²² *Id.* See also the 2021 general rate determination which addressed two unsettled issues relating to TAP arrearage forgiveness.

A. The Settlement Between PWD and the Public Advocate.

The proposed TAP-R rates contained in the Settlement result in an increase in the TAP-R surcharge for the affected water and wastewater customers for the Next Rate Period. The proposed settlement rates are fair and reasonable and are consistent with the relevant ordinance and regulations established by the Rate Board. Such rates are fully supported by the record, which establishes that they will provide an appropriate level of funding for the TAP program.

The Department supports the Settlement. PWD reviews and proposes adjustments to the TAP Rate Rider annually to account for changes in actual and projected TAP costs and the extent to which those costs were over- or under-recovered during a prior period. The proposed TAP-R rates are reasonable in light of the projected TAP enrollment and TAP Credits during the Next Rate Period.

The Department expects an average TAP participation level of 55,974 in the Next Rate Period. For the projections in Most Recent Period (September 2023 to August 2024) and the Next Rate Period (September 2024 to August 2025), the Settlement used 55,974 as the average monthly number of TAP participants beginning in April 2024.²³ The average monthly number of TAP participants will be higher in the Next Rate Period, since actual enrollment (a) averaged more than 21,000 from September 2023 to December 2023;²⁴ and, (b) increased in 2024 due to a “pre-qualification” partnership with IDEA as well as other enrollment efforts.

²³ See footnote 2.

²⁴ Formal Notice, Schedule RFC-3 at p. 5. The monthly totals are September 2023, 20,177; October 2023, 20,809; November 2023, 21,341; December 2023, 21,694. *Id.* The average of those monthly totals is 21,005.

Please note that the Department did not project that all of the candidates from IDEA would be eligible for TAP. The Department projected the enrollment of 34,280 new TAP participants out of all of the candidates identified by IDEA. The projected average enrollment for the Next Rate Period can be viewed as the consolidated total of the actual TAP enrollment in December 2023 (21,694)²⁵ and the enrollment of candidates identified by IDEA (34,280).

The Public Advocate criticizes the Department's projection of the number of TAP participants for the Next Rate Period. Mr. Morgan questions whether all of the 34,280 "pre-qualified" IDEA candidates projected by PWD (who become TAP participants) will remain in TAP. Mr. Morgan assumed a 5% attrition rate to the 34,280 candidates to reduce the total the number of candidates from IDEA to 32,540.

The Department originally projected/calculated an average discount of \$55.49 per TAP Participant. It reduced that projection/calculation to \$53.24 in Schedule RFC-3 (updated April 29, 2024) based on updated reporting through March 2024 and using the existing (historic average discount) methodology. Mr. Morgan's average discount for all TAP participants was calculated to be \$34.73. Mr. Morgan also recommended that the average discount for IDEA candidates be reduced to \$20.91 given that candidates from IDEA were pre-qualified (by IDEA) at 133% of the Federal Poverty Level (FPL). He finally recommends that the average monthly consumption for IDEA participants be reduced to 536.65 CF.

The Department and Public Advocate found "common ground" for purposes of the Settlement. The Department and the Advocate specifically agreed that (i) the average monthly number of TAP Participants for the projections during the Most Recent Period and the Next Rate

²⁵ Formal Notice, Schedule RFC-3 at page 5 of 17.

Period should be 55,974; (ii) the average discount per TAP Participant should be \$40.00; and (iii) the average monthly consumption per Participant should be 700 CF. This agreement does not endorse any of the methodologies or calculation methods employed by any party to project the number of TAP Participants, the average discount per TAP Participant, and the average monthly consumption per Participant.²⁶

Please note that the participant levels, average discount and usage averages will be reconciled in the next TAP-R proceeding. This filing is unique because it is occurring at a time when the Department (together with WRB) is in the midst of enrolling a significant number of customers into TAP from IDEA. That being said, the Department and WRB are working on quality assurance measures to ensure that each of the “pre-qualified” candidates from IDEA were, and remain, eligible to participate in TAP. This means that the actual number of TAP participants may vary during the remainder of the Most Recent Period and Next Rate Period. The Department, however, does not anticipate that quality assurance measures will cause the actual monthly number of TAP participants to fall materially below the agreed-upon average monthly number of TAP participants (55,974) because candidates will continue to come from IDEA and from other enrollment efforts by the Department and WRB.

The Department and Public Advocate have agreed to the TAP-R rates shown in Table 2 below.

²⁶ The agreed-upon projected average monthly number of TAP Participants for the Next Rate Period reflects the original PWD projections. The Department’s original projection would result in average monthly number of TAP participants (for September 2024 to August 2025) being 55,974. The Public Advocate’s original projection would result in the average monthly number of TAP participants (for September 2024 to August 2025) being 54,260. The agreed-upon average discount per TAP Participant is \$40.00 which is \$15.49 less than the originally proposed average discount per TAP Participant shown in Schedule RFC-3 (Original Filing).

Table 2: Comparison of Proposals for TAP-R Surcharge Rates			
	Department's Original Proposal Schedule BV-1	Settlement Proposal	Public Advocate's Original Proposal
Water TAP-R Surcharge	\$4.19 /MCF	\$ 3.08 /MCF	\$2.55 /MCF
Wastewater TAP R-Surcharge	\$6.04 /MCF	\$ 4.40 /MCF	\$3.64 /MCF

The Settlement does not endorse any of the methodologies or calculation methods employed by any party for calculating TAP-R rates. To facilitate the Rate Board's review of the proposed Settlement, estimated bill impacts are provided in Tables C-4 and C-5 attached to this Brief.

Please note that PLUG has indicated that it does not oppose the Settlement.

B. Annual Adjustment Issues Raised By “Non-Settling” Participants

The Settlement resolves all issues as between the Department and the Public Advocate, as explained above. The Settlement also effectively resolves issues raised by PLUG that can be addressed in this reconciliation proceeding. The narrative below provides the Department's response to the criticisms of the remaining (non-settling) Participants.

With respect to the general criticism of increased enrollments as the result of data sharing with other City agencies — the Department and WRB have worked to increase the number of TAP Participants consistent with the directives of the Rate Board. Please recall that the Rate Board “strongly encourage[d] the Department and other City agencies to consider and take all cost-effective steps to increase and maintain enrollment for eligible customers that cannot

otherwise pay their water and sewer bills in full.”²⁷ In the 2023 General Rate Proceeding Rate Determination, the Rate Board specifically instructed PWD and WRB to facilitate TAP enrollment through data sharing. The new IDEA pre-qualified enrollments are the direct result of Rate Board directives.

During the public input hearing, concern was also expressed that the enrollment of pre-qualified candidates from IDEA was being undertaken in violation of the Department’s regulations. That concern is misplaced. The Department’s regulations provide that Owners, Tenants or Occupants may become customers. The Department’s regulations were also amended so as to explicitly allow WRB to enroll or recertify a Low-Income Customer into TAP using “Verified Administrative Data.”²⁸ Those amendments became final earlier this year by operation of law.

Mr. Haver also opposed any increase in the TAP rate. He opposed projections made by the Department or by the Public Advocate. Mr. Haver posited that the accuracy of past projections is indicative of the accuracy of future projections. However, he did not provide any analysis to support his thesis. Mr. Haver also failed to show how indicative past projections would be in the instant context (unique circumstances with the rapid influx of IDEA pre-qualified participants).

In addition, Mr. Haver did not provide any explicit comments on the data or math that are part of the TAP-R formula. For example, Mr. Haver did not opine on the three factors raised by the Public Advocate with regard to the TAP-R formula.

²⁷ *Id.*

²⁸ *See* footnote 4.

Moreover, Mr. Haver did not provide his own projected average monthly number of TAP Participants for the Next Rate Period (September 2024 to August 2025). During the technical hearing, Mr. Haver did not expressly accept the projections made by the Department or by the Public Advocate. The Settlement provides that the projected average monthly number of TAP Participants for the Next Rate Period (September 2024 to August 2025) should be 55,974.²⁹ This projection of 55,974 is greater than the Public Advocate's projection of 54,260.³⁰ Mr. Haver has not accepted, as of this date, the projection within the Settlement (or any other projection).

Further, Mr. Haver did not provide his own average discount per TAP Participant for the Next Rate Period (September 2024 to August 2025). During the technical hearing, Mr. Haver did not expressly accept the projections made by the Department or by the Public Advocate. The Settlement provides that the average discount per TAP Participants for the Next Rate Period (September 2024 to August 2025) should be \$40.00.³¹ That is less than the Department's projection/calculation of \$55.49 per TAP Participant and more than the Public Advocate's projection/calculation of \$33.74 per TAP Participant.³² As of this writing, Mr. Haver has not accepted the above projection within the Settlement (or any other projection).

Nor did Mr. Haver provide his projection of the average monthly consumption per TAP Participants for the Next Rate Period (September 2024 to August 2025). During the technical

²⁹ Joint Petition at ¶ 25. This agreement does not endorse any of the methodologies or calculation methods employed by any party to project the number of TAP Participants. Id.

³⁰ Joint Petition at ¶ 19.

³¹ Joint Petition at ¶ 25. This agreement does not endorse any of the methodologies or calculation methods employed by any party to project the number of TAP Participants. Id.

³² Joint Petition at ¶ 19.

hearing, Mr. Haver did not expressly accept the projections made by the Department or by the Public Advocate. The Settlement provides that the average monthly consumption per TAP Participant for the Next Rate Period (September 2024 to August 2025) should be 700 CF.³³ As of this writing, Mr. Haver has not accepted this projection within the Settlement (or any other projection).

Finally, Mr. Haver, continues to fail to recognize or accept that the TAP Rate Rider and the associated TAP-R rates are, by design, reconcilable. Meaning that any projections or assumptions utilized in establishing the TAP-R rates are cured or corrected with each subsequent annual reconciliation.

Taken together, the Department submits that the above-described criticisms to reduce or modify the average discount per participant, reduce the projected number of TAP Participants or the average consumption for TAP participants as set forth in the 2024 TAP Adjustment should be rejected by the Rate Board.³⁴

C. Additional Issues Raised By “Non-Settling” Participants

The Department responds to additional criticisms of Mr. Haver and Mr. Skiendzielewski as follows:

³³ Joint Petition at ¶ 25 This agreement does not endorse any of the methodologies or calculation methods employed by any party to project the number of TAP Participants. Id.

³⁴ As noted above, TAP Rate Rider and associated surcharge rates are reconcilable and any variances of actuals to projections are accounted for in the TAP-R reconciliation process.

1. Funding for TAP

TAP is an assistance program that allows low-income customers to pay reduced bills based on a percentage of their income. TAP Participants receive a fixed monthly bill based on a percentage of their annual household income.

TAP is supported by a Rate Rider (“TAP-R”).³⁵ TAP-R is a regulatory surcharge intended to recover lost revenue as authorized under the Department’s regulations. The surcharge is discrete, and is considered apart from the Department’s other expenses. In fact, the formula³⁶ sets forth the basis for calculating and adjusting the TAP-R surcharge. Specifically, Section 2.1 of the Department’s regulations regarding rates provides, in part, that:

In addition to the service charge, the quantity charge portion of each bill is determined by applying the quantity charge set forth below to all water use. In addition, the quantity charge will also include a Tiered Assistance Program (TAP) Rate Rider Surcharge, as set forth in Section 10.

The TAP-R surcharges are expressed in a dollar amount per thousand cubic feet (MCF) since they relate to the quantity of service (water or wastewater) provided. Section 10.0 of the Department’s regulations describe the formula for the recovery of TAP costs. Section 206.0 of the Department’s regulations describes the program itself.

It is an accepted industry practice to use surcharges to fund customer assistance programs. That practice is followed across Pennsylvania: “Various forms of automatic

³⁵ Joint Petition at ¶ 1-3.

³⁶ The formula was approved in the Rate Board’s 2018 General Rate Determination. <https://www.phila.gov/media/20180713144736/2018-RATE-DETERMINATION-TIMESTAMPED.pdf>.

adjustment clauses have been included in fixed utility tariffs in Pennsylvania for over 50 years.”³⁷ This includes surcharges for universal service (customer assistance) programs.³⁸

Mr. Haver is critical of the existence of the TAP-R surcharge because the surcharge increases the financial burden on Philadelphians using water and wastewater services. He states that rates have risen, and many cannot afford to pay. He frames this issue as “who pays” for poverty? By doing so, Mr. Haver is advocating for a policy change that goes beyond the scope of this proceeding. His requested policy change also goes against the above-described industry practice of using surcharges to fund customer assistance programs.

Rather than a surcharge, Mr. Haver appears to suggest that cost of TAP should be borne by the City’s General Fund or by the Department’s “Rate Stabilization Fund” (or both). The change in funding goes beyond the scope of this proceeding. In addition, neither alternative is viable. The City’s Charter provides (in part) that the Department should be fully funded by PWD customers,³⁹ not by tax revenues. This issue was discussed in the 2023 General Rate Proceeding and did not result in changes to the structure of TAP-R.

The Department submits that none of the above-described criticisms should be considered or adopted by the Rate Board, since they are beyond the limited scope of this adjustment proceeding.

³⁷ James H. Cawley & Norman J. Kennard, A Guide to Utility Ratemaking at 88 (2018 ed.). https://www.puc.pa.gov/General/publications_reports/pdf/Ratemaking_Guide2018.pdf.

³⁸ *Id.* at 98.

³⁹ Charter at Section 5-801.

2. Public Participation

Mr. Haver is critical of the treatment of public input in this proceeding. Mr. Haver states that (given the Rate Board’s administration of public hearings and outreach related to same) public input and public participation “do not matter.” In taking this position, he overlooks the well established procedures for public input and comment on proposed water rates and charges.⁴⁰ Mr. Haver also ignores the Hearing Officer’s explanation that public input and participation are an integral part of the Rate Board’s review of the changes to the Department’s rates.

Also, in this context, Mr. Skiendzielewski questioned the use of virtual hearings. The Hearing Officer explained that issues regarding the scheduling of the public and technical hearings were addressed at the pre-hearing conference. The Hearing Officer further explained that Zoom hearings have been well-attended in the past and are cost-effective. Please note that this year’s TAP-R public input and technical hearings were also well attended.

The Department submits that the above-described criticisms should be rejected by the Board. The Rate Board regulations address the administration of the hearing process and related outreach. The directives of the Hearing Officer were consistent with the aforesaid regulations and hearing procedures to be followed by the participants in this proceeding were clearly communicated. Moreover, outreach efforts for the public input hearings (as undertaken by the Department and Public Advocate) were extensive in this case — exceeding the requirements in the applicable regulations. Public input hearing participation also exceeded prior TAP-R proceedings.

⁴⁰ Rate Ordinance, § 13-101(3)(e); Board Regulations at §§ II.A.1(b), II.C.

3. TAP Program; Structure and Approach

Mr. Haver criticizes the structure of TAP, the administration of TAP and the formula adopted to calculate the TAP-R surcharge. Specifically, Mr. Haver questions (1) enrollment standards; (2) the cost of enrolling customers in TAP; (3) cost recovery under the TAP-R Rider; (4) PWD procurement of services; (5) the efficiency of PWD’s operations; and (6) rate equity and affordability regarding TAP. Mr. Haver raised similar criticisms in the 2022 TAP-R proceeding.⁴¹ None of the above criticisms is appropriately considered within the limited scope of a TAP-R reconciliation proceeding.

4. Ethics and Integrity

The Rate Board has limited jurisdiction.⁴² That jurisdiction is limited to “fixing and regulating rates and charges.”⁴³ The Rate Board’s jurisdiction does not include authority to investigate, administer or enforce public integrity laws or ethical codes. The refusal to recognize this fact by Mr. Haver constitutes a determined effort to ignore reality, since Mr. Haver raised similar ethical criticisms as part of the 2022 TAP-R proceeding.⁴⁴

⁴¹ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2022-annual-rate-adjustment/>

⁴² The Rate Board’s jurisdiction is discussed more fully in the Department’s Brief in the 2021 General Rate Proceeding, which was already incorporated herein, *see* footnote 16 and the accompanying text.

⁴³ *See*, Philadelphia Code §13-101(3).

⁴⁴ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2022-annual-rate-adjustment/>

Mr. Haver is critical of the Rate Board's hiring of the Hearing Officer and Public Advocate. Those criticisms are misplaced. The Hearing Officer and Public Advocate were hired by the Rate Board. In October 2023, the Rate Board used Requests for Proposals. On October 11, 2023, the Rate Board issued a Request for Proposal ("RFP") seeking the services of a Hearing Officer to administer various aspects of rate proceedings that the Water Department would commence during calendar year 2024. (RFP 21231005214452). On October 13, 2023, the Rate Board filed a separate RFP seeking the services of a Technical Consultant. (RFP 21231005214730). On October 16, 2023, the Rate Board filed a separate RFP seeking the services of a Public Advocate with experience in utility rate cases to represent the interests of all Small Users in rate proceedings that the Water Department would commence during the coming year and, if renewed in the Board's annual option, through 2028. (RFP, 21231005214948). The Board accepted proposals and entered into contracts. At a regular meeting, on November 8, 2023, the Rate Board authorized the entry into contracts for Hearing Officer, Public Advocate and Technical Consultant.

Mr. Haver is critical of the Hearing Officer and the Public Advocate. He questions the fairness of the Hearing Officer (asserting bias). He also questions whether the Public Advocate represents the interest of the Small User Customers. PWD submits that all of the above criticisms are misplaced as demonstrated in the conduct of this proceeding, the transcribed record documenting the extensive opportunity to be heard provided by the Hearing Officer and the proposed Settlement (e.g., significant reduction in (i) the projected Average Discount per TAP Participant, (ii) the projected TAP Billing Loss and (iii) Net Recoverable Costs for the Next Rate Period).

Mr. Skiendzielewski has also been critical of the rate process and has sent messages⁴⁵ to the Rate Board, the Hearing Officer and the other participants regarding the Rate Board's Legal Counsel. Mr. Skiendzielewski was given the opportunity to give a statement during the public input hearings but did not do so. The same or substantially similar allegations raised in his emails were made by Mr. Skiendzielewski before the Rate Board,⁴⁶ and denied by the Rate Board,⁴⁷ in the 2021 General Rate Proceeding.

The Department submits that none of the above-described issues regarding the investigation, administration, or enforcement of public integrity laws or ethical codes should be considered or adopted by the Rate Board, since they are (a) beyond the limited jurisdiction of the Rate Board; and, (b) beyond the limited scope of this adjustment proceeding.

IV. CONCLUSION

For all of the reasons stated in this Brief (together with the facts and information contained in the record), the Department respectfully requests that the Hearing Officer recommend that (1) the Rate Board find that the rates and charges proposed by the Settlement, are supported by the record, are in compliance with the Rate Ordinance and other applicable requirements and therefore should be permitted to be placed in effect for service rendered on and after September 1, 2024; (2) the Rate Board reject any remaining issues, proposals, modifications

⁴⁵ Mr. Skiendzielewski only asked questions. From the Department's perspective, Mr. Skiendzielewski did not request relief by way of testimony, motion or petition. Mr. Skiendzielewski did not submit written testimony or pursue his "issues" at the technical hearing.

⁴⁶ 2021: <https://www.phila.gov/media/20210513093207/Michael-Motion.pdf> and <https://www.phila.gov/media/20210526131221/Skiendzielewski-Exceptions.pdf>

⁴⁷ 2021: <https://www.phila.gov/media/20210513093208/Order-Skiendzielewski-recusal-may-11-2021-final.pdf> and <https://www.phila.gov/media/20210618105014/2021-General-Rate-Determination-as-filed-with-Records-Dept-20210616.pdf>

and/or adjustments by the other participants hereto that are not contained in the Settlement; and
(3) the Rate Board authorize the Department to file revised TAP-R rates and charges as contained
in the Settlement for service rendered on and after September 1, 2024.

Respectfully submitted,

/s/ Andre C. Dasent

Andre C. Dasent, Esquire
Commerce Square
2001 Market Street, 25th Floor
Philadelphia, PA 19103
(267) 624-3503

Kevin Birriel, Esquire
Neal Sellers, Esquire
Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102

Carl R. Shultz, Esquire
Sarah C. Stoner, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

Dated: May 20, 2024

Counsel for Philadelphia Water

**TABLE C-4
COMBINED SYSTEM: COMPARISON OF TYPICAL
BILL FOR RESIDENTIAL CUSTOMERS
UNDER EXISTING AND PROPOSED RATES**

(1) Meter Size Inches	(2) Monthly Use Mcf	(3) FY 2024		(4)	(5)	
		Existing Rates \$	Proposed Rates \$	FY 2025	% Proposed of Existing %	
5/8	0.00	30.87	33.22		7.6	
5/8	0.20	50.39	55.80		10.7	
5/8	0.30	60.16	67.09		11.5	Typical Senior
5/8	0.40	69.93	78.38		12.1	
5/8	0.45	74.81	84.03		12.3	Typical Residential
5/8	0.50	79.70	89.68		12.5	
5/8	0.60	89.45	100.97		12.9	
5/8	0.70	99.22	112.26		13.1	
5/8	0.80	108.99	123.55		13.4	
5/8	1.70	196.86	225.17		14.4	
5/8	2.70	290.33	333.57		14.9	
5/8	3.30	345.35	397.45		15.1	

Notes:

FY 2024 figures reflect the existing base and current TAP-R rates, of \$0.15/Mcf for water and \$0.24/Mcf for sewer.

FY 2025 figures reflect the adopted base rates and proposed TAP-R rates of \$3.08/Mcf for water and \$4.40/Mcf for sewer.

The FY 2025 TAP-R rates are subject to the Rate Board's Determination in the FY 2024 TAP-R Reconciliation Proceeding.

The TAP-R Rates are subject to annual reconciliation.

Of the estimated 12.3% (\$9.22) increase in the typical residential customer's bill, 8.1% (\$6.03) is associated with the previously approved base rates for FY 2025 and 4.3% (\$3.19) is associated with the proposed TAP-R rates in this proceeding.

Typical Senior Citizen is presented prior to discount. Eligible Senior Citizen's receive a 25% discount on their total bill. The associated FY 2024 and FY 2025 bills would be \$45.12 and \$50.32, respectively.

Of the estimated 11.5% (\$5.20) increase in the typical senior customer's bill, 8.0% (\$3.61) is associated with the previously approved base rates for FY 2025 and 3.5% (\$1.59) is associated with the proposed TAP-R rates in this proceeding.

Mcf - Thousand cubic feet

**TABLE C-5
COMBINED SYSTEM: COMPARISON OF EXAMPLE BILLS
FOR NON-RESIDENTIAL CUSTOMERS
UNDER EXISTING AND PROPOSED RATES**

(1) Meter Size Inches	(2) Monthly Use Mcf	(3) Impervious Area sf	(4) Gross Area sf	(5)		(7) % Proposed of Existing %
				FY 2024 Existing Rates \$	FY 2025 Proposed Rates \$	
5/8	0.0	1,794	2,110	41.44	44.88	8.3
5/8	0.2	1,794	2,110	60.96	67.46	10.7
5/8	0.3	1,794	2,110	70.73	78.75	11.3
5/8	0.4	1,794	2,110	80.50	90.04	11.9
5/8	0.5	4,000	5,500	117.67	131.74	12.0
5/8	0.6	4,000	5,500	127.42	143.03	12.3
5/8	0.7	4,000	5,500	137.19	154.32	12.5
5/8	0.8	26,000	38,000	447.60	499.24	11.5
5/8	1.7	26,000	38,000	535.47	600.86	12.2
5/8	2.7	4,000	5,500	328.30	375.63	14.4
5/8	3.3	4,000	5,500	383.32	439.51	14.7
5/8	11.0	7,000	11,000	1,131.98	1,306.67	15.4
1	1.7	7,700	7,900	292.45	330.83	13.1
1	5.0	22,500	24,000	786.54	894.65	13.7
1	8.0	7,700	7,900	871.88	1,003.52	15.1
1	17.0	22,500	24,000	1,886.82	2,172.29	15.1
2	7.6	1,063	1,250	781.77	900.28	15.2
2	16.0	22,500	24,000	1,825.70	2,098.39	14.9
2	33.0	66,500	80,000	3,971.74	4,560.12	14.8
2	100.0	7,700	7,900	9,337.93	10,831.33	16.0
4	30.0	7,700	7,900	3,023.37	3,488.50	15.4
4	170.0	10,500	12,000	15,052.51	17,519.94	16.4
4	330.0	26,000	38,000	28,014.75	32,709.14	16.8
4	500.0	140,000	160,000	43,042.72	50,241.02	16.7
6	150.0	10,500	12,000	13,606.90	15,808.18	16.2
6	500.0	41,750	45,500	41,898.12	48,963.90	16.9
6	1,000.0	26,000	38,000	81,534.54	95,464.08	17.1
6	1,500.0	140,000	160,000	122,850.31	143,827.86	17.1
8	750.0	10,500	12,000	61,575.60	72,049.93	17.0
8	1,500.0	66,500	80,000	122,063.00	142,946.27	17.1
8	2,000.0	26,000	38,000	161,367.24	189,077.83	17.2
8	3,000.0	140,000	160,000	241,393.01	282,936.61	17.2
10	600.0	22,500	24,000	49,994.20	58,433.04	16.9
10	1,700.0	41,750	45,500	137,875.33	161,489.16	17.1
10	3,300.0	26,000	38,000	263,681.75	309,176.34	17.3
10	6,000.0	140,000	160,000	477,225.52	559,792.12	17.3

Typical Small Business

- (a) Examples with gross area less than 5,000 square feet reflect an impervious area of 85% of the gross area consistent with PWD Regulations section 304.3.
- (b) The FY 2024 figures reflect the existing base and current TAP-R rates, of \$0.15/Mcf for water and \$0.24/Mcf for sewer.
- (c) FY 2025 figures reflect the adopted base and proposed TAP-R rates, of \$3.08/Mcf for water and \$4.40/Mcf for sewer.
- (d) The FY 2025 TAP-R rates are subject to the Rate Board's Determination in the 2024 TAP-R Reconciliation Proceeding. The TAP-R Rates are subject to annual reconciliation.
- (e) Of the estimated 12.3% (\$15.61) increase in the example small business customer's bill, 8.9% (\$11.35) is associated with the previously approved base rates for FY 2025 and 3.3% (\$4.26) is associated with the proposed TAP-R rates in this proceeding.

Mcf - Thousand cubic feet
sf - square feet