

**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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REPLY BRIEF OF THE PHILADELPHIA WATER DEPARTMENT

I. INTRODUCTION

The Philadelphia Water Department (“PWD” or “Department”)¹ submits this Reply Brief in response to the Brief and subsequent submission² by Lance Haver in the above proceeding. Mr. Haver opposes the implementation of the annual reconciliation adjustment to the Tiered Assistance Program (“TAP”) Rate Rider (“TAP-R”) as set forth in the Settlement. He specifically argues that the Department’s TAP-R proposals should be rejected because same are premised upon the inclusion of pre-qualified TAP participants identified through data sharing with the City’s Office of Integrated Data for Evidence and Action (“IDEA”). In Mr. Haver’s view, PWD should not be able to base its projections on IDEA pre-qualified participants, as PWD Regulations (“Regulations”) did not explicitly permit such enrollments (using pre-qualification) as of February 13, 2024 — when the program was launched.³

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

² Mr. Haver submitted a filing entitled Opposition to Joint Petition for Settlement of TAP-R proceeding on May 22, 2024.

³ Mr. Haver’s argues that the City unlawfully enrolled candidates into TAP using IDEA data because the PWD’s Prior Regulations (defined below), in effect on April 29, 2024, did not specifically authorize enrollment without a customer-initiated application. PWD Regulations were amended on April 29, 2024 to specifically allow WRB to use Verified Administrative Data to enroll eligible customers into TAP. Mr. Haver points out that the current Regulations were not in effect until after the City initiated enrollment of prequalified IDEA candidates into TAP on February 13, 2024. Mr. Haver is correct on this timeline, but fails to recognize that the language of Prior Regulations did not prohibit WRB from enrolling customers based on information provided in other assistance applications. See discussion, *infra* (Section II.A).

II. ARGUMENT

As stated in the Department’s 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 Settlement (also referred to as “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.

Mr. Haver takes a different view, rejecting the Settlement and arguing that projections based on the inclusion of new TAP participants utilizing data provided by IDEA should be removed from the TAP-R filing.⁴

As explained below, the Department opposes Mr. Haver’s position because (a) PWD Regulations permit the inclusion of IDEA pre-qualified enrollments; (b) the TAP-R filing reasonably includes increased projected TAP participation based on IDEA data sharing; and (c) Rate Board directives were the impetus for pre-qualification using IDEA data sharing.

⁴ As explained in the record, the Department recently started using data provided by IDEA to identify “pre-qualified” candidates for TAP. More specifically, IDEA provided 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.

A. PWD Regulations Permit Inclusion of IDEA Pre-Qualified Enrollments.

Mr. Haver’s argument that IDEA pre-qualified enrollees should be “stripped” from the TAP-R filing, because their inclusion is inconsistent with PWD Regulations, is unfounded. Section 206.2(a) of the PWD Regulations governs TAP enrollment. The provisions of Section 206.2(a) that were in effect prior to April 29, 2024 (“Prior Regulations”) are stated below:

206.2 (a) A Low-income Customer or a Customer with a Special Hardship may apply to the WRB for enrollment in TAP beginning July 1, 2017. A Customer may submit the required financial and other information through a web-based application, by mail or by hand delivery to WRB’s office. A Customer also may provide the required information to a customer service representative.
[Emphasis added].

Please note that the Prior Regulations allowed customers to “apply” for TAP by providing required financial and other information through various methods to WRB to facilitate the determination of TAP eligibility. The word “apply” is not defined to explicitly mean that the customer must prepare a TAP application. Also, the plain language of the Prior Regulations should be interpreted broadly (permissive language) given the repeated use of the word “may” in Section 206. It bears emphasis that the Prior Regulations did not contain language that strictly required anything of TAP candidates, but instead, included a list of options via which a customer could provide their information to WRB for TAP enrollment.

Based on its interpretation of the Prior Regulations, WRB enrolled eligible customers from the Low Income Housing Water Assistance Program (“LIHWAP”) in 2023. These customers did not have to complete separate TAP applications because by applying to the LIHWAP program and providing their income and residential information, those customers also

provided “the required financial and other information” to WRB for consideration of TAP enrollment. This approach was unassailed in the 2023 TAP-R proceeding. So, contrary to Mr. Haver’s position in this case, the Prior Regulations were not interpreted to limit analogous LIHWAP to TAP enrollments in the last proceeding.

In February 2024, WRB enrolled thousands more new TAP customers through a similar process using data from IDEA. Again, these customers had already *applied* by providing their personal information to the City for purposes of a review of assistance available to them. For this reason, WRB again lawfully used this data to complete the customers’ enrollment into TAP under the Prior Regulations consistent with its approach to LIHWAP enrollments in 2023.

Notwithstanding the foregoing, for greater clarity, PWD proposed to update its Regulations in March 2024. The updated Regulations were posted with the Department of Records on March 27, 2024. These Regulations became effective (by operation of law) on April 29, 2024. The current version of PWD Regulations explicitly authorizes the City to use Verified Administrative Data to enroll customers into TAP. Section 206.2(b) of the Regulations is stated below:

206.2 (b) WRB may enroll or recertify a Low Income Customer into TAP using Verified Administrative Data.⁵

The above updated language (together with Section 206.1(p) cited below) helps to clarify the definition of the data being used and specifically describes another method of entry into TAP. The City was well within its authority to enroll customers without this update to the Prior

⁵ Section 206.1(p) defines “Verified Administrative Data” as “Information possessed by the City such as personal income, household income, or residency information required to confirm a Customer’s eligibility for TAP, the Senior Citizen Discount, or other forms of assistance.”

Regulations, but the amended language will eliminate any confusion in the future, such as the argument raised by Mr. Haver.

B. TAP-R Filing Reasonably Includes Increased Projected TAP Participation Based on IDEA Data Sharing.

As explained in the Department’s Main Brief, PWD reviews and proposes adjustments to the TAP Rate Rider 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. The proposed TAP-R rates are reasonable in light of the projected TAP enrollment and TAP Credits during the Next Rate Period.⁶

In the instant proceeding, 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 2024.⁷ 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;⁸ and (b) increased in 2024 due to a “pre-qualification” partnership with IDEA as well as other enrollment efforts. Please note that the Department’s projection for the Next Rate Period would be reasonable whether the IDEA pre-qualified candidates were added in February or March 2024 or thereafter. The key fact is that projected TAP participation will be increased during the Next Rate

⁶ PWD Main Brief at 9

⁷ 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.”

⁸ 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. The average of those monthly totals is 21,005.

Period. That fact is unchanged by Mr. Haver’s observation that IDEA enrollments began in February 2024 (as opposed to a later date). And the projection of TAP participation for the Next Rate Period is reasonably set at 55,974 (as stated in the Settlement) in the circumstances presented. Please also note that the inputs and projections proposed in the Settlement (e.g., the number of TAP participants in the Most Recent Rate Period) will be subject to reconciliation in the next TAP-R proceeding.

C. Rate Board Directives Were the Impetus for Increased TAP Participation Using IDEA Data Sharing.

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.”⁹ 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 in direct response to Rate Board directives. It also follows that the inclusion of IDEA pre-qualified participants in projections for the Next Rate Period (based upon the record confirming that over 35,000 such enrollments have already taken place) is reasonable in the circumstances presented. The Board’s directives are also consistent with the goals of the IWRAP Ordinance¹⁰ and WRB policy to assign customers to the lowest rate as to which they qualify.

⁹ PWD Main Brief at 12-13.

¹⁰ Philadelphia Code, Section 19-1605 (3)(c).

In light of the (i) Board’s directives; (ii) IWRAP goals and WRB policy; (iii) PWD’s reasonable interpretation of the Regulations it administers; and (iv) the fact that inputs and projections are subject to reconciliation (including TAP participation projections), PWD submits that Mr. Haver’s arguments to reject or modify the Settlement should be rejected.

III. CONCLUSION

For all of the reasons stated in this Reply Brief, the Department’s Main Brief (together with the facts and information contained in the record), PWD respectfully requests that the Hearing Officer approve the 2024 TAP-R Adjustment as described in the Joint Petition for Settlement of the TAP-R Proceeding.

Respectfully submitted,

/s/ Andre C. Dasent

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