

RECEIVED

By Records Dept. at 4:58 pm, Jun 15, 2022

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

In the Matter of the Philadelphia Water
Department's 2022 Special Rate Proceeding

∴
∴
∴

For: Fiscal Year 2023

**RATE DETERMINATION
2022 SPECIAL RATE PROCEEDING**

Water, Sewer and Storm Water Rate Board

Irwin Popowsky, Chair

Tony Ewing, Vice-Chair

Abby L. Pozefsky, Secretary

McCullough Williams III, Member

Debra McCarty, Member

June 15, 2022

TABLE OF CONTENTS

I.	OVERVIEW.....	1
II.	HISTORY OF THE PROCEEDING	2
III.	DISCUSSION	8
	A. Federal Stimulus Funding Adjustment.....	9
	B. Financial Performance Adjustment	11
	C. Other Issues	18
IV.	CONCLUSION	23

Appendix A: Tables

Appendix B: Board Polling Sheet June 8, 2022

I. OVERVIEW

Before the Philadelphia Water, Sewer and Storm Water Rate Board (Rate Board) for consideration and disposition is the filing made by the Philadelphia Water Department¹ (PWD or the Department) that initiated a Special Rate Proceeding regarding the potential downward adjustment of water, sewer and stormwater incremental rates and charges previously approved to take effect September 1, 2022 (\$34.11 million increase in FY 2023 revenue, the FY 2023 Base Rate Incremental Increase), as provided by the [Rate Determination](#)² issued on June 16, 2021, which discussed and approved without modification the [Joint Petition for Partial Settlement](#)³ (Joint Petition, Joint Settlement Petition). That Joint Petition contained two limited conditions under which the FY 2023 Base Rate Incremental Rate Increase might be reduced. The first condition related to the receipt of certain federal stimulus funding; the second condition addressed PWD's FY 2021 financial performance as measured by the Rate Stabilization Fund balance as of June 30, 2021.

After a thorough review of the record in this proceeding, including the Advance and Formal Notices, extensive discovery, two public hearings and one technical hearing where witnesses sponsored by PWD and the Public Advocate⁴ testified and were cross-examined, Hearing Officer Marlane R. Chestnut, on May 24 2022, issued a [Hearing Officer Report](#)⁵ in which she found that the first condition (the receipt of federal stimulus funding), had not been satisfied, thereby warranting no reduction to the FY 2023 Base Rate Incremental Increase. She further found that the second condition (PWD's FY 2021 financial performance as measured by the Rate Stabilization Fund balance as of June 30, 2021) had been satisfied, thereby warranting a potential reduction of no more than \$3 million to the FY 2023 Base Rate Incremental Increase.

¹ PWD is a City department, with responsibility for provision of water, sewer and storm water services in the City of Philadelphia.

² <https://www.phila.gov/media/20210618105014/2021-General-Rate-Determination-as-filed-with-Records-Dept-20210616.pdf>

³ <https://www.phila.gov/media/20210505154832/Joint-Petition-for-Partial-Settlement.pdf>

⁴ Community Legal Services was previously selected through a competitive, publicly noticed procurement process to provide services as the Public Advocate to represent the concerns of residential consumers and other small users, pursuant to our regulations at II.B.2

⁵ <https://www.phila.gov/media/20220525164524/Spec-Rate-Report-2022-May-23-final.pdf>

Pursuant to the schedule established, separate Exceptions to the Hearing Officer Report were filed on June 2, 2022, by [PWD](#),⁶ the [Public Advocate](#)⁷ and [Lance Haver](#)⁸, an individual participant. At its regular public monthly meeting on June 8, 2022, the Rate Board deliberated on the proceeding, the Hearing Officer Report, and the Exceptions, and voted as set forth in the polling sheet attached as Appendix A hereto, which we incorporate by reference in this Rate Determination.

We hereby adopt and incorporate the May 24, 2022 [Hearing Officer Report](#) except as otherwise indicated. Additionally, we grant or deny the Exceptions, consistent with this Rate Determination. Any exception or argument that is not specifically addressed shall be deemed to have been duly considered and denied without further discussion.

As discussed in more detail below, based on the record produced in this proceeding and the arguments presented by the participants, we find that: (1) the first condition (the receipt of federal stimulus funding) has not been satisfied, thereby warranting no adjustment to the FY 2023 Incremental Base Rate Increase; and (2) the second condition (PWD's FY 2021 financial performance) has been satisfied. We therefore find that the Base Rate Incremental Increase resulting in a FY 2023 revenue increase of \$34.11 million set to take effect on September 1, 2022, as authorized in our [2021 General Rate Determination](#) pursuant to the terms of the [Joint Petition for Partial Settlement](#), should be reduced by \$3 million.

II. HISTORY OF THE PROCEEDING⁹

In its June 16, 2021 [Rate Determination](#), the Rate Board discussed and approved without modification the [Joint Petition for Partial Settlement](#) entered into by the Department and the Public Advocate which, inter alia, provided for PWD to initiate a special rate proceeding pursuant to Sections II.A.2 and II.D of the Rate Board's [regulations](#)¹⁰ to determine whether certain conditions contained in the Settlement Petition had been satisfied so as to warrant downward

⁶ <https://www.phila.gov/media/20220603160149/PWD-special-exceptions-2022.pdf>

⁷ <https://www.phila.gov/media/20220603160148/public-advocate-exceptions-2022-final.pdf>

⁸ <https://www.phila.gov/media/20220603160147/Haver-June-2022-Exception-to-Special-Proceeding.pdf>

⁹ This discussion adopts and supplements the History of the Proceeding as set forth in the May 24, 2022 Hearing Officer Report.

¹⁰ <https://www.phila.gov/media/20220204155914/WRBRegulationsAmended20210908reaffirmed20211013.pdf>

adjustment of the incremental rates and charges approved to take effect in FY 2023. These conditions were (1) the amount of specified federal stimulus funding in excess of \$2 million received by PWD between July 1, 2021, and December 31, 2021 (the federal stimulus funding adjustment); and (2) the amount in the Rate Stabilization Fund (RSF) at the end of FY 2021 above a “minimum threshold” to be shared between PWD and its customers (the financial performance adjustment). It was further agreed that the total of these adjustments, if any, must not exceed \$34.110 million, the revenue amount of the FY 2023 Base Rate Incremental Increase.

On January 21, 2022, the Department filed an [Advance Notice](#)¹¹ with the Philadelphia City Council and the Rate Board for initiation of this special rate proceeding; on February 21, 2022, it filed the [Formal Notice](#)¹² with the City’s Department of Records, which included the statements and exhibits which had been provided in the Advance Notice, updated primarily to incorporate changes associated with projected increases in TAP¹³ enrollment, as well as the inclusion of one month of additional data (December 2021). To support its position that neither of the specified conditions had been satisfied and therefore, no adjustment was warranted or proposed, the Department presented the direct testimony, schedules and exhibits of a number of witnesses:

- (1) [PWD St. 1](#): Melissa La Buda, (PWD Deputy Water Commissioner for Finance);¹⁴
- (2) [PWD St. 2](#): Katherine Clupper (Public Financial Management) and Peter Nissen, (Acacia Financial Group, Inc);¹⁵ and

¹¹ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2022-special-rate-proceeding/#advance-notice-of-filing>

¹² <https://www.phila.gov/media/20220225145807/PWD-FY2023-Special-Proceeding-Formal-Notice.pdf>

¹³ TAP, the Tiered Assistance Program, is a customer assistance program, mandated by City Council, that allows low-income customers to pay reduced bills based upon a percentage of their household income.

¹⁴ <https://www.phila.gov/media/20220124131428/PWD-Statement-No.-1-Direct-Testimony-and-Schedules-of-Melissa-La-Buda.pdf>

¹⁵ <https://www.phila.gov/media/20220124131430/PWD-Statement-No.-2-Direct-Testimony-and-Schedules-of-Katherine-Clupper-and-Peter-Nissen.pdf>

- (3) [PWD St. 3](#): Ann Bui, Dave Jagt, and Brian Merritt (Black & Veatch Management Consulting LLC).¹⁶

The general public was notified through information made available on the Rate Board’s website and PWD’s website and e-notification system as well as publication in various Philadelphia newspapers and social media. See [PWD Hearing Exh. 1](#);¹⁷ [Public Advocate Post Hearing Exhibit](#).¹⁸ In addition, participants to PWD’s 2021 general rate proceeding were notified by e-mail of this proceeding and provided an opportunity to participate.

Along with PWD and the Public Advocate, participants included the City of Philadelphia Water Revenue Bureau¹⁹ (WRB), the Philadelphia Large Users Group (PLUG) and two individual customers, Michael Skiendzielewski and Lance Haver.

After the filing of the Advance Notice but prior to the filing of the Formal Notice, the Public Advocate on February 9, 2022, filed a [Motion to Strike](#)²⁰ portions of the Advance Notice, alleging that they improperly enlarged the scope of the proceeding by containing new financial assumptions regarding future revenue requirements. On February 18, 2022, PWD filed a [Memorandum in Opposition to the Motion to Strike of the Public Advocate](#)²¹ requesting that the Motion be dismissed and denied, as being both premature and procedurally improper. On March 8, 2022, Hearing Officer Chestnut issued an [Order](#)²² which granted in part and denied in part the Public Advocate’s Motion to Strike. PWD and the Public Advocate filed a [Stipulation](#)²³ dated April 5, 2022, in which they agreed on a general methodology for calculating a possible FY 2021 financial performance adjustment, and the use in this proceeding of the updated financial information contained in the Formal Notice.²⁴

¹⁶ <https://www.phila.gov/media/20220124131431/PWD-Statement-No.-3-Direct-Testimony-and-Schedules-of-Black-and-Veatch.pdf>

¹⁷ <https://www.phila.gov/media/20220427155658/PWD-hearing-exhibit-1-outreach.pdf>

¹⁸ <https://www.phila.gov/media/20220428173954/2022-Post-Hearing-Exhibit-Outreach-Report.pdf>

¹⁹ The Water Revenue Bureau, which is part of the City’s Department of Revenue, provides all billing and collection functions for the Department.

²⁰ <https://www.phila.gov/media/20220215184351/Motion-to-Strike-Final-2022-02-09.pdf>

²¹ <https://www.phila.gov/media/20220224112952/PWD-Response-to-PA-Motion-FINAL.pdf>

²² <https://www.phila.gov/media/20220308150639/2022-Spec-Rate-PA-Motion-Strike-Final.pdf>

²³ <https://www.phila.gov/media/20220406195003/PWD-2022-SPECIAL-STIPULATION-FINAL.pdf>

²⁴ On April 8, 2022, Mr. Haver filed a document entitled “[Opposition to Stipulation](#),” in which he expressed his opposition to the Stipulation which had been entered into by PWD and the Public Advocate. By email dated April

Also after the filing of the Advance Notice but prior to the filing of the Formal Notice, Mr. Haver on February 16, 2022, filed a [Motion to Remove for Cause the Acting Public Advocate](#),²⁵ alleging that the Public Advocate had not been properly appointed in this special rate proceeding and in addition should be removed because of its failure to properly perform its duties in the underlying general rate proceeding which was the subject of the Rate Board's [June 16, 2021 Rate Determination](#). An [Answer in Opposition](#)²⁶ (with an accompanying Memorandum of Law) to the [Motion to Remove](#) was submitted by the Public Advocate on February 22, 2022. The [Answer](#) specifically denied the various averments contained in the Motion. By [Order](#)²⁷ dated February 25, 2022, Hearing Officer Chestnut denied the Motion, finding that those issues were previously reviewed and decided in the 2021 proceeding, and further, are outside the scope of this limited, special rate proceeding, which is not to reexamine or reconsider the [Joint Settlement Petition](#), but to determine whether the conditions contained in the Settlement Petition had been satisfied so as to warrant downward adjustment of the FY 2023 Base Incremental Rates.

A prehearing conference to address preliminary procedural issues was held (remotely via Zoom) in this proceeding on March 9, 2022. All participants to the filing were invited to attend; in addition, notice of the prehearing conference was posted on the Rate Board's website at [Meetings & Hearings | Water, Sewer & Storm Water Rate Board | City of Philadelphia](#).²⁸ At that prehearing conference, a schedule was adopted, and directives were issued regarding discovery and the holding of hearings. These determinations were memorialized in a [Prehearing Conference Order](#)²⁹ dated March 9, 2022.

On March 22, 2022, Mr. Haver submitted a document entitled "[Direct Appeal of Hearing Examiner's Order Denying Haver Motion to Remove Public Advocate](#),"³⁰ alleging that both the Public Advocate and the Hearing Officer had acted inappropriately and that counsel employed by the Public Advocate should be removed. Separate responses to this Direct Appeal

12, 2022, the hearing officer informed Mr. Haver that she would not consider his objections, as the Stipulation is not binding on other participants, and in fact does not need to be approved by the Hearing Officer.

²⁵ <https://www.phila.gov/media/20220217171233/Motion-to-Remove-Public-Advocate.pdf>

²⁶ <https://www.phila.gov/media/20220224112951/Answer-to-LH-Motion-to-Remove-PA.pdf>

²⁷ <https://www.phila.gov/media/20220225145815/2022-TAP-R-LH-motion-final.pdf>

²⁸ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/meetings/>

²⁹ <https://www.phila.gov/media/20220309172332/Spec-Rate-PHC-Order-mar-9-2022.pdf>

³⁰ <https://www.phila.gov/media/20220325160241/edited-quid-pro-quo-water.pdf>

were filed by [PWD](#)³¹ and the [Public Advocate](#).³² At its regular meeting on April 13, 2022, the Rate Board discussed and denied this Direct Appeal after hearing directly from Mr. Haver, the Department and the Public Advocate. See Rate Board April (2022) [Monthly Meeting Notes](#).³³

On March 23, 2022, two public hearings (at [1:00 p.m.](#)³⁴ and [6:00 p.m.](#)³⁵) were conducted remotely, with the option to participate via Zoom online or telephonically. A stenographic transcript was produced of each public hearing.³⁶

In accordance with the schedule contained in the [Prehearing Conference Order](#), the Public Advocate on April 5, 2022, filed [PA St. 1](#),³⁷ the direct testimony of Lafayette K. Morgan, Jr. (Exeter Associates), in which Mr. Morgan recommended that the revenue to be raised from the FY 2023 Base Rate Incremental Increase be reduced by \$6.6 million. In response, the Department submitted the rebuttal testimony of Melissa La Buda, Katherine Clupper and Peter Nissen ([PWD Rebuttal St. 1](#)³⁸) and Ann Bui, Dave Jagt, and Brian Merritt (Black & Veatch) ([PWD Rebuttal St. 2](#)³⁹).

A further prehearing conference was held on April 26, 2022, to address procedural issues in connection with the scheduled technical hearing. The Department, the Public Advocate and Mr. Haver participated. A stenographic [transcript](#)⁴⁰ was produced.

The technical hearing was held (remotely via Zoom) on April 28, 2022. PWD presented two panels of witnesses: (1) Melissa La Buda, Katherine Clupper and Peter Nissen (the financial panel); and (2) Ann Bui, Dave Jagt, and Brian Merritt (the Black & Veatch panel). Each panel was cross-examined by the Public Advocate and Mr. Haver. The Public Advocate presented

³¹ <https://www.phila.gov/media/20220408175554/pwd-answer-to-haver-appeal.pdf>

³² <https://www.phila.gov/media/20220408175552/April-8-PA-Response-haver-submission.pdf>

³³ <https://www.phila.gov/media/20220512191446/April-13-2022-Meeting-Minutes.pdf>

³⁴ <https://www.phila.gov/media/20220603155616/WRB-Public-Hearing-transcript-1-pm-2022-03-23.pdf>

³⁵ <https://www.phila.gov/media/20220428173948/WRB-Special-public-hearing-6pm-2022-03-23.pdf>

³⁶ The transcript reflects that six individuals, including Mr. Haver, gave comments at the public hearings and another six registered to speak but did not provide comments. Two people sent comments to the Rate Board via email. See <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2022-special-rate-proceeding/#public-input>.

³⁷ <https://www.phila.gov/media/20220406194710/PA-LKM-Testimony.pdf>

³⁸ <https://www.phila.gov/media/20220419170212/2022-Special-PWD-rebuttal-statement-1-2022-04-19.pdf>

³⁹ <https://www.phila.gov/media/20220422152713/2022-pwd-rebuttal-black-and-veatch.pdf>

⁴⁰ <https://www.phila.gov/media/20220510164728/WRB-Pre-Hearing-Conference-2022-04-26.pdf>

its witness, Mr. Morgan, who was cross-examined by PWD and Mr. Haver. Mr. Haver did not testify or present any witnesses. A stenographic [transcript](#)⁴¹ of the technical hearing was produced. As discussed at the hearing, the Public Advocate on April 28, 2022, submitted [PA Post Hearing Exhibit](#),⁴² a log of the outreach it conducted in this proceeding.

On May 4, 2022, Mr. Haver filed a [Motion to Strike](#) the [Public Advocate's Post Hearing Exhibit](#), alleging that this exhibit, the Public Advocate's outreach log, was untimely and otherwise improper. The Public Advocate responded by [letter](#) dated May 9, 2022.

Pursuant to the schedule contained in the [March 9, 2022 Prehearing Order](#), Briefs were filed on May 10, 2022, by [PWD](#) and the [Public Advocate](#). By email dated May 10, 2022, Mr. Haver stated that he was not filing a brief: "As I was not included in any of the settlement discussions, I am not filing a brief now, but will be filing a reply brief."⁴³

On May 24, 2022, Hearing Officer Chestnut submitted her [Hearing Officer Report](#). She found that the first condition (the receipt of federal stimulus funding), had not been satisfied, thereby warranting no reduction to the FY 2023 Base Rate Incremental Increase. She further found that the second condition (PWD's FY 2021 financial performance as measured by the Rate Stabilization Fund balance as of June 30, 2021) had been satisfied, thereby warranting a potential reduction of no more than \$3 million to the FY 2023 Base Rate Incremental Increase to reflect the sharing of this better than projected financial performance. Finally, she denied Mr. Haver's Motion to Strike the Public Advocate's Post Hearing Exhibit.

Exceptions to the Hearing Officer Report were timely filed by [PWD](#), the [Public Advocate](#) and [Mr. Haver](#).

At its Public Meeting on June 8, 2022, the Board discussed and voted upon the Hearing Officer's recommended determinations and the Exceptions filed thereto. The Board's

⁴¹ <https://www.phila.gov/media/20220510164729/WRB-tech-hearing-transcript-2022-04-29.pdf>

⁴² <https://www.phila.gov/media/20220428173954/2022-Post-Hearing-Exhibit-Outreach-Report.pdf>

⁴³ Neither [the March 9, 2022 Prehearing Order](#) nor the Rate Board's regulations at [§ II.C.3.b](#)(6) provide for the filing of reply briefs.

votes on each issue are set forth in the attached Appendix. The results of those determinations are set forth below.

As provided in the Rate Board's regulations at [§ II.C.3.b](#), the record in this proceeding includes the [Advance Notice](#) (including Sts. [1](#), [2](#) and [3](#), and associated schedules and exhibits); the [Formal Notice](#); PWD Rebuttal Sts. [1](#) and [2](#); PWD Hearing Exhs. [1](#), [2](#) and [3](#); responses to written [discovery](#); [PA St. 1](#); [PA Hearing Exh. 1](#); [PA Post Hearing Exhibit](#); the stenographic transcripts of the [April 26, 2022 further prehearing conference](#), the [April 28, 2022 technical hearing](#), and the public hearings, [1:00 p.m.](#) and [6:00 p.m.](#); [PWD's Brief](#); the [Public Advocate's Brief](#); the [Hearing Officer Report](#), PWD's [Exceptions](#), the Public Advocate's [Exceptions](#) and Mr. Haver's [Exceptions](#). All of these documents, as well as other pleadings and orders, are posted on the Rate Board's website, [2022 Special Rate Proceeding | Water, Sewer & Storm Water Rate Board | City of Philadelphia](#).⁴⁴

III. DISCUSSION

In her [Hearing Officer Report](#), Hearing Officer Chestnut explained that the [Joint Settlement Petition](#) was discussed and accepted by the Rate Board in its [June 16, 2021 Rate Determination](#).⁴⁵ In addition to numerous other terms, it contained an agreement by the settling participants concerning two potential downward adjustments to the rates scheduled to take effect on September 1, 2022 (the FY 2023 Base Rate Incremental Increase). As originally filed by PWD in its 2021 [general rate proceeding](#), the proposed rate increases would have raised the Water Department's overall revenues by \$48.9 million in FY 2022 and by \$92.1 million in FY 2023 for a total increase of \$141 million. Under the Settlement approved by the Rate Board, the revenues raised from rates increased by \$10.4 million in FY 2022 and a maximum of \$47 million in FY 2023, or a maximum total increase of \$57.4 million. The incremental portion of the second year's rate increase (up to \$34.11 million in revenues, the FY 2023 Base Rate Incremental Increase) could be reduced in a subsequent special rate proceeding in early 2022 if, during the period July 1, 2021 through December 31, 2021, PWD received more than \$2 million of certain federal funds that would reduce the Department's operating expenses or if its financial reserve funds as expressed

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

⁴⁵ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/>

by the Rate Stabilization Fund balance at the end of FY 2021 exceed “a minimum threshold,” provided that the total adjustments, if any, could not exceed that \$34.11 million. This limited proceeding was initiated by PWD to determine whether either of those conditions had been met and, if so, to determine the amount by which the incremental rates approved for September 1, 2022, should be reduced.

After a thorough consideration and discussion of the record⁴⁶ and arguments of the participants, Hearing Officer Chestnut found that the first condition (the receipt of federal stimulus funding) had not been satisfied, thereby warranting no reduction to the FY 2023 Base Rate Incremental Increase. She further found that based on a minimum threshold of \$113.988 million (rounded to \$114 million for purposes of discussion), the second condition (PWD’s FY 2021 financial performance as measured by the Rate Stabilization Fund balance of \$124.661 million as of June 30, 2021) had been satisfied, thereby warranting a potential reduction of no more than \$3 million to the FY 2023 Base Rate Incremental Increase. Finally, she denied Mr. Haver’s Motion to Strike the Public Advocate’s Post Hearing Exhibit.

A. Federal Stimulus Funding Adjustment

The [Joint Settlement Petition](#) provided that the FY 2023 Base Rate Incremental Increase (increasing rates on September 1, 2022 to produce \$34.11 million in incremental revenue in FY 2023) would be reduced on a dollar-for-dollar basis (subject to the combined maximum reduction of \$34.11 million) if during the Receipt Period (July 1, 2021, through December 31, 2021), PWD directly received more than \$2 million of specified federal stimulus funding that could be applied to operating expenses.

PWD’s position is that no adjustment is warranted, as it did not receive in excess of \$2 million of stimulus funding during the Receipt Period. [PWD St. 1](#) at 8-13, the direct testimony of Ms. La Buda; [PWD Brief](#) at 8. The Public Advocate agreed that no adjustment was

⁴⁶ Hearing Officer Chestnut noted that in making her recommendations, she kept in mind the public comments in the record, all of whom asked that the Rate Board consider the impact of higher rates on PWD’s customers. While some of these recommendations are outside the scope of this special rate proceeding, it is appropriate for the Rate Board to consider public comments to the extent it has discretion to do so.

warranted as the conditions had not been satisfied. [PA St. 1](#) at 19. No other participant submitted written direct or rebuttal testimony on this potential adjustment. Hearing Officer Chestnut found that the conditions warranting this potential adjustment were not satisfied and, therefore, no adjustment should be made on the basis of federal stimulus funding. [Hearing Officer Report](#) at 8.

In his [Exceptions](#) at 12-13, Mr. Haver asserted that PWD failed to make “good faith⁴⁷ efforts to obtain stimulus funding within the terms of the partial settlement agreement.”⁴⁸ He submitted no evidence to support this assertion; instead, he relied on various “acknowledgments” allegedly made by Ms. La Buda during his cross-examination of her.⁴⁹ In fact, Ms. La Buda affirmatively stated in her direct testimony ([PWD St. 1](#) at 13) that PWD has “used its best efforts to secure stimulus funding,” and noted that PWD filed monthly [reports](#)⁵⁰ with the Rate Board on its efforts to obtain federal and state funding.

Mr. Haver’s contention ([Exceptions](#) at 12, ¶59) that PWD “had not accepted the help City Council offered in receiving stimulus dollars” is both incorrect and irrelevant. If he is referring to the FY 2023 budget hearing held on April 27, 2022, which was the subject of his cross-examination, then Ms. La Buda’s response was, “This is outside the bounds of my testimony. Yes, someone offered to provide -- a Councilperson did offer to provide additional information which I welcomed.” April 28, 2022 [Transcript](#) at 64. In any event, this falls outside the receipt period identified in the Settlement, so is irrelevant to this proceeding.

The record thus suggests that PWD utilized its best efforts to obtain stimulus funding within the Receipt Period specified in the Joint Settlement Petition (July 1, 2021, through December 31, 2021). At a minimum, there has been no showing to the contrary on the record of this proceeding. This Exception is therefore denied, and we accept the Hearing Officer’s recommendation.

⁴⁷ The [Joint Settlement Petition](#) at 6 actually provides that “PWD will utilize its best efforts to secure Stimulus Funding.”

⁴⁸ As Mr. Haver declined to submit a brief, the Hearing Officer had no opportunity to address this issue.

⁴⁹ Mr. Haver provided no specific citations to either the testimony submitted by Ms. La Buda or the transcript of his cross-examination of her, so we do not know what statements he is relying on. We note that the [transcript](#) of this hearing is publicly available on the Rate Board’s website, <https://www.phila.gov/media/20220510164729/WRB-tech-hearing-transcript-2022-04-29.pdf>

⁵⁰<https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#reports-from-the-water-department>

B. Financial Performance Adjustment ⁵¹

The second potential reduction to the FY 2023 Base Rate Incremental Increase is directed to PWD's financial performance as measured by the balance in the RSF as of June 30, 2021 (the FY 2021 RSF balance). As set out in the [Joint Petition for Partial Settlement](#), paragraph II.A.(2)(a)(ii):

(ii) Reconciliation Framework (Changes in FY 2021 Performance)

Subject to Paragraph 11.A.(2)(a)(i) and this subparagraph (ii), the FY 2023 Base Rate Incremental Increase is subject to a reduction on a dollar-for-dollar basis via the Special Rate Reconciliation Proceeding and within the parameters described below.

- **Adjustment, Mechanics:** The Department shall file a reconciliation request for FY 2023, setting forth the amount by which it requests the Rate Board reduce the FY 2023 Base Rate Incremental Increase to share with customers the benefit of FY 2021 amounts above a minimum threshold¹² in the Rate Stabilization Fund. The Department shall include the City's annual financial report for such fiscal year and a statement explaining the basis for the Department's requested reduction (which may be any amount, including zero, up to \$34.110 million).

- **Maximum Adjustment:** Reconciliation under this adjustment, separately or in combination with other adjustments, cannot lower the FY 2023 Base Rate Incremental Increase below zero dollars.

¹² The settling parties expressly agree that participants in the Special Rate Reconciliation Proceeding may propose different "minimum thresholds" and that a "minimum threshold" has not been established in connection with the Reconciliation Framework (Changes in FY 2021 Financial Performance) set forth in Paragraph II.A.(2)(a)(ii) above.

We agree that the scope of this special, limited proceeding is defined by the [Joint Settlement Petition](#), as set forth above. Both the "minimum threshold" and the sharing methodology were undefined and remained contested here. What was made explicit in the Joint Settlement Petition was that the metric used to measure whether PWD's FY 2021 financial condition had improved so as to support a downward adjustment to the FY 2023 rates would be the balance in the Rate Stabilization Fund at the end of FY 2021. As correctly stated by the Hearing

⁵¹ This discussion adopts and supplements the discussion contained in the May 24, 2022 [Hearing Officer Report](#).

Officer in the March 8, 2022 [Order](#) addressed to the Public Advocate’s Motion to Strike (Portions of the Advance Notice): “Again, the purpose of this limited, special rate proceeding is not to establish new rates or the appropriate revenue requirement for FY 2023 – it is to determine whether any actual, improved financial performance of the Department in Fiscal Year 2021, as reflected in the Rate Stabilization Fund balance, should result in some sharing with its ratepayers, and if so what the amount of that sharing should be.” Order at 6.

The Hearing Officer agreed with PWD and the Public Advocate (the only participants that addressed this issue) that the starting point of this analysis is the FY 2021 ending balance in the RSF (which is the same as the beginning balance for FY 2022) of \$124.661 million (rounded to \$124.7 million for purposes of discussion), as shown on [PWD St. 1](#) (La Buda) at 16 and Schedule ML-4.⁵² The two contested issues relating to this potential adjustment were (1) the appropriate minimum threshold to compare to the RSF balance; and (2) the amount of sharing, if any, of any better than anticipated FY 2021 financial performance.

PWD’s position in this proceeding is that no adjustment is warranted, as the appropriate minimum threshold to compare to the \$124.7 million RSF balance is \$135 million, thus resulting in no excess funds available for sharing with its customers. It explained that a \$135 million RSF balance was a target established by the Rate Board in the [2018 Rate Determination](#)⁵³ and is consistent with PWD’s liquidity goals that address concerns expressed by the bond rating agencies. Further, even if a different minimum threshold is adopted by the Rate Board (thus making a portion of the RSF balance available), there should not be any sharing, i.e., zero reduction to the FY 2023 Incremental Base Rate Increase, given the Department’s current and anticipated

⁵² PWD also maintains a separate Residual Fund of about \$15 million; this fund was not referenced in the Joint Settlement Petition and will not be considered here or included in the financial performance analysis.

⁵³ <https://www.phila.gov/media/20180713144736/2018-RATE-DETERMINATION-TIMESTAMPED.pdf>. The Board stated at 38:

“On a going forward basis, the Board adopts a combined target level of \$150 million for the rate stabilization and residual funds. At any given point in time, the Board recognizes that these funds may exceed or fall short of these levels. On the basis of the evidence presented by the parties in this proceeding, however, the Board concludes that a \$150 million combined target level for the rate stabilization and residual funds is adequate to ensure that the Department has adequate reserves to meet its financial needs, while not imposing an undue burden on customers.” Because the residual fund target is generally set at \$15 million, the target for the RSF on a stand-alone basis would be \$135 million.

financial difficulties and the possibility of downgrade to the PWD’s credit ratings if certain financial metrics are not achieved.

PWD presented its concerns of a possible downgrade to its credit rating, particularly if the Department’s RSF balance falls below \$120 million as a consequence of a reduction in rates and resulting revenues for FY 2023. The Department presented rating agency reports indicating ratings (A+ from Standard & Poor’s and Fitch, A1 from Moody’s), all with a stable outlook. [Formal Notice, PWD Statement No. 1, Sch. ML-3](#).⁵⁴ In its analysis dated September 17, 2021, S&P stated, “If we believe that future rate covenant compliance is likely to rely on unplanned additional rate increases to achieve revenue requirements, deplete the RSF below the targeted \$120 million indicated in its current projections, or require significant capital or COA project delays, we would likely lower the rating.” On that basis, the Department presented testimony that a Rate Stabilization Fund balance of less than \$120 million would cause a risk of ratings downgrade, which would in turn result in substantially higher costs to customers over time. [PWD St. 1 at 17](#) (La Buda); [PWD St. 2 at 5](#) (Clupper and Nissen); [PWD Rebuttal St. 1 at 25-26](#) (La Buda, Clupper and Nissen).

The Public Advocate’s position is that the record supports a downward adjustment to the FY 2023 Base Rate Incremental Increase. It suggested use of the projected RSF balance at the time the Settlement was entered (\$113.988 million) as the minimum threshold for purposes of a possible adjustment, thus potentially making approximately \$10.7 million available for sharing. In terms of the actual sharing, the Public Advocate’s position is that the minimum adjustment that is warranted is \$5.35 million, but recommends an adjustment of \$6.6 million, which it states, “more appropriately reflects and shares the degree of outperformance demonstrated by PWD’s FY 2021 financial results.”

Hearing Officer Chestnut rejected PWD’s position that the appropriate minimum threshold to compare with the \$124.7 million RSF balance is the \$135 million set as a target balance by the Rate Board. Instead, she found that use in this limited proceeding of the FY 2021 ending RSF balance projected as of the date of the Rate Board’s adoption of the Joint Settlement

⁵⁴ <https://www.phila.gov/media/20220124131428/PWD-Statement-No.-1-Direct-Testimony-and-Schedules-of-Melissa-La-Buda.pdf> (beginning at PDF p.62).

Petition (\$113.988 million, rounded to \$114 million for discussion purposes) as the minimum threshold was reasonable. The Hearing Officer stated:

I recognize that the Rate Board in its [2018 Rate Determination](#) at 37-38 did set a combined target of \$150 million for the combined rate stabilization and residual funds on a “going forward basis,” but I do not feel it is appropriate to use the target of a \$135 million RSF balance as the minimum threshold for the limited purpose of this special rate proceeding. This level is considerably higher than even the projected RSF balance for fiscal year-end 2021 (\$109.188 million) contained in PWD’s 2021 general rate filing (Formal Notice, [PWD St. 7A](#)), which I can only assume was a balance that the Department felt was adequate at that time, particularly since the Department was also projecting RSF balances of \$108.857 million at fiscal year-end 2022 and \$109.303 million at fiscal year-end 2023. In other words, while it may be beneficial ultimately for PWD to increase the RSF balance to the targeted \$135 million, the Department recognized at the time of the settlement that this must occur gradually.

Instead, the use in this limited proceeding of the FY 2021 ending RSF balance projected as of the date of the Rate Board’s adoption of the Joint Settlement Petition is reasonable and consistent with the provision regarding this potential adjustment. This amount - \$113.988 million - is reflected in the Rate Board’s [2021 Rate Determination, Table C-1](#).

[Hearing Officer Report](#) at 10-11 (footnotes omitted)

She went on to explain that although that would indicate a total amount available for sharing of approximately \$10.7 million (\$124.7 million - \$114 million), she did not recommend that we adopt the Public Advocate’s proposals that either \$5.35 million or \$6.6 million be used to reduce the FY 2023 incremental rate increase, citing concern of a possible downgrade to PWD’s credit rating or other adverse action by the rating agencies. As she explained in the [Hearing Officer Report](#) at 12-13:

I recognize that PWD has taken substantial steps to reduce the revenue burden on its customers, first by voluntarily withdrawing its FY 2021 proposed rate increase proceeding entirely due to the COVID pandemic, and then by accepting a FY 2022 settlement that not only reduced the overall revenue requirement substantially but agreed to rate increases structured so as to provide for a much smaller first-year increase in order to make it easier for the customers to adjust to higher rates.

The fact remains, however, that PWD did agree in the [Joint Settlement Petition](#) to the concept of sharing with its customers at least some portion of the RSF balance above a minimum threshold. I find that the condition regarding

PWD's FY 2021 financial performance as measured by the Rate Stabilization Fund balance as of June 30, 2021, has been satisfied and therefore a sharing of a portion of this better than projected financial performance is warranted. I recommend that the Rate Board reduce the \$34.11 million base rate incremental increase scheduled to take effect on September 1, 2022, by no more than \$3 million.

This adjustment of no more than \$3 million is less than 0.4% of projected FY 2023 revenues of \$780,730,000, as shown on [PWD St. 1 \(La Buda\), Sch. ML-2, table C-1](#). This produces an allowed level of rates and charges that is sensitive to the required financial metrics while sharing with PWD customers the benefits of the financial performance (reflected in the RSF balance) experienced in FY 2021 as anticipated by the [Joint Settlement Petition](#).

It must be acknowledged, however, that even this modest reduction in the incremental base rate increase of \$34.11 million set for September 1, 2022, could leave the Water Department with less than \$120 million in the Rate Stabilization Fund by the end of FY 2023. It is clear from the various reports presented that the three rating agencies look at a myriad of factors; it is not certain that this recommendation alone would necessarily lead to a credit rating downgrade. This recommended adjustment of no more than \$3 million is far less than the maximum adjustment of \$34.11 million referenced in the [Joint Settlement Petition](#),³⁵ but it cannot be denied that a risk of a credit downgrade is of particular importance. Therefore, at its discretion, the Rate Board could decrease this recommended sharing of no more than \$3 million or even eliminate it entirely, to help mitigate the risk of a downgrade or negative action by the rating agencies.

³⁵ The rating agencies presumably were aware of the Joint Settlement Petition that was approved by the Rate Board in June 2021, and the possibility that the FY 2023 Base Rate Incremental Increase of \$34.11 million could be reduced, up to a maximum of \$34.11 million.

Both PWD and the Public Advocate excepted to this recommendation.

In its [Exceptions](#) at 3-4, the Department reiterated its position that no adjustment should be made, in light of PWD's "sub-par FY 2021 performance and its current financial circumstances" and that "In point of fact, such a reduction would (a) place the Department in greater financial difficulty; (b) require ratepayers to address the Department's financial difficulties in FY 2024 and beyond (including the impact of proposals considered here which, if adopted, will exacerbate our current troubles); and (c) potentially trigger a negative rating action or downgrade by the rating agencies."

The Department again asserted that the Rate Board should use the \$135 million RSF goal/target as the minimum threshold in this proceeding, as "This metric is an established and

objective goal/target accepted by the Rate Board and utilized by PWD for financial planning.” PWD requested, however, that if a minimum threshold of less than \$135 million is utilized, that the Board clarify that the decision to use a lower RSF balance as the minimum threshold in this limited proceeding does not represent any indication that the RSF target of \$135 million has been changed or lowered.

We will grant this Exception in part, to the extent that, as recognized in the Hearing Officer Report, any determinations or statements concerning the RSF balance in this case are solely to establish the appropriate minimum threshold for the limited purpose of implementing the provisions of the Joint Petition for Partial Settlement in this special rate proceeding.⁵⁵ We are not here making any changes to the previous Board financial targets or the appropriate level of the RSF balance for ratemaking or any other purpose in the future.

PWD’s second specific Exception was to the Hearing Officer’s use of the 2021 Table C-1 (attached to our 2021 Rate Determination) to determine the projected RSF balance at the time the parties entered into their agreement (and the Rate Board approved their Settlement Petition). The Department asserts that Table C-1 did not represent any agreement between the settling participants, but was included to show, in the context of the 2021 Settlement, the impact of the agreed upon additional revenues to be generated for FY 2022 and FY 2023. PWD further alleges that, in addition to the \$114 million not being an agreed number, its use to establish the minimum threshold here would be “counter-intuitive and clearly erroneous” in that “a reduction in approved FY 2023 rates will be moving the Department farther from the above-stated targeted balance of \$135 million” and may lead to the necessity of higher revenue requirements in future cases and possible rating downgrading. PWD [Exceptions](#) at 3-4.

In the [Hearing Report](#) at 10-11, Hearing Officer Chestnut found it appropriate to use as the minimum threshold the projected RSF balance as of the date of the Rate Board’s adoption of the Joint Settlement Petition, as it is the most reasonable projection of the FY 2021 year-end RSF balance in the record of that proceeding (the [2021 General rate Proceeding](#)) . Indeed, every

⁵⁵ This is explicitly stated in the Hearing Officer Report, fn 35: “To be clear, I am recognizing this RSF balance only for the limited purpose presented here and am not recommending that it be adopted as a target or otherwise deemed appropriate for ratemaking or other purposes.”

other projection provided by PWD on the record of that proceeding of the FY 2021 year-end RSF balance was lower than the \$114 million figure used in the settlement. In its Advance Notice, PWD witness LaBuda specifically noted that “the Department is deferring the Cash Reserve goals for the Rate period” and that “PWD’s projected RSF balance is less than the target \$135 million RSF balance by the end of FY 2021.” [PWD Statement No. 2](#)⁵⁶ at 29.⁵⁷ Ms. LaBuda added that “The RSF will need to be restored over time.”

We agree that it is appropriate to consider the projected RSF balance of \$114 million as the appropriate minimum threshold as of June 2021, for the reasons set out in the Hearing Officer Report. Nevertheless, we would reiterate that the use of this \$114 million figure for the limited purpose of establishing the minimum threshold used to establish the financial performance standard under the terms of the prior rate proceeding settlement in no way affects the Board’s prior decisions regarding the appropriate financial target level of the RSF balance to be used by the Department and the Board on an ongoing basis.

The Public Advocate in its Exceptions asserts that the recommendation that the Rate Board approve a reduction to the FY 2023 Base Rate Incremental Increase of no more than \$3 million is the result of “undue weight” being placed upon PWD’s updated financial projections, and that the Rate Board “should approve at least a \$5.35 million, but preferably a \$6.6 million, downward adjustment to FY 2023’s incremental rate increase, finding that such adjustment is warranted under the terms and conditions of the Settlement and supported by the weight of substantial evidence submitted in this proceeding.” [Exceptions](#) at 7, 10.

According to the Public Advocate, PWD has consistently underestimated its net revenues and its projections in the current case simply continue its long-standing history of financial outperformance. As stated by the Public Advocate: “Indeed, just as PWD attained Net Revenues after Operations that were between \$12,697,000 and \$14,540,000 higher than anticipated in FY 2021, a year in which it did not receive a rate increase, PWD’s financial position

⁵⁶ <https://www.phila.gov/media/20210115161814/PWD-Statement-No.-2-Direct-Testimony-and-Schedules-of-Melissa-La-Buda.pdf>

⁵⁷ As noted by the Hearing Officer, the Department’s year-end RSF projections in its 2021 general rate filing were \$109.188 million in 2021; \$108.857 million in 2022 and \$109.303 million in 2023. (Formal Notice, [PWD St. 7A](#), Sch. BV-1, Table C-1.)

will be much stronger in FY 2022 and FY 2023 than it projected a handful of months ago.” [PA Exceptions](#) at 8-9.

Upon consideration of the record and the arguments presented by the participants, we determine that the revenue amount by which the FY 2023 Base Rate Incremental Increase should be reduced is \$3 million to reflect the sharing of the amount by which the FY 2021 RSF balance exceeded the minimum threshold for financial performance. This produces an allowed level of rates and charges and resulting revenues that is sensitive to the required financial metrics⁵⁸ while sharing with PWD customers the benefits of the financial performance (reflected in the RSF balance) experienced in FY 2021 as anticipated by the Joint Settlement Petition.⁵⁹ We note that this adjustment is far less than the potential reduction of \$34.11 million referenced in the Joint Petition.

C. Other Issues

Aside from alleging that PWD did not use its best efforts to obtain federal stimulus funding, Mr. Haver in his [Exceptions](#) did not address any of the substantive issues in this limited special proceeding.⁶⁰ Instead, he challenged the notice provided by the Rate Board and continued his attacks on the competence and integrity of the Public Advocate and the Hearing Officer. He asserts that therefore the Hearing Officer Report should be rejected, the settlement agreement should be set aside, and a new hearing undertaken. [Exceptions](#) at 14.

⁵⁸ Our rate determination arises from the Settlement Petition, which was presented as a “black box” settlement, in which the individual adjustments to the proposed rates and revenue are not specifically identified. Similarly, we are here making no determination other than that a FY 2023 Base Rate Incremental Increase of \$31.11 million produces rates and charges sufficient to fund budgeted operating expense and annual debt service obligations from current revenues and to comply with rate covenants and the debt service reserve requirements. [Philadelphia Code §13-101\(4\)](#).

⁵⁹ This reduction in the Fiscal Year 2023 Base Rate Incremental Increase is set forth in line 5 of Table C-1A attached to this Order; Tables C-4 and C-5, attached for illustrative purposes, reflect the expected impact of these rate changes based on customer meter size and usage levels.

⁶⁰ Although his Exceptions Table of Contents lists as #6 “Argument for no rate increase,” there is no discussion of this issue. In any case, there is no proposed rate increase before the Rate Board here. The subject of this limited proceeding is whether the incremental base rate increase already approved and scheduled to take effect on September 1, 2022, should be reduced as the result of the conditions specified in the Joint Petition for Partial Settlement.

We note that as a result of his decision not to file a brief, Mr. Haver made it difficult, if not impossible for the Hearing Officer to address or respond to many of his arguments. Nevertheless, the Rate Board will address his Exceptions to the Hearing Report.

1. Alleged Inadequate Notice⁶¹

Mr. Haver's first Exception ("Inadequate Notice") alleges that the Rate Board failed to give adequate notice of the public hearing in violation of its regulations and the Philadelphia [Home Rule Charter, Sec. 8-600](#)⁶² (Language Access Plans).

As a preliminary matter, we note that Mr. Haver mischaracterizes what [regulations](#) govern this proceeding.⁶³ It is not a general rate proceeding pursuant to § II.B.4 which requires a minimum of four public hearings, but a limited proceeding (§ II.D), which by its express language is a "flexible" proceeding conducted within the parameters of § II.C.2-3, and which at § II.C.2(a) permits the Rate Board to "schedule one or more public hearings." As shown in PWD Exh. 1, proper notice and advertising (as specified by [§ II.A.2\(d\)](#)) was provided of the two public hearings held on March 23, 2022, in this limited, special rate proceeding.

We find there is no merit to his allegation that there was not adequate notice of this proceeding. The Rate Board's notice uses plain language to clearly explain the subject of this special, limited proceeding: "On January 21, 2022, the Philadelphia Water Department filed Advance Notice of the initiation of a Special Rate Proceeding regarding the reconciliation and potential downward adjustment of water, sewer and stormwater rates and charges previously approved to take effect September 1, 2022." This accurately and succinctly states the purpose of this filing. There has been no showing on the record of any customer unable to understand the scope of this proceeding.

Further, the website uses plain language to inform those who may be affected by this potential change in rates how to participate in the proceeding: "Persons affected by the rates

⁶¹ Although the Hearing Officer did not have an opportunity to address this contention, Mr. Haver made the same argument in the currently pending 2022 TAP-R reconciliation and we will look to that proceeding.

⁶² https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-183661

⁶³ The Rate Board's regulations are posted on its website, <https://www.phila.gov/media/20220204155914/WRBRegulationsAmended20210908reaffirmed20211013.pdf>

may become participants in the special rate proceeding to consider those changes by sending their names, addresses, email addresses and on whose behalf they are participating to: TAP-R Reconciliation Proceeding, Water Rate Board, % Steven Liang, City of Philadelphia Law Dept., 1515 Arch St., 17th Fl., Philadelphia, PA 19102 or WaterRateBoard@phila.gov.”

With respect to the allegation that the Rate Board’s website notice was in violation of the City’s Home Rule Charter, the purpose of [Section 8-600 of the Philadelphia Home Rule Charter](#) is to ensure that individuals with “limited English proficiency” are able to access City services. There has been no showing on the record that any customer “of limited English proficiency” has had any difficulty in understanding the plain language of the notices – explaining both the subject matter of this filing and how to participate – posted on the Rate Board’s website. Further, any violation of Section 8-600 would appear to be within the purview of the Philadelphia Office of Immigrant Affairs.

Therefore, this Exception is denied.

2. Retention and Rulings of the Hearing Officer

Mr. Haver in his next Exception accuses the Hearing Officer of corruption and prejudice, an unwarranted and wholly unsupported attack which has no basis on the facts of this case. Despite being told repeatedly and directly how the Hearing Officer (as well as the other providers of services to the Rate Board) is selected after a publicly noticed and competitively bid procurement process and retained pursuant to annual contract periods, he erroneously states that she is hired for each proceeding and that her decisions are made in consideration of future employment, which Mr. Haver characterizes as a “corrupt practice.” He goes on to state, “The Rate Board, rather than hire an objective hearing examiner, who serves for a limited time or limited number of proceedings, hires some one who they can influence by offering continued employment if the board is happy with the manner in which the hearings are conducted and happy with the hearing examiner’s report. . . This goes beyond the appearance of a conflict of interest, where it appears that a ruling that supports the efforts of the rate board may have an impact on future employment. It is a conflict as serving the interest of the rate board is the only way the hearing examiner can increase her likelihood of future compensation. A decision by the hearing examiner

that fails to please the Rate Board, may lead to a refusal to hire the hearing examiner in the next proceeding.” [Exceptions](#) at 5.

This is an outrageous and utterly unfounded attack on Ms. Chestnut’s character. She in fact is retained for a limited time (one year, with Board options for additional one-year terms), is not separately hired for each proceeding,⁶⁴ and there is no basis whatsoever to infer that any decisions or actions she has taken are for the purpose of “increasing her future compensation.” There is likewise no support whatsoever for Mr. Haver’s similarly unfounded statement ([Exceptions](#) at 7) that, “The hearing examiner has refused to file a conflict-of-interest statement or a financial disclosure form, leaving the public without knowledge if she or family members have financial interests in the businesses that do business with the Philadelphia Water Department.” Ms. Chestnut has not “refused” to file a conflict-of-interest statement or financial disclosure form – in fact, by email dated May 18, 2022, Mr. Haver was provided with copies of her state financial interest forms.⁶⁵

Finally, Mr. Haver has erroneously accused the Hearing Officer of preventing him from filing Exceptions; clearly, she did not. She appropriately pointed out that there has been no opportunity to respond to Mr. Haver’s positions as the result of his decision not to file written direct or rebuttal testimony or a brief in this case. He also complains that her procedural rulings have been prejudicial against him, for the purpose of assisting the Department and the Public Advocate. [Exceptions](#) at 6. Again, there is no basis for this allegation. As members noted in our June 8, 2022 deliberations on this rate determination and in our public meeting April 19, 2022, Ms. Chestnut – who has over a quarter of a century experience as an administrative law judge with the Pennsylvania Public Utility Commission – has done an exemplary job in conducting the hearings. Her rulings – both during the hearings and on resolution of various motions – have been well within the scope of her authority to “Make all procedural rulings necessary to conduct a fair,

⁶⁴ The Rate Board considered and rejected such allegations by Mr. Haver at its April 13, 2022 public meeting. See minutes, <https://www.phila.gov/media/20220512191446/April-13-2022-Meeting-Minutes.pdf>. We note also that Sections I.C.2(a) and I.D.2 of the Rate Board’s regulations do not require it to utilize the services of a Hearing Officer in TAP-R or Special Rate Proceedings.

⁶⁵ As explained at the [April 13, 2022 Rate Board meeting](#), legal counsel for the Rate Board has requested a public opinion from the City Board of Ethics whether its contractors must file state and City financial interest statements.

impartial and expeditious hearing process, including the exclusions of irrelevant or redundant testimony or evidence.” [Rate Board Regulations](#), § II.B.1(b). Adverse procedural rulings – especially when correctly discussed and resolved – are not indicative of bias.

This Exception is denied; further baseless attacks on the Hearing Officer’s character will not be countenanced.

3. Ineffective Assistance of Counsel / Public Advocate’s Conflict of Interest

These two Exceptions are a continuation of Mr. Haver’s dissatisfaction with the Public Advocate, which we have addressed numerous times. Mr. Haver (as an individual and non-lawyer he cannot represent the public or anyone other than himself) asserts that he has been deprived of effective counsel as the result of the Public Advocate’s alleged failure to engage its “client” the public before entering into the Joint Settlement Petition, and throughout this case. He again repeated his baseless and unwarranted accusations that the Public Advocate entered into the settlement in order to benefit from a “no-bid” contract. [Exceptions](#) at 8-9.

We reiterate that neither the “public” in general nor Mr. Haver in particular is the “client” of Community Legal Services (CLS), a vendor providing certain specified non-legal services under contract with the Rate Board.⁶⁶ If the Rate Board is dissatisfied with the services rendered, it can take whatever appropriate action is available under that contract. The fact that Mr. Haver as an individual is dissatisfied because the Public Advocate failed to take certain actions he promoted in this and prior proceedings does not warrant granting this Exception.

Mr. Haver’s final Exception alleging conflicts of interest is similarly without merit. We do not know the source of the graphic ([Exceptions](#) at 10), or what it is intended to represent. It was not presented during the course of the proceeding, so there was no opportunity for any other participant to address it. There is no support for his contention that there is any conflict at all, or that CLS in its performance of its general services contract with the Rate Board is influenced

⁶⁶ For a description of the scope of the contracted services, see Public Advocate’s [Answer to Haver Motion to Remove the Public Advocate](#), <https://www.phila.gov/media/20220224112951/Answer-to-LH-Motion-to-Remove-PA.pdf>. See also, Public Advocate’s [Response to Haver Objections](#) at 6-8 in the currently pending TAP-R reconciliation proceeding, <https://www.phila.gov/media/20220504170607/pub-adv-response-to-Haver-objections-final.pdf>

inappropriately by PWD’s “owner” [the City]. [Exceptions](#) at 10-11. The applicable contract grants CLS the duty and independence to advocate forcefully for the interests of small customers, and CLS has consistently done so. Moreover, the contract does not provide for CLS to provide legal representation, so Rule 1.7 of the Rules of Professional Conduct would not apply in any event.

We have previously found that Mr. Haver’s criticisms of how CLS has fulfilled its contractual responsibilities as Public Advocate are incorrect and unsupported by the record. Most recently, we denied his [Motion to Remove Public Advocate](#)⁶⁷ and associated [Direct Appeal](#)⁶⁸ at our [April 13, 2022 meeting](#).⁶⁹ See also our [2021 Rate Determination](#)⁷⁰ at 17-29 (2021 General Rate Proceeding).

As we have found repeatedly, there is no basis for these unwarranted allegations, based on mischaracterized facts⁷¹ and false insinuations,⁷² directed to the Public Advocate and the Hearing Officer. Going forward, such baseless attacks will be dismissed.

IV. CONCLUSION

Based on the record produced in this proceeding and in accordance with the discussion, findings and conclusions above, we therefore:

- (1) Grant or deny the Exceptions of the Philadelphia Water Department filed on June 2, 2022, consistent with this Rate Determination;
- (2) Grant or deny the Exceptions of the Public Advocate filed on June 2, 2022, consistent with this Rate Determination;

⁶⁷ <https://www.phila.gov/media/20220217171233/Motion-to-Remove-Public-Advocate.pdf>

⁶⁸ <https://www.phila.gov/media/20220325160241/edited-quid-pro-quo-water.pdf>

⁶⁹ <https://www.phila.gov/media/20220512191446/April-13-2022-Meeting-Minutes.pdf>

⁷⁰ <https://www.phila.gov/media/20210618105014/2021-General-Rate-Determination-as-filed-with-Records-Dept-20210616.pdf>

⁷¹ For example, he continues to characterize the Public Advocate’s contract with the Rate Board as “no bid” ([Exceptions](#) at 5) despite being repeatedly informed that the contract was solicited via the Board’s Request for Proposals, which was duly posted on the City’s public eContract Philly website. It was lawfully entered into pursuant to the City’s procurement rules and renewed pursuant to its terms.

⁷² For example, he suggests ([Exceptions](#) at 6-7) that opposing a PWD position could somehow lead the City to defund all of its contracts with CLS.

(3) Deny the Exceptions of Lance Haver filed on June 2, 2022, consistent with this Rate Determination;

(4) Adopt the Hearing Officer Report issued by Hearing Officer Marlane R. Chestnut on May 24, 2022, consistent with this Rate Determination;

(5) Find that the condition regarding the receipt of federal stimulus funding contained in the Joint Petition for Partial Settlement approved by Rate Determination dated June 16, 2021, has not been satisfied;

(6) Find that the condition regarding Philadelphia Water Departments FY 2021 financial performance contained in the Joint Petition for Partial Settlement approved by Rate Determination dated June 16, 2021, has been satisfied;

(7) Find that the FY 2023 Base Rate Incremental Increase, scheduled to take effect on September 1, 2022, resulting in additional revenues of \$34.110 million as approved in the 2021 General Rate Determination, should be reduced by \$3.00 million from \$34.110 million to \$31.110 million,⁷³ and

(8) Direct the Philadelphia Water Department to file rates and charges that are consistent with those approved by the Board in the 2021 General Rate Determination, modified solely pursuant to Ordering Paragraph (7) above, and by the revised TAP-R rates, based upon the Rate Board's Determination in the 2022 TAP-R Reconciliation Proceeding,⁷⁴ to be placed in effect for service rendered on and after September 1, 2022.

Irwin Popowsky, Chair
Tony Ewing, Vice-Chair
Abby L. Pozefsky, Secretary
McCullough Williams III, Member
Debra McCarty, Member

⁷³ This reduction in the Fiscal Year 2023 Base Rate Incremental Increase is set forth in line 5 of Table C-1A attached to this Order.

⁷⁴ Tables C-4 and C-5, attached to this Order for illustrative purposes, reflect the expected impact of these rate changes based on customer meter size and usage levels.

APPENDIX A: TABLES

TABLE C-1A: PROJECTED REVENUE AND REVENUE REQUIREMENTS
Base Rates Excluding TAP-R Surcharge
(in thousands of dollars)

Line No.	Description	Fiscal Year Ending June 30,	
		2022	2023
OPERATING REVENUE			
1	Water Service - Existing Rates	263,593	266,743
2	Wastewater Service - Existing Rates	423,433	429,267
3	Total Service Revenue - Existing Rates	687,026	696,010
	Additional Service Revenue Required		
	Percent Months		
	Year Increase Effective		
4	FY 2022 1.85% 10	10,411	12,901
5	FY 2023 5.37% 10		31,110
6	Total Additional Service Revenue Required	10,411	44,011
7	Total Water & Wastewater Service Revenue	697,437	740,022
	Other Income (a)		
8	Other Operating Revenue	29,192	29,111
9	Debt Reserve Fund Interest Income	-	-
10	Operating Fund Interest Income	1,230	1,234
11	Rate Stabilization Interest Income	1,198	1,078
12	Total Revenues	729,056	771,445
OPERATING EXPENSES			
13	Total Operating Expenses	(517,470)	(533,064)
NET REVENUES			
14	Transfer From/(To) Rate Stabilization Fund (b)	9,800	14,200
15	NET REVENUES AFTER OPERATIONS	221,386	252,581
DEBT SERVICE			
	Senior Debt Service		
	Revenue Bonds		
16	Outstanding Bonds	(163,516)	(164,558)
17	PENNVEST Parity Bonds	(10,885)	(11,067)
18	Projected Future Bonds	(8,000)	(30,798)
19	Commercial Paper	(2,000)	(4,000)
20	Total Senior Debt Service	(184,401)	(210,423)
21	TOTAL SENIOR DEBT SERVICE COVERAGE (L15/L20) (c)	1.20 x	1.20 x
22	Subordinate Debt Service	-	-
23	Transfer to Escrow	-	-
24	Total Debt Service on Bonds	(184,401)	(210,423)
25	CAPITAL ACCOUNT DEPOSIT	(29,447)	(31,155)
26	TOTAL COVERAGE (L15/(L20+L22+L25)) (c)	1.03 x	1.04 x
27	End of Year Revenue Fund Balance	7,538	11,003

(a) Includes other operating and nonoperating income, including interest income on funds and accounts transferable to the Revenue Fund.

(b) Pursuant to the General Ordinance, as of June 30 of each Fiscal Year, the City may transfer (i) from the Rate Stabilization Fund to the Revenue Fund or (ii) from the Revenue Fund to the Rate Stabilization Fund, the amount determined. The amounts presented are subject to actual results.

(c) Projected estimates are subject to actual financial results and final transfers to/from Rate Stabilization (see note (b)).

NOTE: Provided for rate setting purposes only. Does not reflect current financial projections.

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

(1)	(2)	(3)	(4)	(5)	
		FY 2022	FY 2023		
Meter Size	Monthly Use	Existing Rates	Proposed Rates	% Proposed of Existing	
Inches	Mcf	\$	\$	%	
5/8	0.0	28.96	30.52	5.4	
5/8	0.2	45.04	47.76	6.0	
5/8	0.3	53.07	56.38	6.2	Typical Senior
5/8	0.4	61.11	65.00	6.4	
5/8	0.5	69.15	73.62	6.5	Typical Resident
5/8	0.6	77.19	82.23	6.5	
5/8	0.7	85.23	90.85	6.6	
5/8	0.8	93.26	99.47	6.7	
5/8	1.7	165.61	177.04	6.9	
5/8	2.7	243.42	260.45	7.0	
5/8	3.3	289.46	309.79	7.0	

Notes:

The FY 2022 figures reflect the existing base and current TAP-R rates, of \$0.69/Mcf for water and \$1.09/Mcf for sewer.

The FY 2023 figures reflect:

(1) the TAP-R rates, of \$1.03/Mcf for water and \$1.63/Mcf for sewer, based upon the Rate Board's Determination in the 2022 TAP-R Reconciliation Proceeding; and

(2) the FY 2023 base rates based upon the Rate Board's determination in the 2022 Special Rate Proceeding.

The TAP-R Rates are subject to annual reconciliation.

Typical Senior Citizen is presented prior to discount. Eligible Senior Citizen's receive a 25% discount on their total bill. The associated FY 2022 and FY 2023 bills would be \$39.80 and \$42.28, respectively.

Mcf - Thousand cubic feet

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

(1) Meter Size	(2) Monthly Use Mcf	(3) Impervious Area sf	(4) Gross Area sf	(5) FY 2022	(6) FY 2023		(7) % Proposed of Existing
				Existing Rates \$	Proposed Rates \$	%	
5/8	0.0	1,794	2,110	38.55	40.77		5.8
5/8	0.2	1,794	2,110	54.63	58.01		6.2
5/8	0.3	1,794	2,110	62.66	66.63		6.3
5/8	0.4	1,794	2,110	70.70	75.25		6.4
5/8	0.5	1,794	2,110	78.74	83.87		6.5
5/8	0.6	4,000	5,500	111.59	119.11		6.7
5/8	0.7	4,000	5,500	119.63	127.73		6.8
5/8	0.8	26,000	38,000	399.87	428.57		7.2
5/8	1.7	26,000	38,000	472.22	506.14		7.2
5/8	2.7	4,000	5,500	277.82	297.33		7.0
5/8	3.3	4,000	5,500	323.86	346.67		7.0
5/8	11.0	7,000	11,000	953.27	1,021.27		7.1
1	1.7	7,700	7,900	252.33	269.90		7.0
1	5.0	22,500	24,000	678.16	726.58		7.1
1	8.0	7,700	7,900	736.76	789.08		7.1
1	17.0	22,500	24,000	1,598.80	1,713.22		7.2
2	7.6	1,063	1,250	658.75	704.84		7.0
2	16.0	22,500	24,000	1,550.70	1,661.16		7.1
2	33.0	66,500	80,000	3,386.32	3,629.34		7.2
2	100.0	7,700	7,900	7,823.62	8,383.48		7.2
4	30.0	7,700	7,900	2,551.13	2,730.78		7.0
4	170.0	10,500	12,000	12,659.00	13,565.46		7.2
4	330.0	26,000	38,000	23,612.08	25,308.97		7.2
4	500.0	140,000	160,000	36,384.51	39,004.58		7.2
6	150.0	10,500	12,000	11,453.34	12,269.79		7.1
6	500.0	41,750	45,500	35,354.72	37,895.92		7.2
6	1,000.0	26,000	38,000	68,795.12	73,748.50		7.2
6	1,500.0	140,000	160,000	103,753.45	111,230.51		7.2
8	750.0	10,500	12,000	51,953.62	55,688.42		7.2
8	1,500.0	66,500	80,000	103,047.69	110,469.34		7.2
8	2,000.0	26,000	38,000	136,187.40	145,999.13		7.2
8	3,000.0	140,000	160,000	203,860.73	218,581.14		7.2
10	600.0	22,500	24,000	42,209.78	45,237.24		7.2
10	1,700.0	41,750	45,500	116,393.47	124,772.89		7.2
10	3,300.0	26,000	38,000	222,616.87	238,691.47		7.2
10	6,000.0	140,000	160,000	403,051.20	432,211.48		7.2

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 2022 figures reflect the existing base and current TAP-R rates, of \$0.69/Mcf for water and \$1.09/Mcf for sewer.
 (c) The FY 2023 figures reflect:
 (1) the TAP-R rates, of \$1.03/MCF for water and \$1.63/Mcf for sewer, based upon the Rate Board's Determination in the 2022 TAP-R Reconciliation Proceeding; and
 (2) the FY 2023 base rates based upon the Rate Board's Determination in the 2022 Special Rate Proceeding.
 The TAP-R Rates are subject to annual reconciliation.

Mcf - Thousand cubic feet
 sf - square feet

APPENDIX B: BOARD POLLING SHEET JUNE 8, 2022 – SPECIAL RATE PROCEEDING

	Hearing Officer Report Recommended Finding	Exception	Mr. Popowsky	Mr. Ewing	Ms. Pozefsky	Mr. Williams	Ms. McCarty
1	The condition in the Joint Settlement Petition regarding the receipt of federal stimulus funding has <u>not</u> been satisfied, thereby warranting no reduction to the FY 2023 Base Rate Incremental Increase.	Mr. Haver: The Water Department failed to make a good faith effort to obtain stimulus funding in order to obviate the need for a rate increase.	Finding Accept	Finding Accept	Finding Accept	Finding Accept	Finding Accept
			Exception Deny	Exception Deny	Exception Deny	Exception Deny	Exception Deny
2	The condition in the Joint Settlement Petition regarding PWD’s FY 2021 financial performance as measured by the Rate Stability Fund balance as of June 30, 2021, <u>has</u> been satisfied.	¹ PWD: The condition for financial performance has not been met because the Hearing Officer should have utilized the \$135 million RSF target adopted by the Board in its 2018 general rate determination. ² PWD: If a lower financial performance measure is adopted for the purposes of this proceeding, the Board should clarify that it is not changing the \$135 million target for the RSF balance over time.	Finding Accept	Finding Accept	Finding Accept	Finding Accept	Finding Accept
			1st Exception Deny	1st Exception Deny	1st Exception Deny	1st Exception Deny	1st Exception Deny
			2nd Exception Accept	2nd Exception Accept	2nd Exception Accept	2nd Exception Accept	2nd Exception Accept
3	The minimum threshold for potential sharing of the better than projected financial performance with customers should be set at \$113.988 million for this limited special rate proceeding.	PWD: The Hearing Officer erred by using the \$113.988 RSF balance from Table C-1 in the 2021 Settlement as the minimum threshold for financial performance.	Finding Accept	Finding Accept	Finding Accept	Finding Accept	Finding Accept
			Exception Deny	Exception Deny	Exception Deny	Exception Deny	Exception Deny

	Hearing Officer Report Recommended Finding	Exception	Mr. Popowsky	Mr. Ewing	Ms. Pozefsky	Mr. Williams	Ms. McCarty
4	The amount by which the FY 2023 Base Rate Incremental Increase should be reduced, to reflect the sharing of the amount by which the FY 2021 RSF balance exceeded the minimum threshold for financial performance, should be no more than \$3 million.	¹ Public Advocate: Hearing Officer erred by implicitly placing undue weight on PWD’s updated financial outlook.	Finding Accept	Finding Accept	Finding Accept	Finding Accept	Finding Accept
		² Public Advocate: Hearing Officer should have adopted the Public Advocate’s proposed reduction of \$5.35 to \$6.6 million to the FY 2023 Rate Increase.	1st Exception Deny	1st Exception Deny	1st Exception Deny	1st Exception Deny	1st Exception Deny
		³ PWD: There should be no reduction to the FY 2023 rate increase.	2nd Exception Deny	2nd Exception Deny	2nd Exception Deny	2nd Exception Deny	2nd Exception Deny
		⁴ Mr. Haver: Due to lack of adequate notice, prejudicial actions by the Hearing Officer, inadequate representation by the Public Advocate, and PWD’s failure to make its best efforts to obviate the need for a rate increase, the Hearing Officer’s report should be rejected, the settlement agreement should be set aside, and the FY 2023 Base Rate Incremental Increase should be rescinded in its entirety.	3rd Exception Deny	3rd Exception Deny	3rd Exception Deny	3rd Exception Deny	3rd Exception Deny
			4th Exception Deny	4th Exception Deny	4th Exception Deny	4th Exception Deny	4th Exception Deny
	Final Determination		Mr. Popowsky	Mr. Ewing	Ms. Pozefsky	Mr. Williams	Ms. McCarty
5	The Rate Board determines that the FY 2023 rate increase of \$34.110 million beginning September 1, 2022, previously set by the Board in its June 2021 General Rate Determination pursuant to the terms of the Joint Petition for Partial Settlement, should be reduced by \$(_____).		Finding \$3 million Accept	Finding \$3 million Accept	Finding \$3 million Accept	Finding \$3 million Accept	Finding \$3 million Accept