

**REPORT OF THE REVENUE AND WATER COMMISSIONERS
ON THE PUBLIC HEARING WITH RESPECT TO
THE INCOME-BASED WATER RATE ASSISTANCE PROGRAM REGULATIONS
OF THE WATER AND REVENUE DEPARTMENTS**

February 10, 2020

On December 6, 2019, the Revenue and Water Departments (hereinafter referred to together as the Departments) filed with the Department of Records, pursuant to Section 8-407(a) of the Philadelphia Home Rule Charter, proposed amendments to the Departments' joint regulations regarding the Income-Based Water Rate Assistance Program (IWRAP), also referred to as the Tiered Assistance Program (TAP).

Public notice of the filing of the proposed amendments to the regulations was published on December 11, 2019. A written request for a public hearing was made by Community Legal Services, Inc. (CLS) on December 20, 2019. A public hearing was scheduled and held before the Revenue and Water Commissioners on Tuesday, January 15, 2020 at 2:00 p.m. at the Municipal Services Building located at 1401 J.F.K. Boulevard, Philadelphia, Pennsylvania. Rachel Lopez of the Drexel Community Lawyering Clinic and Robert Ballenger of CLS spoke at the hearing. Mr. Ballenger also provided written comments.

Through this Commissioners' Report (Report), amendments to Sections 206.6 (Removal from TAP), 206.7 (Earned Forgiveness), 206.9 (TAP Recertification) and 206.10 (Conservation Measures) of the regulations are adopted, with modifications to Sections 206.6 and 206.7 based on further consideration of the oral and written comments. The regulations as revised by this Report are attached as Exhibit A and shall become effective 10 days after the filing of this Report with the Records Department. A version showing all changes made to the current regulations by the amendments as modified by this Report is attached as Exhibit B. The written testimony received on the proposed regulations is attached as Exhibit C. A summary of the written comments and testimony and the responses of the Commissioners are provided below.

Both testifying witnesses at the public hearing support amending the regulations to include forgiveness of arrearages owed by customer enrolled in TAP. Mr. Ballenger had several additional comments and recommendations.

Mr. Ballenger stated that his primary focus was on the provisions in the proposed regulations requiring continuous enrollment in TAP for twenty-four months and twenty-four complete payments of TAP bills before earning forgiveness. He opined that these provisions taken together are inconsistent with the legislation authorizing TAP. He commented that these provisions are inconsistent with other utility earned forgiveness programs which allow a customer who falls out of the program and then reenrolls in good standing to retain the benefits of payments made during both periods of enrollment. He further commented that the continuous enrollment language could be interpreted to prohibit access to earned forgiveness if a customer experiences an interruption in participation yet does not have a change in program eligibility or becomes ineligible for continued enrollment due to a change in income. He stated that such customers should not have to "restart" their arrearage forgiveness cycle upon reenrollment.

The Commissioners disagree with the contention that the proposed regulations would create an outcome that is inconsistent with the Philadelphia Code and with the comment that a TAP customer should earn forgiveness with each payment on a monthly basis. However, we are modifying the proposed regulations to address the concerns about the proposed requirement for continuous enrollment and customers who become ineligible for continued enrollment due to a change in income. The final regulations have been modified so that customers who reenroll after falling out of enrollment do not have to restart their arrearage forgiveness cycle. The regulations also have been revised to allow customers who are no longer eligible due to a change in household income to earn partial forgiveness based on the total number of complete monthly payments made.

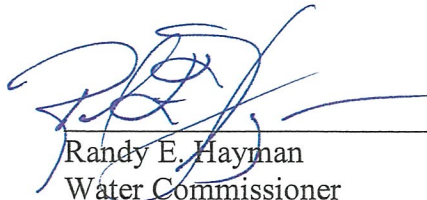
Mr. Ballenger raised concerns that providing earned forgiveness in a lump sum would not align the period in which TAP customers make payments with the point at which the Water Department may recover the lost revenue from arrearage forgiveness under the TAP-R Rate Rider. He proposed language that would allow arrearage to be structured either in monthly installments or as a lump sum. The Commissioners decline to adopt his proposed language and have modified Section 206.7(c) to clarify that the forgiven arrears will be credited to a customer's account in a lump sum rather than monthly.

Mr. Ballenger commented that that a TAP customer returning to TAP after a period of non-enrollment should be able to earn retroactive forgiveness for months outside of the program by paying a TAP cure amount. The recommend changes to 206.7 will address concerns about TAP customer returning to TAP after a period of non-enrollment. We also note that TAP customers can earn forgiveness by curing missed payments while enrolled in TAP.

Mr. Ballenger also provided comments on the proposed addition of language in Section 206.6(g) regarding TAP audits. He stated that he did not object to the Departments reserving the right to conduct TAP audits but added that the process of such audits and their ramifications should be vetted before regulations are finalized. The Commissioners have determined that it is not necessary to address the ramifications of an audit at this time and have modified the proposed language of Section 206.6(g) accordingly. We will further direct that a formal audit process not be initiated until the issues raised by CLS about audits are more thoroughly vetted at the next Residential Customer Assistance and Service (R-CAS) meeting.



Frank Breslin, CPA
Revenue Commissioner



Randy E. Hayman
Water Commissioner

EXHIBIT A

206.0 INCOME-BASED WATER RATE ASSISTANCE PROGRAM

* * *

206.6 Removal from TAP

(a) A Customer enrolled in TAP may request to be removed from TAP at any time.

(b) A Customer will be removed from TAP if the Customer is no longer eligible for TAP due to a change in household income or household size.

(c) In addition to removal from TAP pursuant to Section 206.6(a) and (b) of these regulations, a TAP Customer may be removed from TAP for submitting intentionally false enrollment or re-certification information/documentation, unauthorized use of service, failure to recertify upon request by WRB, or failure to accept and reasonably maintain free conservation services offered by the Water Department.

(d) Customers removed from TAP for submitting intentionally false enrollment or re-certification information/documentation or unauthorized use of service shall be back-billed for previously unbilled usage and/or for the amount by which the Customer's monthly service, usage and stormwater charges if billed at rates applicable to general Customers would have exceeded the amounts actually billed on the Customer's monthly TAP Bill during the period of enrollment in TAP.

(e) When a TAP Customer is removed from TAP, the balance on all past unpaid TAP Bills and whatever debt remains on pre-TAP arrears becomes immediately due.

(f) WRB will not re-enroll a Customer in TAP for a one-year period (unless specifically identified elsewhere below), if the TAP Customer:

(1) submits intentionally false enrollment or re-certification information or documentation;

(2) provides water for use at a location other than the Customer's primary residence; or

(3) refuses to take necessary actions to accept and reasonably maintain any free conservation measures offered to the Customer by the Water Department, Customer will not be eligible for re-enrollment until services are accepted.

(g) The Water Department and WRB reserve the right to periodically audit TAP Customers to confirm continued eligibility.

206.7 Earned Forgiveness

If a Customer maintains continuous enrollment, the Customer will obtain forgiveness of outstanding arrears under the following conditions:

(a) A Customer maintaining enrollment in TAP, who makes twenty-four (24) complete monthly payments of the TAP Bill, will earn forgiveness of penalty charges on pre-TAP arrears.

(b) After each year of continued enrollment in TAP, any arrears older than fifteen years will be removed in accordance with Philadelphia Code Section 19-1605(1).

(c) A Customer maintaining continuous enrollment in TAP who makes twenty-four (24) complete monthly payments of the TAP

Bill on or after September 1, 2020, will earn forgiveness of pre-TAP arrears. The credit for the pre-TAP arrears will be applied to the Customer's account on or after the twenty-fourth (24th) complete monthly payment of the Customer's TAP bill during such period of enrollment.

(d) In the event that a Customer is unable to maintaining enrollment in TAP for twenty-four (24) consecutive months due to a change in household income that results in a determination that the Customer is no longer eligible for enrollment in TAP, forgiveness of pre-TAP arrears will be earned on the last day of the enrollment period and applied to the Customer's account on or after the last day of enrollment with the amount of forgiveness of pre-TAP arrears determined by multiplying the amount of the Customer's pre-TAP arrears at the time of initial enrollment by 1/24 by the number of complete monthly payments of TAP Bills issued on or after September 1, 2020.

* * *

206.9 TAP Recertification

(a) Upon written request of WRB and no more frequently than once every year, a Customer must re-certify to WRB his or her income, eligibility and/or Special Hardship condition.

(b) In the event of a change in household income or household size, prospective TAP Bills will be calculated according to these regulations and the Water Department's rates for customers enrolled in TAP. Such recalculation shall be done promptly at the request of the Customer. A Customer also may request a determination or redetermination of Special Hardship at any time he or she experiences a change in

circumstances. In the event of a change in household income that results in a determination that the Customer is no longer eligible to participate in TAP, such Customer shall receive the benefit of any forgiveness earned during the period of enrollment in TAP.

(c) Prior to recertifying a Customer as eligible for TAP, WRB shall determine whether the Customer would receive more affordable bills under another available payment agreement or rate discount in accordance with the procedures set forth in Section 206.2(b) of these regulations.

(d) Prior to recertifying a Customer as eligible for TAP, WRB shall determine if there are any unpaid TAP Bills. If there are any unpaid TAP Bills that are not part of a TAP Payment Agreement at the time of recertification, the Customer will be offered a TAP Payment Agreement if the Customer has not been offered a TAP Payment Agreement for unpaid TAP Bills during the prior twelve (12) months. A Customer may be required to pay amounts due on unpaid TAP Bills or a previously offered TAP Payment Agreement prior to WRB recertifying the Customer for TAP if the Customer is not eligible for a TAP Payment Agreement pursuant to this section.

206.10 Conservation Measures.

(a) Each Customer enrolled in TAP shall agree to accept and reasonably maintain any free conservation measures offered to the Customer by the Water Department.

(b) Failure to accept and/or reasonably maintain the free conservation measures offered by the Water Department shall result in the Customer's removal from TAP as set forth in Section 206.6(c) of these regulations.

EXHIBIT B

206.0 INCOME-BASED WATER RATE ASSISTANCE PROGRAM

* * *

206.6 Removal from TAP

(a) A Customer enrolled in TAP may request to be removed from TAP at any time.

(b) A Customer will be removed from TAP if the Customer is no longer eligible for TAP due to a change in household income or household size.

(c) In addition to removal from TAP pursuant to Section 206.6(a) and (b) of these regulations, a TAP Customer may be removed from TAP for submitting intentionally false enrollment or re-certification information/documentation, unauthorized use of service (~~providing water for use at a location other than the Customer's primary residence~~), failure to recertify upon request by WRB, or failure to accept and reasonably maintain free conservation services offered by the Water Department.

(d) Customers removed from TAP for submitting intentionally false enrollment or re-certification information/documentation or unauthorized use of service shall be back-billed for previously unbilled usage and/or for the amount by which the Customer's monthly service, usage and stormwater charges if billed at rates applicable to general Customers would have exceeded the amounts actually billed on the Customer's monthly TAP Bill during the period of enrollment in TAP.

(e) When a TAP Customer is removed from TAP, the balance on all past unpaid TAP

Bills and whatever debt remains on pre-TAP arrears becomes immediately due.

(f) WRB will not re-enroll a Customer in TAP for a one-year period (unless specifically identified elsewhere below), if the TAP Customer:

(1) submits intentionally false enrollment or re-certification information or documentation;

(2) provides water for use at a location other than the Customer's primary residence; or

(3) refuses to take necessary actions to accept and reasonably maintain any free conservation measures offered to the Customer by the Water Department, Customer will not be eligible for re-enrollment (stay-out until services are accepted).

(g) The Water Department and WRB reserve the right to periodically audit TAP Customers to confirm continued eligibility.

206.7 Earned Forgiveness

If a Customer maintains ~~continued~~ enrollment, the Customer will obtain forgiveness of outstanding arrears under the following conditions:

(a) ~~Penalty charges on pre-TAP arrears shall be waived and forgiven for a Customer enrolled in TAP if the Customer makes monthly payments of the TAP Bill for twenty-four (24) consecutive months~~ A Customer maintaining enrollment in TAP, who makes twenty-four (24) complete monthly payments of the TAP Bill, will earn forgiveness of penalty charges on pre-TAP arrears.

(b) After each year of continued enrollment in TAP, any arrears older than fifteen years will be removed in accordance with Philadelphia Code Section 19-1605(1).

~~(c) After fifteen years of continued enrollment in TAP, all arrears will be removed in accordance with Philadelphia Code § 19-1605(1).~~ A Customer maintaining enrollment in TAP, who makes twenty-four (24) complete monthly payments of the TAP Bill on or after September 1, 2020, will earn forgiveness of pre-TAP arrears. The credit for the pre-TAP arrears will be applied to the Customer's account on or after the twenty-fourth (24th) complete monthly payment of the Customer's TAP bill during such period of enrollment.

(d) In the event that a Customer is unable to maintaining enrollment in TAP for twenty-four (24) consecutive months due to a change in household income that results in a determination that the Customer is no longer eligible for enrollment in TAP, forgiveness of pre-TAP arrears will be earned on the last day of the enrollment period and applied to the Customer's account on or after the last day of enrollment with the amount of forgiveness of pre-TAP arrears determined by multiplying the amount of the Customer's pre-TAP arrears at the time of initial enrollment by 1/24 by the number of complete monthly payments of TAP Bills issued on or after September 1, 2020.

* * *

206.9 TAP Recertification

(a) Upon written request of WRB and no more frequently than once every year, a Customer must re-certify to WRB his or her income, eligibility and/or Special Hardship condition.

(b) In the event of a change in household income or household size, prospective TAP Bills will be calculated according to these regulations and the Water Department's rates for customers enrolled in TAP. Such recalculation shall be done promptly at the request of the Customer. A Customer also may request a determination or redetermination of Special Hardship at any time he or she experiences a change in circumstances. In the event of a change in household income that results in a determination that the Customer is no longer eligible to participate in TAP, such Customer shall receive the benefit of any forgiveness earned during the period of enrollment in TAP.

(c) Prior to recertifying a Customer as eligible for TAP, WRB shall determine whether the Customer would receive more affordable bills under another available payment agreement or rate discount in accordance with the procedures set forth in Section 206.2(b) of these regulations.

(d) Prior to recertifying a Customer as eligible for TAP, WRB shall determine if there are any unpaid TAP Bills. If there are any unpaid TAP Bills that are not part of a TAP Payment Agreement at the time of recertification, the Customer will be offered a TAP Payment Agreement if the Customer has not been offered a TAP Payment Agreement for unpaid TAP Bills during the prior twelve (12) months. A Customer may be required to pay amounts due on unpaid TAP Bills or a previously offered TAP Payment Agreement prior to WRB recertifying the Customer for TAP if the Customer is not eligible for a TAP Payment Agreement pursuant to this section.

206.10 Conservation Measures.

(a) Each Customer enrolled in TAP shall agree to accept and reasonably maintain any free conservation measures offered to the Customer by the Water Department.

(b) Failure to accept and/or reasonably maintain the free conservation measures offered by the Water Department shall result in the Customer's removal from TAP as set forth in Section 206.6(c) of these regulations.

EXHIBIT C

WRITTEN COMMENTS



Before the Commissioners of
The Philadelphia Water Department and
The Philadelphia Department of Revenue

In the Matter of the Proposed Amendments :
To Chapter 2 (Assistance Programs) :
Of the Philadelphia Water Department Regulations :

Comments of Community Legal Services, Inc. Energy Unit

January 15, 2020



These comments set forth the recommendations of Community Legal Services, Inc. Energy Unit (CLS) regarding the Amendments to Chapter 2 of the Philadelphia Water Department Regulations, dated December 6, 2019 (“Proposed Regulations”).

We appreciate that the Law Department provided us an opportunity to review an earlier draft of these Proposed Regulations. On November 27, 2019, we provided a letter containing written comments, a copy of which is attached as Exhibit A. As we recognized then, and reiterate now, we believe that the Water Department and Department of Revenue (Departments) have chosen an appropriate period of time – 24 months – over which customers participating in the Tiered Assistance Program (TAP) should be eligible to earn full forgiveness pre-TAP arrears (principal and interest/penalties). We wholeheartedly support the Departments’ selection of a 24-month period for the elimination of pre-TAP arrears.

The Proposed Regulations incorporate language responsive to one of the comments included in our November 27 correspondence. Specifically, the Proposed Regulation 206.9(d) ensures that TAP participants are provided reasonable opportunity to access TAP payment agreements at the time of recertification, in order to allow those customers to remain in TAP. We appreciate this adjustment in response to our concerns.

Additionally, based on correspondence from the Law Department, it is our understanding that the Departments would like to collaborate on Standard Operating Procedures to address three of the other concerns raised in our November 27 comments. We understand and appreciate the Departments’ desire to address these topics (definition of pre-TAP arrears, TAP audits, and tenant maintenance of conservation services) through a broader group discussion, and agree that these topics are well-suited to resolution among the members of the Residential Customer Assistance and Service Committee (R-CAS). However, because the Departments propose that TAP audits could lead to removal from TAP participation, CLS submits that the regulations for TAP audits should not be finalized until after R-CAS can provide the Departments with meaningful feedback.¹

These comments address subjects that were raised in our November 27 letter for which the Departments have not proposed revised regulation language and/or further discussion regarding the development of Standard Operating Procedures. After giving these subjects additional thought, we developed more specific recommendations, which we describe below.

General Modifications to Section 206.7

Proposed Regulation 206.7 provides TAP participants with an opportunity to earn forgiveness of pre-TAP arrears based on two criteria: (1) continuous enrollment, and (2) completion of 24 monthly payments of the TAP bill. We are not certain how the Departments’ intend to interpret

¹ CLS does not object to the Departments reserving the right to conduct TAP audits. However, the process of such audits and their ramifications should be vetted thoroughly before regulations are finalized.



the language of the Proposed Regulations. However, we have articulated our concerns with these two criteria, as we read them, in the sections set forth more fully below.

In general, however, we respectfully urge the Departments to approve modest revisions to the Proposed Regulations that will allow the earned forgiveness of pre-TAP arrears to be fully considered and evaluated in the context of PWD's forthcoming rate proceeding. We believe the language should be flexible enough to defer some specifics about earned forgiveness to the rate proceeding, where the potential cost recovery of TAP arrearage forgiveness can be carefully evaluated.

Under one reading of the Proposed Regulations, TAP participants would earn the majority of forgiveness at one point in time – upon making the 24th complete monthly TAP Bill payment. If operationalized in this manner, we expect that several concerns would be raised in the rate proceeding regarding the TAP-R cost recovery mechanism for earned arrearage forgiveness. As discussed below, we submit that collecting arrearage forgiveness costs through the TAP-R should coincide with the period during which payments are made by the customer to earn the program benefit.

In order for these details to be fully considered in the PWD rate proceeding, and for TAP arrearage forgiveness and cost recovery to be implemented without further changes to the regulations, we propose that Section 206.7 be revised to read as follows:²

206.7 Earned Forgiveness

A Customer enrolled in TAP will obtain forgiveness of outstanding arrears under the following conditions:

(a) Forgiveness of a Customer's total penalty charges on pre-TAP arrears will be earned by making twenty-four (24) complete monthly payments of the TAP Bill.

(b) After each year of enrollment in TAP, any arrears older than fifteen years will be removed in accordance with Philadelphia Code Section 19-1605(1).

(c) Forgiveness of pre-TAP arrears will be earned by making twenty-four (24) complete monthly payments of the TAP Bill on or after September 1, 2020.

Proposed Requirement of “Continuous Enrollment”

We agree with the general proposition that customers should earn forgiveness of pre-TAP arrears by paying TAP bills while eligible to participate in TAP. However, we are concerned that

² As drafted, this language could be interpreted to allow customers to earn forgiveness on a monthly basis, which would align with ongoing cost recovery through the reconcilable TAP-R. Alternatively, this language could be interpreted to allow customers to earn forgiveness upon making the 24th complete payment.



language requiring “continuous enrollment” could be interpreted to prohibit access to earned forgiveness if a customer experiences an interruption in participation yet does not have a change in program eligibility. This outcome would be inconsistent with the language of the Philadelphia Code, which ensures that customers maintain the benefit of TAP arrearage forgiveness earned while enrolled in the program. Indeed, customers do not forfeit that benefit when they later experience a change in household income that makes them ineligible in future periods.³ These provisions seek to ensure that earning arrearage forgiveness is tied to income eligibility and payment of TAP bills. A requirement to maintain continuous enrollment could create a barrier to access that is not contemplated by the Philadelphia Code.

An absolute requirement of “continuous enrollment” also fails to accommodate the likely interruptions customers will experience due to mistake, misunderstanding, or actions of third parties, which are not attributable to any fault of the customer or any change in the customer’s eligibility.⁴ Furthermore, CLS’s low-income clients can and do experience significant hardships that may impede their ability to respond to TAP recertification requests. A TAP customer who is hospitalized, struggling with the care of a disabled relative, or recovering from domestic violence should not be penalized by having to “restart” their arrearage forgiveness cycle due to inability to timely respond to recertification requests.

We appreciate that the Departments’ procedure for recertification seeks to ensure that TAP customers do not experience accidental interruptions in participation, but we are concerned that a requirement of “continuous enrollment” could be applied in such a way as to limit access to earned forgiveness. We do not believe that is or should be the intention of the regulations.

If the intention of the language regarding “continuous enrollment” is to ensure that only payments by customers who are eligible for TAP will count for arrearage forgiveness, then that language appears superfluous. A customer either receives TAP bills or she does not. Because the TAP bill is not recalculated if the customer fails to recertify for TAP, an unpaid TAP bill remains an unpaid TAP bill for which payment can subsequently be made. If the customer is able to demonstrate that she remains income-eligible, rejoin TAP, and make payments on previously unpaid TAP bills, those payments should be treated no differently than if the customer had not experienced a lapse in participation in TAP.

Ongoing Earned Forgiveness: Timely and Accurate Cost Recovery

As written, the Proposed Regulations could be interpreted to provide forgiveness of pre-TAP arrears (and penalties on such arrears) in lump sum, after 24 payments. As CLS proposes, above, this language could be more flexible to permit earned forgiveness to occur either after 24 payments or in proportion with each of 24 payments. CLS proposes this flexible language so

³ See Phila. Code § 19-1605(3)(p).

⁴ Indeed, there is evidence to support that customers in some low-income neighborhoods may be less likely to receive mail timely, if at all, impeding their ability to respond to mailed notices. See, e.g., <https://billypenn.com/2019/09/03/99-problems-and-the-mail-is-one-usps-delivery-problems-spike-in-philly-neighborhoods/>



that arrearage forgiveness and cost recovery can be given full consideration in the forthcoming rate proceeding. CLS submits that ongoing forgiveness of arrears (earning forgiveness with each payment of a TAP bill) will ensure timely and accurate cost recovery for PWD, is consistent with best practices for customer assistance programs in Pennsylvania, and more appropriately incentivizes customers to make timely payments of TAP bills.

We have not yet received or reviewed PWD's proposed modifications to the TAP-R that would incorporate cost recovery for earned forgiveness of pre-TAP arrears. However, if PWD proposed to forgive arrearages in a lump sum after 24 payments, we would be concerned about the mismatch between the period in which a TAP customer is making payments and the point at which PWD seeks to recover costs associated with the forgiven arrears. In our view, it is far more efficient and appropriate, given the ability to reconcile the TAP-R cost recovery, for proportionate arrearage forgiveness to occur with each TAP bill payment received. Furthermore, a lump sum arrearage forgiveness mechanism creates a risk of rate shock caused by a significant number of TAP customers earning forgiveness at the same time.

Notably, although the Pennsylvania Public Utility Commission's Customer Assistance Program Policy Statement does not specifically address how arrearage forgiveness should occur (on a monthly or lump sum basis),⁵ we are not familiar with any utility in Pennsylvania that provides lump sum forgiveness. As far as we are aware, each PUC-regulated public utility provides proportionate earned forgiveness with each payment of a customer assistance program bill.

Finally, the forgiveness of arrearages on a monthly basis is a powerful incentive to TAP customers to make payments. As the National Consumer Law Center has consistently recognized, "one major advantage of an [arrearage forgiveness program] is that the customer sees the arrearage balance decrease each month, and thus sees the incentive that accompanies each payment."⁶ Lump sum forgiveness fails to provide a comparable incentive since, in reality, only one payment – the 24th payment – would result in the elimination of the customer's indebtedness. The TAP customer would see no direct and immediate incentive accompanying the first 23 payments under a lump sum forgiveness approach.

Earned Forgiveness for Curing Missed Payments

In our November 27 correspondence, we recommended the addition of language to the regulations to specifically address the ability of customers to "cure" missed TAP payments. We also submitted that, in the event a TAP customer is unsuccessful or unable to recertify for TAP but subsequently rejoins the program, the regulations should authorize a "cure" amount based on that individual's income. Both of these constructs have been adopted and implemented by the Philadelphia Gas Works in its customer assistance program.

⁵ See 52 Pa. Code §69.265(6)(ix) ("Arrearage forgiveness should occur over a 2- to 3-year period contingent upon receipt of regular monthly payments....").

⁶ See C. Harak, *Helping Low-Income Utility Customers Manage Overdue Bills Through Arrearage Management Programs (AMP)*, National Consumer Law Center (September 2013) (emphasis added).



We continue to believe that TAP customers should be able to earn forgiveness by curing missed payments, and that the Departments should implement procedures that enable a customer rejoining TAP to pay a recalculated amount to regain the benefit of any lost forgiveness. In consideration of the Law Department's suggestion that certain aspects of our November 27 recommendations can be addressed through Standard Operating Procedures, we submit that the procedures for implementing "cure" payments for TAP is also an appropriate matter to address in the R-CAS forum. We submit that our draft language for Section 206.7, set forth above, would accommodate the practices we recommend, and that a specific regulation is not necessary at this time.

* * *

We appreciate the Departments' consideration of these comments and our ongoing collaborative efforts to ensure that TAP delivers the meaningful benefits necessary to assist low-income Philadelphians' with ongoing and accumulated water bills.

Respectfully submitted,

Robert W. Ballenger, Esq.
Josie B. H. Pickens, Esq.
Joline R. Price, Esq.
Kintésia S. Scott, Esq.⁷

⁷ Ms. Scott is currently admitted to practice law in Texas.



EXHIBIT A

VIA EMAIL

November 27, 2019

Scott J. Schwarz
Divisional Deputy City Solicitor
City of Philadelphia Law Department
Regulatory Affairs Unit, Water Division
1101 Market Street, 5th Floor
Philadelphia, PA 19107

Dear Scott,

Thank you for providing us the opportunity to review a draft of proposed amendments to the Philadelphia Water Department's (PWD) regulations regarding the income-based water rate assistance program, referred to as TAP. We are pleased to see that PWD and the Water Revenue Bureau (WRB) are advancing a proposal to implement forgiveness of arrearages owed by low income customers who participate in TAP. Indeed, we believe PWD and WRB have selected an appropriate period of time – 24 months – over which such customers should be eligible to eliminate arrearages through payment of TAP Bills.

Nonetheless, we have several comments concerning the draft regulations and suggestions for improvements to align this program with its purposes and our understanding of successful earned forgiveness programs offered by other utilities. Also, while we have endeavored to consider and evaluate all of the ramifications of the draft amendments, we have had limited time to do so given the holidays and PWD's intention to file these regulations next week. As a result, we must reserve the right to raise additional concerns, if necessary, based on our review of the proposed regulations once filed with the Department of Records.

Forgiveness Should Be Earned with Each Payment.

As written, the draft regulations appear not to provide forgiveness of "pre-TAP arrears" until the customer has successfully made 24 complete payments while maintaining continuous enrollment. This is not consistent with the ordinance authorizing TAP. For example, the ordinance mandates that a customer who becomes ineligible for TAP after a period of participation nonetheless receives the benefit of forgiveness earned while enrolled in the program.¹

¹ See Phila. Code § 19-1605(3)(p).



Many TAP participants will likely find that twenty-four month “cliff” forgiveness is out of reach for several reasons and/or for extended periods. For example, a TAP customer may enroll in TAP after a loss of employment or while experiencing a disability, yet within 24-months return to gainful employment and no longer qualify for TAP. As drafted, that customer might not earn any forgiveness of arrearages even though the ordinance authorizing TAP ensures that earned forgiveness “shall be available” to that customer.² Similarly, a TAP customer may not be able to maintain continuous enrollment in TAP, in operation, due to mail delay, mistake, misunderstanding, and/or processing hurdles associated with TAP recertification. As written, the onus to maintain continuous enrollment is placed entirely on the customer, despite the fact that recertification relies upon timely notification and is an administrative function performed by WRB.

Ultimately, the object of an earned forgiveness program must be to provide an incentive *for each bill payment*. A customer struggling to afford basic household necessities should be encouraged to prioritize payments for essential water service by receiving forgiveness of indebtedness with each payment. That same customer, if experiencing an interruption in payment or a lapse in participation, should continue to have the incentive to make current payments, even if unable to catch up on all missed TAP Bills.

For PWD, the ability of customers to earn monthly forgiveness of arrearages also provides an opportunity to receive ongoing, monthly revenues with respect to such forgiveness. While pre-TAP arrears may be considered virtually uncollectible (since the ordinance authorizing TAP ensures that the TAP customer need make no payment in respect of those amounts), the ongoing forgiveness of those debts could be considered part of the cost of operating TAP and eligible for recovery through PWD’s TAP-R.³ Monthly forgiveness with each TAP Bill payment provides an opportunity to levelize the recovery of those costs, whereas 24-month “cliff” forgiveness may present significant challenges and/or delays in cost recovery.

We recommend that Section 206.7(c) be revised to read as follows:

A Customer enrolled in TAP will earn forgiveness of pre-TAP arrears for each monthly TAP Bill that is paid in full regardless of any past due bills. Each payment of a monthly TAP Bill will reduce the pre-TAP arrears by 1/24th of the original balance.⁴

Customers Should Earn Forgiveness by Curing Missed Payments.

In order for each TAP bill payment to result in forgiveness, the customer must be able to earn forgiveness by catching up on previously unpaid TAP bills, i.e., by “curing” missed payments.

² Phila. Code §19-1605(3)(h.2).

³ The extent of such recovery, and the calculation of the “cost” of arrearage forgiveness, is a matter within the exclusive authority of the Philadelphia Water, Sewer and Storm Water Rate Board, and should be considered in a future PWD rate increase proceeding.

⁴ This language is modeled on PGW’s Second Amended Universal Service and Energy Conservation Plan, dated August 31, 2017 (PGW USECP).



A customer who does not earn forgiveness in one month due to a missed payment should be able to earn that forgiveness in a subsequent month by catching up on TAP Bills or by satisfying the requirements of a TAP Payment Agreement. Furthermore, an appropriate cure provision must take into account not only the period during which a customer is enrolled in TAP, but also a period in which, for whatever reason, a customer has been unable to successfully recertify or maintain TAP participation through timely payment.

We recommend that a new section 206.7(d) be inserted, as follows:

A Customer enrolled in TAP will earn arrearage forgiveness for each month of arrearage forgiveness “missed” for each full payment of an unpaid TAP Bill and for each unpaid TAP Bill satisfied through payment on a TAP Payment Agreement. For a Customer returning to TAP after a period of non-enrollment, the Customer will earn retroactive forgiveness for months spent outside of the program once the TAP Cure Amount is paid. The “TAP Cure Amount” for a Customer returning to TAP shall be calculated as: (1) the sum of the TAP Bills that would have been issued to the Customer for the months the Customer was not enrolled in TAP, calculated using the Customer’s current income and household composition; plus (2) the sum of the unpaid TAP Bills (if any) issued to the Customer while previously enrolled in TAP; minus (3) any payments received on the Customer’s account since the Customer ceased being enrolled in TAP.⁵

TAP Recertification Provisions Should Encourage Compliance Without Unnecessarily Limiting Access to TAP.

PWD has proposed new regulation Section 206.9(d) to encourage customers to catch up on unpaid TAP Bills. While CLS shares the goal of promoting compliance with TAP and payment of TAP Bills, proposed Section 206.9(d) should align with Section 206.5. Section 206.5 provides customers enrolled in TAP with the opportunity to obtain a payment agreement to catch up on missed TAP Bills. This opportunity should not be taken away from customers merely because the need for a payment agreement arises at the time of recertification. However, we acknowledge that recertification should not serve as a means to avoid payment, and so some limitation on the scope of payment agreements could be considered. CLS proposes that unpaid TAP Bills from the prior 12 months be eligible for a payment agreement at the time of TAP recertification, in order to provide customers an opportunity to catch up on missed payments, while maintaining a strong incentive for timely payment.

Proposed Section 206.9(d) should be modified as follows:

(d) Prior to recertifying a Customer as eligible for TAP, WRB shall determine if there are any unpaid TAP Bills. If there are any unpaid TAP Bills that are not part of a TAP Payment Agreement at the time of recertification, the Customer will be offered a TAP Payment Agreement if the Customer has not been offered a TAP Payment Agreement for

⁵ As above, this provision is modeled on the PGW USECP.



unpaid TAP Bills during the prior twelve (12) months. A Customer may be required to catch up on unpaid TAP Bills or a previously offered TAP Payment Agreement prior to WRB recertifying the Customer for TAP if the Customer is not eligible for a TAP Payment Agreement pursuant to this section.

Pre-TAP Arrears Should be Defined.

As currently operated, WRB determines pre-TAP arrears differently for owners and for occupants. For tenants, pre-TAP arrears consist of those balances that accumulated while the tenant was WRB's customer but before TAP enrollment, and exclude periods during which the tenant may have been unable to obtain customer status (even though the tenant was responsible for water bills under a lease agreement). As a result, CLS frequently advocates on individual, client-by-client bases, for WRB to transfer balances to our clients' accounts in order to ensure that penalties do not continue to accrue on outstanding balances of deceased owners, or to enable tenants to have direct responsibility for water bills that accumulated during their tenancy but prior to their approval of customer status.⁶ We believe these issues should be addressed in the proposed regulations.

Additionally, in the event of a meter malfunction or other error resulting in a make-up bill after TAP enrollment, pre-TAP arrears should be adjusted.

In order to address these circumstances, we recommend the definition of "pre-TAP arrears" be set forth in Section 206.1 as follows:

Pre-TAP Arrears: (1) for owners and occupants, the sum of all unpaid rates and charges (principal, interest and penalties) at the property, calculated at the time of TAP enrollment; (2) for tenants, the sum of all unpaid rates and charges (principal, interest and penalties) at the property accruing during the period the tenant has been responsible to pay for water service pursuant to the terms of their lease, calculated at the time of TAP enrollment. Pre-TAP arrears shall be recalculated in the event of the Customer is issued a make-up bill for service provided prior to TAP enrollment.

Continued Eligibility Audit Provisions Should Provide Opportunity for Response/Resolution.

The draft regulations at 206.6(g) propose to reserve to PWD and WRB the right to audit and remove customers from participation in TAP if an audit reveals any of the following:

- A change in household income or household size;
- Intentionally false enrollment or recertification information was submitted;
- Unauthorized use of service; and

⁶ For many tenants, failing to make payments or otherwise satisfy these debts results in threats of eviction. TAP can assist these tenants in providing an assurance to the landlord that the debt is being addressed over time with timely payment.



- Failure to accept and reasonably maintain free conservation services.

Although the regulations do not describe how PWD/WRB will conduct the audits, the City should be aware that information obtained through credit reporting services can be incorrect or misleading. Furthermore, the use of such information may trigger obligations under the Fair Credit Reporting Act (FCRA). Removal from TAP on the basis of credit reporting information appears to constitute an adverse action within the meaning of FCRA and requiring compliance with FCRA regulations.⁷

CLS is concerned that the “audit and remove” provisions proposed, without an explicit opportunity for the customer to respond prior to removal from TAP, will generate unnecessary and avoidable disputes and expenses. Any determination to remove a customer from TAP would be reviewable at the Tax Review Board. Accordingly, it is important that PWD/WRB ensure that such determinations are not made lightly. PWD/WRB should provide the customer an opportunity to respond and provide information or assurance to avoid removal.

Even if an audit correctly concludes that there has been a change in household income or household size, that conclusion is not determinative of TAP eligibility. To the contrary, such change may result in a need to recalculate TAP Bills (which could be lower as a result of such change) or the need to consider, pursuant to Philadelphia Code Section 19-1605(c), whether the customer would be better served under a more affordable alternative. Unauthorized use can be attributed to incomplete shut offs or faulty equipment. What appears to be a “failure” to accept or maintain conservation services could be a result of miscommunication, misunderstanding, or even the inability to accept or maintain such services.⁸

Customers should be provided a notice explaining the circumstances PWD/WRB believe constitutes grounds for removal from TAP and an opportunity to provide information to clarify or supplement an eligibility audit in order to avoid unnecessary and premature removal from TAP.

Furthermore, customers who are removed from TAP for failure to accept or reasonably maintain conservation services should have an expedited route to re-enrollment upon accepting or restoring such conservation services. These customers have demonstrated financial eligibility and the need for affordable water bills; that they may be reluctant to accept conservation services in their homes could be the result of factors that can be addressed in cooperation and collaboration with community partners.

⁷ See, e.g., Final Order In the Matter of PECO Energy Company Universal Service and Energy Conservation Plan, Docket No. M-2015-2507139 at 37 (August 11, 2017) (holding that FCRA requirements apply to PECO’s use of credit reporting agency information to identify potential ineligibility for PECO’s customer assistance program).

⁸ As discussed below, a tenant may not be capable of providing consent for such services to be provided, nor prevent removal or disruption of such services once provided.



Tenant Customers Should not be Removed From TAP due to Actions/Inactions of Landlords.

Drafts of proposed regulations 206.6(f)(3), 206.6(h) and 206.10 prohibit re-enrollment or provide for removal from TAP in the event a customer fails to accept or reasonably maintain free conservation services. While CLS shares PWD/WRB's goal of ensuring that TAP customers benefit from conservation services, CLS is concerned that these provisions fail to take into consideration the limited authority that tenants may have to exercise control over water usage in leased premises.

Tenants may not be able to unilaterally accept conservation services and may not be legally empowered to maintain conservation services that are provided. A tenant should not be penalized for actions or inactions beyond their control. Accordingly, at a minimum, PWD regulations should ensure that tenant customers are not removed from TAP absent a showing that the tenant is, in fact, responsible for the failure to accept or maintain conservation services.

* * * * *

We appreciate the opportunity to provide feedback on the draft amendments to PWD regulations. Please let us know if you would like to discuss this correspondence and any questions or concerns it may raise. We look forward to working with PWD and WRB to ensure that low-income customers benefit from TAP arrearage forgiveness in the near future.

Sincerely,

Robert W. Ballenger
Josie B. H. Pickens
Joline R. Price
Energy Unit Attorneys

cc. Eric Bodzin, Esq.



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