

Frivolous Appeal restrictions will be lifted.

(a-c) A notice of the Customer's rights of review, compromise, waiver and refund with the Tax Review Board, TRB, OAR and/or the Department of Revenue under Chapter 19-1700 of The Philadelphia Code and the stay procedures set forth below shall be included by the hearing officer in every hearing decision.

(b-d) If a Customer an Authorized User timely files a petition for review with the Tax Review Board (TRB) or the OAR raising matters within the jurisdiction of the TRB/OAR and the matters were raised before the informal hearing officer, the WRB will stay further shut off action pending a final decision of the TRB/OAR, provided that the Customer Authorized User or his or her representative promptly notifies the hearing officer in writing of the petition and the Authorized User pays or arranges to pay any undisputed past charges, including penalties, and thereafter complies with any outstanding payment agreements and pays or arranges to pay all current charges when due in the future, except as otherwise provided during medical emergencies as set forth in Section 100.10 of these regulations.

If a stay is revoked because of a Customer's the failure of an Authorized User or their representative to comply with these conditions, the WRB shall give at least ten (10) days written notice by mail or hand delivery of its intention to shut off service Utility Service. In no case will the filing of a petition for review require the WRB Water Department to restore service Utility Service already shut off, except as otherwise provided during medical emergencies as set forth in Section 100.10 of these regulations.

(e-e) After a final decision of the

WRB/OAR regarding a billing issue, the WRB will mail a final bill to the Customer Authorized User who requested review by TRB/OAR with a notice that the Customer Authorized User will have thirty (30) days from the date of the bill to pay or enter into payment agreement with the WRB to pay the original or modified charges or the Residential Property Service Location will be subject to shut off without further notice, unless the property is occupied by a one or more USTRA Tenants, in which case appropriate notice shall be provided to each Dwelling Unit in accordance with USTRA and Section 100.6 of these regulations.

(e-f) If the Customer Authorized User files a petition for compromise, waiver or refund, the Customer Authorized User may apply in writing to the WRB, which may in its discretion grant a stay of further shut off action pending final decision on the petition. If a stay is granted, the procedures in Sub-sections 100.8 (b) and (c) of these Regulations shall apply.

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## **100.10 Medical Emergency Procedures**

(a) The WRB shall delay shut off of water service where shut off will aggravate an existing serious illness of any person who is a resident of the Residential Property, if:-  
(1) A a written certification on a physician's stationery, dated and signed by a physician is submitted to the WRB which sets forth the name, address, and telephone number of the physician, the name and address of the resident who is ill, that the physician has examined the person, and the nature, seriousness and expected duration of the illness; and

(1) The affected resident makes a written certification that the shut off will aggravate an existing serious illness and acknowledges in writing that if before the end of the delay period the Customer has

~~not paid the delinquency in full or exercised any rights that may exist to enter into a payment agreement or request a hearing, or, in the case of an USTRA Tenant occupied property, if a payment has not been made by one or more Tenants of the charges incurred in the thirty (30) days preceding the notice of shut off, service will thereafter be subject to shut off without further notice.~~

(3b) The certification of illness shall delay shut off for the length of the illness or thirty (30) days from the date that the certificate is submitted, whichever is less, and may be renewed for no more than an additional thirty (30) days.

(4c) The right to delay shut off under this Section may only be exercised once in any twelve month period.

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#### **100.13 Posting of Customer Authorized User Rights**

(a) The WRB will shall post in several conspicuous places in its offices easily understood posters to notify Customers Authorized Users of their rights, including the right to dispute the WRB's decision.

(b) The Department and WRB will post a flyer or brochure describing the dispute process on their websites.

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## **CHAPTER 1 CUSTOMER RIGHTS AND OBLIGATIONS**

### **100.0 RESIDENTIAL CUSTOMERS**

#### **100.1 Definitions**

The following words and phrases when used in Sections 100.0 through 100.14 of these regulations have the meanings given to them in this Section unless specifically provided otherwise or unless the text clearly indicates otherwise:

(a) Authorized User: Any of the following types of Customers or users of the City's Utility Service:

1. Owner-Customer: An Owner in whose name the Utility Service account is established or who by operation of law is responsible for payment of charges for Utility Service.
2. Tenant-Customer: A Tenant with legal proof of tenancy, in whose name the Utility Service account is established.
3. USTRA Tenant: As defined hereinafter in this Section.
4. Occupant with ownership interest: A current Occupant with proof of residency and with the intent of gaining ownership of the Service Location.
5. Occupant without ownership interest: A current Occupant with proof of residency that accepts responsibility for the account and without any intent of gaining ownership of the Service Location.
6. Household Member with Medical Emergency: Any person who resides at the Service Location and who seeks

to delay shutoff of service pursuant to Section 100.10 of these regulations.

(b) Customer: An Owner, Tenant or Occupant, other than an USTRA Tenant, who by operation of law or agreement is responsible for payment of the charges for Utility Service at a Service Location.

(c) Department: The Philadelphia Water Department also referred to as Philadelphia Water or the Water Department.

(d) Dwelling Unit: An individual housing unit in a Residential Property such as a single family home or a single apartment within a multi-unit apartment building.

(e) Frivolous Appeal: An appeal taken other than in good faith and solely for purposes of delay.

(f) Occupant: A person who has the Owner's authorization to reside at a Service Location.

(g) Owner: A person who has title to a Service Location, or his or her agent acting on his or her behalf.

(h) Rental Agreement: An agreement between two parties, either oral or written, by which the Owner of a Service Location agrees to lease all or part of the Service Location to a Tenant.

(i) Residential Property: Any building containing one or more Dwelling Units occupied for residential purposes, but not including dormitories, nursing homes, hotels, or motels.

(j) Service Location: A Dwelling Unit or Residential Property of a Customer or Authorized User that is eligible to receive Utility Service after acceptance of an application for such Utility Service or by

operation of law.

(k) Tenant: A person who leases all or part of a Service Location pursuant to a current Rental Agreement and who is not an USTRA Tenant.

(l) USTRA: The Utility Service Tenants Rights Act, 68 P.S. §399.1 et seq.

(m) ~~USTRA Landlord~~: A Customer that is a “landlord ratepayer” as defined for water service by USTRA, 68 P.S. §399.2.<sup>21</sup>

(n) USTRA Tenant: A “tenant” as defined for water service by USTRA, 68 P.S. §399.2.<sup>21</sup>

(o) Utility Service: Water, sewer and/or stormwater service provided to an Authorized User or property.

(p) WRB: The Water Revenue Bureau,

<sup>21</sup> USTRA defines “landlord ratepayer” as: One or more individuals or an organization listed on a gas, electric, steam or water utility’s records as the party responsible for payment of the gas, electric, steam or water service provided to one or more residential units of a residential building or mobile home park of which building or mobile home park such party is not the sole occupant. USTRA defines “residential building” as: A building containing one or more dwelling units occupied by one or more tenants, but excluding nursing homes, hotels and motels. See footnote 2 for the definition of “tenant.”

<sup>21</sup> USTRA defines “tenant” as: Any person or group of persons whose dwelling unit in a residential building or mobile home park is provided gas, electricity, steam or water, pursuant to a rental arrangement for such dwelling unit, mobile home or plot of ground within a mobile home park, but who is not the ratepayer of the company which supplied such gas, electricity, steam or water. USTRA defines “residential building” as: A building containing one or more dwelling units occupied by one or more tenants, but excluding nursing homes, hotels and motels. See footnote 1 for the definition of “residential building” in USTRA.

within the Philadelphia Revenue Department.

## 100.2 Application for Service as Residential Customers

The Water Revenue Bureau (WRB), subject to the terms and conditions set forth in these regulations, will receive completed applications to become a Customer from Owners, Tenants and Occupants and will, upon acceptance of a completed application, direct the Department to provide Utility Service in the name of the Customer to the authorized Service Location under the terms and conditions set forth in these regulations.

### (a) Application to Become a Customer

(1) An Owner shall become a Customer as of the date of title transfer established by the record deed or otherwise established by sufficient evidence to show title to the Service Location.

(2) A Tenant or Occupant who wishes to become a Customer must submit:

(A) His or her name and current address, and, when available, a current telephone number. An applicant generally will be required to provide at least one form of personal identification in the form of a United States or State government issued photo identification, i.e. driver’s license (any state), PA photo ID, U.S. passport, U.S. passport card, U.S. Permanent Resident Card, U.S. Visa, or U.S. Department of Defense Common Access Card. Other forms of personal identification will be referred to a WRB Supervisor.

(B) Satisfactory evidence of Owner’s authorization to reside at the Dwelling Unit by a Tenant or Occupant. Such evidence will

usually be in writing, including, for example, a current: Rental Agreement or Agreement of Sale for the Dwelling Unit for which the applicant desires service, a lease, rent book, money order receipts, canceled checks, other utility bills in the applicant's name at that address, rent receipts, or other written evidence of tenancy or written evidence of the Owner's consent to occupancy. Evidence of a prior determination by a court of competent jurisdiction of the existence of a current rental arrangement for the Dwelling Unit between the Owner and the applicant or the acceptance of the applicant's complaint against the Owner and the scheduling of a hearing thereon by the Philadelphia Fair Housing Commission shall be considered conclusive of this issue.

(C) A completed application and affidavit in such form as the WRB shall from time to time deem appropriate wherein the applicant agrees to pay for Utility Service supplied in his or her name and makes certain acknowledgements and certifications consistent with these regulations.

(3) All WRB determinations shall be made in writing upon the application form and a copy given or mailed to the applicant.

(4) Where a person with a household income at or below 250% of the federal poverty level becomes the Owner of a Service Location with an existing delinquent balance, the Department and the WRB will not deprive or refuse the new Owner of Utility Service solely on the basis of that pre-existing delinquent balance, where the Owner becomes or is eligible to become a Customer. The City may lien the property for any delinquent balance.

~~(5) An USTRA Tenant may apply to become a Customer pursuant to this section. An USTRA Tenant who requests continued service but who does not request to become a Customer may apply for continued service pursuant to Section 100.3 of these regulations.~~

(b) Eligibility

(1) An Owner, Tenant or Occupant of a Service Location is qualified to become a Customer, UNLESS:

(A) The applicant is the agent of a current or previous delinquent Customer at the Service Location and is attempting on that delinquent Customer's behalf to avoid shut off or restore service previously shut off without payment of that Customer's past due charges for Utility Service or any other miscellaneous charges. Such agency will normally be found to exist where the property that would be receiving Utility Service is or will be occupied by a currently delinquent Customer or where such delinquent Customer would otherwise use or receive the benefit of the Utility Service;

(B) The applicant has not paid or arranged to pay for past due charges for Utility Service for which the applicant is legally responsible at this or another Service Location, including charges for unauthorized usage;

(C) Utility Service to the Service Location is legally off ~~due to nonpayment of prior bills, and there exist uncorrected Water Department violation(s)~~ at the Service Location; or a determination that providing Utility Service to the Service Location would endanger life, health, safety or property;

(D) Service to a Service Location

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cannot be accomplished without revision of the Department's distribution and/or collector facilities or acquisition of additional rights-of-way;

(E) The Tenant or Occupant is a Customer currently receiving service at another Service Location and has a delinquent bill at the other Service Location; or

(F) The Tenant is applying for Utility Service at a Service Location for which no valid residential rental property license exists.

(2) Upon receipt of the evidence and documents required in Section 100.2(a) of these regulations, the WRB shall determine whether the applicant is a qualifying Owner, Occupant, or Tenant and whether the applicant is eligible to become a Customer.

(3) In determining whether uncorrected Water Department violations exist at a Service Location, the WRB shall request that the Department promptly review its files and provide the WRB with a listing of any violations. The applicant shall be given a written list of any violations and advised that it is his or her responsibility to correct the violations. The applicant may be required to provide a certification from a registered plumber that the corrections have been made before service will be provided. In no case will Utility Service be turned on if the Service Location is found at any time by the Department to be in a condition not suitable to receive water, or in a condition which would create an emergency or dangerous condition to itself or another Service Location or endanger life, health, safety or property.

**(c) Additional Conditions**

(1) If the Dwelling Unit is already separately metered, a meter reading must be taken before the applicant will be accepted as a Customer. The reading may be taken by the applicant. In such cases, the Customer must provide the meter number and the meter interface unit (MIU) or encoder receiver transmitter (ERT) number. The WRB reserves the right to require a reading by the WRB or the Water Department before the application will be accepted. In such cases, the WRB will promptly order a meter reading and advise the applicant to facilitate entry of the meter reader into the Dwelling Unit.

(2) If the applicant's Dwelling Unit is presently set up for individual metering but no meter is at the property, a meter must be installed before the applicant will be accepted as a Customer. In such cases, WRB will promptly order from the Water Department the installation of a meter and the applicant must provide entry to Department personnel into the property for this purpose. Meter charges must be paid or scheduled for payment as part of a payment agreement by the applicant before application approval.

(3) If the applicant's Dwelling Unit is not individually metered, the Dwelling Unit must be set up for individual metering by a registered plumber to the Department's satisfaction at the expense of the applicant or the Owner and a water meter must be installed before an applicant will be accepted as a Customer. Meter charges must be paid or must be scheduled for payment as part of a payment agreement before application approval.

**(d) Notice to Owner**

(1) Upon receipt of a Customer

application for Utility Service by a person not the Owner of a Service Location, the WRB shall mail to the Owner at the license address on file with the Department of Licenses and Inspections for the property in which an applicant's Service Location is located, or if no such license address is available, at such other address as the WRB reasonably believes is the valid current address of the Owner, a notice of the application in such form as the WRB shall from time to time deem appropriate.

(2) The notice shall advise the Owner of the application for and the possible provision of the Utility Service to the Service Location for which the Owner will be responsible for payment if the applicant becomes delinquent. The notice shall afford the Owner twenty (20) ~~ten (10)~~ days from the date of the notice in which to provide the WRB with any comments regarding the applicant's eligibility and to indicate any objection to the application. The notice shall also advise the Owner to notify the WRB immediately if an emergency condition exists which makes the provision of water service a danger to the property or to the safety of others or their property.

(3) Should the Owner fail to object and request an informal hearing prior to such time as the WRB is otherwise prepared to accept the applicant as a Customer, the Owner shall be deemed to have no objection to provision of Utility Service in the applicant's name, and Utility Service will be provided to the applicant, unless the water is currently off and the applicant has no evidence of a current lease or a right to possess the property, as described in Section 100.2(a)(2)(B).

(e) Acceptance of Application

(1) An applicant otherwise eligible

shall be entitled to become a Customer for his or her Dwelling Unit only or to have service continued or restored to his or her Dwelling Unit only, upon fulfillment of the above conditions in Subsections 100.2(a) through (c), unless:

(A) Water service is currently on, ~~the applicant has not presented evidence of a current lease or a right to possess the property, as described in Section 100.2(a)(2)(B)~~, and the Owner expressly objects to the application; or

(B) Water service is currently off, ~~the applicant has not presented evidence of a current lease or a right to possess the property, as described in Section 100.2(a)(2)(B)~~, and the Owner has not given his or her express written consent to the provision of service in the applicant's name.

(2) The WRB may determine in its sole discretion to temporarily continue or restore service to the applicant's Dwelling Unit at no cost to the applicant.

(3) If a Tenant or Occupant is accepted as a Customer, the WRB shall so indicate on the application by signing it and giving or mailing the applicant a copy.

(4) Acceptance of an application from a Tenant or Occupant will not occur until the 2010-day notice period to the Owner pursuant to Subsection (d) of this Section has expired. Prior to that time the application of a Tenant or Occupant will be considered as pending. Any termination will be deferred during the period when the application is pending.

(f) Turn-on of Utility Service

(1) If Utility Service has been shut off by the Department, the Department will visit

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the Service Location to turn-on Utility Service for a new Customer at no charge to the applicant where service can be provided by operation of the curb stop.

(2) Where Utility Service can only be provided by means other than the operation of the curb stop, such as restoration of the ferrule, service line or curb-stop to operable condition, such restoration must be made by a licensed plumber at the expense of the applicant or Owner.

(3) Notwithstanding any other provision of these regulations, where Utility Service has previously been shut off by the Water Department or the WRB for any reason under these regulations or permitted by law, and the WRB has been notified that the Department of Licenses and Inspections has determined the premises to be in dangerous or imminently dangerous condition pursuant to the Building Code, Title 4 of the Philadelphia Code, service will be provided only upon the prior written consent of the Department of Licenses and Inspections.

### (g) Rejection of Application

If the applicant is rejected as a Customer, the WRB shall so indicate on the application and give its reasons in writing in the appropriate space on the application. WRB will note any condition that must be met and itemize charges that must be paid in order to obtain service and will provide a description of the process by which the applicant may dispute the WRB determination. A copy of the rejected application shall be promptly mailed or hand-delivered to the applicant.

### (h) Revocation of Acceptance

Should the WRB after issuance of a written acceptance of the application,

receive a valid objection from an Owner or determine that any of the certifications in the application are materially false or that the applicant may otherwise not be eligible to be a Customer, the WRB may deny, revoke and rescind acceptance of the application. The WRB will give its reasons for revocation in writing on the application. The WRB will note any condition that must be met and itemize any charge that must be paid in order to obtain service and will provide a description of the process by which the applicant may dispute the WRB determination.

### (i) Termination of Customer Relationship

(1) After acceptance by the WRB of an application for Utility Service, Tenants and Occupants who are Customers will remain responsible for paying all future charges for Utility Service to their Dwelling Units until such time as there is:

(A) Revocation of acceptance of the Customer application;

(B) A written request received from the Tenant or Occupant Customer to terminate Customer status;

(C) Acceptance of a subsequent Customer for the Dwelling Unit by the WRB and the taking of a final meter reading; or

(D) Purchase of a discontinuance permit and termination of service at the Owner's request. Responsibility for the stormwater service charge will not terminate upon the issuance of a discontinuance permit.

(2) The WRB will notify Tenants and Occupants who are Customers of termination of their status as Customers in writing by first class mail.

(3) Owners, whether or not they are Customers or occupy the Service Location where Utility Service is being provided, remain responsible for paying water/sewer charges until the issuance of a discontinuance permit, and remain responsible for paying stormwater charges at all times during ownership.

### **100.3 USTRA Tenant Rights**

(a) The Department and WRB will comply with the provisions of USTRA, 68 P.S. §399.1 et seq. The rights of USTRA Tenants to continued service are set forth in Section 7 of USTRA, 68 P.S. §399.7.

(a) An USTRA Tenant may apply to the WRB for continued service at any time, UNLESS:

(1) The USTRA Tenant is the agent of a current or previous delinquent Customer at the Service Location and is attempting on the Customer's behalf to avoid shut off or restore service previously terminated without payment of the Customer's past due charges for Utility Service; or

(2) The USTRA Tenant has not paid or arranged to pay delinquent charges for Utility Service arising out of illegal, unauthorized or authorized usage for which he or she is responsible.

(b) Application for Continued Service under USTRA

(1) USTRA Tenants who wish to apply to have Utility Service continued or resumed pursuant to Section 7(a) of USTRA or an USTRA Tenant who has been notified of a proposed discontinuance or Utility Service pursuant to Section 3 of USTRA and wishes to subscribe for future

Utility Service pursuant to Section 7(b) of USTRA, A person who wishes continued service as an USTRA Tenant must submit:

(A) His or her name and current address;

(B) A completed application and supporting documentation affidavit in such form as the WRB shall from time to time deem appropriate and which provides information necessary to support the applicant's claim of tenancy; and

(C) Satisfactory evidence of Owner's authorization to reside at the Dwelling Unit by a Tenant or Occupant. Such evidence will usually be in writing, including, for example, a current Rental Agreement or Agreement of Sale for the Dwelling Unit for which the applicant desires service, a lease, rent book, money order receipts, canceled checks, other utility bills in the applicant's name at that address, rent receipts, or other written evidence of tenancy or written evidence of the Owner's consent to occupancy.

(2) All USTRA Tenant determinations will be made by the WRB in writing upon the application form. If an applicant is entitled to continued service under USTRA, the WRB shall accept the application by signing it and giving or mailing the applicant a copy. The WRB may determine in its sole discretion that in lieu of continuing service under USTRA, the WRB will temporarily continue or restore service at no cost to the USTRA Tenant. If there is a change in ownership of the Service Location, the USTRA Tenant must reapply for continued service under USTRA.

### **100.4 Shut off of Utility Service**

(a) Nothing in this regulation shall modify

the Department's right to shut off Utility Service without prior notice to prevent or alleviate an emergency which presents a danger to life, health, safety or property.

(b) In addition to shut offs caused by revocations of acceptance of applications, the WRB may cause the Water Department to shut off Utility Service at a Service Location, after notice has been given and the opportunity for an informal hearing provided, on the following grounds:

(1) ten (10) days after a Customer is delinquent for two billing periods; or

(2) when the Water Department or the WRB is denied for two consecutive billing periods access to the Service Location to read or make changes or repairs to the meter.

(c) When the Department shuts off Utility Service to a Service Location, the water and sewer service charges shall not be charged against the Service Location during the period of any termination beginning with the date of any termination. The Owner shall be responsible for the stormwater service charge at all times and under all circumstances.

(d) The Department will suspend the termination of Utility Service to residential occupied properties for nonpayment of a delinquent bill from December 1<sup>st</sup> to March 31<sup>st</sup> of the ensuing year. This suspension does not release any water Customer of the obligation to pay for Utility Service.

**(e) Immediate Termination for Unauthorized Use, Fraud or Tampering**

~~(1) The Department may immediately terminate Utility Service without prior notice for unauthorized use of Utility Service delivered on or about the affected~~

~~Service Location, fraud, material misrepresentation of the Customer's identity for the purposes of obtaining service, or tampering with meters or other Water Department equipment.~~

~~(2) Upon termination, the Department shall make a good faith attempt to provide a post termination notice to the Customer or a responsible adult person or Occupant at the affected Service Location. If providing a post termination notice to the Customer or responsible adult person at the affected Service Location is not possible, the Department shall conspicuously post the notice at the affected Service Location. In the case of single meter, multiunit Residential Property, the Department shall conspicuously post the notice at the Residential Property, including in common areas when possible.~~

~~(3) For purposes of this Subsection the phrase "unauthorized use of service" means the unreasonable interference or diversion of Utility Service, including tampering (an act which affects the proper registration of service through a meter), by passing unmetered service that flows through a device connected between the City's water supply system and Customer owned facilities), and unauthorized service restoration.~~

## **100.5 Notice of Shut off**

**(a) Shut off Notice to Residential Customer other than USTRA Landlords**

A shut off notice in English and Spanish will be mailed or delivered to a Customer. Translations to other languages will be provided upon request. If the WRB directly bills a Tenant Customer, a duplicate notice will be mailed or delivered to the Owner Customer. The shut off notice to a Customer shall include at least the following

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information, when applicable, in such form, as the WRB or the Department shall from time to time deem appropriate.

- (1) Account number;
- (2) Date of notice;
- (3) Address of property;
- (4) Amount past due;
- (5) Date on or after which water service will be shut off;
- (6) The available methods for avoiding shut off, including:
  - (A) tendering sufficient payment to avoid or postpone shut off of water service or otherwise eliminate the grounds for shut off of service;
  - (B) entering into a payment agreement before the shut off date;
  - (C) paying what is past-due on the most recent payment agreement before the shut off date;
  - (D) enrolling in the City's Water Revenue Assistance Program, if the Authorized User is eligible for the program;
  - (E) applying to the WRB for continued service under USTRA, if the Authorized User is an USTRA Tenant;
  - (F) completing such other steps as may be required as specified in a notice issued by the Department; or
  - (G) requesting an informal hearing within ten (10) days if a dispute exists as to any matter described in

Section 100.7(a) of these regulations;

(7) A notice that a timely hearing request will prevent shut off until a final decision is made;

(8) A notice that a hearing request must be made in person or in writing, and must be received within ten (10) days of the date of the notice;

(9) A telephone number to call for further information or explanation; and

(10) The Medical Emergency Procedures for delaying shut off pursuant to Section 100.10 of these Regulations.

(b) Shut off Notices Required by to USTRA Landlords

Shut off notices required by to be given to landlords and USTRA Tenants pursuant to USTRA shall comply with the notice provisions of USTRA, 68 P.S. § 399.1 et seq.

Shut off notices required to be given to USTRA Landlords pursuant to Section 3 of USTRA, 68 P.S. 399.3 shall contain the information required by Section 5 of USTRA, 68 P.S. §399.5, in such form as the WRB shall deem appropriate.

(c) Shut off Notices to USTRA Tenants

Shut off notices required to be given to USTRA Tenants pursuant to Section 3 of USTRA, 68 P.S. §399.3, shall contain the information required by Section 6 of USTRA, 68 P.S. §399.6, in such form as the WRB shall deem appropriate.

(d) Subsequent Shut off Notices to USTRA Tenants

~~Subsequent shut off notices required to be given to USTRA Tenants pursuant to Section 7 of USTRA, 68 P.S. §399.7, shall contain the information required by Section 8 of USTRA, 68 P.S. §399.8~~

(ec) Shut off for Lack of Meter Access

If a Service Location is subject to shut off due to lack of a meter reading or lack of access to the meter, the Department will send or deliver a notice to the Service Location by mail or hand delivery stating that to avoid shut off of service and possible additional charges the Customer must contact the Department and provide access to the meter by the Department. If the Department's records show that the mailing address of the Owner is different from the Service Location address, a duplicate notice will be sent or delivered to the Owner by mail or hand delivery to his or her mailing address.

(fd) Service of Notices

In the case of service of notices referred to in this Section which are mailed or delivered to a Customer or Service Location, WRB and the Department shall be entitled to rely on the mailing address or service address as reflected on the bill and in the records of WRB or the Department, as of the date the notice is served.

## 100.6 Shut-Off Notice Schedule

(a) Notice Schedule for Residential Customers

(1) Except as otherwise provided in Section 100.4 of these regulations, Customers subject to shut off for any of the reasons stated in these regulations will receive two prior written notices of the

scheduled shut off date.

(2) A notice scheduling shut off no earlier than ten (10) days after a Customer has been delinquent for two billing cycles will be issued no earlier than the date of the first delinquent bill.

(3) A notice for failure to provide access to the meter pursuant to Section 100.4 of these regulations will be mailed or hand delivered in accordance with Section 100.5(c) of these regulations.

(4) ~~Except as otherwise provided in Section 100.6(b)(2) of these regulations, a~~ A second notice will be issued at least thirty (30) days after mailing or hand delivery of the first notice. This will be the final notice scheduling shut off.

(5) If the Customer does not permit a reading or access to the meter, pay the delinquent bill in full, enter into a payment agreement, request a hearing or produce a certificate of serious illness pursuant to Section 100.10 of these regulations, the water service to the Residential Property will be subject to shut off any time on or after the shut off date set forth on the second notice.

(b) Notice Schedule for ~~Notices Required by USTRA Landlords and USTRA Tenants for Nonpayment~~

Shut off notices required to be given to landlords and USTRA Tenants pursuant to USTRA shall comply with the notice provisions of USTRA, 68 P.S. § 399.1 et seq.

~~(1) Where a Service Location is inhabited by USTRA Tenants, the first notice will be issued to the Owner at the address which the WRB reasonably believes to be the Owner's address scheduling shut off no~~

earlier than forty five (45) days after the notice.

(2) If within fifteen (15) days after the mailing or delivery of the first notice to the Owner, the Owner has not paid the delinquent bill in full, entered into a payment agreement, requested an informal hearing or petitioned the appropriate court to dispute shut off, a second notice will be mailed or delivered to the Owner. At the same time a shut off notice will be mailed or delivered to the tenants or occupants of the property advising them of the steps they may take to continue water service.

(3) Service shall be effective upon the Owner or his or her agent by certified mail with a return receipt signed by the Owner or agent, or hand delivery at the address(es) which the WRB reasonably believes to be the Owner's address.

(4) After unsuccessful attempts at personal service on two (2) separate days at any address where the Owner or agent might be reasonably found, service may be effected by mailing the notice by first class mail and conspicuously posting the notice at the Owner's principal place of business or billing address. If the Owner has not otherwise designated a billing or business address, the WRB may consider the Service Location as the principal place of business of the Owner for this purpose.

(5) Service shall be effective upon USTRA Tenants by hand delivery to the Service Location or delivery by first class mail and, in the case of multi-unit Service Locations, by posting notices in those common areas where it is reasonably likely to be seen by all tenants and occupants and may include a warning that any person who removes or tampers with the notice commits a criminal act punishable by fine.

(6) After mailing or delivery of the second notice to the Owner, a WRB representative will visit a multi-unit Service Location to post a notice scheduling shut off no earlier than thirty (30) days thereafter and, if possible, to make contact with USTRA Tenants to inform them of their rights.

(7) A notice to an USTRA Tenant who has failed to pay a second or succeeding thirty (30) day bill(s) shall be mailed or otherwise delivered to the address of each affected tenant, scheduling shut off no earlier than thirty (30) days after delivery of the notice.

(c) Notice to Tenant Customers, Occupant Customers and Owners.

Where water service to a Tenant Customer or Occupant Customer is to be shut off for reasons of his or her non-payment of charges for Utility Service or his or her failure to permit access to the meter, the Tenant Customer or Occupant Customer shall be afforded the same notice and hearing rights as any other residential Customer under these regulations. In such a case, the WRB or the Department shall promptly send to the Owner by mail or hand delivery to his or her record address(es) a copy of the shut off notice mailed or delivered to the Tenant Customer or Occupant Customer.

## **100.7 Administrative Informal Hearings**

(a) Informal Hearings before Revenue Department Hearing Officers

In addition to the hearing provided in Section 100.2(d)(2) of these regulations, and unless a hearing or an opportunity for a hearing has already been given on the same issue or charges (as determined by the Revenue

Department), upon timely request, an Authorized User may request an informal hearing before a Revenue Department hearing officer to contest a written decision or determination of the Water Department or WRB with regard to the following:

- (1) the Authorized User's responsibility for the Utility Service charges;
- (2) the amount due or any possible errors in computing charges on the Utility Service bill;
- (3) a WRB payment agreement, ~~including whether the agreement terms have been properly applied, the amount of arrears for which an Authorized User is responsible, the completeness of an application for a payment agreement, the adequacy and completeness of any documentation submitted in connection with an application for a payment agreement, or the performance of an Authorized User's obligations under the payment agreement;~~
- (4) rejection of an application for service under Section 100.2(g) or revocation of acceptance of an application for service under Section 100.2(h) of these regulations;
- (35) shut off for nonpayment;
- (46) shut off for failure to provide access to the meter;
- (57) denial of a request for continued service pursuant to Section 100.10 of these regulations (Medical Emergency Procedures);
- (68) denial of an application for continued water service under USTRA and/or;

(79) a determination that an applicant is ineligible for a HELP loan due to a delinquent balance on his or her Utility Service bill or for a reason other than homeownership.

(b) Appeals to the Tax Review Board (TRB)

(1) Pursuant to Section 19-1605 of the Philadelphia Code, the TRB is authorized to review any adverse final decision or determination of the Revenue Department relating to initial or continued eligibility for an Income-Based Water Rate Assistance Program (IWRAP) agreement or to a customer's performance of his or her obligations under an IWRAP agreement.

(2) Pursuant to Section 19-1702 of the Philadelphia Code, the TRB has jurisdiction to hear appeals of decisions or determination relating to the liability of any person for any unpaid money or claim collectible by the Department of Revenue for the on behalf of the City, including but not limited to any water or sewer rents.

(c) Appeals to the Office of Administrative Review (OAR)

An Authorized User may appeal the following written decisions or determinations of the WRB directly to OAR:

(1) rejection of an application for service or revocation of acceptance of an application for service under Section 100.2 of these regulations; and/or

(2) any decision or determination relating to a WRB payment agreement, other than an IWRAP agreement.

(d) The Board of License and Inspection Review

The Board of License and Inspection Review hears appeals of notices of property violations and notices of plumbing defects issued by the Water Department.

(be) Procedures for Informal Hearings before Revenue Department Hearing Officers

(1) To be timely, requests for informal hearings before a Revenue Department hearing officer must be made:

(A) within thirty (30) days of the date of the disputed bill or written determination that is being disputed; or

(B) within ten (10) days from the date of the first shut off notice, or notice of rejection or revocation of an application for service.

Thereafter, the right to request a hearing is waived, except to dispute charges accruing and determinations made after the date of the first shut off notice, or unless the hearing officer, for good cause shown, grants an untimely request for an informal hearing.

(e2) Hearing requests may be made in person to the WRB or by mail. An Authorized User may request a hearing by completing and submitting a form prepared by WRB. The form may be completed by a WRB customer or service representative in exceptional circumstances on a case-by-case basis, e.g. where the Authorized User is visually impaired. If shut off has not occurred, the WRB may upon good cause shown grant a hearing request made after the scheduled shut off date, or more than ten (10) days after the first shut off notice.

(d3) Where an Authorized User has

requested an informal hearing and Utility Service to a Service Location is on, the WRB shall give at least ten (10) days notice by regular mail or hand delivery to the Authorized User or his or her specified representative, if any, setting forth the time, date and place of hearing and the Authorized User's rights at the hearing as set forth in Sub-sections 100.7(a) of these regulations, provided that an earlier hearing may be scheduled by mutual agreement. Where a hearing is requested and water service to a property is off, or the hearing is requested by an Authorized User to dispute denial of a request for continued service pursuant to Section 100.10 of these regulations (Medical Emergency Procedures), or a hearing is requested by an Authorized User subject to immediate termination pursuant to ~~Section 100.4(e) (Immediate Termination for Unauthorized Use, Fraud or Tampering)~~ or Section 100.8(eb) of these regulations (Frivolous Appeals) ~~of these regulations~~, the WRB shall schedule an informal hearing to be held within ten (10) days of receipt of an informal hearing request form, unless a later time is requested.

(e4) The Authorized User, or his or her designated representative who need not be an attorney, may request in writing or may visit the WRB in person during regular working hours, to review and receive copies of any available records relevant to Utility Service at such individual's primary residence, including any computer printout relevant to the billings for Utility Service to the Service Location. WRB will make a good faith effort to respond to such a request in accordance with WRB policy and procedures.

(f5) Upon showing of good cause by the Authorized User, such as illness, one continuance of the informal hearing shall be granted for a total period not to exceed ten

(10) days. Additional continuances may be granted within the discretion of the Revenue Department.

(g6) The informal hearing shall be conducted by an impartial hearing officer who shall be an employee of the City knowledgeable about water usage, billing practices and procedures, but who has not previously discussed or considered the dispute with the Authorized User, except in his or her capacity as a hearing officer.

(h7) At the informal hearing, the hearing officer shall consider all relevant evidence and shall permit the presentation and questioning of relevant witnesses and documents as determined by the hearing officer. The Authorized User may bring a representative who need not be an attorney. All testimony at the hearing may be recorded by the hearing officer but the recording will not be transcribed unless a party at the hearing requests and makes arrangements for payment for such a transcript or other circumstances warranting a transcription exists. Unless objected to, parties may make their own tape recording of the hearing, but the only official record shall be that made by the hearing officer.

(i8) The hearing officer may request a meter re-reading at no charge to the Authorized User and/or a meter test, the cost of which will be charged to the Authorized User if the test shows that the meter is accurate within 2%. The hearing officer shall review such evidence in reaching a final decision on the dispute.

(j9) The hearing officer may conduct the hearing telephonically upon a timely request of a party and a showing of good cause, e.g. Authorized User is disabled, ill, a senior citizen or out of town.

(k10) The hearing officer has the authority to determine, either on his or her own motion or upon a motion of a party to the hearing, that an Authorized User does not have standing, or that a matter is moot or not yet ripe for a decision, or that the matter is more appropriately decided by another City office, department, board or commission.

(l11) After the hearing, the hearing officer shall send to the Authorized User and to his or her specified representative, if any, by first class mail a written decision with a summary of the facts and reasoning that are the basis of the decision. Any meter rereading, inspection or meter test findings shall be included in the hearing decision, if applicable and relevant to the decision.

(m12) Thereafter, any obligation of the Authorized User affirmed by the hearing officer must be satisfied within thirty (30) days of the date of the decision. Upon the expiration of thirty (30) days, unpaid disputed charges shall be delinquent.

## **100.8 Rights Pending Final Decision**

(a) Except as otherwise provided in this Section or elsewhere in these regulations, WRB and the Water Department will not shut off Utility Service to a Service Location in the following circumstances and during the following periods:

(1) from the initiation of a dispute covered by Section 100.7(a) of these regulations until thirty (30) days after the issuance of a decision on that dispute;

(2) while a dispute about an account is being reviewed by the Account Analysis Unit (AAU) of the Revenue Department;

(3) from the filing of a completed informal hearing request form in accordance

with Section 100.7 of these regulations until thirty (30) days after the issuance of an informal hearing decision;

(4) from the filing of a completed hearing request with the Tax Review Board (TRB) orf Office of Administrative Review (OAR) until thirty (30) days after the issuance of a TRB or OAR decision;

(5) when WRB is notified of a medical emergency condition in accordance with Section 100.10 of these regulations; or

(6) during such other periods as established by WRB or Water Department rules, regulations or written policy.

However, the Authorized User must pay the undisputed portion of disputed bill(s) and shut off of service may occur if the undisputed portion becomes delinquent.

~~(b) Informal hearing requests related to the completeness of an application for a payment agreement or the adequacy or completeness of any documentation submitted in connection with such an application will not result in a delay or stay of the shut off of water service pending the outcome of the appeal. Applicants submitting incomplete applications will be mailed or delivered a written notice of what information or documentation is missing. Upon providing notice to the applicant that its informal hearing request is incomplete, water service on the account may be shut off without further demand or notice no earlier than fourteen (14) days after such notice of an incomplete application has been mailed or delivered to the applicant.~~

~~(eb) Frivolous Appeals. Except as provided in this Subsection below, if an Authorized User is found by a decision of a hearing officer to have filed or submitted at least~~

two Frivolous Appeals and the hearing officer's decision is not appealed further or is appealed and upheld after further appeal, then subsequent informal hearing requests by such Authorized Users within 18 months of the hearing officer's Frivolous Appeal determination will not result in a stay or postponement of shut off of Utility Service. Instead, upon filing of a subsequent informal hearing request by such an Authorized User under the circumstances described above, an informal hearing will be scheduled on an expedited basis (within 10 days of an informal hearing request form), unless a later time is requested by the Authorized User. A request to delay the hearing will not stay shut off of Utility Service. If a hearing officer decides a future informal hearing request in favor of such Authorized User, the Frivolous Appeal restrictions will be lifted.

~~(dc) A notice of the rights of review, compromise, waiver and refund with the TRB, OAR and/or the Department of Revenue under Chapter 19-1700 of The Philadelphia Code and the stay procedures set forth below shall be included by the hearing officer in every hearing decision.~~

~~(ed) If an Authorized User timely files a petition for review with the TRB or the OAR raising matters within the jurisdiction of the TRB/OAR and the matters were raised before the informal hearing officer, the WRB will stay further shut off action pending a final decision of the TRB/OAR, provided that the Authorized User or his or her representative promptly notifies the hearing officer in writing of the petition and the Authorized User pays or arranges to pay any undisputed past charges, including penalties, and thereafter complies with any outstanding payment agreements and pays or arranges to pay all current charges when due in the future, except as otherwise provided during medical emergencies as set~~

forth in Section 100.10 of these regulations.

If a stay is revoked because of the failure of an Authorized User or their representative to comply with these conditions, the WRB shall give at least ten (10) days written notice by mail or hand delivery of its intention to shut off Utility Service. In no case will the filing of a petition for review require the Water Department to restore Utility Service already shut off, except as otherwise provided during medical emergencies as set forth in Section 100.10 of these regulations.

(fe) After a final decision of the TRB/OAR regarding a billing issue, the WRB will mail a final bill to the Authorized User who requested review by TRB/OAR with a notice that the Authorized User will have thirty (30) days from the date of the bill to pay or enter into payment agreement with the WRB to pay the original or modified charges or the Service Location will be subject to shut off without further notice, unless the property is occupied by one or more USTRA Tenants, in which case appropriate notice shall be provided in accordance with USTRA and Section 100.6 of these regulations.

(gf) If the Authorized User files a petition for compromise, waiver or refund, the Authorized User may apply in writing to the WRB, which may in its discretion grant a stay of further shut off action pending final decision on the petition.

\* \* \* \* \*

## **100.10 Medical Emergency Procedures**

(a) The WRB shall delay shut off of water service where shut off will aggravate an existing serious illness of any person who is

~~an resident Occupant~~ of the Residential Property if a written certification on a physician's stationery, dated and signed by a physician is submitted to the WRB which sets forth the name, address, and telephone number of the physician, the name and address of the ~~resident Occupant~~ who is ill, that the physician has examined the person, and the nature, seriousness and expected duration of the illness.

(b) The certification of illness shall delay shut off for the length of the illness or thirty (30) days from the date that the certificate is submitted, whichever is less, and may be renewed for no more than an additional thirty (30) days.

(c) The right to delay shut off under this Section may only be exercised once in any twelve month period.

\* \* \* \* \*

## **100.13 Posting of Authorized User Rights**

(a) ~~The WRB will shall~~ post in several conspicuous places in its offices easily understood posters to notify Authorized Users of their rights, including the right to dispute the WRB's decision.

(b) The Department and WRB will post a flyer or brochure describing the dispute process on their websites.

\* \* \* \* \*

**EXHIBIT D**

**WRITTEN COMMENTS**



July 18, 2016 (*Revised, July 21*)

Commissioner Debra McCarty  
Philadelphia Water Department  
1101 Market Street  
Philadelphia, PA 19107

Dear Commissioner McCarty:

As set forth in the sections that follow, this correspondence describes the concerns and recommendations of Community Legal Services, Inc. (CLS) regarding the Philadelphia Water Department's (PWD) proposed amendments to its regulations at Chapter 1: Customer Rights and Obligations, filed May 12, 2016 (Proposed Regulations). Generally, our comments and recommendations are organized in the following issue areas: (I) Application for Service as Residential Customers; (II) Immediate Shut off For Unauthorized Use, Fraud or Tampering; (III) Informal Hearings and Rights Pending Final Decision; and, (IV) Miscellaneous Changes.

Our comments continue to reflect many concerns we raised in our February 12, 2016 memorandum, concerning PWD's then-draft proposed regulations. That memorandum is attached hereto as Appendix 1. We request this memorandum, and Appendix I, be attached to and included with the Department's final report pursuant to Section 8-407(c) of the Philadelphia Home Rule Charter.

We note that our comments do not address the substantial revisions in the Proposed Regulations concerning compliance with the Utility Service Tenants Rights Act (USTRA). The requirements of USTRA are unambiguous and are fully detailed in the statute. As we observed in our February 12, 2016 memorandum regarding PWD's then draft of Proposed Regulations, PWD's regulations appear to fall short of implementing the statutory requirements.<sup>1</sup>

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<sup>1</sup> We continue to be concerned that PWD does not satisfy USTRA's requirements and PWD's Proposed Regulations suggest this problem will continue. Should PWD continue to feel it necessary to incorporate USTRA into its regulations, and as an alternative to trying to reconcile USTRA with terminology utilized in PWD regulations, PWD could append the statute to PWD regulations, with the following statement substituted for the text appearing at Section 100.3: "PWD will comply with the Utility Service Tenants Rights Act, 68 P.S. §§ 399.1-399.18, a copy of which is appended to these regulations." Other changes to eliminate USTRA-related definitions and provisions would be necessary.



## I. APPLICATION FOR SERVICE AS RESIDENTIAL CUSTOMERS

### A. Generally

PWD's Proposed Regulations will result in more applicants for service being unable to access customer status. Adding unnecessary and confusing barriers to customer status and receipt of service would illegally obstruct access to the Income-Based Water Rate Assistance Program (IWRAP). Regarding tenants, PWD's changes conflict with determinations by other City departments, including the Fair Housing Commission. Finally, as PWD is aware, it has a responsibility to report to the Philadelphia Water Sewer and Storm Water Rate Board (Board) annually on why potential customers face barriers to obtaining service from PWD.<sup>2</sup> PWD's reporting obligations arose as a result of Board members' concern regarding unrebuted witness and participant testimony in PWD's FY 2017-2018 Rate Proceeding, demonstrating that applicants face unreasonable obstacles, constructed by PWD, that prevent them from obtaining service. Rather than reducing those barriers, PWD appears to be raising them higher, and without direction or agreement to do so from the Residential Customer Assistance and Service Committee (R-CAS).<sup>3</sup>

### B. Confusing and Unnecessary Barriers to Service and Customer Status

The Proposed Regulations contribute to confusion and conflict between the concept of "service" and the concept of "customer status". For example, the introduction to Section 100.2 appears to confirm that an applicant who is approved as a "customer" will receive "utility service" in his or her name. However, Section 100.2(b)(1)(C) adds a new provision that prohibits an applicant from becoming a customer if utility service is off for any number of reasons, *including nonpayment of prior charges* (previously, water had to be off and uncorrected violations endangering health or safety had to exist). This change to Section 100.2(b)(1)(C) is impermissible.

Under Section 100.2(b)(1)(C), PWD can deny customer status to any applicant (owner, tenant or occupant) when "utility service" is not being provided because of nonpayment of prior bills rendered for service to the service location.<sup>4</sup> This creates an unnecessary new barrier to customer status for applicants who lack service.<sup>5</sup> More importantly, this change

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<sup>2</sup> See Report of the Board on PWD Proposed Rate Changes, FY17, FY18 at 40.

<sup>3</sup> If PWD does not intend for R-CAS members to contribute to the development of PWD policy in a meaningful way, PWD is wasting R-CAS members' time and R-CAS should be discontinued.

<sup>4</sup> This appears to conflict with Section 100.2(f)(1), stating that PWD will restore service to a new customer upon acceptance of an application.

<sup>5</sup> We note this prohibition is also internally inconsistent with the plain language of Section 100.2(a)(1) (providing that an Owner becomes a Customer as of the date of title transfer, etc.).



would directly violate the terms of IWRAP under Section 19-1605 of the Philadelphia Code (including within the definition of “customer” any natural person who is receiving or *requesting to receive or restore* service to such person’s primary residence in Philadelphia). IWRAP establishes a clear right to apply for customer status and restoration of service simultaneously for any person who may qualify for IWRAP or an affordable payment agreement thereunder.<sup>6</sup> All applicants should have the opportunity to access the benefits, and fulfill the obligations, associated with customer status, regardless of whether service is on or off at the time of application.

Furthermore, PWD’s Proposed Regulations continue to ignore the well-reasoned opinion of the Mediation Team that PWD should not hold applicants hostage by denying them customer status to force compliance with non-safety related requirements. See December 11, 2015 Mediation Report and Summary of Agreements, at 8. Section 100.2(b)(1)(C) continues to prohibit customer status and utility service where there exists any uncorrected PWD violation. PWD should not impose a barrier to customer status and service, creating a health and safety risk, where an uncorrected violation, which itself poses no such health and safety risk, can be addressed through other appropriate means of enforcement (e.g., issuance of notices, referral to L&I, referral to IWRAP, referral to LICAP, etc.).

#### C. Owner Consent Will Continue to Impede Customer Status

Section 100.2(d) and (e) appear to continue the longstanding practices, detrimental to tenants and occupants, of requiring the owner’s consent to obtain customer status.<sup>7</sup> We continue to believe that the requirement of owner consent, is an unnecessary barrier to establishing customer status and receiving service.<sup>8</sup> As PWD is aware, “express consent” is impossible in many circumstances. We have worked with Water Revenue Bureau on a number of occasions to demonstrate that an occupant or tenant is entitled to customer status even when, e.g., the owner cannot be located to provide consent. **The ability of an applicant to receive service in his or her name should not change based on a third-party's actions nor whether water service is on or off.** We remind PWD that it agreed to address issues regarding tenant applications for service through Mediation with CLS, only

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<sup>6</sup> Philadelphia Code § 19-1605(3)(h.2) by necessity extends this protection to “customers” having household income between 150% and 250% of FPL.

<sup>7</sup> The effect of this prohibition is to exclude tenants and occupants, with legal rights to reside at service locations, from accessing benefits such as low-income program assistance.

<sup>8</sup> As defined, a “tenant” has a current rental agreement. Section 100.2(a)(2)(B) already requires a showing by tenants or occupants of their authorization to reside at the applicable dwelling. Showing the existence of a rental agreement or authorization to reside at the service location should be sufficient for purposes of customer status.



to later reverse course, claiming many such issues should be brought before PWD's then yet-to-be-formed R-CAS. No consensus has emerged from R-CAS regarding the reasonableness of PWD's owner consent practice, and PWD does not appear to want to achieve any such agreement.

PWD's proposed Section 100.2(b)(1)(F) flatly denies customer status to tenants whose landlords lack rental property licenses. PWD will recall that CLS raised this issue in the mediation, and it was unresolved. The City should not deny customer status, and the rights and obligations associated with it, on the basis of an owner's failure to obtain a rental property license, which failure does not impact the legality of the tenant or occupant's possession. Rather, the City should, in the event it determines a rental license is necessary, refer that matter separately to L&I for enforcement. Denying customer status to a tenant is not the appropriate lever to push to obtain landlord compliance. Nor is it logical to do so and deprive the City of current service revenues from a willing tenant customer.

Relatedly, we do not believe PWD should eliminate the "acceptance of an applicant's complaint against the Owner and the scheduling of a hearing thereon by the Philadelphia Fair Housing Commission" from the evidence that will be considered conclusive of tenancy. Reg. 100.2(a)(2)(B). First, we are aware of no good reason for the change. Second, the Fair Housing Commission requires proof of tenancy in connection with a complaint in order to schedule a hearing. Ultimately, the Fair Housing Commission **does not require the landlord to have a residential rental license** in order for the tenant to access city services. PWD's regulations create a conflict between city departments, depriving tenants of access to customer status when they are most likely to need it.

## II. IMMEDIATE SHUT OFF FOR UNAUTHORIZED USE, FRAUD OR TAMPERING

CLS continues to have serious concerns regarding PWD's proposal to expand broadly its discretion to terminate life-essential water service without due process of law. As stated in our February 12, 2016 comments (Appendix 1), the current PWD regulations at Section 100.4(a) already provide PWD with powers to terminate service without prior notice to address a danger to "life or property." CLS is not objecting to PWD's additional proposed language to address danger to "life, health, safety or property." However, PWD's decision to continue to propose new Section 100.4(e) without any modification from its February 2016 proposed language is alarming and, if not eliminated, will result in wrongful shut offs of life-essential water service without pre-deprivation notice and an opportunity to be heard, even in cases where PWD has no reason to believe there is danger to life, health, safety or property.



In new proposed Section 100.4(e), PWD lifts language from new PUC regulations, 52 Pa. Code section 56.98, to propose immediate shut offs of water service without prior notice when, in PWD's sole discretion, there has been "unauthorized use." After a seven year PUC rulemaking process, section 56.98 was revised and clarified to implement new statutory language at 66 Pa. C.S.A. section 1406(c) regarding grounds for immediate termination. As PWD is not a utility regulated by the PUC, section 1406(c) does *not* apply to PWD. PWD proposes in a six month process to expand broadly its discretionary powers in regulations to shut off essential water service without prior notice to households, in the absence of any new accompanying statutory authority.

Pre-deprivation notice and an opportunity to be heard are fundamental constitutional due process requirements when a government agency proposes to deprive households of a benefit or service. Mathews v. Eldridge, 424 U.S. 319 (1976). Elimination of pre-deprivation protections should not be taken lightly and certainly not without statutory authority through city legislation and a more robust legislative and regulatory review process.

Further, during PWD's Mediation with the Public Advocate, PWD agreed to provide notice of landlord violations to tenants so that tenants may assist in the necessary steps to remedy these violations to obtain restoration of service. See Issue G of December Mediation Report. Proposed section 100.4(e) would run contrary to such agreement, if such landlord violations regarding meters, which may constitute unauthorized use, unfairly subject tenants to immediate loss of essential water service and provide no pre-deprivation opportunity to take steps to remedy the violation.

### III. INFORMAL HEARINGS AND RIGHTS PENDING FINAL DECISION

#### A. Informal Hearing Regulations Do Not Adequately Incorporate Mediation Agreements

From March 2013 to November 2014, PWD and CLS, serving as Public Advocate, participated in extensive Mediation sessions regarding improvement of PWD's informal dispute and hearing process. The sessions were mediated by an impartial mediation team and culminated in a 17 page Mediation Report, issued on November 11, 2014, which memorialized numerous agreements between the parties. These agreements provide for substantial improvements at every stage of the informal dispute and hearing process, from initiation of a dispute to the provision of a right to appeal all informal hearing decisions. November 11, 2014 Mediation Report and Summary of Agreements, at pages 4-11. To date, PWD has not provided CLS or the public with evidence that any of the Mediation



agreements have been implemented or that PWD has updated any internal manuals, policies or procedures to reflect the agreements.

The City's Proposed Regulations at Sections 100.7 and 100.8 do not adequately incorporate all of the agreed upon changes to the informal dispute and hearing process, nor do the Proposed Regulations provide notice of the changes to PWD users. Absent clear evidence that PWD has implemented the Mediation agreements in some other form, the Mediation agreements pertaining to the informal dispute and hearing process should be incorporated into the Proposed Regulations at Sections 100.7 and 100.8.

#### B. Informal Hearing Regulations Continue to Deprive PWD Users of Due Process

The Proposed Regulations at 100.7(a) and 100.7(b) adopt the position that only written decisions or determinations are contestable. While PWD and CLS did not reach agreement on whether all decisions and determinations are contestable, the parties did agree to significant changes pertaining to enhanced communications between PWD and its users. These changes are intended to provide PWD users with consistent notice of their appeal rights and should be included in the Proposed Regulations. In particular, PWD agreed that "enhanced and consistent verbal and written communications will be provided to all Authorized Users" and that "at the end of every contact with an Authorized User, the Customer Service Representative will ask if the individual is satisfied and, if they are not satisfied, inform them of the right to make an [Informal Hearing] request." November 11, 2014 Mediation Report and Summary of Agreements, at page 4. To date, these agreements have not been implemented by PWD and they have not been set forth in the Proposed Regulations.

During the Mediation, CLS repeatedly expressed its concern that PWD's practice of making verbal decisions and determinations functions as a "gatekeeping" mechanism that prevents PWD users from accessing the informal dispute and hearing process. The Proposed Regulations perpetuate this gatekeeping by eliminating informal hearing rights for verbal denials and determinations. The proposed revisions to 100.7(a) and 100.7(b) undermine PWD's commitment to improve the process for providing notification of appeal rights and should be rejected.

The Proposed Regulations also continue PWD's longstanding practice of denying dispute rights to PWD users who want to dispute decisions and determinations that are not included on the list of contestable issues set forth at 100.7(a). In the case of Koger v. Guarino, 412 F. Supp. 1375 (ED Pa. 1976), the U.S. District Court held that a water user has "a legitimate claim of entitlement to continued water service which is a property interest to



which the Due Process Clause of the Fourteenth Amendment applies.<sup>9</sup> The court determined that the City of Philadelphia's procedures violated the constitutional requirement of due process prior to deprivation of water service. The Proposed Regulations deprive PWD users of due process by denying an opportunity to be heard to users who have contestable issues that do not appear on the list set forth at 100.7(a).

PWD should revise its regulations to state that all adverse eligibility determinations are contestable. If the proposed 100.7(a) is not expanded to include all adverse determinations, PWD regulations will fail to guarantee users their rights to contest inaccurate determinations, which threaten to or actually do deprive them of access to water service. These determinations include, but are not limited to, issues such as: the determination that an applicant is an agent of a current or previous delinquent customer under regulation 100.2(b)(1)(A); USTRA issues other than denial of an application for continued water service; and, shut off for reasons other than nonpayment or failure to provide access to the meter.

Further, the proposed Section 100.7(a)(9) unreasonably denies dispute rights to users who contest determinations that they are ineligible for HELP loans due to homeownership. The regulation should be revised to state that an Authorized User can request a hearing to dispute a HELP denial related to homeownership. Ownership is often a fact intensive issue, and one that is appropriate for an informal hearing. When access to HELP is necessary to maintain service, the inability to seek resolution of such an issue expeditiously through an informal hearing process would wrongfully deny access to a fair hearing process.

**C. Rights Pending Final Appeal Regulations Unreasonably Deny a Stay on Termination for Users with a Hearing Request Related to the Completeness of an Application for a Payment Agreement**

Section 100.8(b) denies a delay or stay of the shut off of water service to informal hearing requests related to the completeness of an application for a payment agreement or the adequacy or completeness of any documentation submitted in connection with such an application. During the Mediation, CLS presented PWD with evidence that payment agreement applications were sometimes deemed incomplete, and effectively denied, due to PWD representative error in interpreting supporting documents. A PWD user seeking to enter into a payment agreement is often unable to afford the bill and applies for a payment agreement as a method of preventing shut off. Section 100.8(b) increases the likelihood of shut off by denying a stay.

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<sup>9</sup> 412 F. Supp. 1375, at 1386.



Further, PWD and CLS agreed during the Mediation that a stay of enforcement will be triggered from the filing of a completed informal hearing request form until 30 days after the issuance of an informal hearing decision. November 11, 2014 Mediation Report and Summary of Agreements, at page 6; See also, Decision of the Philadelphia Water Commissioner and Revenue Commissioner as to the Mediation Report Regarding the Informal Dispute and Hearing Process, at page 4. PWD should honor the agreements that it made during the Mediation and provide a stay of enforcement pending appeal for PWD users who dispute the completeness of an application for a payment agreement.

Finally, IWRAP legislation states that PWD “shall promulgate standards governing stay, postponement, and holds of pending enforcement actions or service terminations to allow customers time to apply for and enter into IWRAP or other payment agreements, and/or to seek legal representation or assistance from community based organizations.” Section 19-1605(3)(m). The proposed 100.8(b) is contrary to the IWRAP legislation because it does not allow customers time to enter into a payment agreement when the barrier to enrollment is a PWD determination that an application is incomplete. The proposed 100.8(b) is unreasonable and should be revised to provide a stay for informal hearing requests related to the completeness of an application for a payment agreement or the adequacy or completeness of any documentation submitted in connection with such an application.

#### IV. MISCELLANEOUS

The definition of “Tenant-Customer” (Section 100.1(a)(2)) should eliminate the language “with legal proof of Tenancy.” By definition, a Tenant resides at a Service Location pursuant to a Rental Agreement. As we advised you in writing on February 12, 2016:

The terminology ‘legal proof’ appears to establish some further standard of tenancy beyond what is required for obtaining customer status, and would impede access to the Informal Hearing process.

Language at 100.2(e)(3), guaranteeing tenant and occupant customers the same rights and obligations as other residential customers should be restored. There appears to be no clear basis for this change, as rights and obligations of “customers” under the regulations do not differ between tenants, occupants and owners.

Section 100.2(e)(4), regarding considering an application pending during the period of notice to the Owner, PWD should clarify that any pending termination will be deferred during such period.



Language at section 100.4(b)(2), allowing for “two consecutive billing periods,” before a shut off notice would be issued for denial of access to the meter, should be restored. In this modern age when households are encouraged to automate monthly utility payments from their financial institutions, utility bills and notices will often go unopened as they are presumed to be have already been paid and satisfied. Eliminating the two month grace period to reply to requests for access to the meter will lead to many premature shut off notices and unnecessary suffering from actual shut offs.

Regulation 100.5(a) has been revised to state that shut off notices in languages other than English and Spanish will be provided to a Customer upon request. The proposed regulation does not specify how Limited English Proficient (LEP) customers will be informed of the opportunity to request notices in other languages. PWD should take reasonable actions to ensure that LEP customers are made aware of the opportunity to request notices in other languages. PWD should include a tagline on all of its shut off notices, including USTRA, to inform LEP customers of PWD's language access policies. The tagline should be available in various languages and should include a description of the process for requesting notices in a language other than English and Spanish. 100.5(a) should be revised to include a short statement regarding PWD's language access protocol.

The proposed revision to section 100.10 regarding “Medical Emergency Procedures,” to replace the word “resident” with the word “Occupant,” should be eliminated. PWD also proposes to revise the definition of the word “Occupant” to be a “person who has the Owner’s authorization to reside at a Service Location.” PWD’s proposed revision to section 100.10 would require that a seriously ill person seeking delay of shut off for medical reasons must not only show that he or she resides at the property, but he or she would also be required to show that the owner has authorized him or her to reside there. Such a requirement would delay or be a barrier to this critical medical protection if the person, such as a minor child or newborn, cannot timely show or show at all that his or her name is specifically listed on a written lease, if one even exists.

Regulation 100.13 does not fully incorporate the Mediation agreements regarding posting of Authorized User rights. In addition to the large poster at all customer service centers, PWD agreed to make available a one page flyer or brochure describing the dispute process to be published on PWD, WRB, and Philly Watersheds websites. November 11, 2014  
Mediation Report and Summary of Agreements, at 11.

Respectfully submitted,

Thu B. Tran

Josie B.H. Pickens

Robert W. Ballenger

George D. Gould



To: Susan Crosby, Esq.  
Scott Schwarz, Esq.  
City of Philadelphia Law Department

From: CLS Energy Unit  
Date: 2/12/2016  
Re: Proposed Amendments to PWD Regulations

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This memorandum sets forth our preliminary comments on, and concerns with, the draft proposed amendments to Chapter 1, Customer Rights and Obligations, of the Philadelphia Water Department (PWD) regulations (Proposed Regulations) supplied to us on January 29, 2016.<sup>1</sup> Generally, our comments are limited to: (1) matters within the scope of the stipulation to mediation of customer service issues agreed to in settlement of the PWD FY 2013-2016 Rate Increase Proceeding (Mediation); and, (2) responses/reactions to other changes PWD has incorporated into the Proposed Regulations.

We note that PWD's compliance with the Utility Service Tenants Rights Act (USTRA) remains a significant CLS concern. However, USTRA compliance was not a subject of the Mediation. While we observe that PWD proposes significant modifications to its regulations concerning USTRA, we decline to provide detailed comments on those changes, which appear to fall short of implementing the statutory requirements imposed on PWD.<sup>2</sup>

Our comments are organized according to the following topics: (I) Application for Service as Residential Customers; (II) Immediate Shut off For Unauthorized Use, Fraud

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<sup>1</sup> Given the limited period of time the City has afforded us to comment on the Proposed Regulations, we reserve the right to raise issues not discussed in this memorandum in connection with the regulation review process.

<sup>2</sup> It may be preferable to incorporate the specific USTRA notice requirements in PWD regulations, as opposed to incorporating them by reference to the statute.

or Tampering; (III) Informal Hearings and Rights Pending Final Decision; (IV) Payment Agreements; and, (V) Miscellaneous Changes. We welcome additional discussion on these issues, prior to filing the Proposed Regulations with the Department of Records, with the hope that further changes to the City's draft can resolve a great many of them.

## I. Application for Service as Residential Customers

During the Mediation, CLS (serving as Public Advocate), made a number of recommendations concerning owner notice and consent rights, a potential "Landlord Cooperation Program," and the ability of tenants and occupants to obtain customer status (regardless of whether service is on or off), among others. In response, the City (PWD and WRB) submitted that these issues could not be resolved in the Mediation because landlord input was required. The City then commenced a separate process, the Residential Customer Assistance and Service Committee (R-CAS), to shift consideration of these issues to another forum, outside of the agreed-to Mediation. See the City's June 2015 Memorandum, City Summary of Agreements and Statement of Position, at 2, 3.

The Proposed Regulations reflect no attempt to consider the input of R-CAS. R-CAS members have not fully considered resolutions of these vital issues, and the Proposed Regulations appear to be a premature attempt to further circumvent fair discussion of them.

Furthermore, the City has rejected the well-reasoned opinion of the Mediation Team that "the tenant (and his/her security deposit with the landlord) should not be held hostage to try to force a landlord to comply with non-safety-related requirements." December 11, 2015 Mediation Report and Summary of Agreements (December Mediation Report), at 8. The City asserts that it will continue to deny service to tenants who commence tenancy after water has been shut off due to a prior customer's unpaid bill. See Decision of the Philadelphia Water Commissioner and Revenue Commissioner, dated January 11, 2016, at 7. The Proposed Regulations reflect the continuation of the City's practice, which a City-selected mediator considered and found unreasonable.

Finally, the City has included language prohibiting tenants and occupants from becoming customers at properties for which no valid residential rental property license exists. As to tenants, CLS raised this issue in the Mediation, and it was unresolved. As to occupants, by definition, this prohibition will *preclude any occupant from obtaining customer status*. In both cases, the City should not deny customer status, and the rights and obligations associated with it, on the basis of an owner's failure to obtain a rental property license, which failure does not impact the legality of the tenant or occupant's possession. Rather, the City should, in the event it determines a rental license is necessary, refer that matter

separately to L&I for enforcement. Denying customer status to a tenant is not the appropriate lever to push to obtain landlord compliance. Nor is it logical to do so and deprive the City of current service revenues from a willing tenant.

For the foregoing reasons, we believe the majority of changes in the Proposed Regulations in Section 100.2 require further consideration.

Several additional, specific changes in this section of the Proposed Regulations should be made:

<b><i>Proposed Regulation Issue</i></b>	<b><i>CLS Recommendation</i></b>
Section 100.2(a)(2)(A). Requirement to provide photo identification.	We suggest that an applicant “will generally be required to provide at least one form” of photo ID. The second sentence of this section clarifies that a customer without the preferred form of photo ID will be referred to a supervisor. This change would more accurately reflect the agreement reached in the Mediation. December Mediation Report, at 5.
Section 100.2(a)(2)(A). Prior court determinations and Fair Housing Commission hearing.	Restore language regarding prior Court determinations of tenancy and the scheduling of Philadelphia Fair Housing Commission hearings. PWD regulations should not undermine the determination of the Courts or PFHC concerning the existence of tenancy. The elimination of this section is unfounded.
Section 100.2(e)(3): Acceptance of Application.	Eliminated language (“After acceptance by the WRB, the Tenant or Occupant Customer shall be entitled to the same rights and subject to the same obligations as any other residential Customer of the WRB”) should be restored.
Section 100.2(f)(3): Turn-On of Utility Service.	Additional language “or permitted by law” should be eliminated. PWD regulations should set forth or incorporate all bases for lawful termination.

Section 100.2(i)(1): Termination of Customer Relationship.	A provision should be added/restored allowing Tenants/Occupants to notify WRB to terminate Customer status. The City agreed with this during the Mediation. See the City's June 2015 Memorandum, City Summary of Agreements and Statement of Position, at 5. A Tenant or Occupant vacating a Service Location must be able to terminate Customer status and avoid responsibility for bills rendered thereafter, regardless of whether a new Tenant/Occupant or Owner becomes the Customer.
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## II. Immediate Shut Off for Unauthorized Use, Fraud or Tampering

The addition of new subsection 100.4(e) (Immediate Shut Off for Unauthorized Use, Fraud or Tampering) appears to be premised upon Pennsylvania Public Utility Commission (PUC) regulation 52 Pa. Code § 56.98. Section 56.98 was revised and clarified as part of a seven (7) year rulemaking process implementing provisions of Act 201 of 2004, 66 Pa. C.S.A. Chapter 14 of the Public Utility Code. As discussed further below, the PUC, throughout the rulemaking process, repeatedly reminded the regulated public utilities that the termination of service can have serious consequences. Further, this new subsection to the PWD regulations is not necessary given the existing language at 100.4(a) allowing for shut off without prior notice.

The PUC implementation orders reflected careful consideration of the health and safety factors for those immediately affected by termination of life-essential utility service. In its first Chapter 14 Implementation Order, the PUC cautioned public utilities against interpreting the immediate termination provisions too liberally.

Indeed, our regulations already permit termination without advance notice in these situations. We must, however, caution utilities to use this authority judiciously and only under circumstances that address clear safety concerns. See, e.g., 52 Pa. Code §§56.98, 59.24(b).

*First Implementation Order*, Pa. PUC Docket No. M-00041802F0002, March 4, 2005, at pp. 8-9.

In its Second Implementation Order, the PUC provided for standards to “ensure that appropriate proof of fraud is established before termination without notice is performed” and the required content of the “post-termination notice.”

[W]ith respect to CLS' recommendation that there should be heightened post-termination protections where the post-termination notice should inform customers in detail of the alleged facts underlying the conclusion that fraud or material misrepresentation has been committed, we agree that the post-termination notice in such instances should provide adequate information about the reason why the utility terminated service without prior notice so that the customer or occupant understands why the utility terminated service.

*Second Implementation Order*, Pa. PUC Docket No. M-00041802F0002,  
September 12, 2005.

We believe there is no need for the addition of Proposed Regulation Section 100.4(e). But we are concerned that, in any event, PWD must commit to ensuring that proper proof of unauthorized use, fraud or tampering will be obtained prior to termination. Furthermore, PWD should follow the PUC's standards for providing adequate information about the reason for immediate termination, in order that customers or occupants can be adequately protected and pursue appropriate remedy.

We note that the Proposed Regulations use inconsistent language to refer to a service termination. In some sections, the word "suspension" is used and in other sections, the words "shut off" are used. If there is a distinction, the difference should be reflected in the Proposed Regulations. If there is no difference, then consistent language ought to be used to avoid confusion.

### III. Informal Hearings and Rights Pending Final Decision

The resolution of the informal dispute and hearings process section of the Mediation resulted in a Mediation Report and Summary of Agreements dated November 11, 2014 (November Mediation Report), which contained numerous agreements between the parties. These agreements provided for substantial improvements at every phase of the informal appeals process, from initiation of a dispute through the provision of a right to appeal all informal hearing decisions.

The City's Proposed Regulations at Sections 100.7 and 100.8 do not adequately incorporate the agreed upon changes to the City's informal appeals process, nor do the Proposed Regulations sufficiently provide notice of the improvements to the informal hearing process. Fifteen months after the issuance of the November Mediation Report, the City has not provided any written material, i.e., policies, manuals, etc., that demonstrate that the Mediation agreements have been implemented. The City has convened only one quarterly meeting since the issuance of the November Mediation Report. The City's stated commitment to implementing the agreed upon changes through

internal procedures and policies, and not through regulation, is belied by its failure to do so over the past fifteen months.

CLS submits that the Mediation agreements pertaining to the informal hearing process should be incorporated into the Proposed Regulations at Sections 100.7 and 100.8. The City should undertake a careful review of the November Mediation Report and revise the regulations to include any agreement that the City is unable to conclusively demonstrate has been implemented through changes in internal procedure or policies. At a minimum, the City should:

Revise Section 100.7 to include:

- The parties' agreement that at the end of every contact with an Authorized User, the Customer Service Representative will ask if the individual is satisfied, and, if they are not satisfied, inform them of the right to make an informal hearing request. November Mediation Report, at 4.
- The parties' agreement that each decision will provide the basis of its reasoning in sufficient detail so that affected persons can determine if they have a dispute. November Mediation Report, at 4.
- The parties' agreement that the City will allow a CSR to complete an informal hearing request form over the phone in exceptional circumstances on a case by case basis. November Mediation Report, at 5.
- The parties' agreement that if a delinquency has been transferred to the City Law Department or a collection agency, then customer service functions and informal hearing process will be available on other transactions not subject to transfer. November Mediation Report, at 5.
- The parties' agreement that notices will be given contemporaneously to complainant's designated representatives who have entered their appearance in a given dispute. November Mediation Report, at 8.
- The parties' agreement that informal hearing unit staff will not unilaterally cancel a hearing. November Mediation Report, at 8.
- The parties' agreement that a hearing officer will make any decision about the appropriateness of canceling a hearing, after consulting with both parties to the dispute, except that a hearing officer may unilaterally cancel or postpone or continue a hearing due to illness, family death or other person emergencies. November Mediation Report, at 8.
- The parties' agreement that hearings can be recorded at the request of either party. November Mediation Report, at 9.

- The parties' agreement that hearing officers will be expected to have reviewed the informal hearing request and any preliminary response from WRB and to establish an accurate record and basis for a decision. November Mediation Report, at 9.
- The parties' agreement that hearing officers will have full authority to secure necessary information to make a decision, continue the informal hearing to a later date if needed and will enter all information relied on for the decision into the record, ensure complainant has full opportunity to respond, and that applicable policy has been put on the record. November Mediation Report, at 9.
- The parties' agreement that each hearing officer's decision shall provide a concise statement of the background, date of the hearing and persons present, evidence/information presented before or during hearings upon which the hearing officer relied, and the governing provisions of law/policy upon which the hearing officer's decision is based. November Mediation Report, at 9.
- The parties' agreement that the hearing officer's decision will be based on substantial evidence presented at the hearing and shall not be arbitrary or capricious. November Mediation Report, at 9.
- The parties' agreement that hearing officer decisions should be provided to parties within 30 days of the conclusion of the hearing(s). November Mediation Report, at 9.
- The parties' agreement that hearing officer decisions will include notice of the right to appeal to TRB/OAR and will attach any TRB/OAR appeal form or instructions that are required to initiate such an appeal. November Mediation Report, at 10.

Revise Section 100.8 to include:

- The parties' agreement that a stay of enforcement will be in effect upon referral of a dispute to AAU for investigation. November Mediation Report, at 6.
- The parties' agreement that while a stay of enforcement is in effect, subsequent shut off notices from Philadelphia Water will only demand payment of undisputed portions of the bill. November Mediation Report, at 7.
- The parties' agreement that all hearing officer decisions are appealable to the TRB/OAR. November Mediation Report, at 6.
- The framework of the TRB/OAR appeals process as memorialized in the Memorandum of Understanding that was entered into between the Philadelphia Water Department, the Finance Department, and the Tax Review Board and Office of Administrative Review. November Mediation Report, at 10.

- The parties' agreement that the Frivolous Appeal provision will not take effect until the TRB/OAR appeal process is in place. November Mediation Report, at 7.

CLS further submits that Proposed Regulation Section 100.7 requires the following additional improvements:

<i><b>Proposed Regulation Issue</b></i>	<i><b>CLS Recommendation</b></i>
Section 100.7(a). List of contestable issues.	Remove the all-inclusive list of appealable issues and replace it with language supporting a right to appeal all adverse determinations, whether written or oral. Due process principles require the provision of notice and opportunity to be heard on a government unit's adverse decisions, even when those decisions do not appear on a list.
Sections 100.7(a)(1) and (a)(3). Authorized User/Customer	Replace the term "Customer's" with the term "Authorized User's." The City should not predetermine whether an authorized user has standing to bring an appeal. The hearing officer should determine whether the Authorized User has standing to bring the appeal.
Section 100.7(a)(9). Denial of right to appeal HELP loan disputes re: homeownership	Revise to state that an Authorized User can request a hearing to dispute a HELP denial related to homeownership. Ownership is often a fact intensive issue, and one that is appropriate for an informal hearing. When access to HELP is necessary to maintain service, the inability to seek resolution of such an issue expeditiously through an informal hearing process would wrongfully deny access to a fair hearing process.

Section 100.7(e). Access to records.	<p>Revise to state that the term “documents” refers to all physical and electronic records in WRB’s possession that relate to the subject matter of the Authorized User’s dispute with WRB. Due process requires that information received, considered and relied on for a government agency decision be available to an Authorized User having a dispute concerning a City decision.</p> <p>Further revise the language about making a good faith effort to respond in accordance with policy and procedures to state what policy and procedures will be followed.</p>
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Proposed Regulation Section 100.8 requires the following additional improvement:

- Revise Section 100.8(b), which states that informal hearing requests related to the completeness of an application for a payment agreement or the adequacy or completeness of any documentation submitted in connection with such an application will not result in a delay or stay of the suspension of water service pending the outcome of the appeal. This provision is likely to harm vulnerable Authorized Users who are contesting an effective denial of an application for a payment agreement and who will continue to receive unaffordable bills while waiting weeks or months for a hearing and decision on a payment agreement application.

#### IV. Payment Agreements

The Proposed Regulations include significant changes to Section 100.9, concerning payment agreements. Additional changes to Section 100.12 introduce internal inconsistencies<sup>3</sup> and eliminate favorable restoration terms for low-income customers (i.e., the ability to restore upon payment of 15% of monthly household income). With the exception of Proposed Regulations Sections 100.9(g) and (h), we oppose these changes at this time.

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<sup>3</sup> 100.9(b) states that payment agreements for customers who are shut off are set forth in section 100.12, contradicting 100.9(b)(10) which provides for more affordable payment agreement terms for customers whose service is already off.

Generally, these changes further blur the contours of the existing WRAP and WRBCC programs, essentially lumping both programs together under language providing WRB undue discretion to impede participation. For example, Proposed Regulation 100.9(b) provides that WRB:

- *May* base payment agreements on household income and expenses. (Proposed Reg. 100.9(b)(1))
- Can conduct a review at any time, and modify, rescind or revoke any payment plan for any reason. (Proposed Reg. 100.9(b)(9))
- *May* provide more favorable terms to customers without service or threatened with loss of service, in the event such customers are “known by WRB to be at or below 150% of federal poverty level.”<sup>4</sup> (Proposed Reg. 100.9(10))

Significant protections for customers at or below 250% of FPL currently reflected in 100.9 are proposed for removal, including:

- The requirement that WRBCC agreements shall be based on household income and expenses.
- Limitations on initial payments (10% of the balance or 15% of household income).
- Limitations on subsequent payments (5% of the balance plus current charges).
- Limitation on modification, rescission and revocation of a payment agreement to specific circumstances (failure to supply requested information or due to a material change in income or expenses).

The City acknowledges, in its currently pending rate increase proceeding, that the existing WRAP/WRBCC programs are expected to continue under current assumptions in FY 2017, with expected funding of approximately \$4 million. Changes to regulations governing these programs at this time would be inconsistent with the rate increase assumptions. Moreover, we have been informed that a process for finalization of the design and implementation of a new affordability program pursuant to Bill 140607-AA will be undertaken in collaboration between various stakeholders including representatives of the City Administration and City Council. We intend to participate in that process, which will commence in the coming months.

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<sup>4</sup> It is unclear how WRB would possess knowledge of a customer’s household income; the proposed regulations no longer include any language suggesting that low-income customers can “apply” for extended payment agreements. To the contrary, the only mention of a customer’s ability to apply for an extended payment agreement is limited to customers with income above 250% FPL. See Proposed Reg. 100.9(a)(5).

PWD's proposed amendments would adversely affect the rights of low income customers during the short period of time when all affected stakeholders should be focusing on the implementation of a new and robust affordability program. We submit that changes to Sections 100.9 and 100.12 (with the exception of Proposed Regulations 100.9(g) and (h)) should not be undertaken at this time.

#### V. Miscellaneous Changes

Set forth in the table below is a list of various proposed changes which we believe require further attention. Our recommendations are also provided.

<i><b>Proposed Regulation Issue</b></i>	<i><b>CLS Recommendation</b></i>
Definition of Authorized User - Tenant-Customer: requirement of "legal proof" of tenancy.	Language regarding "legal proof" is ambiguous, and unnecessary. A Tenant-Customer can simply be defined as a "Tenant in whose name the Utility Service account is established." The terminology "legal proof" appears to establish some further standard of tenancy beyond what is required for obtaining customer status, and would impede access to the Informal Hearing process.
Definition of Authorized User - Occupant: requirement to accept responsibility for outstanding bills.	Modify the language to require Occupants to accept responsibility for "Utility Service" and omit language regarding outstanding bills. Occupants have the ability to challenge responsibility for and the amount of Utility Service bills, and this creates a definitional inconsistency with the informal hearing right. This was the recommendation of the Mediation Team. See November Mediation Report, at 3, 13.
Definition of Authorized User – Household Member with Medical Emergency: requires that the person requesting a medical delay be an "Occupant."	"Occupant" has a special meaning. The right to a medical delay on shut off applies to any person who is a resident of the Residential Property. The City agreed in the Mediation that any such person constitutes an Authorized User for purposes of disputing a denial of a medical delay. November Mediation Report, at 3.
Definition of USTRA Tenant.	Correct reference to 399 P.S. §399.2.

Section 100.5(a). Notice of Shut Off Residential Customers other than USTRA Landlords and USTRA Tenants.	The Regulations should be modified to reflect that WRB will provide information concerning avoiding shut off upon contact by an Authorized User. The City agreed to do this in the Mediation. November Mediation Report, at 6.
Sections 100.5, 100.6. Notice of Shut Off; Shut-Off Notice Schedule. (Generally)	The Regulations must clearly require that copies of all termination notices be provided to the Service Location.



# HOMEOWNERS ASSOCIATION OF PHILADELPHIA

## HAPCO

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July 20, 2016

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### Public Hearing Testimony of Darrell M. Zaslow Esq. HAPCO Legal Counsel

Good afternoon members of the Committee. My name is Darrell Zaslow, Legal Counsel to HAPCO, the Homeowners Association of Philadelphia. HAPCO is the largest Association of rental property owners in the state of Pennsylvania. We offer several brief comments on behalf of Philadelphia property owners:

There is an overriding concern- The owner of the property, by law being ultimately responsible for the water bill, and his or her property subject to lien if the tenant fails to pay,

The owner's consent, other than in a USTRA situation, must be obtained before putting the billing in the name of a user other than the owner of the property.

Notice of any intention to seek the owner's consent appears to be addressed in the proposed regulations. We highlight, however, proposed rule 100.2 (d) NOTICE to OWNER.

The 10 days provided to the owner is dangerously short. An owner on vacation or who missed the mail or is elderly or ill, may be hard-pressed to respond to such a deadline. Perhaps an owner misses some mail while on summer vacation or between Christmas and New Year's- and now finds his or her real estate with a municipal lien against it. 20 days of Notice is a more reasonable time, and 10 days is not.

The Notice at 100.2 (d) should not only be extended to a minimum of 20 days, but to comply with recent activity in the Federal Court perhaps the Notice should also be delivered by certified mail. In any case the high importance of Notice of a potential lien certainly outweighs the tenant's need for an answer within 20 days. In reality the water is not being turned off anyway.

May we note in these issues appreciation for the full opportunity to be part of the planning and discussion on these issues. Every opportunity was presented by Joanne Dahme in the most professional of manners with staff in attendance of the Water Department, Law, Revenue, other departments, all in effort to get to the best solution for all. Thank you for our time.

**Darrell M. Zaslow, Esq. HAPCO Legal Counsel**

July 28, 2016



## C I T Y   O F   P H I L A D E L P H I A

Commissioner Debra A. McCarty  
Philadelphia Water Department  
1101 Market Street, 5<sup>th</sup> Floor  
Philadelphia, PA 19107

### OFFICE OF ADMINISTRATIVE REVIEW

PAULA WEISS, Esq.  
*Executive Director*  
LAND TITLE BUILDING  
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Re: Proposed Amendments to the Philadelphia Water Department Regulations e-mail: paula.weiss@phila.gov  
Chapter 1: Customer Rights and Obligations

Dear Commissioner McCarty:

As Executive Director of the Office of Administrative Review (OAR) and the Tax Review Board (TRB), I have reviewed the above-referenced proposed regulations filed with the Department of Records on May 12, 2016. Pursuant to a Memorandum of Understanding entered into between the Water Department, Revenue Department, OAR and TRB in 2014, the TRB and OAR have agreed to hear appeals of Water Department customers or authorized users after review and disposition of disputed claims and disputes in connection with the informal hearing process administered by Revenue Department hearing officers. Section 100.7 of the proposed regulations addresses the informal hearing process and Section 100.8 of the proposed regulations addresses the filing of hearing requests with the TRB or OAR.

In many instances, the TRB currently hears direct appeals from customers disputing bills issued by the Water Revenue Bureau. In addition, under recently enacted amendments to Section 19-1605 of the Philadelphia Code, the TRB is authorized to review any adverse decision or determination relating to eligibility for an agreement under the new Income-Based Water Rate Assistance Program (IWRAP) or a customer's performance of his or her obligations under such an agreement. At times, my staff receives inquiries from customers on other matters that are appealable to other boards, such as notices of plumbing defects issued by the Water Department and appealable to the Licenses and Inspections Review Board.

Based on my review of the regulations and experience with appeals handled by the TRB and OAR, I would encourage the Water Department to modify Section 100.7 to clarify which determinations and disputes listed in that section are directly appealable to the TRB or OAR.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paula Weiss".

Paula Weiss, Esq.  
Executive Director

Cc: Scott Schwarz, Divisional Deputy City Solicitor  
Susan Crosby, Divisional Deputy City Solicitor

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