

MEMORANDUM

To: James Leonard, Records Commissioner
From: Frank Breslin, Revenue Commissioner
Debra A. McCarty, Water Commissioner
Date: March 10, 2017
Subject: Department of Revenue Income-Based Water Rate Assistance Program Regulations and Amendment to Chapter 2 of the Philadelphia Water Department Regulations

On November 14, 2016, pursuant to Section 8-407(a) of the Philadelphia Home Rule Charter, the Revenue and Water Departments filed with the Department of Records the Department of Revenue's proposed Income-Based Water Rate Assistance Program regulations and proposed amendments to Sections 206.0 through 206.10 of Chapter 2 of the Water Department's regulations. In accordance with Section 8-407(b) of the Charter, a hearing was requested and, pursuant to Section 8-407(c) of the Charter, a hearing was held on January 26, 2017. Pursuant to Section 8-407(c) of the Charter, we are forwarding herewith the Report of the Revenue and Water Commissioners on the Public Hearing ("Report"). The regulations as revised by the Report are attached to the Report as Exhibit A. A blackline version showing the changes made by this Report is attached as Exhibit B. Written comments received are attached as Exhibit C. Also please find enclosed a memorandum of approval from the Law Department. Thank you for your assistance in this matter.



Frank Breslin
Revenue Commissioner



Debra A. McCarty
Water Commissioner

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



City of Philadelphia

LAW DEPARTMENT
Water Division
1101 Market Street
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M E M O R A N D U M

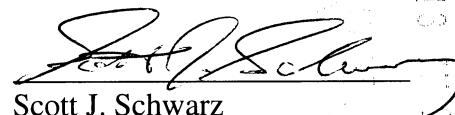
TO: Frank Breslin, Revenue Commissioner
Debra A. McCarty, Water Commissioner

FROM: Scott Schwarz, Divisional Deputy City Solicitor

DATE: March 10, 2017

SUBJECT: Report of the Revenue and Water Commissioners on the Public Hearing with respect to the Revenue Department's Income-Based Water Rate Assistance Program Regulations and Chapter 2 of the Water Department's Regulations on Assistance Programs

I have reviewed the attached report dated March 10, 2017 on the public hearing held on January 26, 2017 with respect to proposed regulations referenced above, and the modified amendments based on suggestions made at the hearing as indicated in the report. I find the report and amended regulations to be legal and in proper form. In accordance with Section 8-407(c) of The Philadelphia Home Rule Charter, you may now forward the written report and the modified amendments to the Department of Records.



Scott J. Schwarz
Divisional Deputy City Solicitor

**REPORT OF THE REVENUE AND WATER COMMISSIONERS
ON THE PUBLIC HEARING WITH RESPECT TO
THE REVENUE DEPARTMENT'S
INCOME-BASED WATER RATE ASSISTANCE PROGRAM REGULATIONS
AND
CHAPTER 2 OF THE WATER DEPARTMENT'S REGULATIONS ON
ASSISTANCE PROGRAMS**

March 10, 2017

On November 14, 2016, pursuant to Section 8-407(a) of the Philadelphia Home Rule Charter, the Revenue and Water Departments (hereinafter referred to together as the Departments) filed with the Department of Records the Department of Revenue's Income-Based Water Rate Assistance Program Regulations and Amendments to Chapter 2 of the Water Department's regulations entitled "Assistance Programs." These regulations are being promulgated to implement the City's new Income-Based Water Rate Assistance Program (IWRAP), also known as the Tiered Assistance Program (TAP).

Public notice of the filing of the proposed regulations was published and one written request for a public hearing was made by Community Legal Services, Inc. (CLS) on behalf of residential customers of the Philadelphia Water Department, including but not limited to low income Philadelphians who are income eligible for legal services provided by CLS. A public hearing was scheduled and held on Thursday, January 26, 2017 at 3:00 p.m. at One Parkway Building, Philadelphia, Pennsylvania. At the hearing, CLS provided written comments and Robert Ballenger of CLS provided in-person testimony. Councilwoman Maria Quiñones-Sánchez also provided in-person testimony. During the hearing, the Water Commissioner announced that the record would remain open for additional comments until February 16, 2017. No additional comments were received. The Commissioners would like to thank both CLS and Councilwoman Quiñones-Sánchez for their testimony at the public hearing and for working with the Departments over the past two years to implement this new program.

Through this Commissioners' Report (Report), the Department of Revenue's Income-Based Water Assistance Program Regulations and Sections 206.0 through 206.10 of Chapter 2 of the Water Department's customer assistance regulations are modified and adopted as modified. A copy of the regulations as amended is attached as Exhibit A and shall become effective 10 days after the filing of this Report with the Records Department. A blackline showing all changes made to the current regulations by the amendment as modified by this Report is attached as Exhibit B. The written testimony received on the proposed regulations is attached as Exhibit C. A summary of the written comments and testimony and the responses of the Commissioners are provided below.¹

¹ The Water Department also filed proposed amendments to Chapter 1 of its regulations related to payment agreements, procedures at shutoff and restoration of service with the Department of Records on December 13, 2016. CLS requested a public hearing on these proposed amendments by letter dated January 6, 2017, and provided written and in-person comments on these proposed amendments at the public hearing on January 26, 2017. The Water Commissioner will address the comments received on these proposed amendments to Chapter 1 of its regulations in a separate report at a later date.

Section 206.1. Definition of “TAP Bill.” The term “TAP Bill” is defined in Section 206.1 as a bill issued by the Water Revenue Bureau to a Customer enrolled in TAP for service, usage and stormwater charges and any payments toward pre-TAP arrears. CLS commented that the definition should be clarified to indicate that “any payments toward pre-TAP arrears” may only be required of customers with incomes in excess of 150% of the federal poverty level. The Commissioners disagree with this comment.

Customers enrolled in TAP will receive monthly TAP bills that are capped at a portion of household income. It is anticipated that for most customers enrolled in TAP, the amount of the monthly charge on the customer’s TAP bill will be less than the actual amount that would be charged if the customer was not enrolled in TAP. However, there may be some months when the total monthly charge on a TAP bill is more than the actual amount that would be charged if the customer was not enrolled in TAP. In such situations, if the customer has arrears, the difference between the TAP bill and the actual amount that would be charged if the customer was not enrolled in TAP will be applied toward arrears. In addition, it is possible that a property owner who resides at the service location where the current bill is in the name of a tenant will qualify for TAP and receive a TAP bill that is limited to arrears. Given such scenarios in which low-income customers enrolled in TAP may have all or a portion of the payment on their TAP bill applied to pre-TAP arrears, we decline to accept the proposed modification to the definition of TAP Bill.

Section 206.2(a)(2). Eligibility and Enrollment - Special Hardship

Subsection 206.2(a)(2) of the regulations sets forth the specific types of documents that customers may submit to qualify for TAP under a special hardship condition. CLS provided comments on and recommended changes to several provisions in this subsection. For the reasons discussed below, the Commissioners decline to modify this subsection on special hardship conditions.

206.2(a)(2)(A). Job Loss. Paragraph 206.2(a)(2)(A) describes the documents that customers may submit as evidence of special hardship due to a job loss that extends beyond four (4) months. CLS commented that four months is an arbitrary standard and recommended the adopting of a flexible standard regarding a job loss that may impact upon a household’s financial condition.

The Commissioners believe that referring to a four-month period is appropriate given the purpose of this provision, which is to provide criteria for the types of documents that a customer may provide to customer service representatives to qualify for special hardship status due to a job loss of more than four months.² Customers with unemployment of four months or less may seek to qualify for TAP as low-income customers (e.g. a customer with anticipated seasonal unemployment and household income below 150%

² Raftelis Financial Consultants, Inc.(RFC) reviewed the current Water Revenue Assistance Program (WRAP) in 2015 and issued draft Water Department Management Audit, dated December 14, 2015. The Audit noted that the use of set criteria for the processing of WRAP applications would provide a benefit by improving efficiency of application processing.

FPL) or under other special hardship provisions such as the provision in paragraph 206.2(a)(2)(G) for customers with circumstances that threaten the household's access to necessities of life if payment of a delinquent bill is required.³

206.2(a)(2)(B). Serious Illness. Paragraph 206.2(a)(2)(B) describes the documents a customer may submit as evidence of a special hardship due to a serious illness of a household member that extends beyond nine months. CLS commented that nine months is an arbitrary standard and recommended that this paragraph be revised to exclude the requirement that an illness extend beyond nine months in favor of a flexible standard regarding an illness that may impact upon a household's financial condition.

The Commissioners disagree that nine months is an arbitrary standard.⁴ Customers with serious illnesses of shorter duration may apply for TAP under the other special hardship provision set forth in paragraph 206.2(a)(2)(G) for customers with circumstances that threaten the household's access to necessities of life if payment of a delinquent bill is required. For these reasons and the other reasons discussed above with respect to the benefits of establishing set criteria for application processing, the Commissioners decline to adopt the recommendation proposed by CLS.

206.2(a)(2)(D). Domestic Violence/PFA. Paragraph 206.2(a)(2)(C) describes the documents a customer may submit as evidence of a special hardship due to domestic violence. The documents specifically referenced in this paragraph as acceptable documentation are: (1) a Protection From Abuse (PFA) order issued to the Customer and currently in effect; or (2) a written notice from the Pennsylvania Department of Human Services (DHS) granting the Customer a good cause waiver to a Temporary Assistance for Needy Family (TANF) or General Assistance (GA) program based on a domestic violence determination and currently in effect. CLS commented that the paragraph should clarify that the protection applies in the event any member of the household is a victim of domestic violence and recommended that the WRB accept other evidence such as letters from case workers, advocates working with abuse victims, and completed Domestic Violence Verification Forms (Form PA-1747).

The requested clarification is not necessary because the paragraph as written refers to documents issued to a "Customer." The term Customer as defined in Section 206.1 includes a natural person who (i) is receiving or (ii) is in the process of requesting or simultaneously requests to receive or restore service from the Water Department at such

³ While water service provided by the City is not subject to the regulatory jurisdiction of the Public Utility Commission (PUC) as to rates or service, the Departments initially considered referring to a job loss of nine months in this paragraph in order to be consistent with PUC regulations which provide special benefits in terms of timing and payment of reconnection fees to customers whose service has been shut off and are experiencing a special hardship due to job loss that extends more than nine months. See 56 Pa Code § 56.191(c)(2)(ii)(A). Based on informal comments received prior to filing of the proposed regulations with the Department of Records, the Departments reduced the job loss period from nine months to four months.

⁴ The PUC regulations referenced above provide special benefits in terms of timing and payment of reconnection fees to customers whose service has been shut off and are experiencing a special hardship due to a "serious illness that extends beyond 9 months." See 56 Pa Code § 56.191(c)(2)(ii)(B). The Departments' regulations are consistent with these PUC regulations for residential customers with serious illnesses.

person's primary residence in Philadelphia. Given this definition of Customer, the paragraph as written is sufficiently broad to include any member of the household.

The Commissioners also believe that modifying this paragraph to specifically refer to other documentation is unnecessary. The paragraph is based in part on the protection provided to victims of domestic violence in the Public Utility Code, which refers to PFA orders.⁵ In addition to a PFA order, the regulation as proposed provides that acceptable documentation may include a written notice from the DHS granting the Customer a good cause waiver to a TANF or GA program based on a domestic violence determination and currently in effect. Such documentation may consist of a Domestic Violence Verification Form (Form 1747) if the form shows that DHS has granted a good cause waiver. Other forms of documentation will not be excluded, but rather will be referred to a supervisor pursuant to paragraph (H), which states that other forms of evidence will be referred to a WRB Supervisor.

206.2(a)(2)(E). Adult Dependent. Paragraph 206.2(a)(2)(F) provides that Federal income tax returns may be submitted as documentation of a special hardship due to the addition of a dependent. CLS commented that many low income families do not file federal income tax returns and added that the Department should accept "reasonable documentation of the dependency relationship." The Commissioners do not believe that a change to this paragraph is necessary in order for the Departments to accept other reasonable documentation of a dependency relationship. Other forms of documentation will not be excluded, but rather will be referred to a supervisor pursuant to paragraph (H), which states that other forms of evidence will be referred to a WRB Supervisor. Upon review of this section, however, it was noted that a comma was inadvertently omitted from the paragraph. The paragraph is modified to insert the comma so as to avoid any misunderstanding and clarify that the paragraph includes all other dependents.

Section 206.2(e). Income or Inability to Pay

Subsection 206.2(e)(1). Establishing Income. Subsection 206.2(e)(1) provides examples of documentation that may be submitted to establish household income. CLS contends that the section as written is inconsistent with the express definition of "income" in the ordinance establishing IWRAP (Ordinance) and suggests that this section be revised to provide: "The Customer shall produce reasonably acceptable documentation of income, based upon the type(s) of income received by the customer and other members of the household."

The Commissioners disagree that the section as written is inconsistent with the definition of income in the Ordinance. The section is permissive in that it provides examples of documents that "may" be submitted to establish income but does not limit the forms of acceptable documentation. In addition, the section as written reflects and is consistent

⁵ Section 1417 of Public Utility Code states: This chapter shall not apply to victims under a protection from abuse order as provided by 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or a court order issued by a court of competent jurisdiction in this Commonwealth, which provides clear evidence of domestic violence against the applicant or customer. 66 Pa.C.S.A. § 1417.

with comments submitted on behalf of Councilwoman Quiñones-Sánchez on an earlier draft of this section of the regulations.⁶

Subsection 206.2(e)(5). Zero Income. Subsection 206.2(e)(5) as proposed states: Customers who report household income as zero dollars (\$0) at the time of enrollment or re-enrollment may be required to complete a “Zero Income Form” which will require that the Customer identify all household members, the address where service is provided, an explanation of how household expenses are met, and such other information as WRB in its discretion may require. CLS contends that the section provides too much discretion to WRB and should be limited to requesting “such other information as WRB may reasonably require.”

The Commissioners disagree that this subsection as written provides them with too much discretion or that the section needs to provide a more detailed description of the contents of the form. Rather, the Commissioners believe that the section provides an appropriate degree of flexibility to the Departments to revise the form based on their experience in implementing this new program. The Departments have shared the draft Zero Income Form with an Advisory Committee that included representatives from CLS and has conducted a number of focus groups with the assistance of other stakeholders. Much of the feedback received from the focus groups has been incorporated into what is our current application and zero income form. The form as currently drafted is reasonable and does not impose an undue burden on applicants reporting zero income. It requests applicants reporting zero income to provide yes or no answers to specific questions regarding the applicant’s financial information and a brief explanation of the applicant’s source of livelihood or means of support.⁷

Based on further review of the comment from CLS on this subsection and the language of the subsection as proposed, however, the Commissioners agree that a change to this subsection of the regulations is appropriate. The regulation as proposed stated that the form would require the customer to identify all household members. The form as modified based on comments received to date does not request the customer to provide information on other household members. Information on household members will be provided on first part of the TAP application form but will no longer be required on the Zero Income Form. The necessary changes to this subsection are made accordingly.

⁶ Earlier drafts of this section stated as follows: “To establish income for the Customer and all members of his or her household, a Customer may produce Federal Income Tax Returns. The WRB also may accept other documents as proof of income or expenses including, but not limited to, pay stubs, W-2 forms, and benefit award letters.” As requested by comments provided on behalf of Councilwoman Quiñones-Sánchez to the Departments on this earlier draft on October 4, 2016, the Departments struck “[t]he WRB also may accept other documents as proof of income or expenses, including but not limited to.”

⁷ In a recent proceeding involving the Philadelphia Gas Works (PGW), the Public Utility Commission concluded that requesting proof of how living expenses are met for applicants who report zero or minimal income is reasonable. PGW noted that this practice provides some fraud protection for its low-income program and is not unduly burdensome. *See PUC Final Order in PGW’S Universal Service and Energy Conservation Plan for 2014-2016*, Docket No. M-2014-2366301 (Aug. 21, 2014) at 26-29.

Section 206.2(i). Intentionally False Statement. Section 206.2(i) states that no person shall intentionally make any false statement when applying to enter into a TAP agreement and provides that if it is determined that a Customer entered into a TAP agreement on the basis of an intentionally false statement, the agreement shall be null and void. CLS does not request a specific change to this section but rather seeks confirmation that the Departments will treat a determination under this section as appealable under Section 206.3, and that customers will receive written decisions informing them of the right to an administrative hearing. The Commissioners confirm that the Departments interpret Philadelphia Code § 19-1605(3)(l) as authorizing appeals of any adverse final decision or determination of the Revenue Department relating to initial or continued eligibility for IWRAP or TAP to the Tax Review Board and also interpret Philadelphia Code § 19-1605(3)(l) and Section 206.3 of the regulations as stating that such decisions shall be provided to the Customer in writing.

Section 206.5. TAP Payment Agreements. Section 206.5(b) provides that TAP Payment Agreements for low-income customers who are enrolled in TAP shall not require the Customer to make additional payments in respect to pre-TAP arrears for service, usage and stormwater charges to maintain service. CLS contends that this section should be clarified to include pre-TAP arrears other than service, usage and stormwater charges, including charge for metering, repairs, and other services provided prior to IWRAP enrollment. The Commissioners disagree. The Ordinance describes IWRAP in general and IWRAP bills in particular as bills charged “in lieu of the Department’s service, usage and stormwater charges.” See Phila. Code § 19-1605(3)(a). The Ordinance does not refer to meter charges, which are considered as miscellaneous charges rather than service or usage charges under the current rates and charges, nor does it refer to charges for repairs or other services which are chargeable to customers as abatement costs and collectible as liens or otherwise by the Law Department under the Administrative Code § A-503.2.⁸

Based on further review of Section 206.5 as initially proposed and additional work by the Departments on the requirements for implementing TAP Payment, however, the Commissioners have concluded that this section should be modified to more accurately reflect the wording of the Ordinance, which distinguishes between arrears that accrue prior to enrollment and after enrollment. See, e.g., Phila. Code § 19-1605(3)(f), (h) and (i)(3). In developing the technical requirements to implement TAP, the Departments generally have found it more efficient and technically feasible to use the term “TAP Payment Agreements” to refer to payment agreements available to customers enrolled in TAP and who request payment agreements for unpaid TAP bills. Upon initial enrollment, customers with arrears and an existing payment agreement will not receive new payment agreements, but rather TAP payment plans that include capped TAP Bills under Section 206.4 and the potential to qualify for earned forgiveness under Section 206.7 and 206.9 of the regulations. The modifications necessary to Sections 206.5, 206.7 and 206.9 are made accordingly.

⁸ A-503.2, entitled “Abatement of violation” states: Whenever any violation of this code or the technical codes or any order issued pursuant thereto is not corrected, the department, in addition to invoking any other sanction or penalty shall be authorized to, itself or by contract, correct the violation, charge the costs (including administrative costs) thereof to the violator, and with the approval of the Law Department collect the costs by lien or otherwise.

Section 206.7. Earned Forgiveness of Arrearages. Section 206.7 of the regulations as proposed set forth the conditions for customer to earn forgiveness of arrearages. It provides as follows:

206.7 Earned Forgiveness

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

- (a) Penalty charges on pre-TAP arrears shall be waived and forgiven for a Customer with a TAP Payment Agreement if the Customer makes timely monthly payments under a TAP Payment Agreement for twenty-four (24) consecutive months.
- (b) After each year of continued enrollment in TAP, any arrears older than fifteen years will be removed in accordance with Philadelphia Code Section 19-1605(1).
- (c) After fifteen years of continued enrollment in TAP, all arrears will be removed in accordance with Philadelphia Code § 19-1605(1).

CLS and Councilwoman Quiñones-Sánchez requested that this provision be expanded to allow for forgiveness of all arrears, including both accrued principal debt and penalties. The Commissioners have given serious consideration to the comments provided at the public hearing on this issue and have concluded that modifying this section of the regulations at this time would risk undermining the implementation of TAP. The uncertainties about the number of customers who will enroll in TAP and the potential revenue impacts are of particular concern. In addition, the efforts by the Departments to implement TAP as proposed in the regulations have reached a stage at which the start date of the program may need to be delayed if major programming modifications are made. The Commissioners agree that they will re-evaluate this issue based on the enrollment data obtained during the initial enrollment period and prior to the next general rate proceeding before the Philadelphia Water, Sewer and Storm Water Rate Board (Rate Board). Based on such an evaluation, the Commissioners will determine whether to modify the earned forgiveness rule to include an additional forgiveness component for accrued debt, as well as whether to propose an acceptable cost recovery mechanism to the Rate Board to account for the revenue impacts of a modified earned forgiveness program.

The Commissioners disagree with the comment by CLS that the earned forgiveness provision as proposed is contrary to the requirements of the IWRAP Ordinance. The Ordinance states: "Earned forgiveness of arrearages shall be available under such terms and conditions as are adopted by regulation." Phila. Code § 19-1605(3)(h.2).⁹ Section 206.7 as proposed complies

⁹ As Councilwoman Quiñones-Sánchez noted at the public hearing, all parties knew that there was going to be a robust debate about what this forgiveness provision meant.

with and is authorized by this provision of the IWRAP Ordinance.¹⁰ CLS also refers to the arrearage forgiveness programs of PECO and PGW as industry standards for arrearage forgiveness but has not provided any examples of similar programs by any Pennsylvania water utilities.

CLS also commented that the earned forgiveness provision should be modified to provide for “catch up” forgiveness, such that a customer who falls behind may earn forgiveness for prior months when the customer is able to catch up on missed payments. The Commissioners agree and the necessary change to Paragraph (a) of Section 206.7 is being made to eliminate the requirement that the monthly payment be made on time to qualify toward forgiveness of penalties. In addition, as noted above, this paragraph is being modified to clarify that penalty charges on pre-TAP arrears will be waived for Customers enrolled in TAP, regardless of whether the Customer entered into a TAP Agreement, if the Customer makes monthly payments of the TAP Bill for twenty-four consecutive months. As modified this paragraph states:

- (a) Penalty charges on pre-TAP arrears shall be waived and forgiven for a Customer enrolled in TAP if the Customer makes monthly payments of the TAP Bill for twenty-four (24) consecutive months.

206.8 Stay of Enforcement. Section 206.8 of the regulations address stays of enforcement. This section provides as follow:

206.8. Stay of Enforcement

- (a) If a Customer maintains continued enrollment in TAP, a Hold shall be placed on the Customer’s account.
- (b) This Section shall not apply to charges owed for HELP loans or any charges other than water or sewer rents (including stormwater charges) owed to the Water Department/Water Revenue Bureau.

¹⁰ CLS also refers to Section 3(p) and 4(c) of the IWRAP Ordinance, which are codified at Phila. Code § 19-1605(3)(p) and Phila. Code § 19-1605(4)(c). Neither of these sections is inconsistent with the earned forgiveness provision as proposed in the regulations. Section 3(p) states: “In the event of a change in household income that results in a determination that the customer is no longer eligible to participate in IWRAP, such customer shall receive the benefit of the forgiveness earned during the period of the IWRAP Agreement.” Consistent with section 3(p), customers who make payments for twenty-four months while enrolled in IWRAP will earn forgiveness of penalties even if the customer is no longer eligible at recertification due to a change in income. See Section 206.9(b) of the regulations and the discussion above regarding the modification to 206.9(b) to clarify that this provision applies to all customers enrolled in the program. Section 4(c) states: “In the event of any adjustment to the arrears, the amount of forgiveness earned by such customers shall be recalculated as if such adjusted arrears were determined as of such customer’s IWRAP enrollment.” This provision addresses situations in which arrears of enrolled customers are reduced for reasons discussed in the above response to the comments on the definition of “TAP Bill.” Consistent with Section 4(c), a Customer enrolled in TAP and who pays a TAP Bill that includes some payment toward arrears would be able to have the amount of earned forgiveness recalculated as if the reduced arrears were determined as of such customer’s enrollment date.

The term “Hold” is defined in the regulations as a non-permanent suspension of litigation. Although CLS agrees that court actions designed to collect on unpaid bills should not continue during a customer’s participation in TAP, it contends that Section 206.8 fails to satisfy the IWRAP Ordinance, which states that the Departments 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.”¹¹

This contention fails to recognize that the Departments are complying with the requirements of the Ordinance through Section 100.8 of the Water Department’s regulations, which provides that WRB and the Water Department will not shut off service during such periods as established by WRB and Water Department written policy. The WRB Procedures Manual will include a written policy setting forth standards governing stays, postponement and hold of all pending enforcement actions or services termination after a Customer requests a TAP application. The policy currently under consideration would provide a 14-day stay of enforcement to customer for the first three times a request for an application is made over a 12-month time frame. After the third request within a 12-month time frame, the stay would no longer be offered.

Warning of Risk of Foreclosure Action

CLS commented that the regulations do not contain a specific provision implementing the provisions of the IWRAP Ordinance pertaining to warnings of risk of water foreclosure actions. See Phila. Code § 19-1605(n). The Commissioners do not deem the promulgation of a specific rule or regulation necessary to effectuate the purpose of this section.

¹¹ Philadelphia Code § 19-1605(m).

EXHIBIT A

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206.0 INCOME-BASED WATER RATE ASSISTANCE PROGRAM

206.1 Definitions.

The following words and phrases when used in Sections 206.0 through 206.10 of these regulations have the meanings given to them in this Section unless specifically provided otherwise or unless the text clearly indicates otherwise:

- (a) Civil Action: An *in personam* lawsuit filed to collect water and sewer rents. A Civil Action shall be deemed commenced when a Complaint is filed with the Court of appropriate jurisdiction.
- (b) Customer: A natural person who (i) is receiving or (ii) is in the process of requesting or simultaneously requests to receive or restore service from the Water Department at such person's primary residence in Philadelphia. A person shall cease to qualify as a Customer under the second category if his or her application for service is ultimately denied.
- (c) Federal Poverty Level or FPL: The Federal Poverty Level, as determined annually by the United States Census Bureau.
- (d) Hold: A non-permanent suspension of Litigation.
- (e) Income: All regular and periodic income from whatever source derived, including but not limited to salaries, wages, income from self-employment, alimony, support money, cash, public assistance and relief, the net amount of any pensions or annuities including railroad retirement benefits, all benefits received under the Federal Social Security Act (except Medicare benefits),

all benefits received under State employment insurance laws and veterans' disability payments, all interest received from the Federal or any State government, or any instrumentality or political subdivision thereof, net income from rentals, workmen's compensation, interest and dividends, and any regular and periodic monetary contributions from a non-household member. Income shall not include overtime; back pay; severance pay; bonuses; tuition reimbursements; loan disbursals; federal or state income tax refunds; lump sum payments of benefits such as loss of time insurance benefits, death benefits, life insurance benefits and other insurance proceeds; Supplemental Nutrition Access Program ("SNAP") benefits or any other form of surplus food or other relief in kind supplied by a governmental agency; or property tax rebate.

- (f) Litigation: A Sheriff's Sale or Civil Action as defined in this Section.
- (g) Low-income: Income equal to or less than one hundred fifty percent (150%) of FPL.
- (h) Monthly Household Income: The monthly Income received by the Customer and all adults residing in the Customer's household.
- (i) Rate Board: The Philadelphia Water, Sewer and Stormwater Rate Board, established pursuant to Section 5-801 of the Home Rule Charter and Section 13-101 of the Philadelphia Code.
- (j) Sheriff's Sale: An *in rem* lawsuit filed to collect water and sewer rents, pursuant to the Municipal Claim and Tax Lien Law, 53 P.S. §§ 7101, et seq. A Sheriff's Sale shall be deemed commenced when a Petition pursuant to 53 P.S. § 7283 is filed with the Court of

appropriate jurisdiction.

(k) Special Hardship: A hardship condition that may include, but is not limited to, the following: (i) an increase in the Customer's number of dependents in the household; (ii) a seriously ill household member; or; (iii) circumstances that threaten the household's access to the necessities of life if payment of a delinquent bill is required.

(l) Tiered Assistance Program (TAP): The Income-Based Water Rate Assistance Program described in these regulations and Section 19-1605 of the Philadelphia Code.

(m) TAP Payment Agreement: A payment agreement provided to a Customer enrolled in TAP in accordance with these regulations and Section 19-1605 of the Philadelphia Code.

(n) TAP Bill: A bill issued by the Water Revenue Bureau to a Customer enrolled in TAP for service, usage and stormwater charges and any payments toward pre-TAP arrears.

(o) WRB: The Water Revenue Bureau, within the City of Philadelphia Department of Revenue.

206.2 Eligibility and Enrollment

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

(1) A Customer who demonstrates Monthly Household Income at or below 150% of the Federal Poverty Level shall be deemed to have satisfied the financial or Special Hardship eligibility requirement.

(2) Applicants for enrollment in TAP due to a Special Hardship condition must demonstrate a Special Hardship condition within the prior twelve (12) month(s). Such evidence of a Special Hardship condition will usually be in writing including, but not limited to, any of the following:

(A) For a job loss that extends beyond four (4) months: termination notice, resignation letter, layoff notice, Pennsylvania Unemployment Compensation Claim Confirmation Letter (Form UC-360) or comparable out of state form, newspaper article.

(B) For a serious illness that extends beyond nine (9) months: a written certification as set out in 100.10 of the Water Department's regulations, a decision letter from Social Security Administration for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), medical bills.

(C) For the death of the primary wage earner: death certificate, obituary.

(D) For domestic violence: a Protection From Abuse (PFA) order issued to the Customer and currently in effect, or a written notice from the Pennsylvania Department of Human Services (DHS) granting the Customer a good cause waiver to a Temporary Assistance for Needy Family (TANF) or General Assistance (GA) program based on a domestic violence determination and currently in effect.

(E) For additional dependent children in the household: birth certificate, baptismal certificate, hospital records, written certification of the child's doctor, proof of guardianship.

(F) For additional elderly, disabled, returning veteran, and other dependents: Federal Income Tax Returns.

(G) For circumstances that threaten the household's access to the necessities of life if payment of a delinquent bill is required, a Customer may request an individual financial assessment comparing household income and expenses in order to demonstrate a Special Hardship. The WRB will consider the following household expense: rent or mortgage, utility bills, telephone, food, medical bills, transportation, laundry, clothing, toiletries, taxes, insurance and other reasonable expenses.

(H) Other forms of evidence will be referred to a WRB Supervisor.

(b) Prior to enrolling a Customer in TAP, and upon each recertification of eligibility, WRB or its designee shall determine whether, on the basis of such Customer's historical usage as shown on his or her prior monthly bills and any pre-TAP arrears, the Customer would receive more affordable bills under another available payment agreement or rate discount, such as the senior citizen discount. Historical usage shall not include significant usage attributable to leaks or activities not customary to a residential setting. If, based on such a determination, the monthly TAP Bill would be higher than the payment the Customer would need to make under another available payment agreement or rate discount, then the Customer will not be eligible for enrollment or re-enrollment in

TAP. A Customer enrolled in TAP will not be eligible for an additional discount as an income-eligible senior citizen.

(c) A Customer may have a community based organization, attorney, family member, representative, interpreter or other person present to assist the Customer during in person meetings with WRB regarding TAP enrollment, TAP Payment Agreements, or other WRB determinations related to TAP.

(d) A Customer who would not receive a more affordable bill under another available payment agreement and rate discount shall be enrolled in TAP upon approval of a completed application on or with which the applicant shall be required to provide proof that he or she: (i) is a resident at the property in question; and (ii) qualifies for TAP as a Low-Income Customer or a Customer with a Special Hardship.

(e) Income or Inability to Pay.

(1) To establish income for the Customer and all members of his or her household, a Customer may produce Federal Income Tax Returns, pay stubs, W-2 forms, and benefit award letters.

(2) Social security numbers or other identification shall not be required for minors, for persons over the age of sixty-five (65) or for disabled persons. A Customer who has supplied social security numbers or other tax identification number for all other household residents shall have satisfied this requirement. Where a household member is unable to provide an otherwise required tax identification number, the WRB may accept a signed affidavit for good cause shown. To establish disability under this Section, a Customer must produce a copy of an award letter issued by the armed services, Social Security Administration, SSI, Railroad

Retirement or Black Lung or comparable official documentation of disability benefits.

(3) Where the WRB possesses inconsistent information or for other good cause shown, the WRB may request additional documentation to substantiate Customer's actual income.

(4) WRB will accept determinations of income made within the prior twelve (12) months pursuant to Section 19-1305 of the Philadelphia Code.

(5) Customers who report household income as zero dollars (\$0) at the time of enrollment or re-enrollment may be required to complete a "Zero Income Form" which will require that the Customer provide the address where service is provided, an explanation of how household expenses are met, and such other information as WRB in its discretion may require.

(f) Residency.

To establish residency under this Section, the Customer must submit documents from any two (2) separate categories in paragraphs (1) through (10) below or provide a determination of the Customer's residency made within the prior twelve months pursuant to Section 19-1305 of the Philadelphia Code. Documentation must include the Customer's name and the property address. Acceptable documents include:

(1) Government-issued ID that has not expired: Photo ID issued by the U.S. Federal Government or the Commonwealth of Pennsylvania (including the Department of State Voter ID Card); PA Driver's License or Non-Driver's License Photo ID; U.S. Passport; U.S. Military ID; or Employee Photo ID

issued by U.S. Federal Government, Commonwealth of Pennsylvania, Pennsylvania County or Municipal government.

(2) Utility Bills: the WRB shall accept Philadelphia Gas Works (PGW), Water Revenue, PECO, cable, or landline telephone bills as proof of residency if the Customer presents at least two bills from at least two different months from within the last 6 months. The two bills may be for the same utility service or for two different utility services.

(3) Voter Registration Card.

(4) Employment/Income Tax records: At least two pay stubs from current employer from the last 6 months; most recent year's W-2 form; or most recent year's state or federal income tax records.

(5) Government-issued benefit or award letter (federal, state, or local) from the last 12 months: Social Security, SSI, DHS, or SNAP (food stamp) benefit award letter or COMPASS printout; Unemployment compensation award letter; LIHEAP award letter; or Homestead Exemption award letter or OPA print-out showing Homestead Exemption has been approved.

(6) At least two mortgage statements from the last six (6) months.

(7) At least two student loan billing statements from the last six (6) months.

(8) At least two bank statements from the last six (6) months.

(9) A written lease and/or rent receipts for the dwelling that cover the last six (6) months.

(10) Other forms of evidence will be referred to a WRB Supervisor.

(g) Customer Responsibilities

(1) The TAP application and recertification forms shall inform the Customer of his or her responsibilities for continued enrollment in TAP, require the Customer to agree to abide by the Customer responsibilities, and inform the Customer of the consequences of failing to abide by the Customer responsibilities.

(2) Customers whose service is off due to an uncorrected notice of violation or defect, or a determination that providing service would endanger life, health, safety or property must correct the violation and/or make any necessary repairs before service will be restored.

(h) TAP Enrollment Confirmation.

Upon a Customer's acceptance into a TAP agreement, the WRB shall provide a written statement setting forth the terms and conditions of the Customer's participation in TAP. The statement shall include the following information, as appropriate:

- (1) the monthly TAP Bill amount;
- (2) the amount of arrears owed prior to enrollment in TAP;
- (3) the requirement that the Customer pay TAP Bills issued upon receipt;
- (4) a brief explanation of the consequences of nonpayment of TAP Bills;

(5) a brief explanation of the Customer's right to cure any noncompliance with the TAP agreement; and

(6) a brief explanation of the customer responsibility and recertification requirements for continued enrollment in TAP.

(i) No person shall intentionally make any false statement when applying to enter into a TAP agreement. If it is determined that a Customer entered into a TAP agreement on the basis of an intentionally false statement, the agreement shall be null and void.

206.3 Decisions in Writing

(a) Written Decisions.

Any decision or determination of the WRB relating to (i) initial or continued eligibility for TAP, (ii) a TAP Payment Agreement, (iii) the amount of TAP or other arrears for which the Customer is responsible, (iv) the completeness of a Customer's application, and the adequacy or completeness of any documentation submitted in connection with an application for a TAP Payment Agreement, or (v) the Customer's performance of his or her obligations under a TAP Payment Agreement, shall be provided to the Customer in writing, and shall include a specific reason for the decision or determination, and a statement of the Customer's right to an administrative hearing to dispute such decision.

(b) Administrative Appeals.

A Customer may request the Tax Review Board to review any adverse final decision or determination of the WRB relating to initial or continued eligibility for a TAP agreement, the Customer's performance of his or her obligations under a TAP agreement, or the

amount of TAP or other arrears for which the Customer is responsible.

(c) Language Access/Non-English Speakers.

Consistent with applicable law and policy, the WRB shall take reasonable steps to ensure meaningful access to written decisions issued pursuant to subsection (a) of this Section for Limited English Proficient (LEP) persons. Such steps shall include providing translations of all such written decisions and advising LEP persons that telephone interpreter services are available.

206.4 TAP Bills

(a) Customers who are enrolled in TAP will receive a monthly TAP Bill for the Customer's current service, usage and stormwater charges. TAP Bills for Low-income Customers enrolled in TAP shall be calculated in accordance with the schedule of rates and charges issued by the Rate Board for Low-income Customers enrolled in TAP.

(b) TAP Bills for Special Hardship Customers whose Monthly Household Income is greater than 150% of FPL will be calculated at 4% of the Customer's Monthly Household Income.

(c) Timely payment of his or her monthly TAP Bill shall satisfy all of a Customer's current liabilities for service, usage and stormwater charges, so that there is no addition to his or her arrears for service, usage or stormwater charges. Timely payment shall be payment postmarked or received within one month of the payment's due date.

(d) Any amount paid for a monthly TAP bill in excess of the customer's current service,

usage and stormwater charges as shown on the TAP bill shall reduce the balance of his or her arrears.

206.5 TAP Payment Agreements

(a) Customers enrolled in TAP and who apply for a payment agreement to pay the unpaid balance on TAP bills will be offered TAP Payment Agreements.

(b) TAP Payment Agreements for Low-income Customers who are enrolled in TAP shall not require the Customer to make additional payments in respect to pre-TAP arrears for service, usage and stormwater charges to maintain service.

206.6 Removal from TAP

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

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

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

(d) Customers removed from TAP for submitting intentionally false enrollment or re-certification information/documentation or

Unauthorized use of service shall be back-billed for previously unbilled usage and/or for the amount by which the Customer's monthly service, usage and stormwater charges if billed at rates applicable to general Customers would have exceeded the amounts actually billed on the Customer's monthly TAP Bill during the period of enrollment in TAP.

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

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

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

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

(3) refuses to take necessary actions to accept and reasonably maintain any free conservation measures offered to the Customer by the Water Department (stay-out until services are accepted).

206.7 Earned Forgiveness

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

(a) Penalty charges on pre-TAP arrears shall be waived and forgiven for a Customer enrolled in TAP if the Customer makes monthly payments of the TAP Bill for twenty-four (24) consecutive months

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

(c) After fifteen years of continued enrollment in TAP, all arrears will be removed in accordance with Philadelphia Code § 19-1605(1).

206.8 Stay of Enforcement

(a) If a Customer maintains continued enrollment in TAP, a Hold shall be placed on the Customer's account.

(b) This Section shall not apply to charges owed for HELP loans or any charges other than water or sewer rents (including stormwater charges) owed to the Water Department/Water Revenue Bureau.

206.9 TAP Recertification

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

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

earned during the period of enrollment in TAP .

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

206.10 Conservation Measures.

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

EXHIBIT B

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206.0 INCOME-BASED WATER RATE ASSISTANCE PROGRAM

206.1 Definitions.

The following words and phrases when used in Sections 206.0 through 206.10 of these regulations have the meanings given to them in this Section unless specifically provided otherwise or unless the text clearly indicates otherwise:

- (a) Civil Action: An *in personam* lawsuit filed to collect water and sewer rents. A Civil Action shall be deemed commenced when a Complaint is filed with the Court of appropriate jurisdiction.
- (b) Customer: A natural person who (i) is receiving or (ii) is in the process of requesting or simultaneously requests to receive or restore service from the Water Department at such person's primary residence in Philadelphia. A person shall cease to qualify as a Customer under the second category if his or her application for service is ultimately denied.
- (c) Federal Poverty Level or FPL: The Federal Poverty Level, as determined annually by the United States Census Bureau.
- (d) Hold: A non-permanent suspension of Litigation.
- (e) Income: All regular and periodic income from whatever source derived, including but not limited to salaries, wages, income from self-employment, alimony, support money, cash, public assistance and relief, the net amount of any pensions or annuities including railroad retirement benefits, all benefits received under the Federal Social Security Act (except Medicare benefits),

all benefits received under State employment insurance laws and veterans' disability payments, all interest received from the Federal or any State government, or any instrumentality or political subdivision thereof, net income from rentals, workmen's compensation, interest and dividends, and any regular and periodic monetary contributions from a non-household member. Income shall not include overtime; back pay; severance pay; bonuses; tuition reimbursements; loan disbursals; federal or state income tax refunds; lump sum payments of benefits such as loss of time insurance benefits, death benefits, life insurance benefits and other insurance proceeds; Supplemental Nutrition Access Program ("SNAP") benefits or any other form of surplus food or other relief in kind supplied by a governmental agency; or property tax rebate.

- (f) Litigation: A Sheriff's Sale or Civil Action as defined in this Section.

- (g) Low-income: Income equal to or less than one hundred fifty percent (150%) of FPL.

- (h) Monthly Household Income: The monthly Income received by the Customer and all adults residing in the Customer's household.

- (i) Rate Board: The Philadelphia Water, Sewer and Stormwater Rate Board, established pursuant to Section 5-801 of the Home Rule Charter and Section 13-101 of the Philadelphia Code.

- (j) Sheriff's Sale: An *in rem* lawsuit filed to collect water and sewer rents, pursuant to the Municipal Claim and Tax Lien Law, 53 P.S. §§ 7101, et seq. A Sheriff's Sale shall be deemed commenced when a Petition pursuant to 53 P.S. § 7283 is filed with the Court of

appropriate jurisdiction.

(k) Special Hardship: A hardship condition that may include, but is not limited to, the following: (i) an increase in the Customer's number of dependents in the household; (ii) a seriously ill household member; or; (iii) circumstances that threaten the household's access to the necessities of life if payment of a delinquent bill is required.

(l) Tiered Assistance Program (TAP): The Income-Based Water Rate Assistance Program described in these regulations and Section 19-1605 of the Philadelphia Code.

(m) TAP Payment Agreement: A payment agreement provided to a Customer enrolled in TAP in accordance with these regulations and Section 19-1605 of the Philadelphia Code.

(n) TAP Bill: A bill issued by the Water Revenue Bureau to a Customer enrolled in TAP for service, usage and stormwater charges and any payments toward pre-TAP arrears.

(o) WRB: The Water Revenue Bureau, within the City of Philadelphia Department of Revenue.

206.2 Eligibility and Enrollment

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

(1) A Customer who demonstrates Monthly Household Income at or below 150% of the Federal Poverty Level shall be deemed to have satisfied the financial or Special Hardship eligibility requirement.

(2) Applicants for enrollment in TAP due to a Special Hardship condition must demonstrate a Special Hardship condition within the prior twelve (12) month(s). Such evidence of a Special Hardship condition will usually be in writing including, but not limited to, any of the following:

(A) For a job loss that extends beyond four (4) months: termination notice, resignation letter, layoff notice, Pennsylvania Unemployment Compensation Claim Confirmation Letter (Form UC-360) or comparable out of state form, newspaper article.

(B) For a serious illness that extends beyond nine (9) months: a written certification as set out in 100.10 of the Water Department's regulations, a decision letter from Social Security Administration for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), medical bills.

(C) For the death of the primary wage earner: death certificate, obituary.

(D) For domestic violence: a Protection From Abuse (PFA) order issued to the Customer and currently in effect, or a written notice from the Pennsylvania Department of Human Services (DHS) granting the Customer a good cause waiver to a Temporary Assistance for Needy Family (TANF) or General Assistance (GA) program based on a domestic violence determination and currently in effect.

(E) For additional dependent children in the household: birth certificate, baptismal certificate, hospital records, written certification of the child's doctor, proof of guardianship.

(F) For additional elderly, disabled, returning veteran, and other dependents: Federal Income Tax Returns.

(G) For circumstances that threaten the household's access to the necessities of life if payment of a delinquent bill is required, a Customer may request an individual financial assessment comparing household income and expenses in order to demonstrate a Special Hardship. The WRB will consider the following household expense: rent or mortgage, utility bills, telephone, food, medical bills, transportation, laundry, clothing, toiletries, taxes, insurance and other reasonable expenses.

(H) Other forms of evidence will be referred to a WRB Supervisor.

(b) Prior to enrolling a Customer in TAP, and upon each recertification of eligibility, WRB or its designee shall determine whether, on the basis of such Customer's historical usage as shown on his or her prior monthly bills and any pre-TAP arrears, the Customer would receive more affordable bills under another available payment agreement or rate discount, such as the senior citizen discount. Historical usage shall not include significant usage attributable to leaks or activities not customary to a residential setting. If, based on such a determination, the monthly TAP Bill would be higher than the payment the Customer would need to make under another available payment agreement or rate discount, then the Customer will not be eligible for enrollment or re-enrollment in

TAP. A Customer enrolled in TAP will not be eligible for an additional discount as an income-eligible senior citizen.

(c) A Customer may have a community based organization, attorney, family member, representative, interpreter or other person present to assist the Customer during in person meetings with WRB regarding TAP enrollment, TAP Payment Agreements, or other WRB determinations related to TAP.

(d) A Customer who would not receive a more affordable bill under another available payment agreement and rate discount shall be enrolled in TAP upon approval of a completed application on or with which the applicant shall be required to provide proof that he or she: (i) is a resident at the property in question; and (ii) qualifies for TAP as a Low-Income Customer or a Customer with a Special Hardship.

(e) Income or Inability to Pay.

(1) To establish income for the Customer and all members of his or her household, a Customer may produce Federal Income Tax Returns, pay stubs, W-2 forms, and benefit award letters.

(2) Social security numbers or other identification shall not be required for minors, for persons over the age of sixty-five (65) or for disabled persons. A Customer who has supplied social security numbers or other tax identification number for all other household residents shall have satisfied this requirement. Where a household member is unable to provide an otherwise required tax identification number, the WRB may accept a signed affidavit for good cause shown. To establish disability under this Section, a Customer must produce a copy of an award letter issued by the armed services, Social Security Administration, SSI, Railroad

Retirement or Black Lung or comparable official documentation of disability benefits.

(3) Where the WRB possesses inconsistent information or for other good cause shown, the WRB may request additional documentation to substantiate Customer's actual income.

(4) WRB will accept determinations of income made within the prior twelve (12) months pursuant to Section 19-1305 of the Philadelphia Code.

(5) Customers who report household income as zero dollars (\$0) at the time of enrollment or re-enrollment may be required to complete a "Zero Income Form" which will require that the Customer ~~identify all household members, provide~~ the address where service is provided, an explanation of how household expenses are met, and such other information as WRB in its discretion may require.

(f) Residency.

To establish residency under this Section, the Customer must submit documents from any two (2) separate categories in paragraphs (1) through (10) below or provide a determination of the Customer's residency made within the prior twelve months pursuant to Section 19-1305 of the Philadelphia Code. Documentation must include the Customer's name and the property address. Acceptable documents include:

(1) Government-issued ID that has not expired: Photo ID issued by the U.S. Federal Government or the Commonwealth of Pennsylvania (including the Department of State Voter ID Card); PA Driver's License or Non-Driver's License Photo ID; U.S. Passport;

U.S. Military ID; or Employee Photo ID issued by U.S. Federal Government, Commonwealth of Pennsylvania, Pennsylvania County or Municipal government.

(2) Utility Bills: the WRB shall accept Philadelphia Gas Works (PGW), Water Revenue, PECO, cable, or landline telephone bills as proof of residency if the Customer presents at least two bills from at least two different months from within the last 6 months. The two bills may be for the same utility service or for two different utility services.

(3) Voter Registration Card.

(4) Employment/Income Tax records: At least two pay stubs from current employer from the last 6 months; most recent year's W-2 form; or most recent year's state or federal income tax records.

(5) Government-issued benefit or award letter (federal, state, or local) from the last 12 months: Social Security, SSI, DHS, or SNAP (food stamp) benefit award letter or COMPASS printout; Unemployment compensation award letter; LIHEAP award letter; or Homestead Exemption award letter or OPA print-out showing Homestead Exemption has been approved.

(6) At least two mortgage statements from the last six (6) months.

(7) At least two student loan billing statements from the last six (6) months.

(8) At least two bank statements from the last six (6) months.

(9) A written lease and/or rent receipts for the dwelling that cover the last six (6) months.

(10) Other forms of evidence will be referred to a WRB Supervisor.

(g) Customer Responsibilities

(1) The TAP application and recertification forms shall inform the Customer of his or her responsibilities for continued enrollment in TAP, require the Customer to agree to abide by the Customer responsibilities, and inform the Customer of the consequences of failing to abide by the Customer responsibilities.

(2) Customers whose service is off due to an uncorrected notice of violation or defect, or a determination that providing service would endanger life, health, safety or property must correct the violation and/or make any necessary repairs before service will be restored.

(h) TAP Enrollment Confirmation.

Upon a Customer's acceptance into a TAP agreement, the WRB shall provide a written statement setting forth the terms and conditions of the Customer's participation in TAP. The statement shall include the following information, as appropriate:

- (1) the monthly TAP Bill amount;
- (2) the amount of arrears owed prior to enrollment in TAP;
- (3) the requirement that the Customer pay TAP Bills issued upon receipt;
- (4) a brief explanation of the consequences of nonpayment of TAP Bills;

(5) a brief explanation of the Customer's right to cure any noncompliance with the TAP agreement; and

(6) a brief explanation of the customer responsibility and recertification requirements for continued enrollment in TAP.

(i) No person shall intentionally make any false statement when applying to enter into a TAP agreement. If it is determined that a Customer entered into a TAP agreement on the basis of an intentionally false statement, the agreement shall be null and void.

206.3 Decisions in Writing

(a) Written Decisions.

Any decision or determination of the WRB relating to (i) initial or continued eligibility for TAP, (ii) a TAP Payment Agreement, (iii) the amount of TAP or other arrears for which the Customer is responsible, (iv) the completeness of a Customer's application, and the adequacy or completeness of any documentation submitted in connection with an application for a TAP Payment Agreement, or (v) the Customer's performance of his or her obligations under a TAP Payment Agreement, shall be provided to the Customer in writing, and shall include a specific reason for the decision or determination, and a statement of the Customer's right to an administrative hearing to dispute such decision.

(b) Administrative Appeals.

A Customer may request the Tax Review Board to review any adverse final decision or determination of the WRB relating to initial or continued eligibility for a TAP agreement, the Customer's performance of his or her obligations under a TAP agreement, or the

amount of TAP or other arrears for which the Customer is responsible.

(c) Language Access/Non-English Speakers.

Consistent with applicable law and policy, the WRB shall take reasonable steps to ensure meaningful access to written decisions issued pursuant to subsection (a) of this Section for Limited English Proficient (LEP) persons. Such steps shall include providing translations of all such written decisions and advising LEP persons that telephone interpreter services are available.

206.4 TAP Bills

(a) Customers who are enrolled in TAP will receive a monthly TAP Bill for the Customer's current service, usage and stormwater charges. TAP Bills for Low-income Customers enrolled in TAP shall be calculated in accordance with the schedule of rates and charges issued by the Rate Board for Low-income Customers enrolled in TAP.

(b) TAP Bills for Special Hardship Customers whose Monthly Household Income is greater than 150% of FPL will be calculated at 4% of the Customer's Monthly Household Income.

(c) Timely payment of his or her monthly TAP Bill shall satisfy all of a Customer's current liabilities for service, usage and stormwater charges, so that there is no addition to his or her arrears for service, usage or stormwater charges. Timely payment shall be payment postmarked or received within one month of the payment's due date.

(d) Any amount paid for a monthly TAP bill in excess of the customer's current service,

usage and stormwater charges as shown on the TAP bill shall reduce the balance of his or her arrears.

206.5 TAP Payment Agreements

(a) Customers enrolled in TAP and who apply for a payment agreement to pay the unpaid balance on TAP bills will be offered with pre TAP arrears will receive TAP Payment Agreements.

(b) TAP Payment Agreements for Low-income Customers who are enrolled in TAP shall not require the Customer to make additional payments in respect to pre-TAP arrears for service, usage and stormwater charges to maintain service.

(c) TAP Customers with Monthly Household Incomes greater than 150% FPL and who are enrolled in TAP due to a Special Hardship condition will receive TAP Payment Agreements with payments for current charges and pre TAP arrears calculated in accordance with Section 206.4(b) of these regulations.

206.6 Removal from TAP

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

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

(c) In addition to removal from TAP pursuant to Section 206.6(a) and (b) of these regulations, a TAP Customer may be removed from TAP for submitting intentionally false enrollment or re-certification information/documentation, unauthorized use of service (providing water for use at a location other than the

Customer's primary residence), failure to recertify upon request by WRB, or failure to accept and reasonably maintain free conservation services offered by the Water Department.

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

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

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

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

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

(3) refuses to take necessary actions to accept and reasonably maintain any free conservation measures offered to the Customer by the Water Department (stay-out until services are accepted).

206.7 Earned Forgiveness

If a Customer maintains continued

enrollment, the Customer will obtain forgiveness of outstanding arrears under the following conditions:

(a) Penalty charges on pre-TAP arrears shall be waived and forgiven for a Customer enrolled in TAP with a TAP Payment Agreement if the Customer makes timely monthly payments of the TAP Bill under a TAP Payment Agreement for twenty-four (24) consecutive months

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

(c) After fifteen years of continued enrollment in TAP, all arrears will be removed in accordance with Philadelphia Code § 19-1605(1).

206.8 Stay of Enforcement

(a) If a Customer maintains continued enrollment in TAP, a Hold shall be placed on the Customer's account.

(b) This Section shall not apply to charges owed for HELP loans or any charges other than water or sewer rents (including stormwater charges) owed to the Water Department/Water Revenue Bureau.

206.9 TAP Recertification

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

(b) In the event of a change in household income or household size, prospective TAP Bills will be calculated according to these regulations and the Water Department's rates

for customers enrolled in TAP. Such recalculation shall be done promptly at the request of the Customer. A Customer also may request a determination or redetermination of Special Hardship at any time he or she experiences a change in circumstances. In the event of a change in household income that results in a determination that the Customer is no longer eligible to participate in TAP, such Customer shall receive the benefit of any forgiveness earned during the period of enrollment in TAP ~~the TAP Payment Agreement.~~

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

206.10 Conservation Measures.

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

EXHIBIT C

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PULL REQUEST

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EXHIBIT C
PULL REQUEST

NAME

DATE



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

In the Matter of the Department of Revenue :
Proposed Income-Based Water Rate Assistance
Program Regulations :

and :

In the Matter of the Proposed Amendments :
To Chapter 1 (Customer Rights and Obligations) :
Of the Philadelphia Water Department Regulations :

Comments of Community Legal Services, Inc. Energy Unit

Submitted by:

Robert W. Ballenger, Esq.
Josie B.H. Pickens, Esq.
George D. Gould, Esq.

January 26, 2017



In the sections that follow, these comments set forth the concerns and recommendations of Community Legal Services, Inc. Energy Unit (CLS) regarding:

1. The Department of Revenue Income-Based Water Rate Assistance Program Regulations and Amendments to Chapter 2 of the Philadelphia Water Department Regulations, Stamped November 14, 2016; and

2. The Philadelphia Water Department's Amendments to Chapter 1 of the Philadelphia Water Department Regulations, Stamped December 13, 2016.

By public notice in The Legal Intelligencer on January 17, 2017, the Records Department indicated a public hearing will be held on January 26, 2017 from 3:00 to 5:00 PM on both sets of proposed regulations.¹

CLS has substantial concerns about both sets of regulations, and urges their further amendment at this time. CLS understands the Commissioners intend to keep the record open after this hearing. CLS reserves the right to supplement these Comments and provide further information for the Commissioners' consideration.

Income-Based Water Rate Assistance Program (IWRAP²) Regulations

Earned Forgiveness of Arrearages

The Revenue Department's proposed regulation on earned forgiveness of arrearages fails to satisfy the language and purposes of City Council's legislation. Essentially, the Revenue Department has proposed no earned forgiveness program whatsoever. Rather, the Revenue Department proposes to provide automatically the discretionary relief it has for many years had the authority to provide. Such a proposal will not accomplish the goals intended by City Council's legislation. In contrast, an assessment of the benefit to the City of an appropriately-structured earned arrearage forgiveness program was performed by economist Roger Colton, and is appended to this statement together with a one-page overview at Appendix A.

The Revenue Department proposes two practices, erroneously identified under the heading "Earned Forgiveness." First, the Revenue Department contends that, after two

¹ This notice also erroneously indicated that anyone affected by the proposed regulations could "file written request for hearing with the Department of Records within thirty (30) days from the publication of this notice." It is unclear whether any further requests for hearing will be filed during this period.

² The Revenue and Water Departments propose rebranding this program "TAP" or Tiered Assistance Program. For purposes of these Comments, CLS has endeavored to use the terminology in the IWRAP ordinance, except when quoting the proposed regulations directly. For purposes of these comments, the terms IWRAP and TAP are largely interchangeable.



years of timely payment, the Department will waive and forgive accumulated interest and penalty charges included in arrears. Accordingly, an IWRAP participant must maintain a perfect payment pattern for 24 months, in order to receive this forgiveness. Second, the Revenue Department proposes that each year a customer is enrolled in IWRAP, arrears older than fifteen years will be removed, such that after fifteen years the customer's arrears would have been completely removed. These proposals do not satisfy City Council's legislation, because neither alone nor in combination do they constitute an earned arrearage forgiveness program.

Primarily, it must be noted that as set forth in the Philadelphia Code, the Revenue Department has for many years had the ability to waive interest and penalty obligations and to forgive unpaid balances older than 15 years. Section 19-1705 of the Philadelphia Code authorizes the Revenue Commissioner to waive interest and penalties on outstanding water balances.³ Similarly, Section 19-1605 of the Philadelphia Code authorizes the Revenue Department to waive any claim for water, sewer and stormwater charges that are unpaid after fifteen years.⁴ City Council's legislation concerning the IWRAP program requires that the Revenue Department implement a new program, in connection with the provision of affordable bills for current service, under which "earned forgiveness of arrearages shall be available." Phila. Code § 19-1605(3)(h.2). Simply committing to do what the Revenue Department has had the ability to do on a discretionary basis fails to satisfy this purpose.

As background, the Commissioners should be reminded that the process leading from introduction of Bill 140607 through to its final passage was a lengthy one, involving significant time commitment of representatives of the Revenue and Water Departments, Law Department, City Council, and Community Legal Services, and various consultants, over a period of 17 months. During this process, it has been clear at all times that the legislative purposes to be served by Bill 140607 include creating a comprehensive low-income affordability program for water customers to incentivize payment of affordable bills and *eliminate bad debt*.

When Bill 140607 was first heard in the City Council Finance Committee, on April 9, 2015 (10 months after its June 19, 2014 introduction), the subject of arrearage forgiveness for IWRAP participants was discussed. As explained by Councilwoman Quiñones-Sánchez, the impetus for this legislation was to create a pathway out of indebtedness for customers who

³ In addition, customers enrolled in WRB's WRBCC program do not accumulate interest and penalty obligations.

⁴ Based upon information provided to City Council regarding outstanding water liens, it appears that the Water Revenue billing system may only account for certain unpaid water bills for 15 years. See April 8, 2015 Letter from Howard Neukrug to Councilwoman Quiñones-Sánchez (reporting \$0 in outstanding liens greater than 15 years old).



cannot afford mounting water bill debts, and in recognition of the low subscription rate of existing low-income water assistance programs.⁵ City Council discussed a period as short as two years for this purpose.⁶ Furthermore, Councilwoman Quiñones-Sánchez recognized the demonstrable financial benefit of customer assistance programs shown by other Philadelphia utilities, PECO and PGW, which provide arrearage forgiveness over one- and three-year periods, respectively. Moreover, Council was well-informed of the fact that debts owed by low-income customers are largely uncollectible, bad debt.⁷ Council's desire to create a program to manage this debt, in a fashion similar to the programs utilized by PECO and PGW, clearly indicates that the Departments should be looking to the arrearage forgiveness programs operated by these utilities, pursuant to the Public Utility Commission's CAP Policy Statement, 52 Pa. Code § 69.265 (requiring arrearage forgiveness to occur over a period of no more than two to three years).

At the request of the Water and Revenue Departments, Councilwoman Quiñones-Sánchez amended the bill further to require the Revenue Department, with assistance from CLS (then serving as Public Advocate), to collaborate and propose by October 1, 2015 for Council approval, a low-income program design including the "terms and conditions for an earned forgiveness program for pre-IWRAP arrears." That bill was unanimously passed by City Council on June 18, 2015. However, between June 18 and September 10, 2015, neither the Water nor the Revenue Department made a concerted effort to collaborate with CLS. Ultimately, on September 10, by resolution, City Council requested the passed ordinance be returned to City Council for reconsideration, in order to give the Water and Revenue Departments *even more* time and opportunity to collaborate with stakeholders on the terms and conditions of IWRAP, including the provision of earned arrearage forgiveness.

Between September 2015 and November 2015, CLS, Councilwoman Quiñones-Sánchez's office, the Water and Revenue Departments and the Law Department engaged in concerted efforts to craft legislation that would sufficiently describe the requirements of the new low-income program. The resulting legislation, the final amended version of Bill 140607, contained three key provisions concerning forgiveness of arrears, which indicate why the Revenue Department's proposals are insufficient:

- First, a new earned arrearage forgiveness program is required. Had Council contemplated that the Revenue Department would simply institutionalize those discretionary abilities to assist customers that previously existed, it would not have passed legislation mandating that "earned forgiveness of arrearages *shall be available* under such terms and conditions as are adopted by regulation."⁸

⁵ See April 9, 2015 Finance Committee Hearing Transcript, 23-27.

⁶ Id. at 26.

⁷ Id. at 23, 27.

⁸ Phila. Code § 19-1605(3)(h.2).



- Second, the legislation makes clear that a customer who becomes ineligible for IWRAP based on a change in income or household composition “shall receive the benefit of any forgiveness earned during the period of the IWRAP agreement.”⁹ In so providing, Council clearly recognized that forgiveness would be earned on an ongoing basis, such that customers becoming ineligible (whether upon recertification or voluntary acknowledgment of eligibility changes) would nonetheless receive forgiveness even for short periods of participation.
- Third, the legislation acknowledges that the customer is entitled to recalculation of the amount of forgiveness earned upon adjustment to the Department’s initial calculation of arrears. Clearly, this adjustment mechanism contemplates ongoing forgiveness, since recalculation of earned forgiveness never, or virtually never, would occur under the Department’s proposed model, where forgiveness “cliffs” will not be reached by the time the arrears are recalculated.¹⁰

Ultimately, the Revenue Department’s proposal is at odds with the recognized meaning of earned arrearage forgiveness in the utility industry.¹¹ The concept of earned arrearage forgiveness is not a complicated one, and it was clearly understood by Council (in referring to programs operated by PECO and PGW) that earned arrearage forgiveness would occur through proportional crediting, not “cliff crediting” as proposed by the Revenue department. Utility arrearage forgiveness programs consistently function in the following manner:

With each payment, there is a corresponding decrease in the amount of the... participant's obligation to repay the arrears. If the customer stays on the plan, the arrearage is totally forgiven.¹²

As the Revenue Department is most certainly aware, PECO and PGW arrearage forgiveness programs function by reducing accrued arrears by 1/12 (PECO) or 1/36 (PGW) of the

⁹ Phila. Code § 19-1605(3)(p).

¹⁰ Phila. Code § 19-1605(4)(c).

¹¹ The American Water Works Association recognizes that “Affordable rate alternatives are typically developed as part of a larger program. These programs frequently include a variety of nonrate strategies to help address a variety of customer situations negatively impacting the ability to pay for water and wastewater services.” Arrearage forgiveness is listed as one such strategy. The Department’s proposal does not meaningfully reduce large arrears that negatively impact the ability to pay for water and wastewater services. American Water Works Association (AWWA) Principles of Rates, Fees and Charges Manual (MP1) at 191.

¹² Charlie Harak, National Consumer Law Center, *Helping Low-Income Utility Customers Manage Overdue Bills through Arrearage Management Programs (AMP)*, Nat'l Consumer Law Center, Sept. 2013, at 18, available at: http://www.nclc.org/images/pdf/utility_telecom/consumer_protection_and_regulatory_issues/amp_report_final_sept13.pdf. Notably, Mr. Harak confirms Mr. Colton’s assessment, generally, that these programs create “a win-win” for all affected stakeholders – low-income participants, the utility, the other customers, and the citizens. Id. at 16.



balance each month with a customer's payment until the entire debt is forgiven. These programs also provide for "catch-up" forgiveness, such that a customer who falls behind may earn forgiveness for prior months when the customer is able to catch up on missed payments. These programs were cited to by Councilwoman Quiñones-Sánchez in hearings on IWRAP legislation, and it is abundantly clear that the Revenue Department's proposal does not comport with the industry standard for arrearage forgiveness.

As submitted in Mr. Colton's testimony during the Water Department's 2016 Rate Proceeding, there are best practices for arrearage forgiveness. Mr. Colton testified that the earned arrearage forgiveness portion of the IWRAP program should be structured to provide forgiveness over 24-months, which would provide a meaningful opportunity, over a low-income customer's planning horizon, to *see* the impact of timely payment.¹³ The Department's proposed 15-year forgiveness program fails to provide a meaningful opportunity for customers to earn forgiveness. Clearly, a 15-year timeline is unachievable for seniors, tenants and occupants who will be permitted to enroll in IWRAP and cannot be expected to reside at the service address for the full 15 years.

Similarly, Mr. Colton testified that a longer duration would impede one purpose of the IWRAP plan, to incent regular payment. Finally, Mr. Colton demonstrated that structuring the program to provide arrearage forgiveness when payments are made, including in ~~case~~ of a previously missed payment, has policy and programmatic bases, as well as an empirical basis.¹⁴ Ultimately, as reiterated in Mr. Colton's economic analysis of a properly-structured arrearage forgiveness program, and its benefits to customers, the utility, and the City of Philadelphia:

A PWD arrearage forgiveness credit that would retire arrears over a 24-month period, with a pro rata share of the pre-existing account balance retired for each complete payment made by a program participant, would mirror the ~~best practices~~ of Pennsylvania utilities.¹⁵

For all of these reasons, CLS submits that the Revenue Department's regulations should be further amended, to incorporate on-going earned forgiveness of arrears, over a 24-month period. For each payment, including catch-up payments, of an IWRAP bill, the participant should earn forgiveness of 1/24th of their arrears. This proposal is supported by City Council's legislation, utility best practices, and the sound economic analysis of Mr. Colton.

¹³ See Direct Testimony of Roger D. Colton, In re PWD Application for Increased Rates and Charges, FY 2017-2018, at 22-23 (March 24, 2016).

¹⁴ See Direct Testimony of Roger D. Colton, In re PWD Application for Increased Rates and Charges, FY 2017-2018, at 23-24 (March 24, 2016).

¹⁵ Appendix A, at 5.



Definition of "Hold," Stay of Enforcement

The Revenue Department includes the following definition in its proposed regulations: "Hold: A non-permanent suspension of Litigation," where litigation includes *in rem* and *in personam* actions in court to collect unpaid water bills. The significance of a "hold" is set forth in Section 206.8 of the proposed IWRAP regulations:

206.8. Stay of Enforcement

- (a) If a Customer maintains continued enrollment in TAP, a Hold shall be placed on the Customer's account.
- (b) This Section shall not apply to charges owed for HELP loans or any charges other than water or sewer rents (including stormwater charges) owed to the Water Department/Water Revenue Bureau.

Although certainly CLS agrees that court actions designed to collect on unpaid bills should not continue during a customer's IWRAP participation, these provisions fail to promulgate the standards required by the IWRAP legislation, which require the Revenue and Water Departments to not only discontinue litigation, but to discontinue other enforcement actions and service terminations. Notably, as contemplated by the IWRAP legislation, the Revenue and Water Departments must promulgate standards that apply not only during a customer's active participation in IWRAP, but must promulgate standards that "allow customers time to apply for and enter into IWRAP or other payment agreements." In addition, the language requires the promulgation of standards under which pending enforcement actions shall be "discontinued" after the customer enters IWRAP. The Department's proposed temporary suspension of certain of these actions fails to satisfy the language of the ordinance.

The applicable language follows:

The Department and the Water Department 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. The Department and the Water Department shall also promulgate standards regarding circumstances under which pending enforcement actions shall be discontinued after a customer enters into IWRAP.¹⁶

¹⁶ Phila. Code § 19-1605(3)(m).



In addition, the IWRAP legislation sets forth specific actions the Revenue Department must take, in advance of proceeding in any water foreclosure action. See Phila. Code § 19-1605(n). The proposed regulations make no mention of these requirements.¹⁷

Other Provisions Require Revision

As set forth in the following list, several other provisions of the proposed regulations should be revised.

- 206.1. Definition of “TAP Bill.” The definition should be clarified to indicate that “any payments toward pre-TAP arrears” may only be required of customers with incomes in excess of 150% FPL.
- 206.2(a)(2)(A). Special Hardship, Job Loss. This section should exclude the requirement that a job loss extend beyond four (4) months, in favor of a flexible standard regarding a job loss that may impact upon a household’s financial condition. Four months is an arbitrary standard and may exclude families in dire need of assistance.
- 206.2(a)(2)(B). Special Hardship, Illness. This section should exclude the requirement that an illness extend beyond nine (9) months, in favor of a flexible standard regarding an illness that may impact upon a household’s financial condition. Nine months is an arbitrary standard and may exclude families in dire need of assistance.
- 206.2(a)(2)(C). Special Hardship, Domestic Violence/PFA. This section should clarify that the protection applies in the event any member of the household is a victim of domestic violence.¹⁸ In addition, as previously recommended,¹⁹ the Department should accept letters from caseworkers, advocates working with abuse victims, and a completed Form PA-1747 (Domestic Violence Verification Form).
- 206.2(a)(2)(E). Special Hardship, Adult Dependent. As previously indicated,²⁰ many low income families do not file Federal income tax returns. The Department should accept “reasonable documentation of the dependency relationship.”
- 206.2(e)(1). Establishing Income. This section (listing acceptable proof of income as Federal Income Tax returns, addressed above, pay stubs, W-2 forms and benefit award letters) is inconsistent with the express definition of “income” included in the IWRAP ordinance, and these regulations. “Income” includes, for example, alimony,

¹⁷ To the extent the Revenue Department intends to comply with this requirement through the promulgation of written policy, CLS requests the Department’s assurance that such policy will be publicly available and posted on its website.

¹⁸ The language in the proposed regulation is borrowed from the Public Utility Code, which is broadly defined to include adult household members.

¹⁹ See e-mail correspondence from Robert Ballenger to Susan Crosby and Scott Schwarz, October 6, 2016.

²⁰ See e-mail correspondence from Robert Ballenger to Susan Crosby and Scott Schwarz, October 6, 2016.



support money, pensions/annuities, etc., which would not be supported by the limited list of acceptable documentation. Accordingly, we suggest this section be revised to provide: "The Customer shall produce reasonably acceptable documentation of income, based upon the type(s) of income received by the customer and other members of the household."

- 206.2(e)(5). Zero Income. The Department should not be permitted to demand whatever information it may ask for, in its unfettered discretion. The Department should be limited to requesting "such other information as WRB may *reasonably* require."
- 206.2(i). Intentionally False Statement. CLS seeks confirmation from the Department that it intends to treat a determination under this section as appealable under Section 206.3, and that customers will receive written decisions informing them of the right to an administrative hearing. See Phila. Code § 19-1605(3)(l) (authorizing appeals of any adverse final decision or determination of the Department relating to initial or continued eligibility for IWRAP).
- 206.5(b). TAP Payment Agreements. This section should be clarified.²¹ Pre-IWRAP arrears are broader than the limited service, usage and stormwater charges specified in this section. Pre-IWRAP arrears includes other charges, including those associated with metering, repairs, and other services provided prior to IWRAP enrollment. See Phila. Code § 19-1605(3)(e) (referring to "any pre-IWRAP arrears").

Amendments to Chapter 1: Customer Rights and Obligations

Coordination of Section 100.9, 100.12 and IWRAP Regulations

IWRAP legislation provides a definition of "customer" that makes clear that IWRAP must be available to restore service. The term "customer" is defined to include any person who is "in the process of requesting or simultaneously requests to receive or restore service from the Water Department at such person's primary residence in Philadelphia."²¹ Accordingly, customers who lack service are entitled to restoration of service upon enrollment in IWRAP. Although the Department may intend to satisfy this requirement, the proposed regulations are ambiguous and appear likely to lead to illegal payment demands from customers eligible for restoration upon entering IWRAP.²² The regulations should be further amended to provide the clarity required of IWRAP.

²¹ Phila. Code § 19-1605(2)(a).

²² As set forth in Phila. Code § 19-1605(3)(c) and as a general principle of utility law, the Department is obligated to provide customers with the most affordable rate to which they are entitled. The demand for an initial deposit from an IWRAP-eligible customer would violate these provisions.



Section 100.9 of the proposed amended Water Department regulations refers customers whose service is shut off to Section 100.12 of the regulations. This is true for “Standard Payment Agreements” and “Income-Based Payment Agreements.”²³ Separately, Section 100.9(c) provides that customers eligible for IWRAP may apply for IWRAP payment agreements pursuant to Section 206.0 through 206.10 of the regulations, beginning July 1, 2017. There is no provision in proposed Section 206 that commits the Water Department to restoring service upon enrollment in IWRAP.²⁴

Section 100.12 provides for restoration of service following the entry into a payment agreement for customers above 250% of FPL (Section 100.12(b); 50% initial payment required) and for customers below 250% of FPL and customers above 250% FPL who have extraordinary expenses (Section 100.12(c); 25% initial payment required). In addition, Section 100.12(d) provides for restoration of service to IWRAP participants who catch up on unpaid IWRAP bills.

Although Section 100.9(c) suggests that any customer, regardless of shut off status, may apply for IWRAP, Section 100.12 nowhere states that service will be restored upon enrollment in IWRAP. It is crucial that the Department clarify that customers will be eligible for restoration of service upon enrollment in IWRAP, since IWRAP offers a new program, not previously available, for customers who may have been unable to benefit from and maintain service under the Department’s existing programs.

Customers Between 150-250% FPL Must be Provided Affordable Payment Agreements, and Entitled to Restoration

IWRAP legislation provides that “Customers with household income from one hundred fifty percent (150%) to two hundred fifty percent (250%) of FPL, shall be offered payment plans that result in a total bill – including arrearages – that is affordable.”²⁵ The Departments have committed to offering IWRAP bills that are 4% of monthly household income to customers whose income exceeds 150% of FPL and demonstrate Special Hardship.²⁶ However, it is not clear that the proposed regulations adequately effectuate this requirement. CLS submits that further clarification should be provided.

As set forth in proposed regulation 100.9(b)(6), the Department proposes that “Customers with household income from 150% to 250% of the federal poverty level ***may demonstrate that the payment terms set forth in this subsection are not feasible*** by submitting

²³ Proposed Reg. §§ 100.9(a), 100.9(b).

²⁴ The closest provision, Proposed Reg. § 206.2(g)(2) (concerning “Customer Responsibilities”) provides only that certain violations must be corrected prior to restoration of service.

²⁵ Phila. Code § 19-1605(3)(h.2).

²⁶ Proposed Reg. § 206.4(b).



financial and other information showing that the Customer's total bill including arrearages is greater than 4%" of household income. This language shifts to the customer the obligation IWRAP imposes upon the Department to issue affordable payment agreements to customers with income between 150-250% of FPL. Rather than requiring a customer to demonstrate that payment agreement terms cause the bill to become unaffordable, the Department must calculate payment agreement terms which satisfy the affordability standard for those customers with Special Hardships.

In addition, as explained above, customers entitled to affordable payment agreements cannot be required to pay initial deposits that exceed the payment agreement terms required by IWRAP legislation. The term "customer" for purposes of IWRAP includes customers applying for restoration of service, and the Department lacks the discretion to establish initial or subsequent payment terms that violate the ordinance. Sections 100.9 and 100.12 should be further amended to require payment agreements for these customers to be affordable to maintain and restore service.

The Departments Should Not Eliminate the Income-Based Initial Payment Provisions in Sections 100.9 and 100.12

As we have previously explained, CLS opposes changes to Department regulations which eliminate favorable payment agreement and restoration terms for customers.²⁷ As discussed above, for customers with household income between 150-250% FPL, and who can demonstrate Special Hardship, IWRAP requires an affordable payment agreement. However, the Department's revised regulations eliminate favorable initial payment terms, including terms necessary for customers between 150-250% FPL who may not satisfy the Department's standards for Special Hardship to restore service.

Customers with income between 150-250% of FPL are financially strained and will be challenged to afford basic expenses, regardless of whether they adequately demonstrate Special Hardship to the Department. As explained by the National Center for Children in Poverty, "current research suggests that, on average, families need an income of about twice the federal poverty level just to afford basic expenses."²⁸

Notwithstanding this fact, the Department proposes to eliminate the current regulatory limitations on initial payments. Under existing regulations, customers above 250% FPL can enter a payment agreement upon initial payment of 25% of the balance or 15% of monthly household income, whichever is less.²⁹ Similarly, customers below 250% FPL can enter a

²⁷ See February 12, 2016 Memorandum, *Proposed Amendments to PWD Regulations*, from the CLS Energy Unit to Susan Crosby and Scott Schwarz.

²⁸ Available at: <http://www.nccp.org/topics/measuringpoverty.html>.

²⁹ Current Reg. § 100.9(a)(1).



payment agreement and restore service upon payment of 10% of the balance or 15% of monthly household income, *whichever is less*.³⁰ The proposed regulations eliminate these important provisions, and the important path toward restoration of service for customers between 150-250% FPL. Although the proposed regulations provide discretion to defer initial payments for customers between 150-250% FPL who are not off (Section 100.9(b)), and the proposed regulations authorize the Department to provide more favorable restoration terms (Section 100.12(f)), the Department's discretion is no substitute for the right of customers to enter agreements and restore service on the terms currently provided by PWD regulations, if other means are not available.

Similarly, the proposed regulations eliminate the limitation on subsequent monthly payment amounts for customers with income between 150-250% FPL. Current Sections 100.9(b)(5) and 100.12(c)(2) limit these payments to no more than 5% of the outstanding balance. The proposed regulations at 100.9 indicate that these payment agreements may extend for 60 months or longer, but do not guarantee that agreements will be limited to no more than 5% of the balance per month. The proposed regulations at 100.12 are virtually silent as to subsequent monthly payment terms, stating only that the remainder shall be "divided equally amongst the number of months of the agreement."³¹

While CLS urges the Department to apply its Special Hardship standards liberally, in order to maximize the ability of low- and moderately low-income customers to restore service, it nonetheless submits that the Department should not eliminate payment agreement options and paths toward restoration that have been available and useful for customers and CLS clients in the past.

Other Provisions Require Revision

As set forth in the following list, several other provisions of the proposed regulations should be revised.

- 100.1(k). Definition of "TAP Bill." The definition should be clarified to indicate that "any payments toward pre-TAP arrears" may only be required of customers with incomes in excess of 150% FPL.
- 100.9(a); 100.9(d)(3). Negotiation of Payment Agreements. The regulations should eliminate language suggesting customers have to "negotiate" for payment agreements. The ability to maintain life essential water service should not be considered a negotiation.
- 100.9(a)(2); 100.9(b)(3). Subsequent Payment. The proposed regulations introduce the following timing requirement: "In no event will the second installment

³⁰ Current Reg. §§ 100.9(b)(4), 100.12(c)(1).

³¹ Proposed Reg. § 100.12(c)(2).



be due less than twenty-eight (28) calendar days from the date of the initial installment." CLS submits the Department should not tie its hands or those of its customers. Customers receiving wages, pension payments, or other income once per month may be incapable of complying with this provision. The Department should make efforts to reasonably accommodate customers' ability to make monthly payments.

- 100.9(e)(3); 100.9(g)(3). Limitation on Dispute Rights. The proposed regulations should not pre-judge the merits of a customer's payment agreement dispute by limiting the customer to whether standard payment agreement terms have been applied or the customer has complied with the payment agreement. Customers may have other bases for dispute, including factual claims concerning the existence of a breach, whether the Department has complied with its requirements to render service during the payment agreement, etc.
- 100.11(a)(3). Right to Cure. This regulation indicates that a customer who has breached a payment agreement, but subsequently cured the breach (by making payment), will nonetheless be subjected to shut off and required to pay 100% of the outstanding balance. This section should be revised to ensure that customers who cure a breached payment agreement are not shut off.

CLS submits that the proposed IWRAP regulations and proposed amendments to Chapter 100 (Customer Rights and Obligations) of the Water Department regulations should be further revised to address the issues set forth in these Comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R.W.B."/

Robert W. Ballenger, Esq.
Josie B.H. Pickens, Esq.
George D. Gould, Esq.

Energy Unit, Community Legal Services, Inc.

APPENDIX A

Low-Income Water Arrearage Forgiveness Benefits the City

Economist Roger Colton, who has been studying home energy affordability for decades, has concluded an assessment of the benefit to low-income customers and the City of Philadelphia of implementing an arrearage forgiveness program for water debt.

- Philadelphia's new water assistance program (IWRAP) should include arrearage forgiveness. Analysis shows that similar programs collect \$9 out of every \$10 billed.
 - More than 85% of Philadelphia Water Revenue Bureau repayment agreements fail.
 - Low-income customers unable to pay off old debt are caught in a spiral of increasing debt, with no light at the end of the tunnel.
- Philadelphia can expect a positive cash flow from including arrearage forgiveness in IWRAP.
 - Increased payments from low-income customers will far exceed the value of arrears forgiven.
 - PECO and PGW's successful programs provide forgiveness over 12 months and 36 months.
 - A 24-month period for water earned forgiveness is a reasonable period, within a low-income family's planning horizon.
- Forgiving low-income customer arrears as part of an affordable water rate program does not create new costs.
 - More than half of Philadelphia Water's outstanding debt is more than 2 years old.
 - 98% or more of Philadelphia Water's aging debt cannot, and will not, be collected.
 - Philadelphia Water's *current* rates assume only 2% of old debt will be collected.

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Memo

To: Community Legal Services Energy Unit (Philadelphia)
From: Roger Colton
Date: September 29, 2016
Re: Philadelphia Water – arrearage forgiveness

The question presented to me by your office was to assess what financial impact an arrearage forgiveness program will have on the Philadelphia Water Department. Under Philadelphia's Income-based Water Rate Affordability Program (IWRAP), the City Council has mandated that "low-income customers who are enrolled in IWRAP shall be required to make no additional payment in respect to any pre-IWRAP arrears to maintain service." (emphasis added).

Summary of Conclusions

Providing an arrearage forgiveness program for PWD makes financial and economic sense for the City and for PWD, itself. The data below supports the following conclusions:

- An arrearage forgiveness program would not create new costs for PWD. In its 2016 rate case, PWD projected that it would collect only 2.0% of arrearages that are two or more years old. Two-year arrearages represent more than half (54%) of all unpaid dollars owed to PWD.
- Nonpayment of arrears two years old or older also places in jeopardy arrearages that are less than two years old. When payments are made, the oldest arrears get paid first. If the two-year arrears are not paid, the 30-day arrears are not paid either.
- In contrast to PWD's 2% collection rate on long-term arrears, Pennsylvania programs that incorporate arrearage forgiveness result in the collection of nearly \$9 out of every \$10 billed to low-income customers.

- In contrast to this collection rate of nearly \$9 out of every \$10 billed in Pennsylvania's low-income programs that mirror IWRAP, the status quo's attempts to collect low-income arrears through deferred payment arrangements is marred by failure. In the most recent year for which PWD could report data, more than 85% of *all* deferred payment arrangements failed. Deferred payment arrangements place unaffordable burdens on low-income households.¹
- Imposing an unaffordable bill burden on IWRAP participants places the collection of bills for current service in jeopardy. The percentage of the bill for current service which is paid decreases as the overall bill burden increases above an affordable level. In the absence of arrearage forgiveness, the status quo of large and increasing low-income arrears will continue.
- Rather than continuing the status quo of large and growing low-income arrears, providing arrearage forgiveness for IWRAP customers will result in a positive cash flow for PWD. The extent to which payments toward current bills increases given an affordable bill burden will far exceed the extent to which payments toward pre-existing arrears will decrease as a result of any arrearage forgiveness.

Arrearage Forgiveness does not Create Lost Revenue. Current Rates Recognize that Aging Debt Will not be Repaid.

The arrearage forgiveness program incorporated in the City Council legislation does not create new lost revenue to PWD. PWD would fail to collect revenue from the dollar amounts represented by pre-existing arrears even in the absence of IWRAP. Since PWD has already recognized that these billed dollars will not be collected, the lost revenue from pre-existing arrearages is already embedded in rates. In contrast, an arrearage forgiveness program will increase the extent to which low income customers are able to make full bill payments and will reduce future arrears.²

The lost revenue from IWRAP arrearage forgiveness is already embedded in rates.³ In its most recent rate case, PWD presented a set of collectability factors which varied based on the age of arrears. Since these collectability factors represent the dollars of revenue PWD expects to receive, if one subtracts those collectability factors from 100% of the billing, it is possible to

¹ A "bill burden" is a bill as a percentage of income. For example, a \$500 bill coupled with a \$6,000 annual income represents a burden of 8.3% ($500 / 6,000 = 0.0833$).

² The extent to which current bills are paid is known as the "payment coverage ratio." This ratio places current bill payments in the numerator and current billed revenue in the denominator. A higher percentage indicates, therefore, that more of the revenue that is being billed is actually being paid.

³ In other words, PWD's rates are set at levels that acknowledge that these arrears will not be repaid.

determine the amount of billing PWD does *not* expect to receive, even in the absence of IWRAP.⁴ That amount of billing that PWD already does not expect to receive, even in the absence of IWRAP, represents the embedded lost revenue.

The revenue that PWD loses each year because of the ineffective way in which it seeks to collect arrears is substantial. More than half (54.1%) of PWD's existing arrears are older than two years. Under the rates set in PWD's 2016 rate case, of the more than \$127 million monthly average arrears more than two years old, the Department projected that it would collect only \$1.9 million. This represents less than 1.5% of the average aging debt. Of the \$170 million in PWD arrears that are greater than one year old, PWD reports that it expects to collect less than four percent (3.9%). Granting "forgiveness" of those arrears does not create new costs to PWD. Instead, granting arrearage forgiveness only recognizes that lost revenue in a different form.

Granting arrearage forgiveness will use these costs already embedded in rates to prevent similar arrears from being incurred in the future to be charged to ratepayers. In contrast, keeping the status quo will ensure that these costs will continue to be incurred and be increased.

WRAP participants in arrears are not in arrears "a little." The increasing amount of aging debt is demonstrated by analysis of the long-term arrears of PWD low-income customers. In its 2016 rate case, the Philadelphia Water Department stated that it could not provide the average arrears of customers currently participating in the Department's WRAP program. Data on WRAP arrears, however, is available from PWD's previous rate case. As of May 2012, the average arrears of WRAP participants were as set forth in the Table immediately below. PWD expects to fail to collect 98% of these dollars (i.e., PWD expects to have a collection rate of 2.0%). To recognize this lost revenue through arrearage forgiveness does not create new lost revenue; it merely recognizes the revenue that PWD expects to lose in any event.

Average Monthly Arrears: PWD WRAP Participants				
	2009	2010	2011	2012
Average arrears of WRAP participants in arrears	\$3,379	\$3,868	\$4,142	\$4,186

SOURCE: Discovery response by PWD in 2012 PWD rate case.

The problem with the status quo is more than the fact that low-income arrears are large. Under PWD's status quo, the arrearages of low-income WRAP participants are not only large, but they are growing. Just in the four years from 2009 through 2012, the average arrearages grew

⁴ Billed revenue minus revenue expected to be received = revenue not expected to be received.

by more than \$800 ($\$4,186 - \$3,379 = \807), or by nearly 25% ($\$807 / \$3,379 = 0.239$). The arrearage forgiveness program required by the City Council's legislation will, therefore, not only help address a short-term problem of non-collection by PWD, but will help address the long-term status quo problem of large and growing arrearages.

Arrearage Forgiveness Improves the Collection of Current Bills and Addresses both the Short- and Long-Term Problems Created by the Status Quo.

The lack of arrearage forgiveness not only makes it likely that PWD would fail to collect its pre-existing arrearages, but it also places payments toward *bills for current service* in jeopardy. PWD's status quo makes it likely that the Department will collect a very small percentage of current bills. As a result, the large and growing low-income arrears that have been identified above will simply continue to grow in the future, to the detriment of both PWD's ratepayers and to the City. The IWRAP program, coupled with arrearage forgiveness, will reverse that trend.

The impact of imposing unaffordable burdens is illustrated by the Apprise, Inc. evaluation of the New Jersey Universal Service Fund. That Apprise report shows the following for gas or electric customers (target affordable bill burden of 3%):

Burden as income percent	Bill Payment Coverage Rate ⁵			
	< 50%	50% - <90%	90% - <100%	100% or more
<2%	0.0%	2.7%	5.3%	92.0%
2% - 3%	0.0%	6.0%	11.5%	82.5%
3% - 4%	0.0%	10.0%	13.2%	76.9%
4% - 6%	0.0%	11.6%	16.6%	71.6%
6% - 8%	0.4%	16.6%	17.4%	65.6%
More than 8%	1.0%	25.6%	16.1%	57.4%

As can be seen in the Table above, so long as the bill burden remained in the target range in New Jersey (2% – 3% of income), from 94% to 97% of the low-income customers generated a bill payment coverage ratio over 90%. In contrast, when bill burdens exceeded 8% of income, fewer than 60% of program participants paid their full bill. In contrast to the 94% to 97% paying at least 90% of their full bill with an affordable bill burden, fewer than 75% (16.1% + 57.4% = 73.5%) did when bill burdens reached more than 8% of income.

Similar results have arisen from the Pennsylvania low-income affordability programs. Each year, the Pennsylvania PUC's Bureau of Consumer Services ("BCS") collects and reports data on the performance of the state's "universal service" programs. The data collection allows

⁵ For example, 11.5% of customers with a bill burden of between 2% and 3% paid between 90% and 100% of their bill; 92.0% of customers with a bill burden of less than 2% paid 100% or more of their bill.

policy-makers and utility service providers to compare the performance of low-income residential customers participating in the low-income bill affordability programs of Pennsylvania utilities (called Customer Assistance Programs, or “CAPs”) to the performance of “confirmed low-income” customers in general. In 2013 (the most recent year for which data is available), Pennsylvania utilities had 1.046 million confirmed low-income customer accounts statewide.⁶ The confirmed low-income accounts were heavily payment-troubled. Fifteen percent of these confirmed low-income customers had been disconnected for nonpayment in 2013, of which only 72% were reconnected. More than 22% of all confirmed low-income accounts were in debt, with those confirmed low-income customers having an average monthly arrears of \$656. Of those confirmed low-income accounts in arrears, fewer than half were on payment agreements.

In contrast to these payment difficulties for confirmed low-income customers, the participants in the low-income CAP programs, providing discounted bills and earned arrearage forgiveness, had an average payment coverage ratio of 86%. Through their affordability programs, in other words, Pennsylvania’s utilities took extremely payment-troubled confirmed low-income customers and structured a response where the utilities were receiving nearly \$9 of every \$10 billed. This demonstrates the principle of improved price signals that I’ve testified about in the past.⁷ Carrying arrears affects the price signal that a low-income customer receives.

An arrearage forgiveness program, through which program participants will earn credits toward their pre-existing arrears over a defined period of time, is a standard program component for every CAP amongst Pennsylvania’s electric and gas utilities. A PWD arrearage forgiveness credit that would retire arrears over a 24-month period, with a pro rata share of the pre-existing account balance retired for each complete payment made by a program participant, would mirror the best practices of Pennsylvania utilities. The time period over which arrears would be “forgiven” should be sufficiently long to provide some budget mitigation,⁸ while being sufficiently short to stay within a low-income household’s planning horizon. Experience indicates that the longer the period over which arrears are retired, the less meaningful that retirement is as a noticeable incentive to guide participant behavior. In Philadelphia, a two-year retirement period would fall exactly halfway between PGW’s 36-month retirement period and PECO’s 12-month period.

Pennsylvania’s CAPs show that the capability to retire those arrears, as part of an affordable bill program, increases positive price signals, resulting in improved payment patterns and higher bill

⁶ Pennsylvania utilities had an *estimated* 1,987,364 number of low-income customer accounts. Accordingly, the utilities had “confirmed” roughly 53% of their estimated number of low-income accounts. Given that these numbers include both gas and electric utilities, however, it cannot be concluded that these numbers reflect “households.” Some accounts may be counted twice, once by the electric utility and again by the natural gas utility.

⁷ See Roger Colton, “Water Bill Affordability for the City of Philadelphia,” presented to Philadelphia City Council, April 9, 2015.

⁸ Each additional year over which the arrearage credits are spread reduces the annual budget impact.

coverage. In other words, heavily burdened low-income customers can see a light at the end of the tunnel when affordable payments and arrearage forgiveness are available.⁹

The Status Quo's Use of Payment Plans Fails to Collect Low-Income Arrearages.

PWD cannot realistically assert that deferred payment agreements will retire pre-existing low-income arrearages and collect those outstanding account balances. In its 2016 rate case, PWD reported that it no longer tracked the success rate of deferred payment arrangements, whether those arrangements were for low-income customers or for non-low-income customers. Because of this lack of data, it is thus again necessary to use data from the prior rate case (when PWD did track and report the success, or lack thereof, of its payment plans). In 2012, PWD reported that, in Fiscal Year 2012, an astonishing 85% of customers entering into payment plans with PWD defaulted before successfully completing their payment plans. That performance was a decline in the success of payment plans in Fiscal Year 2011, when 73% of “first” payment plans (13,548 of 18,685) and 76% of “second” payment plans (13,457 of 17,629) defaulted. Moreover, this default rate was of *all* payment plans, both low-income and non-low-income, ~~not~~ simply low-income payment plans. The default rate of low-income plans would have been even higher. It is not surprising that an affordability model reliant upon payment agreements results in significant termination rates and low-income families experiencing long periods without life-essential water service, as reported by Philadelphia low-income advocates.¹⁰

The problem with ineffective payment agreements is that when customers cannot afford to pay older arrears, they also fall further behind on newer arrears and current bills. Payments are applied against the oldest account balances first. If a customer has arrears that are two years old, in other words, that customer also has arrears that are less than two years old. Customers cannot pay their current bills without first having paid all of their arrears. Customers cannot retire their new arrears without having first retired their older arrears.

Payment agreements cannot effectively address the lack of bill affordability. Assume that a 2012 WRAP customer owing an average arrears (as reported in the Table above) enters into a “five percent plan,” under which the outstanding balance is divided into 20 equal parts. Each month,

⁹ This is a very real “light” for low income families who may be heavily indebted due to unpaid bills from prior owners or relatives, leaks requiring repairs they cannot quickly make, historical unavailability of significant bill payment assistance, etc. Eliminating water indebtedness, which is uncollectible anyway, would have the additional benefit of alleviating shame, marginalization, exclusion, and the inability to meet basic needs often associated with heavy debt burdens.

¹⁰ See April 9, 2015 Transcript of City Council’s Committee on Finance Hearing regarding Bill No. 140607, testimony of Robert W. Ballenger. See also Main Brief of the Community Lawyering Clinic in the Matter of PWD’s Proposed FY 2017-2018 Rate Increase (reporting on the reduction in residential water customer accounts, FY 2015 shutoffs of over 32,000 households, and disparate impacts on African-American communities in Philadelphia).

in addition to the current bill, the customer would be required to make an *additional* payment of more than \$209 ($\$4,186 \times 0.05 = \209.30). As the Table below shows, under this approach, the arrearage payments alone would represent a payment burden of between 10% and 34% of income.¹¹

Affordability of Arrearage Payment Under 5% Deferred Payment Plan					
	Annual Income	Monthly Arrearage Pyt (\$4,186 x .05)	Months in Year	Annual Arrearage Pyt (monthly pty x 12)	Arrearage Pyt as Percent of Income
Below 50%	\$7,368	\$209	12	\$2,508	34%
50-74%	\$11,513	\$209	12	\$2,508	22%
75-99%	\$16,119	\$209	12	\$2,508	16%
100-124%	\$20,632	\$209	12	\$2,508	12%
125-149%	\$25,329	\$209	12	\$2,508	10%

These payment burdens would be in addition to the payments toward bills for current service. The result would be to completely undo the affordability impacts that the City Council sought to achieve, with all of the resulting adverse financial impacts on both the PWD and the City, itself.

Granting Arrearage Forgiveness Generates Positive Cash Flow for PWD

We can apply the New Jersey results from above to PWD data to illustrate how and why arrearage forgiveness makes financial sense to a utility such as PWD by generating a positive cash flow. We know from the 2016 PWD rate case that there are an estimated 31,000 participants for IWRAP. We know further from the rate case that annual water bills for low-income PWD customers average \$813. We know that PWD included a collectability factor of 2% for arrears two years old or older when it presented the “revenue assumptions” in the Financial Plan for its 2016 rate case. If we assume that 75% of IWRAP participants will be in arrears, and that the average arrears is \$2,000,¹² providing arrearage forgiveness would cost PWD \$930,030. Since I would propose arrearage forgiveness be spread over two years,

¹¹ Even if the customer instead enters into a 36-month payment plan, that customer would be required to make an additional payment above his or her current bill of \$116. The resulting added payment burden on low-income households would range from 5% of income for households with income between 125% and 150% of Poverty Level and 19% of income for households with income below 50% of Poverty Level.

¹² The average arrears of participants in the existing WRAP program, with participation of roughly 7,000 customers, was roughly \$4,200 in 2012. The IWRAP program, however, has a much larger participation base. As a result, the average arrears would be much lower. In 2014, the average arrears of low-income customers in arrears on payment agreements was somewhat over \$600. In order to avoid understating the arrears of PWD low-income customers, the average arrears used in this Table was increased. To the extent that the average arrears is less than \$2,000, the net gain to PWD from an arrearage forgiveness program would be even greater.

however, the annual cost would be only \$465,015. The calculation of this cost is set forth in the Table below:

Participants (not equal to 31,000 due to rounding)	31,001
Percent of participants in arrears	75%
Number of participants in arrears	23,251
Average arrears of participants in arrears	\$2,000
Total arrears	\$46,501,500
Collectability of arrears (older than two years) (2017/2018 PWD Financial Plan)	2.0%
Dollars collected from arrears (i.e., revenue foregone by arrearage forgiveness)	\$930,030
Annual revenue foregone if arrearage forgiveness is spread over 2 years	\$465,015

The question, then, is how much additional collection of bills for current service would occur if no arrearage repayment increment is added to the current bill, compared with increasing the total burden to IWRAP participants by charging additional payments toward arrears. This can be calculated by comparing the dollars collected given an affordable burden (as set for IWRAP) to the dollars collected given an unaffordable burden (current bill plus arrearage repayment). The additional dollars collected for bills for current service would reach \$1,523,570 per year. The calculation is set forth in the Table below.

As can be seen, through the arrearage forgiveness program, in other words, if all arrears are forgiven in one year, Philadelphia would be spending \$0.930 million to gain \$1.524 million. If instead, all arrears are forgiven over two years, as I would propose, Philadelphia would be spending \$0.465 million to gain \$1.524 million. In either situation, PWD “gains” more money through an increased collection of current bills than it “loses” through the grant of arrearage forgiveness.

Summary and Conclusions.

Several conclusions flow from the data and discussion above of an arrearage forgiveness program for PWD. The City Council’s legislation explicitly states that “low-income customers who are enrolled in IWRAP shall be required to make no additional payment in respect to any pre-IWRAP arrears to maintain service” (emphasis added) and requires the City to establish an earned forgiveness program. These components of the City Council’s legislation constitute not only good social policy from the perspective of Philadelphia’s low-income customers, but also good financial policy from the perspective of the Philadelphia Water Department.

Change in Collection of Bills for Current Service Given an Affordable versus an Unaffordable Bill Burden (PWD--2016)

Participants	Annual Bill	Current Bill Dollars Collected at Unaffordable Burdens Imposed by Including Arrearage Payments by Percentage of Current Bill Paid			Current Bill Dollars Collected at IWRAP-Approved Burden By Percentage of Current Bill Paid			Difference in Current Bill Collection		
		Less than 50%	50-90%	90-100%	100%	Less than 50%	50-90%	90-100%		
Below 50%	9,842	\$813	\$15,003	\$1,075,408	\$917,877	\$3,444,666	\$0	\$113,422	\$302,158	\$5,521,067
50-74%	5,945	\$813	\$9,062	\$649,594	\$554,438	\$2,080,729	\$0	\$68,512	\$182,517	\$3,334,967
75-99%	5,673	\$813	\$8,648	\$619,873	\$529,071	\$1,985,530	\$0	\$65,377	\$174,166	\$3,182,383
100-124%	4,711	\$813	\$7,181	\$514,758	\$439,354	\$1,648,834	\$0	\$54,291	\$144,632	\$2,642,730
125-149%	4,830	\$813	\$7,363	\$527,761	\$450,452	\$1,690,483	\$0	\$55,662	\$148,285	\$2,709,485
Sub-totals	31,001		\$47,257	\$3,387,392	\$2,891,192	\$10,850,241	\$0	\$357,264	\$951,759	\$17,390,631
Totals						\$17,176,084	N/A	\$18,699,654	\$1,523,570	

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