

BEFORE THE
PHILADELPHIA WATER COMMISSIONER

Re Philadelphia Water Department	:	
Proposed Increase in Rates and Charges	:	FY 2013-2015
for Water and Wastewater Utilities	:	

JOINT PETITION FOR SETTLEMENT OF PHASE 2 OF THE RATE PROCEEDING

TO HEARING OFFICER MICHAEL A. BOWMAN:

The Philadelphia Water Department (“Department” or “PWD”), the Public Advocate, Citizens for Pennsylvania’s Future (“Penn Future”), the Direct Discharger Group (whose members include Rohm & Haas Chemicals LLC, Dependable Distribution Services, Inc., Norfolk Southern Railway Company, Red Lion Associates, LP, Astro Holdings, Inc., Greenwich Terminals LLC, Delaware Avenue Enterprises, Inc., Penn City Investments, Inc. on behalf of Penn Warehousing & Distribution, Inc. and JH Stevedoring, Inc., and Arsenal Business Center/Arsenal Condominium Association/Arsenal Associates, LLC), Philadelphia Large Users Group (“PLUG”), PECO Energy Company and Exelon Corporation (“PECO/Exelon” and together with the above mentioned parties, the “Joint Petitioners”), by their respective counsel, submit this Joint Petition for Settlement of Phase 2 of the Rate Proceeding¹ (“Joint Petition”) and request that the Hearing Officer (1) approve the settlement of Phase 2 of these proceedings consistent with the terms and conditions of this Joint Petition (the “Settlement”); and (2) recommend that the Water Commissioner approve the Settlement and authorize PWD to submit Final Regulations and/or revise the PWD Stormwater Credits and Appeals Manual, reflecting the terms and conditions hereof. In support of their request, the Joint Petitioners state the following:

BACKGROUND

1. On February 3, 2012, the Department notified Philadelphia City Council of its intent to file proposed changes in rates for water, sewer and stormwater services to become effective October 1, 2012, or as soon thereafter as procedural requirements permit the promulgation of new rates by regulation. PWD Exhibits 1 and 2.

2. On March 6, 2012, pursuant to Sections 8-407 and 5-801 of the Philadelphia Home Rule Charter, the Department filed with the Department of Records proposed regulations to be promulgated in connection with the above proceeding to implement new rates.²

¹ Phase 2 is defined in Paragraph 4 below.

² Michael A. Bowman, Esquire was appointed to serve as Hearing Officer by the Mayor, City Council President and City Controller. Community Legal Services was appointed to serve as the Public Advocate on behalf of residential customers by these same elected officials. The following parties filed notices of intervention in Phase 2 of the rate proceeding: the Public Advocate, Direct Discharger Group, PECO/Exelon, PLUG and Penn Future.

3. The Hearing Officer convened a pre-hearing conference on June 8, 2012 to establish a schedule for the rate proceeding.

4. Pursuant to the agreement between the parties at the pre-hearing conference, the rate proceeding was bi-furcated into two phases to address the following issues:

Phase 1 - revenues, revenue requirements, cost allocation and rate structure issues with regard to water, sewer and stormwater, including the allocation of costs between stormwater and sanitary sewer functions of the utility; and

Phase 2 - stormwater credits, incentives, modified or enhanced CAP program and surface water discharge (as defined below) issues.

Statement of the Proceedings

5. Public input hearings were held during the period July 9-31, 2012. Technical hearings were convened on August 7-8, 2012 and October 24-25, 2012.

6. The parties to Phase 1 of the rate proceeding submitted a Joint Petition for Settlement to the Hearing Officer for his review and approval on or about August 22, 2012. Statements of Support of the settlement terms were filed by each party to the Phase 1 hearings promptly thereafter.

7. The Hearing Officer approved the Joint Petition for Settlement (Phase 1) by his Recommended Decision dated October 14, 2012. The Recommended Decision has been submitted to the Water Commissioner for his final approval.

8. During the course of Phase 2 of the proceeding, the Direct Discharger Group and PWD discussed the possibility of entering a stipulation regarding stormwater credit policy related to (i) the maximum impervious area credits ("IA Credits") and gross area credits ("GA Credits") and Open Space Credits (as defined below) that properties with direct discharge to surface water bodies ("surface water discharge") could attain; (ii) the application of stormwater credits for certain National Pollutant Discharge Elimination System ("NPDES") permit holders; and (iii) the proposed Enhanced CAP for non-residential customers. The scope of issues agreed upon was broad enough to entertain more expansive settlement discussions with the Public Advocate, Penn Future, PECO/Exelon and PLUG. This Joint Petition sets forth the specific terms and conditions of the proposed settlement agreement for Phase 2 of the rate proceeding.

TERMS AND CONDITIONS

9. The Settlement consists of the following terms and conditions:

Regulations

(a) Upon the Commissioner's Final Rate Determination adopting the terms of this Settlement, PWD shall file final regulations that implement the terms and conditions set forth herein (the "Final Regulations"). Settlement terms and conditions related to stormwater credit policy will be reflected in the Final Regulations and the Department's Stormwater Credits and Appeals Manual.

(b) The Joint Petitioners agree to exercise best efforts to obtain approval of this Settlement by the Water Commissioner on or before December 21, 2012 and the implementation of the Settlement rates effective January 1, 2013.

Statements of Support

10. The Joint Petitioners will indicate their support or non-opposition to the provisions of this Settlement by filing their respective statements and supporting affidavits after the execution of the Joint Petition.

Direct Discharger Settlement

11. The following are the terms and conditions of the Settlement with the Direct Discharger Group which affect all parcels listed in Exhibit A to this Joint Settlement. The terms and conditions of the Settlement are also applicable to other properties that contribute surface water discharges, except as provided below. Unless otherwise defined herein, capitalized terms will have the meanings ascribed to them in the PWD Stormwater Credits and Appeals Manual. If there is any discrepancy between the terms in the Direct Discharger Settlement and the PWD regulations or credit policy as stated in the PWD Credits and Appeals Manual, the terms of this Direct Discharger Settlement with regard to (i) the application of IA Credits, GA Credits and Open Space Credits (as defined herein) to properties with surface water discharge; (ii) the application of NPDES Credits for properties with surface water discharge; (iii) the application of the Enhanced CAP to the Direct Discharger Group; and (iv) the implementation of stormwater credits for properties with surface water discharge, will govern.

Application of IA and GA Credits for Properties with Surface Water Discharge

(a) The stormwater credit maximum for each classification of credit negotiated in the Settlement, specifically applies to properties that can receive IA Credits for the impervious area that contributes surface water discharge ("IA Managed"), GA Credits for area underneath the IA Managed and gross area credits for any remaining open space outside of the IA Managed ("Open Space Credits"). The maximum stormwater credits for properties with surface water discharge are stated below.

(i) A property can receive 90% IA Credits for the square footage of IA Managed.

(ii) A property can receive 90% GA Credits for the square footage of GA underneath the IA Managed.

(iii) A property can receive up to 90% Open Space Credits for the remaining Open Space (total GA less IA Managed) via:

(A) application of the Natural Resources Conservation Service Curve Number (Curve Number); or

(B) a topographical survey, or information that is reasonably equivalent, that demonstrates surface water discharge.

Application of NPDES Credits for Properties with Surface Water Discharge

(b) The application of the NPDES credits negotiated in the Settlement relates specifically to properties that have active industrial stormwater discharge NPDES permits. The Settlement methodology is as set forth below.

(i) A seven percent (7%) NPDES credit will be applied up front to any applicable IA, GA, and Open Space Credits resulting in the following potential maximum credits:

- (A) A property can receive 97% IA Credits for the square footage of IA Managed.
- (B) A property can receive 97% GA Credits for the square footage of the GA underneath the IA Managed.
- (C) A property can receive up to 97% Open Space Credits for the remaining open space (total GA less IA Managed) via:
 - (1) a Curve Number; or
 - (2) a topographical survey, or information that is reasonably equivalent, that demonstrates surface water discharge.

Credit Requirement

(c) All properties with surface water discharge that have existing onsite Stormwater Management Practices (SMPs) must operate and maintain these SMPs as originally designed and the SMPs need to perform as designed in order to qualify for the credits described herein.

Application of Enhanced CAP to Direct Discharger Group

(d) The Settlement changes to the application of the Enhanced CAP relate specifically to the Base Fiscal Year (Base FY) to which the Enhanced CAP criteria will be applied to determine eligibility, and if eligible, then to determine the monthly Enhanced CAP increase amount. The Settlement terms related to the application of the Enhanced CAP for Direct Discharger Group parcels only, are as follows.

(i) For members of the "Direct Discharger Group," the Base FY SWMS charge to which the Enhanced CAP criteria is applied, and from which the Enhanced CAP increase amount is calculated, will be the FY 2011 SWMS charge (as it existed on June 30, 2011).

(ii) For members of the "Direct Discharger Group" whose properties had a Minimum Charge in FY 2011, the Base FY charge will be as determined by the Water Department in the Enhanced CAP application.

(e) There will be no changes to the Enhanced CAP eligibility criteria. To be eligible for Enhanced CAP, a property must meet all of the following criteria as of the Enhanced CAP application date:

(i) the property seeking an Enhanced CAP on the SWMS charges must be a non-residential property;

(ii) the current fiscal year SWMS charges (for a given month) must be at least 10% more than the prior fiscal year's SWMS charges;

(iii) the current fiscal year SWMS charges (for a given month) must be at least \$100 more than the prior fiscal year's SWMS charges; and

(iv) the property must not be delinquent in (i) any tax payments to the City or (ii) the payment of water/sewer/stormwater charges.

Implementation of Stormwater Credits for Properties with Surface Water Discharge

(f) For all of the existing stormwater credit holders with surface water discharge, their existing IA, GA and NPDES credits will be converted to IA, GA, Open Space and NPDES credits consistent with this Settlement, effective January 1, 2013. However, the expiration date of the existing credit period (four year term from the application date) shall remain in effect as previously designated by the Department.

To renew the existing credits for properties with surface water discharge, along with the requisite credit renewal form and fee, the properties shall supply an engineer's certification that the IA Managed and the Open Space area that discharges to the surface waters have not changed and any SMPs that exist on the property perform as designed and that any NPDES permit for stormwater discharges associated with industrial activities remains active and the permit holder is fully compliant with permit requirements.

For the parcels identified in Exhibit A hereof, to obtain IA Credits, GA Credits and/or Open Space Credits for areas that have not previously been awarded credits, the same type and character of information and documentation will be accepted by the Department as have been submitted in the previous credit applications submitted to the Department.

PECO Energy/Exelon Settlement

12. The following are the terms and conditions of the Settlement with PECO Energy Company and Exelon Corporation.

(a) Application of Surface Water Discharge SWMS Credit Policy to Exelon and PECO Parcels. The Exelon parcels at Richmond, Schuylkill and Delaware Stations and the PECO parcel at Schuylkill Station are included among the properties with surface water discharge which are addressed in the Direct Discharger Group settlement terms and conditions set forth in Paragraph 11(a), (b), (c) and (f).

(b) Real Estate Issues. PWD and Exelon will work to resolve issues related to the occupancy and use of facilities on Exelon's properties at Delaware and Schuylkill Stations.

(c) Curve Number. PWD and PECO will work to establish a Curve Number for certain PECO parcels (substations and rights-of-way) that gives recognition to the porous characteristics of such parcels and the permeable yardstone installed on such properties.

Public Advocate and Penn Future Settlement

13. The following are the terms and conditions of the Settlement with the Public Advocate and Penn Future.

Enhanced CAP Settlement Terms

(a) Application to and Duration of Enhanced CAP Program. The following terms and conditions (in addition to the eligibility criteria established by the Department) shall apply with respect to the application to and duration of the Enhanced CAP Program for non-residential stormwater customers (the "Enhanced CAP Program"):

(i) The Department will file final regulations that expressly limit the time to apply to the proposed Enhanced CAP program (for non-residential parcels other than the parcels within the Direct Discharger Group) to the period January 1, 2013 through September 30, 2013.

(ii) The Department will file final regulations that expressly recognize that the proposed Enhanced CAP program for non-residential customers remains subject to further review, extension, modification or termination in a subsequent Rate Determination.

(iii) The Department will expressly limit the time for enrollment in the Enhanced CAP program related to the Direct Discharger Group settlement in this case to a 90 day period beginning January 1, 2013.

(b) Evaluation and Development of Incentive Programs. The Department shall undertake the evaluation and development of cost effective stormwater incentive programs that may reduce or eliminate the need for the Enhanced CAP program, as follows:

(i) Promptly following the issuance of the final Rate Determination in this rate proceeding, the Department will continue the process of evaluation, development and planned implementation of cost-effective stormwater incentive programs that reduce or eliminate the need for the Enhanced CAP program, including, without limitation, consideration of (A) stormwater retrofit project financing programs; (B) offsite mitigation programs; (C) aggregation programs; (D) pay for performance instrument programs; (E) loan programs; and (F) grant programs.

(ii) The process of evaluation, development and planned implementation of the aforesaid incentive programs will be a part of a collaborative undertaking with Natural Resources Defense Council and the Joint Petitioners that desire to participate. Based upon the outcome of the above process and before proposing to extend, modify or terminate any non-residential stormwater CAP program, the Department will work with the Joint Petitioners and City Council on assessing whether there is a need to provide phase-in relief in a future rate proceeding.

(c) Evaluation and Development of Modifications to Enhanced CAP Program. The Department further agrees that before proposing to extend, modify or terminate any non-residential stormwater CAP program in a future rate proceeding, PWD will work with the Joint Petitioners (who desire to participate) to consider, evaluate and develop potential modifications to the Enhanced CAP program, including, without limitation, consideration of:

(i) An escrow concept, whereby participants must pay some amount into an escrow account that must be used for onsite or offsite mitigation upon graduation or exit from the program;

(ii) A loan concept, whereby rate relief is structured as a secured or unsecured loan to program participants, which is only forgiven when participants undertake onsite or off-site mitigation;

(iii) A recoupment concept, whereby rate relief may be recouped from participants who violate program terms and conditions;

(iv) Financial hardship or certification requirements for participants;

(v) Fixed-length phase-in rate relief;

(vi) Deposit-posting requirements;

(vii) Higher percentage and/or dollar increase eligibility thresholds; and

(viii) Higher percentage and/or dollar increases to stormwater charges.

(d) Information Gathering and Reporting. The Department will undertake information gathering and reporting related to the Enhanced CAP program and alternatives thereto, as follows:

(i) During the period beginning January 1, 2013 and ending with the last fiscal quarter preceding the Department's commencement of a future rate proceeding, the Department will gather the following information:

(A) For each individual Enhanced CAP program participant, parcel IA and GA and the dollar amount of the quarterly and fiscal-year-to-date phase-in relief provided by the Enhanced CAP program;

(B) Total number of Enhanced CAP program participants and aggregate IA and GA of their parcels;

(C) Total dollar amount of the quarterly and fiscal-year-to-date phase-in relief provided to all Enhanced CAP program participants; and

(D) Average cost to the Department to create a Greened Acre using public funds (i.e., total public funds spent on Greened Acres divided by the number of Greened Acres created using public funds).

(ii) During the period beginning January 1, 2013 and ending with the last fiscal quarter preceding the Department's commencement of a future rate proceeding, the Department will prepare and provide quarterly reports with the above information to the Joint Petitioners.

(iii) The Department will provide advance notice to the Joint Petitioners of its intent to commence any proceeding or propose any regulatory changes that would extend, modify or terminate any nonresidential stormwater CAP program, and will inform the Joint Petitioners as soon as practicable when made aware of any proceeding, investigation, inquiry, or similar circumstance or event initiated by any person other than the Department that would extend, modify or terminate any non-residential stormwater CAP program.

PLUG Settlement

14. The following are the terms and conditions of the Settlement with the Philadelphia Large Users Group.

(a) The Department will compile information for PLUG customer parcels related to IA/GA credits awarded to date and the eligibility of PLUG accounts for Enhanced CAP.

(b) The Department will offer assistance to PLUG parcel owners with regard to identifying and evaluating SMPs for onsite stormwater management.

(c) The Department will work with PLUG to resolve billing and service issues involving its members.

ADDITIONAL TERMS AND CONDITIONS

15. This Settlement is proposed by the Joint Petitioners to settle Phase 2 of the rate case. The Joint Petitioners preserve their rights to file exceptions with respect to any modifications to the terms and conditions of this Settlement, or any additional matters proposed by the Hearing Officer in his report and recommendations to the Commissioner. Joint Petitioners also reserve the right to file replies to any exceptions filed.

16. This Settlement is conditioned upon the Commissioner's approval of the terms and conditions hereof without modification. If the Commissioner should disapprove the Settlement or materially modify the terms and conditions herein, without the express consent of the Joint Petitioners, the Settlement may be withdrawn upon written notice to the Commissioner and all active parties within three business days following the entry of the Commissioner's Rate Determination, and in such event, the Settlement shall be of no force and effect. If the Joint Petition is disapproved or the Settlement does not take effect for any reason whatsoever, the Joint Petitioners reserve their respective rights to fully litigate Phase 2 of the rate proceeding, including but not limited to the presentation of witnesses, cross examination of witnesses, the presentation of legal argument through submission of briefs, reply briefs, exceptions and oral argument. Upon approval of the Settlement by the Water Commissioner, the transcribed testimony taken in Phase 2 of this rate proceeding, will be stricken from the record.

17. This Settlement is conditioned upon the Joint Petitioners agreement that, upon approval of the Settlement by the Water Commissioner, none of the Joint Petitioners will challenge, enjoin or further litigate any elements of the final ratemaking decisions in this proceeding and the regulations implementing new rates (the "2013 Rate Determination") or any aspect of the rate setting process for FY 2013-2015 in the Philadelphia Court of Common Pleas or any other court of competent jurisdiction. This Settlement and the Water Commissioner's approval of this Settlement, however, shall not constitute administrative finality, issue preclusion or claim preclusion as to any matter in any subsequent rate proceeding.

18. The Department covenants and agrees that the proposed Settlement terms reflected in this Joint Petition, together with any other agreement, understanding or arrangement between the Department and any other Joint Petitioner, do not affect the Phase 1 settlement terms and conditions, including without limitation, the revenue requirement for the revised rate period (FY 2013-2015) and (a) the typical monthly residential bills calculated by the Department in Table 38A of the Department's Statement of Support for the Joint Petition for Settlement related to Phase 1 of the rate proceeding (dated August 29, 2012); and (b) the typical monthly non-residential bills shown in PWD Exhibit 28 (Exhibit JRM-3 Revised).

19. This Joint Petition may be executed in multiple counter-parts, each of which shall be regarded for all purposes as an original and such counter-parts shall be considered as one and the same instrument.

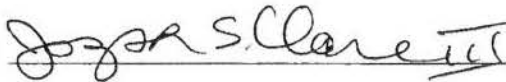
WHEREFORE, the Joint Petitioners respectfully request the following:

- (A) that the Hearing Officer receive and admit into the record all statements and exhibits, including verifications and affidavits filed as to each witness; and include the Joint Petition and related attachments as hearing officer exhibits.
- (B) that the Hearing Officer recommend the approval of the Settlement embodied in this Joint Petition, including all terms and conditions hereof;
- (C) that the Hearing Officer find the terms and conditions of the Settlement are supported by substantial evidence and recommend that the Water Commissioner authorize the Department to file Final Regulations implementing the Settlement; and
- (D) that the Hearing Officer officially close the record of this proceeding.

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Signature Page to Joint Petition for Settlement

PHILADELPHIA WATER DEPARTMENT

By: 

PUBLIC ADVOCATE

By: _____

CITIZENS FOR PENNSYLVANIA'S FUTURE

By: _____

DIRECT DISCHARGERS GROUP

By: _____

PHILADELPHIA LARGE USERS GROUP

By: _____

PECO ENERGY COMPANY

By: _____

EXELON CORPORATION

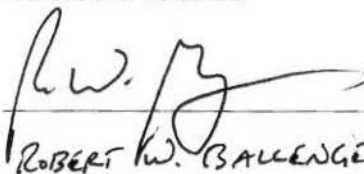
By: _____

Signature Page to Joint Petition for Settlement

PHILADELPHIA WATER DEPARTMENT

By: _____

PUBLIC ADVOCATE

By:  _____
ROBERT W. BALLENGER

CITIZENS FOR PENNSYLVANIA'S FUTURE

By: _____

DIRECT DISCHARGERS GROUP

By: _____

PHILADELPHIA LARGE USERS GROUP

By: _____

PECO ENERGY COMPANY

By: _____

EXELON CORPORATION

By: _____

Signature Page to Joint Petition for Settlement


PHILADELPHIA WATER DEPARTMENT

By: _____

PUBLIC ADVOCATE

By: _____

CITIZENS FOR PENNSYLVANIA'S FUTURE

By:  _____
BRIAN GLASS

DIRECT DISCHARGERS GROUP

By: _____

PHILADELPHIA LARGE USERS GROUP

By: _____

PECO ENERGY COMPANY

By: _____

EXELON CORPORATION

By: _____

Signature Page to Joint Petition for Settlement

PHILADELPHIA WATER DEPARTMENT

By: _____

PUBLIC ADVOCATE

By: _____

CITIZENS FOR PENNSYLVANIA'S FUTURE

By: _____

DIRECT DISCHARGERS GROUP

By: Neil Waters

PHILADELPHIA LARGE USERS GROUP

By: _____

PECO ENERGY COMPANY

By: _____

EXELON CORPORATION

By: _____

Signature Page to Joint Petition for Settlement

PHILADELPHIA WATER DEPARTMENT

By: _____

PUBLIC ADVOCATE

By: _____

CITIZENS FOR PENNSYLVANIA'S FUTURE

By: _____

DIRECT DISCHARGERS GROUP

By: _____

PHILADELPHIA LARGE USERS GROUP

By:  _____

James P. Dougherty
Adeolu A. Bakare
MCNEES WALLACE & NURICK, LLC

PECO ENERGY COMPANY AND
EXELON CORPORATION

By: _____

Signature Page to Joint Petition for Settlement

PHILADELPHIA WATER DEPARTMENT

By: _____

PUBLIC ADVOCATE

By: _____

CITIZENS FOR PENNSYLVANIA'S FUTURE

By: _____

DIRECT DISCHARGERS GROUP

By: _____

PHILADELPHIA LARGE USERS GROUP

By: _____

PECO ENERGY COMPANY

By:  _____

EXELON GENERATION COMPANY, LLC

By: _____

Signature Page to Joint Petition for Settlement

PHILADELPHIA WATER DEPARTMENT

By: _____

PUBLIC ADVOCATE

By: _____

CITIZENS FOR PENNSYLVANIA'S FUTURE

By: _____

DIRECT DISCHARGERS GROUP

By: _____

PHILADELPHIA LARGE USERS GROUP

By: _____

PECO ENERGY COMPANY

By: _____

EXELON GENERATION COMPANY, LLC

By:  _____

Exhibit A

Company	Parcel Address	OPA Number
Penn Warehousing	1951 S. Columbus Boulevard	781053600
Penn Warehousing	1901 S. Columbus Boulevard	771528000
Penn Warehousing	775 S. Columbus Boulevard	884018736
Penn Warehousing	9 Snyder Avenue	884463830
Penn Warehousing	78 S. Pier	884463820
Penn Warehousing	10 Snyder Avenue	884463835
Rohm & Haas	5000 Richmond Street	884209535
Astro Holdings	3117 S. Columbus Boulevard	781054000
Astro Holdings	2701 S. Columbus Boulevard	781053800
Delaware Avenue Enterprises	2937 S. Columbus Boulevard	884141020
Delaware Avenue Enterprises	2501 S. Columbus Boulevard	884138050
Norfolk Southern	4401 S. Broad Street	788012600
Norfolk Southern	2 Mustin Street	788012650
Dependable	84 S. Pier	884463825
Arsenal	5301 Tacony Street	882938550
Red Lion Associates	2701 Red Lion Road	884288000
Exelon - Richmond Station	3901 N. Columbus Boulevard	884352243
Exelon - Schuylkill Station	2600 Christian Street	772599000
Exelon - Delaware Station	1325 Beach Street	884351717