

Philadelphia Water Department - 2021 General Rate Proceeding  
April 30, 2021

PHILADELPHIA WATER DEPARTMENT  
2021 GENERAL RATE PROCEEDING  
RATE PERIOD: FY 2022 AND 2023

TECHNICAL HEARING

Friday, April 30, 2021  
Philadelphia, Pennsylvania

TIME: 10:00 a.m.  
LOCATION: Virtually  
HELD BEFORE: MARLANE R. CHESTNUT  
Hearing Officer

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1                                   - - -

2           (Proceedings commenced at 10:06 a.m.)

3                   HEARING OFFICER CHESTNUT:  Let's go  
4 on the record.  This is the technical  
5 hearing that's been scheduled with respect  
6 to the general rate filing by the  
7 Philadelphia Water Department for Fiscal  
8 Years 2021 and -- I'm sorry, 2022 and 2023.  
9 I'm Hearing Officer Marlane R. Chestnut.

10                   I would like the participants or  
11 the representatives to identify themselves  
12 for the record by stating your name, whom  
13 you are representing, your email address  
14 and any other contact information you feel  
15 is pertinent.

16                   I will start with you, Mr. Dasent.

17                   MR. DASENT:  Yes.  Good morning,  
18 Madam Hearing Officer.  My name is Andre  
19 Dasent.  Represent the Philadelphia Water  
20 Department.  My email address is  
21 andrew.c.dasent@gmail.com.

22                   HEARING OFFICER CHESTNUT:  Thank  
23 you.  Is there any other representative of  
24 the Water Department you want to have noted

1 on the record at this point?

2 MR. DASENT: Sure. Our general  
3 counsel Ji Jun is on the phone. And I  
4 think I also see Carl Shultz from Eckert  
5 Seamans.

6 HEARING OFFICER CHESTNUT: Okay.  
7 Mr. Ballenger?

8 MR. BALLENGER: Good morning.  
9 Thank you, Judge. My name is Robert  
10 Ballenger. I'm an attorney at Community  
11 Legal Services where I represent the  
12 interest of the small users as the Public  
13 Advocate. My email address is  
14 rballenger@clsphila.org. And I don't  
15 believe anyone else from my team will be  
16 joining us this morning, except for our  
17 witness of course.

18 HEARING OFFICER CHESTNUT: Okay. I  
19 see Mr. Morgan there.

20 Okay. I'm going to go just in  
21 order of the people that I see on my  
22 screen. So if I miss someone, let me know.

23 Mr. Haver, do you want to identify  
24 yourself for the record, please.

1 MR. HAVER: Lance Haver, pro se.  
2 Lance@lancehaver.com.

3 HEARING OFFICER CHESTNUT: Thank  
4 you.

5 Mr. Bakare?

6 MR. BAKARE: Good morning, Your  
7 Honor. This is Adeolu Bakare. That's  
8 E-d-o-l-u, last name, B as in boy,  
9 a-k-a-r-e. Appearing on behalf of the  
10 Philadelphia Large Users Group or PLUG.

11 HEARING OFFICER CHESTNUT: Thank  
12 you. Mr. Holtzman?

13 MR. HOLTZMAN: Yes, thank you.

14 Good morning, Your Honor. Anthony  
15 Holtzman here with the law firm of K&L  
16 Gates representing PECO. My email address  
17 is anthony.holtzman@KLGates.com.

18 Thank you.

19 HEARING OFFICER CHESTNUT: Thank  
20 you. Ms. Darlington?

21 You are muted.

22 MS. DARLINGTON: Sorry about that.  
23 Brooke Darlington, Divisional Deputy City  
24 Solicitor with City of Philadelphia

1 representing the Water Revenue Bureau, WRB.

2 HEARING OFFICER CHESTNUT: Thank  
3 you. Ms. Lavery?

4 MS. LAVERY: Danielle Lavery. Also  
5 on behalf of the Water Revenue Bureau. My  
6 email is danielle.lavery@phila.gov.

7 HEARING OFFICER CHESTNUT: I think  
8 everybody else has been included.

9 Mr. Paiva.

10 MR. PAIVA: Good morning, Your  
11 Honor. Frank Paiva on behalf of the Water  
12 Revenue Bureau for City of Philadelphia.

13 HEARING OFFICER CHESTNUT: Okay.

14 Ms. Thompson, I guess you're  
15 included with Mr. Bakare, right?

16 MS. THOMPSON: Yes, Your Honor.

17 MR. DASENT: Ton --

18 HEARING OFFICER CHESTNUT: Go  
19 ahead.

20 MR. DASENT: Tony Holtzman is also  
21 on.

22 HEARING OFFICER CHESTNUT: I got  
23 him.

24 MR. DASENT: Okay. Sorry.

1 HEARING OFFICER CHESTNUT: I think  
2 he identified himself. Did I miss anybody  
3 who hasn't already been included?

4 MR. MARKUS: Good morning, Your  
5 Honor. This is Ed Markus with Amawalk  
6 Consulting Group. We are a technical  
7 consultant to the Rate Board. And email  
8 address is ed.markus@amawalkconsulting.com.

9 HEARING OFFICER CHESTNUT: Thank  
10 you. Thank you, Ed.

11 Any other appearances for the  
12 record?

13 (No response.)

14 HEARING OFFICER CHESTNUT: Okay.

15 Let's go to the agenda, then, for  
16 today's hearing. I received a proposed  
17 agenda from Mr. Dasent which I very much  
18 appreciated.

19 I wasn't real sure. This is my  
20 first technical hearing for the Water  
21 Department as I am sure you are all aware.  
22 I'm not real sure how they are conducted.  
23 I assume they are conducted similar to PE  
24 Hearings, in which we identify the issues

1 and go through them and have whatever  
2 witness cross-examination or presentation  
3 is appropriate.

4 Now here, there were several  
5 issues. One -- I guess, several relating  
6 to the original filing; others relating to  
7 the proposed settlement. So, let's go  
8 through that.

9 I see Mr. Dasent has identified and  
10 separated these into housekeeping and  
11 technical hearing. And if you want, we can  
12 go through it now in that order.

13 MR. DASENT: Sure.

14 If, Your Honor, please, the  
15 housekeeping elements of the Agenda, we  
16 circulated a Term Sheet which sets forth  
17 the proposed settlement for the rate case.  
18 Joint petitioners as of right now are the  
19 Department and the Public Advocate. I  
20 would like Ade Bakare speak for PLUG, but I  
21 have him listed as non-opposition together  
22 with PECO. Lance Haver and  
23 Mr. Sckiendzielewski I put in the category  
24 of opposition based upon our conversations.

1 And no response from the other Pro Se  
2 participants.

3 To be circulated will be, and in  
4 short order, joint settlement petition that  
5 will outline the details of the settlement  
6 and incorporate the Term Sheet. And we,  
7 also, look forward to statements of support  
8 which Department can also provide offering  
9 further details as to the reasons we  
10 believe this will be a just result to  
11 resolve the rate proceeding. And other  
12 parties can, obviously, submit statements  
13 of support or opposition.

14 We have two hearing exhibits to  
15 mark today. And I can either do that  
16 later, Your Honor, or just identify it as  
17 we are going through that we have the  
18 newspaper ads --

19 HEARING OFFICER CHESTNUT: Well,  
20 before we get to that, I do have some  
21 questions about the process for the --  
22 filing the settlement.

23 You have a proposed schedule I saw  
24 somewhere where you have upcoming dates.



1 MR. DASENT: Yes.

2 HEARING OFFICER CHESTNUT: At this  
3 point, when do you plan to circulate the  
4 draft settlement petition among the  
5 parties?

6 MR. DASENT: May 5.

7 HEARING OFFICER CHESTNUT: May 5?

8 MR. DASENT: Yes. I think that  
9 will give everyone enough time to way in.

10 HEARING OFFICER CHESTNUT: So, you  
11 are going to circulate that as well as  
12 submit it to the Rate Board?

13 MR. DASENT: Yes.

14 HEARING OFFICER CHESTNUT: Or me?

15 MR. DASENT: Yes. I will have it  
16 finished by May 5. And together with joint  
17 position -- joint statement supporting the  
18 settlement from the Water Department and  
19 I'm asking the Public Advocate also. And  
20 he's, obviously, on the phone to speak to  
21 that issue. So, we will have joint  
22 statements in support of the settlement  
23 petition as well as the joint settlement  
24 position May 5.

1           MR. BALLENGER: Yeah. If I could  
2 just chime in Judge. One thing I just want  
3 to flag for all concerned and for the  
4 record is that it's a partial settlement.  
5 There are still a couple of issues that  
6 Mr. Dasent and I have agreed to submit via  
7 the briefs. And -- and that's also  
8 included on the upcoming dates proposed for  
9 resolution of the remainder of the case.

10           I -- Mr. Dasent and I have not  
11 talked about having a joint statement in  
12 support, so we can -- we can try to do  
13 that. Alternatively, we can submit our own  
14 statements of support on behalf of the  
15 Public Advocate. I don't know that we  
16 would share in exactly the same  
17 perspective. But I'm happy to speak with  
18 Mr. Dasent about that before the May 5  
19 deadline for submitting something.

20           HEARING OFFICER CHESTNUT: I guess  
21 my concern is that parties -- the two --  
22 beside the signatory parties, is there an  
23 opportunity for other participants to  
24 comment on the proposed settlement?

1 MR. DASENT: Yes.

2 HEARING OFFICER CHESTNUT: Do you  
3 anticipate that will be included in the  
4 May 5 submission?

5 MR. DASENT: That was our  
6 suggestion. If, Your Honor, wants to give  
7 them longer even through the briefs to  
8 indicate their opposition, that's fine. We  
9 just wanted to define as best we could  
10 those that supported the petition detailed,  
11 why we think it's a just resolution of the  
12 rate case issues and offer others an  
13 opportunity to voice their opposition or  
14 non-position as to the settlement.

15 MR. HAVER: Your Honor, when it's  
16 appropriate, I would like to be heard about  
17 the process.

18 HEARING OFFICER CHESTNUT: Sure.

19 MR. HAVER: The process as outlined  
20 is insufficient. When the hearing process  
21 started, the Public Advocate reached out to  
22 community groups throughout the city, the  
23 Water Department reached out to community  
24 groups throughout the city, numerous people

1 testified at the public hearings.

2 Mr. Dasent has no plan to recontact  
3 them to tell them about settlement that  
4 will cost them literally tens of millions  
5 of dollars. And that is unfair and  
6 unjustified. The same outreach that was  
7 done to tell people about the hearings must  
8 be done to tell people about how the Public  
9 Advocate and the Water Department has gone  
10 behind the public's back and reached a  
11 secret agreement.

12 MR. DASENT: We have spread --

13 HEARING OFFICER CHESTNUT: Hold on.  
14 That's inflammatory. I don't think I call  
15 the settlement a secret agreement.

16 MR. HAVER: If nobody knows about  
17 it, Your Honor, what language would you  
18 prefer me to use?

19 HEARING OFFICER CHESTNUT: I'm not  
20 going to get into it with you.

21 MR. HAVER: None of the people --

22 HEARING OFFICER CHESTNUT: Mr --  
23 Mr. Dasent, go ahead. Did you want to  
24 respond to that?

1           MR. DASENT: Yeah. We circulated  
2 the Settlement Term Sheet to all the  
3 technical hearing participants. And I  
4 think that is the sort of boundaries that  
5 we are supposed to circulate it to. We,  
6 certainly, can have it posted today at the  
7 website so everyone can comment that cares  
8 to with respect to the settlement.

9           So, I don't believe it's going to  
10 be secret. The fact that all the  
11 participants have it, the fact that we are  
12 ready to post it at the website. And you  
13 have to negotiate these things, you know,  
14 because they are difficult, you know, in --  
15 with the Public Advocate first and then  
16 roll it out to the other parties. That is  
17 what we have done. And we have a  
18 relatively short time to do it.

19           So, we are trying to do as -- in a  
20 fair manner, make everyone aware the  
21 settlement. And quite frankly, because it  
22 has the reconciliation as a part of its  
23 terms, it offers everyone an opportunity to  
24 both have -- from the Department's

1 perspective -- additional revenues it needs  
2 to address its financial deficit and to  
3 sustain its operations.

4           And on the other side, have a --  
5 because customers know that if there are  
6 additional funds received from federal  
7 stimulus or if we outperform our  
8 projections in Fiscal 21, there is a  
9 vehicle to share any benefits with the  
10 customers. And that reconciliation process  
11 is another thing that we would have to  
12 discuss with the Rate Board.

13           MR. BALLENGER: If I may also  
14 respond, Judge.

15           HEARING OFFICER CHESTNUT: Sure.

16           MR. BALLENGER: I, certainly,  
17 understand Mr. Haver's perspective and his  
18 interests in the impact of a rate increase  
19 on the small user customers whose interests  
20 the Public Advocate represents.

21           I think -- I think what Mr. Haver  
22 has proposed is a process that simply  
23 doesn't really exist here. We have a  
24 schedule for this process. It is a

1 compressed schedule. It is not -- we don't  
2 take lightly the obligation to represent  
3 the interests of the nearly half a million  
4 customers that -- that we know will be  
5 affected and who will face some incremental  
6 increase in their water bills as a result  
7 of the settlement proposed in this case.

8 But City Council has given us 120  
9 days. Unless there is some extraordinary  
10 need to extend the period of time, and --  
11 and that has happened in the past. But I  
12 think where we are in this proceeding, it  
13 doesn't -- it doesn't appear to me that we  
14 have the ability to accommodate another  
15 round of public input concerning the  
16 settlement itself.

17 We have been motivated by what we  
18 heard from customers. And we have taken  
19 into account all of the -- the outcry and  
20 the challenges to a rate increase during a  
21 pandemic. And we have come up with what we  
22 think is a fair compromise that does allow  
23 us to come back and revisit the need for  
24 additional revenues in Fiscal 2023. And we

1 think that is of tremendous benefit to the  
2 residential and small user customers.

3 So just with all due respect, I  
4 don't believe that we have done anything in  
5 secret. And I don't believe we have done  
6 anything behind the public's back. We are  
7 here at a public hearing. And every  
8 hearing that we have had in this case has  
9 been a public one.

10 HEARING OFFICER CHESTNUT: Anybody  
11 else?

12 MR. HAVER: I want my objection to  
13 stay on the record. The Water Department  
14 and the Public Advocate sought out  
15 community groups for input. And is  
16 choosing now to shut them out of the  
17 settlement. There is no attempt to contact  
18 any community group, any person who  
19 appeared at the public hearing to comment  
20 on this settlement.

21 That is unjust and unfair. And  
22 it's absolutely outrageous for somebody to  
23 assume that they know what people think  
24 without asking them.



1           MR. DASENT: And if, Your Honor,  
2 please, we will post the Term Sheet and all  
3 other documents on the website. And if the  
4 record -- I believe we can have the input  
5 that we need on this record to have a fair  
6 and just resolution that takes into account  
7 the fact that we may have future revenues  
8 through federal stimulus or we may have  
9 performance in Fiscal 21 that allows us to  
10 share those benefits with customers.

11           This is a very creative mechanism  
12 that we are trying now to deal with the  
13 extraordinary circumstances presented in  
14 this case. And -- and I think on balance,  
15 it's the fairest possible result given the  
16 uncertainty that is presented.

17           MR. HAVER: Will the Members of  
18 City Council who sent the letter opposing  
19 any rate increase be notified of this,  
20 quote/unquote, settlement?

21           MR. DASENT: I am sure they are  
22 aware of it, and we will post it.

23           MR. HAVER: How do you know that,  
24 Mr. Dasent? How do you know that they are

1 aware of it?

2 MR. DASENT: Because at least the  
3 Council folks that I have some regular  
4 contact with --

5 MR. HAVER: Which Council folks are  
6 those, sir?

7 HEARING OFFICER CHESTNUT: No. You  
8 don't have to answer those kinds of  
9 questions. That's ridiculous.

10 MR. HAVER: Why not? Why not, Your  
11 Honor?

12 HEARING OFFICER CHESTNUT: No. No.  
13 Come on.

14 MR. HAVER: He is putting something  
15 on the record saying he has information.  
16 Why is it not part of the public record?

17 HEARING OFFICER CHESTNUT: This is  
18 getting ridiculous. Mr. Dasent, you're  
19 going to post it on the website.

20 MR. DASENT: Yes.

21 HEARING OFFICER CHESTNUT: We will  
22 post it on our website. Mr. Ballenger, you  
23 will post it on your website.

24 MR. HAVER: Shame on you, Your

1 Honor. Shame on you.

2 HEARING OFFICER CHESTNUT: Well,  
3 I'm sorry you feel like that. But you  
4 know, people do have to have notice --  
5 you're right. People should have notice.  
6 But they are aware --

7 MR. HAVER: And you are not giving  
8 it to them.

9 HEARING OFFICER CHESTNUT: They are  
10 aware --

11 MR. HAVER: It's your decision,  
12 Your Honor, and you are shutting them out.  
13 You are allowing a secret agreement to go  
14 forward.

15 HEARING OFFICER CHESTNUT: It's not  
16 a secret.

17 MR. HAVER: We are not even  
18 contacting City Councilmembers.

19 HEARING OFFICER CHESTNUT: I'm sure  
20 they will be aware of it the way they  
21 are --

22 MR. HAVER: How are you sure of  
23 that, Your Honor? How do you know that?

24 HEARING OFFICER CHESTNUT: Mr --

1 Mr. Haver, you know, I'm not going to get  
2 into an argument with you over this stuff.  
3 It's just not helpful. It really isn't.

4 MR. HAVER: But why are you putting  
5 it on the record that you have no backup  
6 for it?

7 MR. BAKARE: Your Honor, this is  
8 Mr. Bakare. May I make a comment?

9 HEARING OFFICER CHESTNUT: Sure.

10 MR. BAKARE: I just wonder if  
11 perhaps -- I don't want to speak out of  
12 turn, but perhaps Mr. Haver doesn't  
13 understand the difference between an active  
14 participant and a inactive commentator.  
15 Might it be worth perhaps discussing that?

16 I don't know if that would help  
17 address the issues so we can move on.

18 MR. DASENT: Well, if Your Honor,  
19 please, the active participants, the folks  
20 on the service list, were served with the  
21 Term Sheet. And we will also serve them  
22 with a joint settlement petition. And they  
23 will also have an opportunity to oppose the  
24 joint settlement petition or this -- or the

1 Term Sheet. So, I think we are in a  
2 position where those active participants  
3 can be sort of notified directly and we can  
4 receive input from them.

5 In addition to that, because we  
6 posted it on the website, folks in the  
7 community that have reached out to us in  
8 the past to indicate that they are -- been  
9 opposition to the rate case, can also see  
10 that there's a potential settlement that  
11 recognizes some of their concerns and some  
12 of the outcry particularly with ARPA  
13 funding and federal stimulus funding. You  
14 know, it has been recognized through a  
15 reconciliation process.

16 And so all taken together, seems  
17 like the folks that are on the active  
18 service list, the folks that -- that pay  
19 attention to this matter and are very much  
20 attune to the rate increase filing and the  
21 proceedings, can have an opportunity to  
22 further comment if they care to. And I  
23 know, Your Honor, will receive those  
24 comments.

1           And in addition to that, the  
2 statements of opposition or support are a  
3 perfect vehicle for those active technical  
4 hearing participants to voice their  
5 concerns.

6           HEARING OFFICER CHESTNUT: Thank  
7 you.

8           MR. BALLENGER: I would just like  
9 to add, if I may, that we have put out,  
10 both the Public Advocate and the Board,  
11 guidance on participating in these hearings  
12 both as a member of the public and as a  
13 registered participant. And so in our  
14 outreach efforts, we've been clear that  
15 there are two different ways to  
16 participate.

17           And community groups wanting to  
18 participate have the same rights as  
19 Mr. Haver or any of us to enter an  
20 appearance and to provide testimony and --  
21 and to join in or oppose this settlement.

22           MR. HAVER: And how will those --

23           MR. BALLENGER: I think that's on  
24 the record.

1 MR. HAVER: -- folks be notified  
2 about the settlement?

3 MR. BALLENGER: As we have  
4 discussed, that will be posted publicly. I  
5 don't know what more --

6 MR. HAVER: To the best of your  
7 knowledge, how many people visit the Water  
8 Rate Board web?

9 HEARING OFFICER CHESTNUT: Uh,  
10 Mr. Haver, we can't force people to -- to  
11 go to the website.

12 MR. HAVER: But you can do  
13 outreach.

14 HEARING OFFICER CHESTNUT: Now,  
15 you're not coming -- you are doing a lot of  
16 arguing. But you are not really coming up  
17 with any kind of useable proposal here.

18 MR. HAVER: Absolutely. Here is my  
19 proposal. Do the same outreach you did for  
20 the public hearings.

21 HEARING OFFICER CHESTNUT: There  
22 isn't time to do that.

23 MR. HAVER: Of course there isn't.  
24 All electronic --

1 HEARING OFFICER CHESTNUT: I'm not  
2 going to object if any party wants to do,  
3 the Water Department or the Public Advocate  
4 or yourself.

5 MR. HAVER: Not --

6 HEARING OFFICER CHESTNUT: That's  
7 fine. I'm not going to -- I'm not going to  
8 require it, though.

9 MR. HAVER: I request --

10 HEARING OFFICER CHESTNUT: I don't  
11 think there's really --

12 MR. HAVER: I request the email  
13 service list that the Water Department,  
14 Water Revenue Department, Public Advocate  
15 used. And I will send out the notice  
16 myself.

17 HEARING OFFICER CHESTNUT: No. You  
18 talk to them. It's not something I am  
19 going to get involved in.

20 MR. HAVER: I'm asking you to order  
21 that.

22 HEARING OFFICER CHESTNUT: I'm not  
23 ordering them to do that, absolutely not.  
24 That would be most improper.



1 MR. HAVER: Why would it be  
2 improper?

3 HEARING OFFICER CHESTNUT: I'm not  
4 going to get into this with you, okay? I'm  
5 not going to argue with you. I don't think  
6 it's right.

7 I think the system is -- I think  
8 the process is working the way it's  
9 designed to. Which is that we had public  
10 hearings, people commented at these public  
11 hearings and it was taken into account as  
12 it should have been by the Public Advocate  
13 and by the Water Department and by me and,  
14 hopefully, the Rate Board.

15 Now if there were more time, then  
16 maybe we could schedule another round of  
17 public hearings to talk about it, but there  
18 just isn't. And I think we all have to  
19 recognize that. It's not in anybody's  
20 interest if -- if we have to go past 120  
21 days and the Department has to implement  
22 emergency rates, that's just --

23 MR. HAVER: You are stating your  
24 opinion as fact. Those are not facts.

1 Those are your opinion. You are certainly  
2 entitled to them. But it's certainly in my  
3 interest to get community input. I do not  
4 believe the Public Advocate can represent  
5 the public without taking the time to hear  
6 what the public has to say.

7 HEARING OFFICER CHESTNUT: Well,  
8 take that up with Mr. Ballenger then.  
9 Because I think the Public Advocate has  
10 done a very good job --

11 MR. HAVER: I'll take it up with  
12 the Councilmembers --

13 HEARING OFFICER CHESTNUT: -- of  
14 representing the people.

15 MR. HAVER: -- about the Public  
16 Advocate position.

17 HEARING OFFICER CHESTNUT: Okay.

18 Anything else? Let's talk about  
19 the schedule here.

20 MR. DASENT: We propose the briefs  
21 be submitted on May 11. And before that,  
22 we have, you know, various documents that  
23 Mr. Ballenger and I have talked about.

24 Any transcript requests from today,

1 we would suggest come in by May 5. Any  
2 outstanding discovery responses, I have  
3 done an inventory. I see two. If Rob has  
4 more that he can identify, please, tell me.  
5 Those would be provided by May 5. The  
6 joint settlement petition we would have by  
7 May 5 as we have talked about. And any  
8 additional proofs of publication from this  
9 technical hearing will be provided, for the  
10 record by May 5.

11 We also have a response to  
12 PennFuture's letter that was sent in  
13 recently as a part of the public partic --  
14 public input hearings. And we will provide  
15 that for the record today for, Your Honor.  
16 And other than that, I believe the dates  
17 are completely up to you.

18 In terms of hearing, all the dates  
19 are actually up to you. But the Hearing  
20 Officer Report and, you know, other  
21 responses to the Hearing Officer's Report  
22 and any final resolution by the Board,  
23 those dates are in our proposed schedule  
24 but, obviously, are determined by you.

1 Because we develop the schedule by some  
2 consensus with the Public Advocate, be  
3 interested if the other parties have a  
4 problem with it. But it's a little -- it  
5 gives a little more flexibility than the  
6 original schedule. So if, Your Honor,  
7 please, I hope the parties would accept it.  
8 And I hope, Your Honor, would see also that  
9 it offers you enough time to do a final  
10 report.

11 One thing I didn't mention is that  
12 I hope we close the record today, except  
13 for transcript requests, outstanding  
14 discover to the joint petition, petitions  
15 in support or opposition and the proofs of  
16 publication that I mentioned earlier.

17 Other than that, we should be done today.

18 MR. BAKARE: Your Honor, if I may.  
19 This is Mr. Bakare for PLUG.

20 Mr. Dasent had previously asked to  
21 confirm whether PLUG was a non-oppositional  
22 party to the Term Sheet. I just wanted to  
23 confirm that for the record. And also  
24 note, that in terms of this hearing this

1 morning, no party had requested cross of  
2 PLUG's witness. And if that has not  
3 changed, I wanted to ask your leave for me  
4 to sign off from this hearing. And  
5 Ms. Thompson will remain on for PLUG for  
6 the remainder of the hearing.

7 HEARING OFFICER CHESTNUT: Does  
8 anybody have any questions?

9 MR. DASENT: No. We have waived  
10 cross for Mr. Bakare's witness for PLUG, as  
11 well as the Public Advocate. And I think  
12 we only have two witnesses today or --  
13 yeah, two witnesses for the Department that  
14 we are providing for Mr. Haver.

15 MR. BALLENGER: And likewise, the  
16 Public Advocate has waived cross of all  
17 party witnesses. I should be clear, of the  
18 Water Department and PLUG and PECO's  
19 witnesses.

20 One point just for the record is  
21 that, the Board's regulations set out, you  
22 know, what is on the record for purposes of  
23 the Board's determination. And that also  
24 will include the Hearing Officer's Report

1 and any comments or exceptions taken to the  
2 Hearing Officer Report. Just so that we  
3 are clear that we may close the record as  
4 to testimony today, but all of those  
5 subsequent filings remain open.

6 MR. DASENT: And the transcript.  
7 Thank you.

8 HEARING OFFICER CHESTNUT: Yeah,  
9 that's fine, Mr. Bakare.

10 You are right about the record.  
11 There are certain things that have to be  
12 included. But I want to go back, you know.

13 I've been given some more thought  
14 about Mr. Haver's request. And I guess  
15 what you are asking for is a public hearing  
16 on the proposed settlement, right?

17 MR. HAVER: Yes. I'm asking for  
18 outreach -- the same outreach that was done  
19 about the original hearings.

20 HEARING OFFICER CHESTNUT: Is that  
21 doable, Mr. Ballenger, given this time  
22 schedule -- given the schedule?

23 MR. BALLENGER: Well, Judge, I  
24 mean, I certainly -- certainly think that

1 we could do something. I question the need  
2 to do so and the appropriateness of doing  
3 so. It's basically calling into question  
4 the -- the strategy and the negotiations  
5 that we have engaged in, which has been a  
6 matter of significant back and forth  
7 between the Department and the Public  
8 Advocate over the prior weeks.

9 I don't, personally, feel it's  
10 appropriate for Mr. Haver to question our  
11 ability to function as Public Advocate  
12 since we have done that for about 30 years  
13 now, CLS. And we did extensive outreach.  
14 And quite frankly, the voices of those who  
15 chose to participate were heard. I don't  
16 believe that it's appropriate for our  
17 settlement to be subject to a further, sort  
18 of, pressure campaign from the public.

19 We believe we have done our job  
20 here and gotten to what is really, in fact,  
21 Your Honor, a remarkable result. We  
22 haven't settled a case or proposed any form  
23 of settlement before this Rate Board. This  
24 would be a first for this Rate Board to see

1 even a partial settlement from any of the  
2 parties. The last two cases we have  
3 litigated to the end, including an appeal  
4 that is still ongoing.

5 So, I don't believe it's  
6 appropriate to open this up for more input.  
7 And so, I strongly disagree with  
8 Mr. Haver's proposal.

9 HEARING OFFICER CHESTNUT: I guess  
10 I see two aspects of it. And one is that  
11 you were talking about was informing, was  
12 notice, letting people know about the  
13 settlement. And I don't have any problem  
14 making it as widely noticed as possible. I  
15 think that's appropriate.

16 But like Mr. Ballenger, though, I  
17 was thinking, well, what would be the point  
18 of having a public hearing on the  
19 settlement? The settlement's not going to  
20 be renegotiated based on those comments.  
21 There's just no way that's going to happen.  
22 And I don't think it's appropriate. But I  
23 do think people should be aware of it.

24 So, I would urge --



1 MR. HAVER: Your Honor, what I'm  
2 hearing is the Public Advocate doesn't want  
3 to hear from the public about what it's job  
4 has been, and I find that inappropriate. I  
5 don't know how the Public Advocate thinks  
6 it can represent the public without  
7 welcoming the public into the process.

8 HEARING OFFICER CHESTNUT: I think  
9 it already done that.

10 MR. HAVER: Well, Your Honor --

11 HEARING OFFICER CHESTNUT: I think  
12 he's done a very good job of that actually.

13 MR. HAVER: -- about the proposed  
14 settlement, they're seeking council from no  
15 community members, no councilperson. And  
16 they decided, in and of themselves, that  
17 they know what's best for people without  
18 even taking the time to ask people what  
19 they think.

20 MR. BALLENGER: Mr. Haver,  
21 settlement negotiations are confidential.  
22 So, it's really hard for me to sort of  
23 breach confidentiality to poll the public  
24 about the strategy that we take toward

1 entering into a settlement.

2 MR. HAVER: Mr. Ballenger, if you  
3 needed help in figuring out a strategy, I  
4 was available.

5 MR. BALLENGER: I didn't need any  
6 help. Thank you.

7 MR. HAVER: So, this is what you  
8 have decided to do is shut the public out.

9 MR. BALLENGER: No. I have decided  
10 to enter into the settlement on behalf of  
11 the small users who I represent.

12 MR. HAVER: And how did you know --

13 HEARING OFFICER CHESTNUT: Okay,  
14 listen, listen, let's stop. This is not  
15 getting productive.

16 I just want to be clear in my mind  
17 what the options were here, and I think it  
18 should be publicized. But I really don't  
19 see any value in having another public  
20 hearing on it. I really don't. I think  
21 that we had the public hearing for the  
22 public to give its input on the proposed  
23 filing, and those comments were  
24 incorporated into the settlement.

1           I think it would be -- I just don't  
2 even see how the process would work if the  
3 settlement had to be renegotiated and then  
4 resubmitted. It's -- we are just -- we are  
5 just going to have to deal with the  
6 proposed settlement as it is, whether it's  
7 accepted or rejected by me or the Rate  
8 Board is going to be determined based on  
9 the record and based on what I see.

10           I mean, it's not a done deal.  
11 Let's be clear on that. I do have to  
12 evaluate to see whether or not it's an  
13 appropriate resolution of the filing and,  
14 also, whether it's in compliance with the  
15 requirements that are set for the Rate  
16 Board to consider when it approves,  
17 disapproves or modifies a rate request.  
18 So, let's not get too far ahead here.

19           I do want to make it clear, though,  
20 that on the schedules proposed by  
21 Mr. Dasent and, I guess, agreed with by  
22 Mr. Ballenger, where the settlement  
23 petition and any statements will be filed  
24 May 5, that there is an opportunity in the

1 briefing schedule. But if those briefs are  
2 not just limited to the unsettled issue.  
3 They can include opposite, you know,  
4 comment with respect to the settlement.

5 So, I just want to make it clear  
6 that that briefing is not limited today  
7 that issue but will include other issues  
8 that participants may want to raise, okay?

9 Do you have any problem with that,  
10 Mr. Dasent?

11 MR. DASENT: No, not at all. And  
12 we will post and make widely known the  
13 Settlement Term Sheet.

14 HEARING OFFICER CHESTNUT: Okay.

15 MR. HAVER: Your Honor, what does  
16 that mean, make widely known?

17 MR. DASENT: We will post it, at  
18 the very minimum, at the Rate Board  
19 website. And I will talk to my client when  
20 we leave this hearing about posting at the  
21 Water Department website. And I'm sure  
22 Mr. Ballenger will have some input or some  
23 suggestions as to how else we can make it  
24 widely known perhaps at his website.

1 HEARING OFFICER CHESTNUT: Okay.  
2 You guys can discuss that, and see what you  
3 come up with. But we will post it on the  
4 Rate Board website, as well, since you've  
5 approved that. I'm a little uncomfortable  
6 trusting a term sheet as opposed to the  
7 settlement petition. But if it's okay with  
8 you, then we will do that.

9 MR. DASENT: Well, the settlement  
10 petition I think will be clearer because it  
11 explains, gives it a framework as to what  
12 we are asking the Board to do. So, I  
13 certainly agree with that.

14 But because the Settlement Term  
15 Sheet is available now, I certainly wanted  
16 it posted, you know, at the website. And I  
17 think that will help folks be alert to the  
18 fact that we are trying to resolve a very  
19 difficult problem in as fair a matter as we  
20 can and within a creative manner that  
21 recognizes that there may be future  
22 stimulus monies. There may be other  
23 benefits that we can share with customers.  
24 And we want those to be available to

1 address additional revenues that will be,  
2 hopefully, approved for Fiscal 2023.

3 HEARING OFFICER CHESTNUT: Okay.  
4 At this point, I have not, obviously, seen  
5 the settlement petition or your statements  
6 in support or opposition, as it may be. I  
7 do want to make it clear that the  
8 settlement, the proposed settlement rates,  
9 do need to be supported on the record  
10 whether by an affidavit or a stipulation  
11 or something. But it can't just be a  
12 conclusion that they're reasonable. There  
13 has to be some kind of record support for  
14 them.

15 So, I hope that that's part of  
16 whatever process you have anticipated.

17 MR. HAVER: Will the web pages also  
18 publish my objections to the settlement?

19 HEARING OFFICER CHESTNUT: Of  
20 course.

21 MR. HAVER: So in the same print,  
22 the same size, the same placement?

23 HEARING OFFICER CHESTNUT: I don't  
24 even know what you're talking about,

1 Mr. Haver. What you said has to be posted.

2 We don't edit it. We don't modify it.

3 MR. HAVER: Well, certainly, you  
4 don't control Community Legal Services web  
5 page.

6 HEARING OFFICER CHESTNUT: No. I'm  
7 talking about the Rate Board. Community  
8 Legal Service can do whatever they want --

9 MR. HAVER: Well, I'm asking --

10 HEARING OFFICER CHESTNUT: No.  
11 They can do whatever they want with their  
12 website. I'm talking about the Rate Board  
13 website.

14 MR. HAVER: Right. So in other  
15 words, they can censor the opposition?

16 HEARING OFFICER CHESTNUT: I -- Mr.  
17 Haver, you are not doing yourself any  
18 favors, you know.

19 MR. HAVER: Your Honor, I really  
20 didn't ask for your advice. I'm asking you  
21 a direct question. They can censor the  
22 opposition --

23 HEARING OFFICER CHESTNUT: I'm  
24 certainly not going to answer that. That's

1 a ridiculous question. Mr. Haver, don't  
2 waste our time. You know, seriously. This  
3 is supposed to be a productive -- everybody  
4 is busy. And let's make this a productive  
5 use of our time as we can.

6 MR. HAVER: Your Honor, if you  
7 decide to exclude me, you decide to exclude  
8 me. But as of right now --

9 HEARING OFFICER CHESTNUT: I'm not  
10 going to exclude you. But I'm not going to  
11 allow you to insult people. I'm not going  
12 to allow you to impugn the confidence of  
13 people here. I'm not going to allow you to  
14 act inappropriate, Mr. Haver. I've given  
15 you a lot of latitude because I think it's  
16 appropriate as I would anybody. But this  
17 is getting ridiculous.

18 No. You know, I can exclude  
19 irrelevant, redundant, offensive material.  
20 And I think -- you know, I don't want to  
21 get to that point, okay. Let's talk about  
22 the merits of what we are talking about and  
23 how we can best accomplish this in the  
24 interest of both the customers of the



1 Department and the Department itself.

2 I'm very serious that I applaud  
3 that people are working together to  
4 accomplish something that's in the common  
5 good here. So, let's not get distracted  
6 with things that don't need to be  
7 addressed.

8 MR. HAVER: How can you say the  
9 people who bear the brunt of the rate  
10 increase don't have an active interest in  
11 what's happening here, and yet you are  
12 shutting them out and not giving them an  
13 opportunity to be heard?

14 HEARING OFFICER CHESTNUT: Well,  
15 you can take it up with Mr. Ballenger. He  
16 is the Public Advocate, not you. You are  
17 an individual. I'd keep that in mind. You  
18 are only representing yourself. And I  
19 don't want to hear you talking about other  
20 customers. That's Mr. Ballenger's job.  
21 You are only representing yourself. You  
22 are an individual. You are not another  
23 public advocate.

24 MR. HAVER: It's your job to decide

1 what is right and what is reasonable. And  
2 if you allow Mr. Ballenger to make  
3 decisions in a silo, that's on you.

4 HEARING OFFICER CHESTNUT: That  
5 silo is fine because that silo is the  
6 customers.

7 Okay. I'm not sure where -- I'm  
8 getting confused here.

9 MR. DASENT: Well, we have talked  
10 about the schedule.

11 HEARING OFFICER CHESTNUT: Close of  
12 the record.

13 MR. DASENT: And the close of the  
14 hearing record April 30 except for  
15 transcript responses, outstanding discovery  
16 responses, the joint petition, statements  
17 in opposition of joint parties, I mean of  
18 the -- to the joint petition, proofs of  
19 publication, the transcript. And Rob  
20 mentioned one other item.

21 HEARING OFFICER CHESTNUT: The  
22 Hearing Officer Report.

23 MR. DASENT: Exactly.

24 HEARING OFFICER CHESTNUT: There

1 brief exceptions and other arguments  
2 submitted to the report, which are included  
3 in the regulation. That's fine.

4 MR. DASENT: Yes. Okay. Then we  
5 are ready to turn to technical hearing  
6 issues. And we've also discussed a mutual  
7 waiver of cross-examination by the joint  
8 petitioners PLUG and PECO. And there will  
9 be litigated issues between the Department  
10 and the Public Advocate, which will be  
11 handled on brief dealing with arrearage  
12 forgiveness --

13 HEARING OFFICER CHESTNUT: Let me  
14 clarify that. The issue is the arrearage  
15 forgiveness?

16 MR. DASENT: Yes. And --

17 HEARING OFFICER CHESTNUT: Are  
18 there other issues?

19 MR. DASENT: And the recovery of  
20 arrearage forgiveness through the TAP  
21 rider.

22 Did I miss anything?

23 MR. BALLENGER: No. What  
24 Mr. Dasent described is correct. It's both

1 the manner of delivering arrearage  
2 forgiveness and the potential or proposal  
3 to recover some value of the TAP rider for  
4 that arrearage forgiven.

5 MR. DASENT: And that leaves us  
6 with the issues remaining for Mr. Haver and  
7 Mr. Sckiendzielewski if he's in attendance.  
8 And today's hearing will focus on their  
9 issues.

10 For the Department, we are ready to  
11 proffer Missy LaBuda for PWD and the Black  
12 and Veatch witnesses Ann Bui, Brian Merritt  
13 and Dave Jagt. And they will be ready for  
14 cross-examination at your direction, Your  
15 Honor.

16 HEARING OFFICER CHESTNUT: Okay.

17 Mr. Haver.

18 MR. HAVER: So, do you want me to  
19 do each witness individually? Or do you  
20 want me to ask my questions and let them  
21 both answer at the same time?

22 MR. DASENT: If you do it to the  
23 panel, we won't have to -- you know, we can  
24 answer you in real time.

1 MR. HAVER: Okay.

2 HEARING OFFICER CHESTNUT: Okay.

3 Before we do, I don't -- witnesses aren't  
4 sworn in in these types of hearings. But I  
5 do want them to identify themselves for the  
6 record, giving their name and job title, by  
7 whom they're employed.

8 So, who are the witnesses that are  
9 anticipated besides --

10 MR. DASENT: Well, besides  
11 Ms. LaBuda we have Ann Bui who is Managing  
12 Director, I believe, at Black and Veatch.  
13 She is on mute.

14 HEARING OFFICER CHESTNUT: Okay.  
15 Ms. LaBuda, why don't we go with you first.

16 Can you identify yourself for the  
17 record, please, stating your name --

18 MS. LaBUDA: Good morning.

19 HEARING OFFICER CHESTNUT: -- by  
20 whom you are employed and in what capacity.

21 MS. LaBUDA: Good morning, Your  
22 Honor. Melissa LaBuda, City of  
23 Philadelphia, Philadelphia Water  
24 Department. I'm the Deputy Commissioner.

1 And I manage the Finance team.

2 Good morning, everyone.

3 MR. DASENT: Good morning.

4 HEARING OFFICER CHESTNUT: And you  
5 are responsible for testimony and exhibits  
6 in this case?

7 MS. LaBUDA: Yes, ma'am, testimony  
8 and exhibits.

9 HEARING OFFICER CHESTNUT: Okay.  
10 Mr. Dasent, you want to go ahead with the  
11 two other?

12 MR. DASENT: Yes. Ann Bui, also  
13 from -- is from Black and Veatch. Also  
14 testifying on behalf of the Department.  
15 And if you can identify yourself for the  
16 record, Ann.

17 MS. BUI: Thank you, Andre.

18 Good morning, Judge. Ann Bui,  
19 Managing Director with Black and Veatch  
20 Management Consulting. Testifying on  
21 behalf of the Water Department.

22 HEARING OFFICER CHESTNUT: Okay.

23 Anybody else on the panel?

24 MR. DASENT: Brian Merritt also

1 from Black and Veatch. He can speak to the  
2 particulars.

3 MR. MERRITT: Good morning, Your  
4 Honor. Brian Merritt. I'm a manager with  
5 Black and Veatch Management Consulting  
6 appearing on behalf of the Water  
7 Department.

8 HEARING OFFICER CHESTNUT: Okay.  
9 Thank you.

10 MR. DASENT: And last but not  
11 least, Dave Jagt that runs the numbers.

12 MR. JAGT: Hi, good morning. My  
13 name is Dave Jagt. I'm a project manager  
14 and manager with Black and Veatch. And I'm  
15 here representing the Water Department this  
16 morning.

17 HEARING OFFICER CHESTNUT: Okay.

18 Okay, Mr. Haver, do you want to go  
19 ahead?

20 MR. HAVER: I want to make it  
21 clear, I have separate questions for Black  
22 and Veatch.

23 HEARING OFFICER CHESTNUT: Okay.

24 MR. HAVER: So the first question

1 is, on what date did you begin preparing  
2 the requested rate hike?

3 MR. DASENT: Well, that's --

4 MR. MERRITT: Is that for Black and  
5 Veatch?

6 MR. HAVER: I would like the Water  
7 Department to answer it.

8 HEARING OFFICER CHESTNUT: These  
9 questions are for Black and Veatch?

10 MR. HAVER: I'd like Black and  
11 Veatch to answer.

12 MR. DASENT: Well, there will be  
13 components to that, whether the Water  
14 Department started convening meetings with  
15 respect to the rate proceeding.

16 And Missy can speak to that.

17 MS. LaBUDA: So, we started the  
18 proceeding technically last year and then  
19 we had to halt it. I'd say some time in  
20 2019.

21 MR. HAVER: What month last year?

22 MS. LaBUDA: I don't know that. We  
23 would have to get back to you.

24 MR. HAVER: What season last year?



1 MS. LaBUDA: We will get back to  
2 you.

3 MR. HAVER: To the consultants, on  
4 what day did you begin preparing your  
5 testimony on behalf of the Philadelphia  
6 Water Department.

7 MR. MERRITT: Testimony would have  
8 started in the -- preparation would have  
9 started in the fall, November/December time  
10 frame, and submitted shortly thereafter.

11 MR. HAVER: I'm sorry.  
12 November 2020?

13 MR. MERRITT: Yes.

14 MR. HAVER: To both the Water  
15 Department and Black and Veatch, on the  
16 date that you began to prepare, to the best  
17 of your knowledge, had the American  
18 Recovery Plan Act been signed into law?

19 MS. LaBUDA: No.

20 MR. MERRITT: No.

21 MR. HAVER: To both panels, are you  
22 now aware of how the Recovery Act may  
23 impact the Water Department?

24 MS. LaBUDA: Yes.

1 MR. MERRITT: Yes.

2 MR. HAVER: Would each of you  
3 please explain how it might impact it?

4 MS. LaBUDA: The American Recovery  
5 Protection Act as documented by the  
6 Director of Finance for the City of  
7 Philadelphia will have no impact on the  
8 Water Department as we have not been  
9 allocated any portion of those funds.

10 MR. HAVER: So, I'd like to follow  
11 that up before I hear from Black and  
12 Veatch.

13 Ms. LaBuda, are you familiar with  
14 the City of Philadelphia's budgetary  
15 process?

16 MS. LaBUDA: I am.

17 MR. HAVER: Have you ever testified  
18 before City Council in any budgetary  
19 capacity?

20 MS. LaBUDA: I have.

21 MR. HAVER: Could you explain to me  
22 how the budget process works?

23 MS. LaBUDA: The Department's  
24 budget process is we formulate a budget, we

1 submit it to Central Budget. Central  
2 Budget reviews. Testimony is crafted. It  
3 is sent to City Council.

4 Once the Director of Finance and  
5 his team have reviewed it, City Council  
6 reviews it. There is testimony and  
7 hearings, for lack of a better description.  
8 And then City Council approves the budget  
9 some time in the end of June.

10 MR. HAVER: So, would you agree  
11 that the Mayor's Office or any of his  
12 cabinet members can make/not make a  
13 unilateral decision about how City money is  
14 spent?

15 MS. LaBUDA: We will get back to  
16 you.

17 MR. HAVER: I'm sorry?

18 HEARING OFFICER CHESTNUT: What was  
19 that question again? I'm not quite sure I  
20 understood that.

21 MR. HAVER: I'll reword it.

22 Isn't it true that what the  
23 Administration, the Mayor and his cabinet  
24 members propose to City Council can be

1 changed by City Council?

2 HEARING OFFICER CHESTNUT: If you  
3 can't answer that question, don't answer  
4 it. If it's not within the scope of what  
5 you know on your job responsibilities.  
6 Don't guess.

7 MS. LaBUDA: Yeah, that's why I'm  
8 not answering.

9 MR. HAVER: She went on the record  
10 explaining that she knows the answer.

11 MS. LaBUDA: I have gone on record  
12 to explain the Department's budget process,  
13 which was part of my opening statement,  
14 Mr. Haver. I cannot opine as to what the  
15 Mayor's cabinet can or can't do.

16 MR. HAVER: So, you don't know  
17 whether City Council can change the budget  
18 as proposed?

19 MS. LaBUDA: I can't answer that.

20 MR. HAVER: Why not?

21 HEARING OFFICER CHESTNUT: Isn't  
22 that a legal conclusion?

23 MR. HAVER: It's a factual point.

24 HEARING OFFICER CHESTNUT: No.

1 It's about whether they have the authority  
2 to. You don't have to answer that  
3 question.

4 MS. LaBUDA: Thank you.

5 MR. HAVER: To the best of your  
6 knowledge, has City Council ever changed a  
7 proposed budget?

8 MS. LaBUDA: I don't know the  
9 answer to that.

10 MR. HAVER: How often have you  
11 testified before City Council about  
12 budgetary proceedings?

13 MS. LaBUDA: I have testified on  
14 the Department's behalf a few times.

15 MR. HAVER: How many times is that?

16 MS. LaBUDA: I don't know the exact  
17 count.

18 MR. HAVER: How many years have you  
19 worked for the Philadelphia Water  
20 Department?

21 MS. LaBUDA: Approximately, seven.

22 MR. HAVER: And do you have any  
23 background in government?

24 MS. LaBUDA: Working -- I work for

1 the City of Philadelphia, so I do have some  
2 background.

3 MR. HAVER: Have you ever met with  
4 any City Councilperson to discuss the Water  
5 Department's budget?

6 MS. LaBUDA: From time to time, we  
7 do meet with City Councilmembers. Yes.

8 MR. HAVER: To discuss the Water  
9 Department's budget.

10 MS. LaBUDA: To discuss preliminary  
11 budget matters, yes.

12 MR. HAVER: Why do you do that?

13 MS. LaBUDA: Just to understand  
14 their concerns prior to the budget  
15 hearings.

16 MR. HAVER: In your opinion, does  
17 it -- would their concern matter?

18 MS. LaBUDA: I can't speak on their  
19 opinions.

20 MR. HAVER: I'm asking you, does it  
21 matter to you?

22 HEARING OFFICER CHESTNUT: Don't  
23 have to answer that question. That's  
24 improper. She doesn't -- she can't answer

1 that on their behalf.

2 MR. HAVER: Okay. Going forward,  
3 you meet with City Councilmembers to  
4 discuss the Water Department's budget. And  
5 you've said that you do that because you  
6 know that they are concerned; is that  
7 right?

8 MS. LaBUDA: That is not correct.  
9 We do it to hear any concerns, not that we  
10 know their concerns.

11 MR. HAVER: So again, help me out.  
12 Why do you meet with the City  
13 Councilmembers to explain the Water  
14 Department's budget?

15 MS. LaBUDA: To give them a chance  
16 to vet any matters that they might have.

17 MR. HAVER: And does their opinion  
18 matter to the Philadelphia Water  
19 Department?

20 HEARING OFFICER CHESTNUT: If you  
21 can't answer that, don't answer it.

22 MS. LaBUDA: Next question.

23 MR. HAVER: Your Honor, who are you  
24 representing here? The Philadelphia Water

1 Department?

2 HEARING OFFICER CHESTNUT: I'm  
3 representing the integrity of the record  
4 for one thing.

5 MR. HAVER: There has been no  
6 objection raised by Counsel for the Water  
7 Department. You are inappropriately --

8 MR. DASENT: We object then. It's  
9 argumentative.

10 HEARING OFFICER CHESTNUT: It's  
11 been objected.

12 MR. DASENT: And he does not --  
13 she's indicated a response. Move on.

14 HEARING OFFICER CHESTNUT: The  
15 objection is sustained.

16 MR. HAVER: And I appeal that for  
17 the record. Going back to the Black and  
18 Veatch. You have said that you are now  
19 aware of the American Recovery Act.

20 Could it have an impact on the  
21 revenues for the Philadelphia Water  
22 Department if that money was used to  
23 support the Water Department?

24 MR. DASENT: I don't know who is



1 coming off of mute of Black and Veatch.

2 MS. BUI: I will. Brian, I will  
3 take that one.

4 Mr. Haver, as of our understanding  
5 right now, there are no monies coming from  
6 the City of Philadelphia to the Water  
7 Department from that Act.

8 MR. HAVER: Right. That wasn't my  
9 question. My question was, if there were  
10 money forthcoming, would it have an impact  
11 on the Water Department.

12 MS. BUI: Potentially.

13 MR. HAVER: To both panels, are you  
14 aware that the Senate passed the Drinking  
15 Water and Waste Water Infrastructure Act of  
16 2021, which includes \$35 billion of repairs  
17 for aging infrastructure yesterday?

18 HEARING OFFICER CHESTNUT: Is that  
19 directed to anybody in particular?

20 MR. HAVER: Both people -- to both  
21 panels.

22 HEARING OFFICER CHESTNUT: Well,  
23 Ms. LaBuda, can you answer that?

24 MS. LaBUDA: I'm not familiar with

1 the act. Thank you.

2 HEARING OFFICER CHESTNUT: Okay.

3 Black and Veatch, are you familiar with it?

4 MS. BUI: We are aware that an act  
5 passed. The exact details of the act, we  
6 are not familiar with as of this point.

7 MR. HAVER: In your professional  
8 opinion, is it possible that that act would  
9 change the financial conditions of the  
10 Philadelphia Water Department? Not will,  
11 not have to but may?

12 HEARING OFFICER CHESTNUT: I don't  
13 see that there's a basis for answering the  
14 question.

15 MR. HAVER: Again, Your Honor, it's  
16 inappropriate for you to raise objections  
17 to my questions.

18 HEARING OFFICER CHESTNUT: No, it  
19 isn't.

20 MR. DASENT: Please note that it's  
21 speculative and we would object to the  
22 witness guessing or offering, you know,  
23 speculation of the record. If they haven't  
24 read the Act, it's difficult for them to --

1 or aren't acquainted with its details, it's  
2 difficult for them to answer.

3 So, note our objection.

4 HEARING OFFICER CHESTNUT: It's  
5 sustained.

6 MR. HAVER: Again, for the record,  
7 I appeal. And for the record, I object to,  
8 Your Honor's, continual interruption of my  
9 questioning and your continual working for  
10 the Philadelphia Water Department. Just  
11 because they pay, Your Honor, doesn't mean  
12 you should represent them.

13 HEARING OFFICER CHESTNUT: They  
14 don't pay me. The customers pay me, just  
15 like they are paying everybody else in this  
16 case.

17 MR. HAVER: They are not paying me.

18 HEARING OFFICER CHESTNUT: The  
19 customers are paying for me. They are  
20 paying for the Water Department.

21 MR. HAVER: Then I wish you would  
22 fulfill your role and be neutral instead of  
23 representing the Water Department's  
24 interest. You have no right to interfere

1 with my cross-examination. If Mr. Dasent  
2 wants to place an --

3 HEARING OFFICER CHESTNUT: I think  
4 I've been helping your cross-examination.  
5 Mr. Haver, we are giving you the -- you  
6 know, you have every right to cross-examine  
7 them. But --

8 MR. HAVER: And you have no right  
9 to interrupt my cross-examination. You can  
10 rule on objections. You cannot interrupt  
11 me.

12 HEARING OFFICER CHESTNUT: I can do  
13 other things than rule on objections. I  
14 can raise things myself. But don't worry.  
15 Go ahead. If you have a proper question,  
16 ask it. If you have an improper question  
17 that they can answer, they can answer that,  
18 too.

19 MR. HAVER: Okay. Again, to the  
20 Water Department, Black and Veatch, when do  
21 you think that you will be able to review  
22 what's in the Drinking Water and Wastewater  
23 Infrastructure Act of 2021?

24 MS. LaBUDA: I can't provide you a

1 timeline on when I will have time to read  
2 the act or the bill.

3 MR. MERRITT: We would echo,  
4 Missy's comments.

5 MR. HAVER: I'm sorry?

6 MR. MERRITT: We would echo Missy's  
7 comments.

8 HEARING OFFICER CHESTNUT: Maybe  
9 someone could clarify for me. That bill  
10 was signed. Is that signed by the  
11 President? I know it's passed by the  
12 Senate, but I don't think it's been signed  
13 yet. Has it?

14 MR. HAVER: The President -- the  
15 President is signing it to today, Your  
16 Honor.

17 HEARING OFFICER CHESTNUT: Okay.

18 MR. HAVER: It was his bill.

19 HEARING OFFICER CHESTNUT: Okay.

20 MR. HAVER: These are -- again,  
21 just to the Water Department now and then  
22 to Black and Veatch.

23 To the Water Department, would you  
24 change your testimony if you knew how much

1 the Philadelphia Water Department was  
2 getting from the Water Infrastructure Bill?

3 MR. DASENT: That calls for  
4 speculation.

5 MR. HAVER: I'm asking their expert  
6 opinion, which would allow them to  
7 speculate.

8 MS. LaBUDA: Well, we don't  
9 speculate. Go ahead, Andre.

10 MR. DASENT: Well, the question was  
11 answered before, Mr. Haver, with respect to  
12 we don't have the answer to that. I mean,  
13 because it's in the future --

14 MR. HAVER: Please don't testify on  
15 behalf of the Water Department, Mr. Dasent.

16 MR. DASENT: I wasn't.

17 MR. HAVER: It's highly  
18 inappropriate.

19 MR. DASENT: It's highly  
20 inappropriate for you to interrupt  
21 everybody every half hour.

22 MR. HAVER: You can raise  
23 objections if you want. The Hearing  
24 Examiner can rule on the objection. But

1 it's impermissible for you to testify.

2 HEARING OFFICER CHESTNUT: He's not  
3 testifying. I don't know why you do not  
4 understand that when lawyers talk, that's  
5 not testimony. There is no probative  
6 weight to what lawyers say.

7 MR. HAVER: When lawyers put facts  
8 on the record, they are testifying.

9 HEARING OFFICER CHESTNUT: No,  
10 they're not. I don't think you -- that's  
11 not the case.

12 MR. HAVER: Again, I wish you  
13 wouldn't work so much --

14 HEARING OFFICER CHESTNUT: Okay.  
15 She does not -- she hasn't read the  
16 statute. There's been no analysis of it.  
17 I think if it had been maybe further  
18 developed, that might have been included  
19 within the settlement because it has a  
20 provision in there for recognizing federal  
21 funds that may come in and be reconciled.

22 So, I don't know what we can say  
23 beyond that.

24 MR. HAVER: Again, I object and

1 appeal your ruling.

2 HEARING OFFICER CHESTNUT: Do  
3 whatever you want, Mr. Haver.

4 MR. HAVER: I appreciate you giving  
5 me permission to do whatever I want, Your  
6 Honor. But I did not need your approval or  
7 permission.

8 HEARING OFFICER CHESTNUT: Well,  
9 you kind of do.

10 MR. HAVER: No, Your Honor. I  
11 actually don't.

12 HEARING OFFICER CHESTNUT: I'm  
13 sorry, but you do.

14 MR. HAVER: It's amazing what the  
15 laws of the United States allow for. I do  
16 not need your permission to appeal or  
17 object.

18 HEARING OFFICER CHESTNUT: No. But  
19 you do need my permission to participate.

20 MR. HAVER: No, I don't, Your  
21 Honor. As a matter of law, I do not need  
22 your permission to participate.

23 HEARING OFFICER CHESTNUT: Well, I  
24 do have certain powers, too. And including



1 the power to exclude irrelevant, redundant  
2 testimony. You know, I don't want to get  
3 to that point. But if you have questions  
4 that they can answer, that's fine. But you  
5 have to recognize there are questions that  
6 they are not able to answer.

7 Do you have a question?

8 MR. HAVER: I certainly have many  
9 more questions.

10 HEARING OFFICER CHESTNUT: Go  
11 ahead.

12 MR. HAVER: If the settlement is  
13 approved, will the Water Department need  
14 additional funds to meet its obligations?

15 MR. DASENT: During what period of  
16 time?

17 MR. HAVER: During the next two  
18 years.

19 HEARING OFFICER CHESTNUT: I assume  
20 that's directed to Ms. LaBuda?

21 MR. HAVER: Yes.

22 MS. LaBUDA: The Department may  
23 potentially need more funds. But again,  
24 that's a speculative question. That's why

1 we have a open ask for Fiscal Year 2023.

2 MR. HAVER: So, the settlement  
3 doesn't preclude another rate increase  
4 beyond what's allowed in the settlement?

5 MS. LaBUDA: I don't believe the  
6 settlement allows for an additional rate  
7 increase in Fiscal Year 22 or 23.

8 MR. HAVER: Now, I'm confused. Let  
9 me ask again. If the settlement is  
10 approved, will it provide sufficient funds  
11 for the Water Department for the next two  
12 years?

13 MS. LaBUDA: Potentially.

14 MR. HAVER: Could you define the  
15 word "potentially" for me?

16 MS. LaBUDA: It is difficult to  
17 articulate if and how much of a withdrawal  
18 from the Rate Stabilization Fund the  
19 Department may need to take in Fiscal Years  
20 22 and 23 based on the settlement.

21 MR. HAVER: So, the settlement is  
22 no guarantee against another rate increase  
23 in the next two years; is that correct?

24 MS. LaBUDA: I would have to review

1 the Rate Board's regulations as it relates  
2 to rate increase matters.

3 MR. HAVER: When will you have time  
4 to do that?

5 MS. LaBUDA: I can't answer that.

6 MR. HAVER: In reviewing your  
7 testimony, I noticed that you were very  
8 concerned about the comfort of the bond  
9 holders. Could you explain to me whether  
10 you think that the Water Department has to  
11 create a balance between the interest of  
12 the bond holders and the interest of the  
13 rate payers?

14 MS. LaBUDA: The Department is very  
15 concerned with its legal requirements and  
16 its general bond ordinance. And we balance  
17 paying bills, maintaining sufficient access  
18 to capital, appropriate levels of cash and  
19 ensuring that we meet all regulatory  
20 requirements as in our general bond  
21 ordinance. There is a balance, and we do  
22 view it closely.

23 MR. HAVER: A balance between what  
24 and what, please?

1 MS. LaBUDA: It's not a  
2 one-for-one. We look at all matters in  
3 tandem.

4 MR. HAVER: No. A balance between  
5 what and what? The bond holders and what?

6 MS. LaBUDA: As I stated earlier,  
7 we use the legal requirements in the  
8 general bond ordinance to govern many of  
9 the matters that relates to legal  
10 requirements coverage, paying our utility  
11 bills, being able to pay our debt service  
12 as well as maintaining cash on hand. All  
13 of that is looked at collectively.

14 MR. HAVER: And you said it was  
15 balanced. And I'm asking, what's it  
16 balanced against?

17 MS. LaBUDA: The legal requirements  
18 in the general bond ordinance.

19 MR. HAVER: So you don't consider  
20 the rate pairs as part of the balancing  
21 act?

22 MS. LaBUDA: That is not what I  
23 said.

24 MR. HAVER: Well, I'm asking. Do

1 you consider the rate pairs as part of the  
2 balancing act?

3 MS. LaBUDA: As I said before, we  
4 look at the legal requirements to avoid a  
5 default of the general bond ordinance and  
6 make sure the Department can pay its bills,  
7 pay its mortgage payment, which is also  
8 called debt service, and have some cash on  
9 hand to manage through unforeseen  
10 emergencies. All of those things weigh  
11 into the Department's rates and charges.

12 MR. HAVER: Your Honor, I ask you  
13 to direct the witness to answer.

14 HEARING OFFICER CHESTNUT: She did  
15 answer. You may not like her answer, but  
16 she did answer it.

17 MR. HAVER: She most certainly did  
18 not. I asked balance between which  
19 parties. She has not answered that.

20 HEARING OFFICER CHESTNUT: Why  
21 don't you refocus your question. Ask if  
22 they consider the interest of customers in  
23 their uncollectibles or specific things  
24 like that? Ask if they consider it --

1 MR. HAVER: I asked her directly,  
2 and she's not answered. And I am asking  
3 you to compel --

4 HEARING OFFICER CHESTNUT: I'm not  
5 sure you did, but --

6 MR. HAVER: I will ask it again.

7 In the balancing that you are  
8 describing, do you balance the concerns and  
9 the interests of the water consumers?

10 MS. LaBUDA: Under review, the  
11 ability to pay bills and have cash on hand  
12 and the legal requirements in the general  
13 bond ordinance in that mass balance of all  
14 of those matters, of course, is a component  
15 that looks at the typical bill increase of  
16 a customer. And that is reflected in the  
17 rate filing.

18 MR. HAVER: Again, Your Honor,  
19 would you instruct the witness to answer  
20 yes or no.

21 HEARING OFFICER CHESTNUT: No.

22 MR. HAVER: Okay. I appeal that,  
23 as well.

24 In the last ten years, how many

1 times has the Water Department,  
2 quote/unquote, using your term outperformed  
3 it's five year plan projection for the Rate  
4 Stabilization Fund?

5 MS. LaBUDA: I don't have that  
6 information in front of me. We will get  
7 back to you.

8 MR. HAVER: Would Mr. Dasent,  
9 please, provide his witness with response  
10 attachment LH-A5, please.

11 MR. DASENT: I can't do that  
12 remotely, Lance. But if tell us what it  
13 is --

14 MR. HAVER: Please, call me  
15 Mr. Haver, Mr. Dasent. We are not friends.

16 MR. DASENT: I think you made that  
17 obvious. But we don't have that in front  
18 of you.

19 MR. HAVER: I know.

20 MR. DASENT: I would hope not, but  
21 that's okay. We don't have that particular  
22 exhibit in front of us. I don't have it in  
23 front of us. If you had circulated it  
24 prior to the hearing, we could have had it

1 in front of us. But if you describe it, we  
2 will still try to answer you despite all  
3 the histrionics and rancor.

4 HEARING OFFICER CHESTNUT: You can  
5 keep the editorializing, Mr. Dasent.

6 MR. DASENT: Okay.

7 MR. HAVER: I will describe it.

8 In every year, the Water  
9 Department -- and they provided this as  
10 response to my questions, Response  
11 Attachment LH-A5.

12 In every year, the Water Department  
13 has outperformed its projections. What it  
14 said it was going to have, what it  
15 projected it would have in the Rate  
16 Stabilization Fund compared to what it  
17 actually had. In every year, there was  
18 tens of millions of dollars above what the  
19 Water Department projected.

20 Will you accept that as a fact?

21 MS. LaBUDA: I do have LA or LH-A5  
22 in front of me, Your Honor, as the Response  
23 Attachment. I was able to locate it. And  
24 it does demonstrate that the Department's



1 Five Year Plan Projections typically have  
2 demonstrated an outperformance on original  
3 budget. That is correct.

4 MR. HAVER: Okay. Based on the  
5 previous years, would it be unreasonable to  
6 suggest that the Water Department may  
7 outperform in the future years?

8 MS. LaBUDA: Can you please restate  
9 your question?

10 MR. HAVER: Based on the exhibit  
11 that you prepared showing that the Water  
12 Department has every year outperformed its  
13 projections for how much money would be in  
14 the Rate Stabilization Fund, would it be  
15 unreasonable to suggest that it might  
16 outperform its projections in future years.

17 MR. DASENT: Please note our  
18 objection. It calls for speculation.  
19 Circumstance in every year will determine  
20 the financial circumstances or the  
21 financial performance of the utility.

22 HEARING OFFICER CHESTNUT: Can you  
23 answer it with that clarification?

24 MS. LaBUDA: It is difficult for me

1 to articulate future performance at this  
2 point in time. Past performance is no  
3 indication of future performance,  
4 especially on the Five Year Plan. We don't  
5 set rates to cover the original budget.

6 So, it's difficult to provide  
7 speculation on this matter.

8 MR. HAVER: I wasn't asking you to  
9 speculate. I was just asking if it was  
10 unreasonable to suggest it might happen  
11 again?

12 HEARING OFFICER CHESTNUT: Well,  
13 you do have a qualitative aspect to  
14 unreasonable there. You didn't say, is it  
15 possible.

16 MR. HAVER: Is it possible?

17 MS. LaBUDA: It's possible.

18 MR. HAVER: Thank you. If the  
19 Water Department were to receive funding  
20 from the \$35 billion that's included in the  
21 Drinking Water and Wastewater  
22 Infrastructure Act to refinance some of its  
23 bonds and pay for its future  
24 infrastructure, repairs and replacements

1 would that make a difference to the Water  
2 Department's projections of whether it  
3 could pass the 90 percent test?

4 MS. LaBUDA: Probably not.

5 MR. HAVER: Why is that?

6 MS. LaBUDA: Federal funding takes  
7 a significant amount of time to secure. We  
8 will use the example of the PennVEST  
9 applications.

10 The process -- we submit an  
11 application. We wait four months for the  
12 board to meet. The board meets. Then we  
13 have 270 days to close the loan, and then  
14 we start the project. It can take six  
15 months to a year to work through one loan  
16 or grant through the Commonwealth of  
17 Pennsylvania State Revolving Fund.

18 The Building Resilient  
19 Infrastructure Community Process, which is  
20 another federal grant process, takes at  
21 least twelve months. WIFIA, another  
22 federal program run through the  
23 Environmental Protection Agency, takes at  
24 least twelve months and is common for

1 twenty-four months. And they are just to  
2 close the loans. Not to receive any  
3 funding, not to receive a single  
4 reimbursement.

5 It is -- without having read the  
6 act, I can't tell you specifically if it  
7 will benefit the Department or not. But  
8 based on my experience of having worked  
9 through some federal subsidies, they take  
10 an incredible long time and will likely not  
11 benefit the Department in any way, shape or  
12 form in this rate period, especially as it  
13 rates to capital investments.

14 MR. HAVER: So then, you would not  
15 see the wisdom in trying to get these funds  
16 to alleviate the need for a rate increase;  
17 is that correct?

18 MS. LaBUDA: As I just  
19 demonstrated, Mr. Haver, the Department  
20 works tirelessly on pursuing federal  
21 funding. We have applied many times  
22 through PennVEST and are submitting an  
23 application next week. Those applications  
24 take a significant amount of time. We are

1 pursuing federal subsidies. Those  
2 subsidies for capital programs are very,  
3 very lengthy. They are complicated as I  
4 described earlier.

5 MR. HAVER: Yes. My question was,  
6 you wouldn't see the point in seeking money  
7 from this Act to alleviate the need for  
8 this specific rate increase for the next  
9 two years; is that correct?

10 MS. LaBUDA: No, that's not  
11 correct, Mr. Haver.

12 MR. HAVER: So, you would see the  
13 wisdom and the value of attempting to get  
14 money from the Drinking Water and  
15 Wastewater Infrastructure Act; is that  
16 correct?

17 MS. LaBUDA: The Department will  
18 continue to pursue federal funding for its  
19 capital program. And it is very, very  
20 likely that any applications that we  
21 formulate will take a significant period of  
22 time and will not benefit the capital  
23 program and this two-year rate proceeding.

24 MR. HAVER: So, I'm a little

1 confused. For many of my other questions,  
2 you said you didn't feel that you could  
3 speculate. On this you feel you can  
4 speculate?

5 MS. LaBUDA: Because I spend a  
6 significant amount of time pursuing federal  
7 subsidies for the Department or on the  
8 Department's path it has, specifically with  
9 PennVEST, and can articulate it takes an  
10 incredible amount of time to work through  
11 those matters.

12 MR. HAVER: But you don't spend  
13 that much time on looking at the Rate  
14 Stabilization Funds; is that correct?

15 MS. LaBUDA: Mr. Haver --

16 MR. DASENT: Let me note my  
17 objection. That's -- that's not a  
18 particular question.

19 HEARING OFFICER CHESTNUT: I don't  
20 understand the point of that. She spends  
21 the time on it that her job requires.

22 MR. HAVER: Your Honor, the  
23 question goes to the duplicity of her  
24 statements. If on the one hand --

1 HEARING OFFICER CHESTNUT: The  
2 duplicity? Okay. You need to -- need to  
3 use more neutral terms, Mr. Haver.

4 MR. HAVER: It goes to the veracity  
5 of her statements. On the one hand, you  
6 have allowed her to say she doesn't have to  
7 answer because she can't speculate. On the  
8 other hand, she's now saying she can  
9 speculate.

10 HEARING OFFICER CHESTNUT: Because  
11 her job requires it.

12 MR. HAVER: And I'm now asking --

13 HEARING OFFICER CHESTNUT: She's  
14 given a basis for her answer.

15 MR. HAVER: I'm now asking her  
16 about responsibilities including the Rate  
17 Stabilization Fund.

18 HEARING OFFICER CHESTNUT: I am  
19 sure -- she cannot --

20 MR. HAVER: Please don't answer  
21 for --

22 HEARING OFFICER CHESTNUT: We  
23 cannot -- we cannot draw that comparison.

24 MR. HAVER: I am asking her --

1 HEARING OFFICER CHESTNUT: That is  
2 not a fair statement of her testimony. I'm  
3 not testifying for her. But I have to  
4 point out when you have an inaccurate  
5 premise for your question. And that's what  
6 you're doing.

7 MR. HAVER: I'm sorry. I didn't  
8 understand. I didn't understand what you  
9 just said, Your Honor.

10 HEARING OFFICER CHESTNUT: You are  
11 misstating her testimony. And you have to  
12 allow her to say -- to state what she said  
13 in answering your question.

14 MR. HAVER: I'm sorry. I'm missing  
15 something.

16 HEARING OFFICER CHESTNUT: Why  
17 don't you go on.

18 MR. HAVER: How often does anyone  
19 at the Water Department talk to or  
20 correspond with the bond rating agencies?

21 MS. LaBUDA: So, the matters of the  
22 conversations with the rating agencies  
23 typically occur when the Department issues  
24 new debt in the public market. So, that's



1 about once a year.

2 MR. HAVER: Are those  
3 correspondence private?

4 MS. LaBUDA: The conference calls  
5 with the various members who participate in  
6 those matters, are typically calls. And  
7 they are not recorded to the best of my  
8 knowledge.

9 MR. HAVER: Can I get the notes  
10 from those phone calls?

11 MR. DASENT: I think discovery has  
12 ended a few weeks ago.

13 HEARING OFFICER CHESTNUT: Yeah.  
14 Is this some kind of request? I don't even  
15 know what you're asking for.

16 MR. HAVER: I'm asking for the  
17 notes from the conversations that  
18 Ms. LaBuda says that the Water Department  
19 has with the bond rating agencies.

20 MS. LaBUDA: Your Honor, may I --

21 HEARING OFFICER CHESTNUT: I'm not  
22 sure -- go ahead.

23 MS. LaBUDA: So, the Department has  
24 meetings about once a year when we go to

1 borrow money. That's very different than  
2 what you are describing, Mr. Haver.

3 MR. HAVER: I just ask for the  
4 notes.

5 HEARING OFFICER CHESTNUT: If  
6 something -- I don't know what's publicly  
7 available or not.

8 MR. HAVER: That's what I'm asking.  
9 Is it public --

10 HEARING OFFICER CHESTNUT: I'm not  
11 sure -- how is it -- I'm not sure it's  
12 relevant to this case.

13 MR. HAVER: Then, Your Honor, can  
14 rule against me. But I'm asking, can I get  
15 them?

16 MR. DASENT: Please note our  
17 objection. Discovery has ended.

18 MR. HAVER: This has nothing to do  
19 with discovery. I'm not asking for it for  
20 these rate cases. I'm asking in general.

21 MS. LaBUDA: Mr. Haver, if you can  
22 avail yourself to the City Treasurer's web  
23 portal, the rating agency reports are  
24 public information that you can go get at

1 any point in time.

2 MR. HAVER: But I wasn't asking --

3 MS. LaBUDA: If you would like an  
4 overview of those meetings and their  
5 conclusions and summaries, they are  
6 available for you publicly. I believe you  
7 can go down them -- download them at your  
8 leisure.

9 MR. HAVER: I was asking  
10 specifically about the Water Department and  
11 your conversations with the bond rating  
12 agencies. Can I get the notes from those  
13 meetings?

14 MS. LaBUDA: Those reports are  
15 reflective of the meetings we had in  
16 securing the rating. And those reports are  
17 publicly available should you like to go  
18 review them on your -- on your own.

19 MR. HAVER: Okay. Do the bond  
20 rating agencies consider consumers' ability  
21 to pay for the service when they rate a  
22 bond?

23 MS. LaBUDA: Rating agencies do  
24 often look at affordability as one

1 component of their ratings. Again, I think  
2 if you go read the reports, you will find  
3 that information.

4 MR. HAVER: So, does a rate  
5 increase above the inflation level have a  
6 negative impact on a bond rating?

7 MS. LaBUDA: Are you asking my  
8 personal opinion to guess how the rating  
9 agencies are going to respond?

10 MR. HAVER: No. I'm asking if you  
11 know.

12 MS. LaBUDA: I don't know.

13 MR. HAVER: Thank you. In answer  
14 to my Question 16, you say: Additional  
15 debt service coverage does not result in  
16 additional costs to the system bus instead  
17 avoids costs.

18 You have a record of that, or would  
19 you like me to read the question and the  
20 answer that you provided?

21 MR. DASENT: I'd request that you  
22 read the question and the answer because I  
23 don't have it in front of me.

24 MR. HAVER: Excuse me while I get

1 it out. Bond buyers -- the question is:  
2 Bond buyers accept the minimum coverage  
3 ratio in the past. Will they no longer  
4 accept the minimum ratio? How is this  
5 known to you?

6 The Water Department's response is:  
7 It's not a question of whether bond buyers  
8 will accept the minimum ratio. It's a  
9 matter of the increase in borrowing rate  
10 that bond buyers will demand during a bond  
11 sale in exchange for the lower debt service  
12 coverage proffered by the Department. It  
13 should be noted that increased debt service  
14 coverage -- excuse me.

15 Am I reading too quickly?

16 HEARING OFFICER CHESTNUT: She ask  
17 the reporter. Angela, you doing okay?

18 THE STENOGRAPHER: He can keep  
19 going.

20 HEARING OFFICER CHESTNUT: Okay.

21 MR. HAVER: I will slow up. But I  
22 don't mean to do it to make it worse for  
23 people.

24 (Reads) It should be noted that

1 increased debt service coverage results in  
2 both lower borrowing rate in the bonds as  
3 well as the funding of Paygo -- and that's  
4 your term -- capital which itself then  
5 avoids a degree of borrowing that would  
6 otherwise be necessary. Additional debt  
7 service coverage does not result in  
8 additional cost to the system but instead  
9 avoids costs. The revenue from additional  
10 coverage does not leave the system. But  
11 inures to rate payers, higher borrowing  
12 rates on bonds. As result of lower debt  
13 service coverage, does result in additional  
14 cost to the system and burden to rate the  
15 rate payers.

16 Ms. LaBuda, you familiar with that  
17 answer?

18 MS. LaBUDA: I am.

19 MR. HAVER: Do you need me to  
20 re-read it?

21 MS. LaBUDA: I do not. Can you  
22 restate your question, though?

23 MR. HAVER: I haven't asked the  
24 question yet.

1 MS. LaBUDA: Okay.

2 MR. HAVER: In -- in your answer,  
3 you say that higher coverage ratios  
4 actually don't increase costs to rate  
5 payers. Is that what you meant to say?

6 MS. LaBUDA: Yes. In the context  
7 of that response, it is an interplay  
8 between reducing the amount you need to  
9 borrow for your capital program versus what  
10 you are able to find with cash on hand.  
11 So, I am familiar with the response. And  
12 it is written as it was meant to be  
13 written.

14 MR. HAVER: Why then not increase  
15 the coverage ratio to 1.9 if it saves the  
16 rate payers money by increasing the  
17 coverage ratio?

18 MS. LaBUDA: It is difficult to  
19 move to that level of coverage in one  
20 period of time. And we would absolutely  
21 love to be able to find that portion of our  
22 capital program with current revenues --

23 MR. HAVER: So, were you --

24 MS. LaBUDA: -- immediately.

1           MR. HAVER: So in your professional  
2 opinion, raising the coverage to 1.9 would  
3 lower water bills; is that correct?

4           MS. LaBUDA: Over the long term, it  
5 would reduce the amount of debt the system  
6 would need to borrow. And over the long  
7 term, reducing your mortgage or not having  
8 a mortgage payment would, of course, reduce  
9 costs. But again, that is over a longer  
10 period -- a long horizon.

11           MR. HAVER: How many years is that  
12 horizon?

13           MS. LaBUDA: I don't know.

14           MR. HAVER: Okay. In the next two  
15 years, would raising the coverage ratio to  
16 1.9 increase rate payers' cost?

17           MS. LaBUDA: Over the next two  
18 years, if we were to go to 1.9 times  
19 coverage, yes. That would increase the  
20 potential rate level.

21           MR. HAVER: So in the -- in the  
22 terms of the number of years that this rate  
23 request has sought, increasing the coverage  
24 ratio increase the cost to rate payers; is



1 that correct?

2 MS. LaBUDA: The Department didn't  
3 increase the coverage ratio during this  
4 rate filing. As a matter of fact, we are  
5 listing it at the bare minimum levels. So,  
6 we are not increasing coverage to increase  
7 the revenue need during this rate period.

8 MR. HAVER: Again, my question is,  
9 if you increase the coverage ratio in the  
10 short term, the two-year term for this rate  
11 increase, would that cost the rate payers  
12 to pay more?

13 MS. LaBUDA: It just -- first, we  
14 did not increase the coverage level during  
15 this rate period. We kept it at bare  
16 minimum levels to manage the level of rate  
17 need. Over the long term, paying for your  
18 capital program with cash versus financing  
19 it, would save the rate payers money.

20 Over this two-year rate period, we  
21 are managing at minimum coverage levels  
22 because we are acknowledging that we needed  
23 to keep the rate level at a more manageable  
24 level.

1 MR. HAVER: Okay. So in your  
2 prepared testimony, when you wrote that you  
3 were seeking to comfort the bond holders,  
4 that did not include giving them a higher  
5 coverage than they received in the past?

6 MS. LaBUDA: I don't recall my  
7 testimony referring to comforting bond  
8 holders.

9 MR. HAVER: Would you like me to  
10 read it to you?

11 MS. LaBUDA: Please.

12 HEARING OFFICER CHESTNUT: Is that  
13 a page and line reference?

14 MR. HAVER: It's in her direct  
15 testimony.

16 HEARING OFFICER CHESTNUT: Where?

17 MR. HAVER: Well, Your Honor, I am  
18 trying to get it out.

19 HEARING OFFICER CHESTNUT: You  
20 talking Statement II?

21 MR. HAVER: Excuse me?

22 HEARING OFFICER CHESTNUT: So,  
23 Statement II?

24 MR. HAVER: It may be Statement II.

1 I do apologize. I do not have it  
2 in front of me. And I recognize that I am  
3 slowing the process up. So, I will come  
4 back to this if I can find it while I am  
5 asking my other questions.

6 Do you know how many customers are  
7 enrolled in the TAP program?

8 MS. LaBUDA: Approximately, 13 to  
9 15,000 customers to the best of my  
10 understanding.

11 MR. HAVER: Can you explain why PGW  
12 has significantly more people enrolled in  
13 its low income plan than the Water  
14 Department has in its plan?

15 MS. LaBUDA: I don't work for PGW.  
16 So therefore, I can't answer that question.  
17 I work for the Water Department.

18 MR. HAVER: I didn't ask you to  
19 comment on PGW. I asked if you could  
20 explain why there are many more people  
21 enrolled in PGW's plan than the Water  
22 Department's plan?

23 MR. DASENT: Objection: Asked and  
24 answered. She doesn't know.

1 HEARING OFFICER CHESTNUT: Do you  
2 know? Don't speculate. I think we can all  
3 speculate why that is.

4 MR. HAVER: If she doesn't know,  
5 she doesn't know. Let her go on the record  
6 saying "I don't know."

7 MS. LaBUDA: I can't answer  
8 questions on PGW's program. I don't know.

9 MR. HAVER: Okay. The company  
10 that -- does the Water Department currently  
11 contract out to read the water meters?

12 MS. LaBUDA: Yes.

13 MR. HAVER: What company does it  
14 use?

15 MS. LaBUDA: I don't know that  
16 information. Would have to get back to  
17 you.

18 MR. HAVER: My next question would  
19 be, where that company is located?

20 MS. LaBUDA: I don't know that  
21 either.

22 MR. HAVER: I understand that. But  
23 I would appreciate getting back to me on  
24 that, as well.

1           Okay. Going back to my question  
2 about the comfort of the bond. This is a  
3 direct question from Ms. LaBuda's test --  
4 submitted --

5           HEARING OFFICER CHESTNUT: Do you  
6 have a page reference?

7           MR. HAVER: So on mine, it's  
8 Question 13.

9           HEARING OFFICER CHESTNUT: Question  
10 13. Hold on. Okay. I'm looking at  
11 Question 13, Statement Two.

12           Ms. LaBuda, do you have that?

13           MR. DASENT: It might be helpful to  
14 read it for the record.

15           HEARING OFFICER CHESTNUT: It's  
16 pretty -- I mean, I don't see why -- can  
17 she look at it?

18           MS. LaBUDA: Your Honor. I have  
19 PWD Statement Two open. And Question 13  
20 reads: Has the Department taken steps to  
21 make financing its capital program more  
22 economical?

23           HEARING OFFICER CHESTNUT: Is that  
24 the one you are talking about, Mr. Haver?

1 MR. HAVER: No. It's submission --

2 HEARING OFFICER CHESTNUT: That's  
3 Question 13.

4 MR. HAVER: It's submission A, not  
5 B.

6 HEARING OFFICER CHESTNUT: What  
7 does that mean?

8 MR. HAVER: I have two sets of  
9 discovery requests.

10 MR. DASENT: Oh. It's not the  
11 testimony, it's the discovery response?

12 MR. HAVER: Yes.

13 HEARING OFFICER CHESTNUT: Well,  
14 let me -- let me change this then. Hold  
15 on. Is that posted on the rate board  
16 website?

17 MR. HAVER: Yes. Haver Request A.

18 HEARING OFFICER CHESTNUT: Okay.  
19 Let me go to discovery. Hold on. Okay. I  
20 see two sets here.

21 Is that the first or second?

22 MR. HAVER: First.

23 HEARING OFFICER CHESTNUT: I see  
24 your request. I'm sorry, which --

1 MR. HAVER: Number 13.

2 HEARING OFFICER CHESTNUT: Okay.

3 Hold on. Now the -- that's the one -- oh,  
4 I see. You used the term comfort level,  
5 not her.

6 MR. HAVER: No. It's a direct  
7 quote from her testimony.

8 HEARING OFFICER CHESTNUT: Is it?

9 MR. HAVER: That's why it has  
10 quotes around it. And if you read her  
11 answer, you will see the word "comfort"  
12 again.

13 HEARING OFFICER CHESTNUT: Oh,  
14 okay. Yes.

15 MR. DASENT: Is that a question for  
16 the witness then, Mr. Haver?

17 HEARING OFFICER CHESTNUT: Yeah.  
18 I'm confused about what the question is.

19 MR. DASENT: As soon as Ms. LaBuda  
20 finds that place, also.

21 MR. HAVER: Right. I'm waiting for  
22 her to -- I'm waiting for her to have an  
23 opportunity to read what she wrote.

24 MR. DASENT: And for the record, if

1 you state that question, it will help  
2 everyone understand who is reading the  
3 transcript.

4 MR. HAVER: So, I am now quoting  
5 from Ms. LaBuda's testimony.

6 Quote: From both an operational  
7 and a credit rate perspective, it is  
8 essential for the Department to sustain  
9 debt service coverage levels significantly  
10 above the minimal levels required by the  
11 rate covenants to provide rating agencies  
12 and bond holders comfort.

13 MS. LaBUDA: Thank you. I do see  
14 that.

15 MR. HAVER: Okay. So, did you  
16 provide that testimony?

17 MS. LaBUDA: I did, yes.

18 MR. HAVER: Could you help me  
19 understand then why, if you testified you  
20 have to offer above the minimum, that you  
21 now saying you are only offering the  
22 minimum?

23 MS. LaBUDA: When we set rates and  
24 charges, we set it or established rates



1 assuming the minimum coverage levels.

2 MR. HAVER: But in your direct  
3 testimony, you said you are offering above.  
4 And the direct quote is significantly  
5 above.

6 MS. LaBUDA: So in my testimony,  
7 Question 27, lines 13 through 17, I am just  
8 going to read that.

9 HEARING OFFICER CHESTNUT: Hold on.  
10 I will find -- 27?

11 MS. LaBUDA: I believe Mr. Haver's  
12 referring to Question 27. I believe it's  
13 PWD's Statement II, pages 27 of 42.

14 HEARING OFFICER CHESTNUT: Right.  
15 Okay.

16 MS. LaBUDA: I just need to read  
17 this, please.

18 MR. DASENT: Go ahead.

19 MS. LaBUDA: You are correct,  
20 Mr. Haver. That in my -- in my testimony  
21 in Question 20, in response to Q27 or  
22 Question 27, I am making very clear that it  
23 is critical for the Department to fund its  
24 Capital Program with revenues. And the way

1 you do that is through coverage. And while  
2 we have set rates and charges at a minimum  
3 coverage levels as required in the  
4 indenture, we think it's critical or it is  
5 critical to acknowledge that minimum level  
6 is not sustainable.

7 And the word "comfort" is used on  
8 line 16. You are correct.

9 MR. HAVER: So again in today's  
10 testimony, you said that the Water  
11 Department is offering the bare minimum  
12 coverage; is that correct?

13 MS. LaBUDA: As demonstrated in the  
14 rate filing. That is correct.

15 MR. HAVER: But you are saying that  
16 you had advised the Water Department that  
17 that's not sufficient; is that correct?

18 MS. LaBUDA: Can you, please,  
19 restate your question?

20 MR. HAVER: In your direct  
21 testimony and in answer to my discovery  
22 question, you are saying that you are  
23 testifying that what the Water Department  
24 is doing is insufficient; is that correct?

1 MS. LaBUDA: The long term practice  
2 of minimum coverage levels is not  
3 sustainable nor prudent. And is also  
4 inefficient for the long term.

5 MR. HAVER: And again, how long is  
6 the long term?

7 MS. LaBUDA: I'm sorry. I had  
8 my -- I was muted. Anything after three  
9 years is long term.

10 MR. HAVER: And just to circle  
11 back, how accurate are the Rate  
12 Stabilization Funds projections after the  
13 third year? You're welcome to refer back  
14 to your own chart.

15 MS. LaBUDA: I'm sorry. Which  
16 chart are you referring to?

17 MR. HAVER: It's LH-A5.

18 MS. LaBUDA: I don't believe that  
19 has forward looking projections on Rate  
20 Stabilization Fund balances. That is a  
21 point in time snapshot as asked. And is  
22 not a -- doesn't contemplate future years.

23 MR. HAVER: You're saying the Five  
24 Year Plan doesn't project out five years?

1 MS. LaBUDA: Mr. Haver, your  
2 question -- you referred me back to LH-A5.  
3 I don't see any projections on that table.  
4 Are you referring to something else,  
5 please?

6 MR. HAVER: I am saying the  
7 projected year-end balance, do you see that  
8 line?

9 MS. LaBUDA: I do, yes.

10 MR. HAVER: Okay. I'm asking you,  
11 is that a projected -- is that projected a  
12 balance?

13 MS. LaBUDA: As of Fiscal Year 20,  
14 it is, yes and 21.

15 MR. HAVER: How accurate are the  
16 projected balances against the actual  
17 balances after the third year?

18 MS. LaBUDA: That is not detailed  
19 on this table. We will get back to you.  
20 I'm not sure what you're asking.

21 MR. HAVER: It is detailed. Let me  
22 read it to you.

23 For the projected balance for 2011  
24 to 2015 year and Fiscal Year 2013, the

1 Water Department projected having  
2 \$161,238,923 in the Rate Stabilization  
3 Fund. The actual amount was 47,892,000.  
4 In 2014, the discrepancy grew.

5 Do you want me to read it all into  
6 the record, or will you accept that it grew  
7 into the out years?

8 MR. DASENT: It's already in the  
9 record.

10 HEARING OFFICER CHESTNUT: Yeah.

11 MR. DASENT: That's --

12 MR. HAVER: Ms. LaBuda said she's  
13 unfamiliar with it being a projection. So,  
14 I was just trying to help her.

15 MR. DASENT: The response is  
16 already in the record. The Department  
17 provided it. It's LH-A5.

18 MR. HAVER: I agree. But  
19 Ms. LaBuda says she doesn't recognize it as  
20 being projected. So, I'm asking if she  
21 needs me to go through it again?

22 MR. DASENT: She does not.

23 MS. LaBUDA: Thank you.

24 MR. HAVER: So my question again

1 is, in the out years three, four and five,  
2 how accurate are the projections based  
3 compared to the reality?

4 MS. LaBUDA: There are not  
5 five-year projections, nor three-year  
6 projections on this table. These are point  
7 in times snapshots of a submittal of a  
8 five-year plan. There's no out year  
9 projections. There's no Fiscal Year 22 or  
10 23 or 24 or 25 on this table.

11 Are you referring to another  
12 document, Mr. Haver?

13 MR. HAVER: I'm referring to past  
14 projections against past realities. Is  
15 that unclear?

16 MS. LaBUDA: It was. Thank you for  
17 clarifying. It's most appreciated.

18 MR. HAVER: You're welcome.

19 MS. LaBUDA: The table details that  
20 the Department has outperformed its  
21 five-year plan projections. That is  
22 correct.

23 MR. HAVER: Okay. How did the  
24 Philadelphia Water rates compare to other

1 city's water rates?

2 MR. DASENT: I believe that's  
3 answered in the filing. It's in the filing  
4 I'm sorry.

5 HEARING OFFICER CHESTNUT: If you  
6 can answer it, answer it. If she can't  
7 answer it, don't answer it.

8 MS. LaBUDA: Your Honor, I was just  
9 going to refer back to my testimony because  
10 I don't remember it off the top of my head.  
11 If you would like me, I would be happy to  
12 go through my filing and cite --

13 HEARING OFFICER CHESTNUT: Do you  
14 have a reference, Mr. Haver?

15 MR. HAVER: I was wondering whether  
16 this was important enough for her to  
17 recall?

18 MR. DASENT: It's in the filing.

19 MR. HAVER: If it's not and she  
20 doesn't, she doesn't.

21 MR. DASENT: It's in the filing.  
22 We can scroll back and find it for you.

23 MR. HAVER: That's not necessary.  
24 It was a question about -- for the witness.

1 If she doesn't know it, she doesn't know  
2 it.

3 MS. LaBUDA: I have the  
4 Affordability comparison on pdf page 77 of  
5 155 of PWD's Statement Two. And as  
6 detailed on pdf page 77 of 155 of PWD's  
7 Statement Two, our rates compare favorably  
8 and are lower than many of the cities that  
9 are our peers such as Washington, DC,  
10 Cincinnati, St. Louis, Baltimore,  
11 Indianapolis and Boston.

12 MR. HAVER: And you'd say they are  
13 significantly lower, wouldn't you?

14 MS. LaBUDA: I didn't use the word  
15 significantly.

16 MR. HAVER: I'm asking if you would  
17 say that?

18 MS. LaBUDA: Just depends on the  
19 entity. For example, Washington, DC's  
20 rates, typical monthly bill is \$107 versus  
21 our typical bill of, at this point in time,  
22 which is \$74. So, you would have to define  
23 significant for me.

24 MR. HAVER: More than 20 percent?



1 MS. LaBUDA: It depends on the  
2 entity.

3 MR. HAVER: Okay. With that being  
4 said, that the rates tend to be lower, in  
5 some cases significantly lower, can you  
6 explain why the Water Department has not  
7 been able to work with the Commerce  
8 Department to recruit water using  
9 industries to move into the City of  
10 Philadelphia?

11 MS. LaBUDA: That's not something I  
12 can address. Thank you.

13 MR. HAVER: Okay. What programs  
14 would the Philadelphia Water Department  
15 initiate during this proposed rate increase  
16 cycle to make the Water Department more  
17 efficient? And where are those savings  
18 projected?

19 MS. LaBUDA: Would you, please,  
20 restate the question?

21 MR. HAVER: What programs would the  
22 Philadelphia Water Department initiate this  
23 year to make the Water Department more  
24 efficient in the next two years? And where

1 are those savings projected in the rate  
2 filing?

3 MS. LaBUDA: Some of those savings  
4 we discussed earlier, such as the time  
5 consuming and well worth our time seeking  
6 federal assistance whether it's through  
7 WIFIA, through PennVEST, through building  
8 resilient infrastructure communities. All  
9 of those needs point to all above  
10 efficiency because we are trying to access  
11 low cost loans or other federal assistance  
12 to fund our capital program. And all of  
13 that is on the record.

14 So, that is demonstrated and is  
15 part of our ongoing nature, as a utility.  
16 We are always thinking about cost and  
17 managing our budget. So, that's part of  
18 everything we do. And I believe PWD  
19 Statement IV may have some of those  
20 efficiencies outlined from an operating  
21 level, Mr. Haver. But I would have to  
22 review that to specifically point to all  
23 the ones that were noted.

24 MR. HAVER: And could you, please,

1 when you do that --

2 HEARING OFFICER CHESTNUT: That's  
3 not your testimony, is it?

4 MR. DASENT: No.

5 MS. LaBUDA: No.

6 MR. DASENT: That's Donna Schwartz.  
7 But if there's a transcript request there,  
8 Mr. Haver?

9 MR. HAVER: Transcript request and  
10 also where those numbers are reflected in  
11 the settlement.

12 In this particular rate case, Black  
13 and Veatch says they were not paid to  
14 review any innovations.

15 My question is, which consultant  
16 was paid to do that work?

17 MR. DASENT: I'm sorry, Mr. Haver.  
18 Please -- I was writing down your  
19 transcript request. Would you repeat the  
20 question?

21 MR. HAVER: In this rate case, in  
22 direct response to my submission for  
23 discovery B, Black and Veatch says they  
24 were not paid to review any innovations.

1 My question is, which consultant  
2 was paid to do that work?

3 MR. DASENT: Don't know that we  
4 have an answer for that. I'm trying to  
5 sort of think which testimony you are  
6 referring to.

7 MR. HAVER: I'm asking your  
8 witness, not you. If your witness is not  
9 aware that any consultant was hired for  
10 that, let her say that.

11 MR. DASENT: I'm just trying to see  
12 if it ties to a specific testimony.  
13 Something you haven't --

14 MR. HAVER: Sir, I'm not asking  
15 you. I'm asking your witness.

16 MR. DASENT: I'm asking you.

17 HEARING OFFICER CHESTNUT: He  
18 can -- Mr. Haver stop, he can clarify the  
19 question in order to get an answer.

20 MR. HAVER: He's not clarifying my  
21 question, Your Honor.

22 HEARING OFFICER CHESTNUT: Well, I  
23 think he is, at least I'm trying to  
24 understand. Because I think there is an

1 issue the way you phrased it here, which is  
2 not sure you've established a predicate  
3 which is there are these programs to -- I  
4 guess, let me make sure I understand your  
5 question myself which is there may be  
6 programs designed to reduce the Water  
7 Department's operating expenses.

8 Is that what your question is?

9 MR. HAVER: Yes.

10 HEARING OFFICER CHESTNUT: If so,  
11 who evaluates them?

12 MR. HAVER: Which -- I asked under  
13 Discovery Set B, whether Black and Veatch  
14 investigated it and what they found. Their  
15 direct response was they were not retained  
16 to do that review.

17 My direct question is, which  
18 consultant was retained to do that review?  
19 If the answer is none, then the answer is  
20 none.

21 MR. DASENT: For purposes of the  
22 rate case?

23 MR. HAVER: Yes.

24 MS. LaBUDA: Can't answer this

1 question. Not certain what the question  
2 is, to be honest with you. Without the  
3 cite to testimony, Mr. Haver, or what you  
4 are referring to, it's difficult.

5 Thank you.

6 MR. HAVER: Did the Water  
7 Department hire a consultant to review any  
8 innovations in operations for this rate  
9 case?

10 MS. LaBUDA: My testimony isn't on  
11 the operations division. So, Mr. Dasent, I  
12 think we will have to get back to him.

13 MR. HAVER: I'm asking if you  
14 retained an expert, a consultant, anybody  
15 to review. Not asking you if you reviewed  
16 it. I'm asking you in your capacity, do  
17 you know if the Water Department hired a  
18 consultant to review innovations?

19 MS. LaBUDA: I don't know.

20 MR. HAVER: Thank you.

21 MR. DASENT: If you want that as a  
22 transcript request, I can get a response  
23 for you.

24 MR. HAVER: Black and Veatch also

1 said that they were not paid to consider  
2 the rate hike's impact on families. Again,  
3 direct response to my discovery requests.

4 Which consultant was paid to review  
5 the impact of the rate hike on family's  
6 budgets?

7 MR. DASENT: Within the four  
8 corners of the rate case filing, if you  
9 look at PWD Statement V, it deals with a  
10 WRB and assistance programs and things of  
11 that nature that are funded to provide for  
12 our most vulnerable families. That's as  
13 close as I can remember. Just doing an  
14 inventory in my head, Mr. Haver.

15 MR. HAVER: I'm asking which  
16 consultant was hired. If the answer is no  
17 consultant, then that's the --

18 HEARING OFFICER CHESTNUT: It's not  
19 the proper witness for you asking this,  
20 though, Mr. Haver. That's the problem.  
21 That's not the subject of her testimony.

22 MS. LaBUDA: She is the one who is  
23 in charge of the budget, is she not?  
24 That's her testimony.

1 HEARING OFFICER CHESTNUT: But  
2 that's not what you're asking.

3 MR. HAVER: It is. Who did the  
4 Water Department pay as a consultant to  
5 look at this issue. If the answer is they  
6 didn't pay anyone, then that's the answer.

7 MR. DASENT: I think the answer is  
8 if you look at PWD Statement V, you will  
9 say what the Department said and WRB said  
10 as to this issue in helping families that  
11 are struggling with the pandemic and  
12 problems with ability to pay.

13 MR. HAVER: Again, I object to  
14 Mr. Dasent testifying.

15 MR. DASENT: I can only give you --

16 HEARING OFFICER CHESTNUT: He was  
17 directing you to the appropriate statement.

18 MR. HAVER: No. Your Honor, I have  
19 a direct question.

20 HEARING OFFICER CHESTNUT: No,  
21 don't --

22 MR. HAVER: Who did the Water  
23 Department hire --

24 HEARING OFFICER CHESTNUT: No.



1 It's not an appropriate question for this  
2 witness.

3 MR. HAVER: Excuse me?

4 HEARING OFFICER CHESTNUT: You need  
5 to have a foundation for your question.  
6 And she's not the one to provide it.

7 MR. HAVER: Okay.

8 Ms. LaBuda, in your capacity with  
9 the Water Department, do you know which  
10 consultants they used for the rate case?

11 MS. LaBUDA: Are you asking -- let  
12 me just restate what I think your question  
13 is and maybe you can correct me if I go  
14 astray here. If you will just give me the  
15 privilege of redoing this.

16 Is your question, do I know which  
17 consultants the Department has hired to  
18 formulate its rate filing?

19 MR. HAVER: Yes.

20 MS. LaBUDA: Of course. We worked  
21 with Black and Veatch. We work with  
22 Raftelis. We work with PFM and -- if I  
23 missed anyone -- and of course, Legal  
24 Counsel. And if I missed anyone, please

1 let me know.

2 MR. HAVER: Is it within your area  
3 of expertise to know which consultant the  
4 Water Department hires to work on this rate  
5 increase request?

6 MS. LaBUDA: Yes.

7 MR. HAVER: Is that enough  
8 foundation for you, Your Honor?

9 HEARING OFFICER CHESTNUT: Not sure  
10 it is. But I don't even know where you are  
11 going with this. I assume --

12 MR. HAVER: Did the Department hire  
13 a consultant to review the effect of the  
14 water rate case on a family's budget?

15 MR. DASENT: Does that mean that we  
16 don't have people in-house to do that every  
17 day?

18 HEARING OFFICER CHESTNUT: Yeah.

19 MR. HAVER: Does not mean that.  
20 It's a direct question. Did you hire a  
21 consultant to look at that issue?

22 MS. LaBUDA: I don't recall my  
23 testimony answering that question, so I  
24 don't know. I'm not certain I understand

1 the question. It's not in my testimony.

2 MR. DASENT: If you want a  
3 transcript request, I can get a response  
4 for you.

5 MR. HAVER: No, she doesn't know.  
6 She doesn't know. I accept that.

7 Your Honor, that would end my  
8 questions for the Water Department's  
9 witness.

10 HEARING OFFICER CHESTNUT: Any  
11 other cross-examination for these  
12 witnesses?

13 Mr. Ballenger?

14 MR. BALLENGER: No. We have -- I  
15 was just turning my camera back on so that  
16 I was ready.

17 HEARING OFFICER CHESTNUT: Okay.

18 Mr. Dasent, did you want to do  
19 redirect?

20 MR. DASENT: No, Your Honor. I  
21 don't have redirect for Mr. Haver's  
22 questions.

23 HEARING OFFICER CHESTNUT: Okay.

24 Thank you very much people. You are

1 excused.

2 MR. DASENT: Now, I don't see  
3 Mr. Sckiendzielewski.

4 MR. HAVER: I have questions for  
5 Black and Veatch.

6 HEARING OFFICER CHESTNUT: Oh, I'm  
7 sorry. I thought that was the end of your  
8 cross.

9 MR. HAVER: No. I then I have  
10 questions for the Public Advocates'  
11 witnesses.

12 HEARING OFFICER CHESTNUT: Why  
13 don't we take a five-minute break then.

14 - - -

15 (At this time, a break was taken at  
16 11:49 a.m.)

17 - - -

18 HEARING OFFICER CHESTNUT: We will  
19 go back on the record.

20 Mr. Haver, you said you have more  
21 cross for somebody?

22 MR. HAVER: So, I have questions  
23 for Black and Veatch. And then I have  
24 questions for the Public Advocate's

1 witness.

2 HEARING OFFICER CHESTNUT: Okay.

3 MR. HAVER: I will move as quickly  
4 as I possibly can. I have gone through my  
5 notes and taken out questions that have  
6 already been answered.

7 So collectively, how many water  
8 utilities have the three of you consulted  
9 for in the last five years.

10 MS. BUI: In the last five years, I  
11 would say that it's over 60 utilities.

12 MR. HAVER: I'm sorry. I am just  
13 having trouble with the -- 16?

14 MS. BUI: Sixty, 6-0. Can you hear  
15 me?

16 MR. HAVER: Yes, thank you. I  
17 don't know your protocol. Are you speaking  
18 for your coworkers, or they answer  
19 individually?

20 MS. BUI: No. I will speak on  
21 questions associated with Black and Veatch  
22 in general. When you get into more  
23 technical aspects, then my colleagues will  
24 respond, as well.

1 MR. HAVER: Thank you for the  
2 clarification.

3 MS. BUI: You're welcome, Mr.  
4 Haver.

5 MR. HAVER: On average for all of  
6 the Water Departments that you've consulted  
7 for or on behalf of, what's the average  
8 percentage of the amount billed that is  
9 collected?

10 MS. BUI: To clarify, sir, you mean  
11 in terms of what's the average size of the  
12 engagement dollar wise?

13 MR. HAVER: I'm going to have to  
14 turn up my volume. I'm sorry.

15 MS. BUI: I will lean closer to my  
16 mic, as well. And just to clarify, you are  
17 asking the average size of the engagement?

18 MR. HAVER: No. I'm asking of the  
19 sixty utilities you have consulted for,  
20 what is the average collectible? How much  
21 the Water Department or the Water Utility  
22 has been when collected on average?

23 MS. BUI: I cannot tell you that  
24 off the top of my head. I'm sorry.

1 MR. HAVER: Can your technical  
2 people tell me that?

3 MS. BUI: Dave?

4 MR. JAGT: I'll handle. There are  
5 very few utilities that express it on the  
6 same basis as PWD with collectibility. But  
7 utilities express it in total dollars of  
8 bad debt and don't express it in the same  
9 way. So, I mean, we could -- offhand, I  
10 don't have the statistics developed to,  
11 like, provide a summary for comparison  
12 offhand for today.

13 MR. HAVER: Mr. Merritt?

14 MR. MERRITT: I think Mr. Jagt's  
15 answered the question.

16 MR. HAVER: I'm asking you if you  
17 know. If you don't know, you don't know.

18 HEARING OFFICER CHESTNUT: No.  
19 You're asking them as a panel. And you got  
20 an answer from the panel.

21 MR. HAVER: Okay. Do you consider  
22 that an important benchmark in how the  
23 water utility operates its collectibles?

24 MS. BUI: Mr. Haver, in our

1 experience base, that depends from and  
2 varies depending on the utility how -- the  
3 level of importance collectibility is.

4 MR. HAVER: I'm asking you in your  
5 professional capacity as an expert, do you  
6 believe it's an important benchmark?

7 MS. BUI: It is one that is  
8 considered. It's one that's considered in  
9 conjunction with a number of other  
10 benchmarks.

11 MR. HAVER: So, is it fair to say  
12 yes, but it's not the only thing that's  
13 important?

14 MS. BUI: Yes. I would concur with  
15 that. My apologies for my animals in the  
16 background.

17 MR. HAVER: Understood.

18 Of the 60 utilities that you've  
19 consulted with over the last five years,  
20 and I'm going to stop saying that to save  
21 time, but that's the reference point for  
22 Your Honor's foundation question.

23 How many of the water utilities  
24 that you consulted for have billing



1 collectives controlled by either the CEO or  
2 the Water Commission?

3 MS. BUI: I'm sorry. Could you  
4 define control or expand upon that?

5 MR. HAVER: So, let me ask it in  
6 the reverse way. Philadelphia Water  
7 Department and the Water Revenue Department  
8 are bifurcated. The Water Commissioner  
9 does not run the billing and collections.  
10 The Revenue Commissioner does.

11 How many of the 60 water utilities  
12 you consulted for have a similar structure?

13 MS. BUI: Off the top of my head, I  
14 couldn't give you an exact percentage. But  
15 it is not an uncommon thing to see where  
16 you have that bifurcation.

17 Dave or Brian, do you -- I don't  
18 know if you have done that -- that type of  
19 analysis for other utilities?

20 MR. JAGT: I wouldn't have a  
21 percentage basis. But I would say it's not  
22 an uncommon situation. It's common that a  
23 finance department or another division of  
24 the city performs the collections -- the

1 billings and collections.

2 MR. HAVER: So in those cases where  
3 it's done, how are issues resolved if the  
4 Water Commissioner or the CEO is unhappy  
5 with the collection rate in those other  
6 utilities? How are those issues resolved?

7 MR. MERRITT: If they are  
8 inter-departmental matters, so it would be  
9 between the two departments to resolve  
10 those issues.

11 MR. HAVER: You don't know of any  
12 strategy or any pro forma answer? Just  
13 they talk it through?

14 MS. BUI: No.

15 MR. MERRITT: That's -- yeah, no.  
16 No.

17 MR. HAVER: Could you explain what  
18 Black and Veck -- am I pronouncing that  
19 correctly? Is it Veck?

20 MR. DASENT: Veech[phonetically  
21 pronounced], Black and Veatch.

22 MR. HAVER: I'm going to spell it  
23 out phonetically.

24 Could you explain Black and

1 Veatch's process to decide if it has a  
2 conflict of interest before it takes on a  
3 consulting contract for a water utility?

4 MS. BUI: We define what the scope  
5 of work is. We identify what the client  
6 is. It's then sent as an internal email to  
7 all project heads within the entire  
8 organization. We ask in the response back  
9 that they tell us if they -- that we have a  
10 potential conflict, what the nature of the  
11 conflict is. And they are given a week in  
12 which to respond.

13 After we receive any responses that  
14 may indicate that the conflict exists, we  
15 then get on the phone and discuss, you  
16 know, the nature of the engagements that  
17 might create such a conflict.

18 MR. HAVER: Did Black and Veatch  
19 consider that it might have a conflict  
20 working for the Aqua United States and also  
21 for the Philadelphia Water Department.

22 MS. BUI: We have not worked for  
23 Pennsylvania in more than a decade I  
24 believe.

1 MR. HAVER: No. It's Aqua USA.

2 MS. BUI: Aqua USA?

3 MR. HAVER: The holding company for  
4 Aqua PA.

5 MS. BUI: No, we did not. We ran  
6 that conflict. That was not because of the  
7 way Aqua runs by state.

8 MR. HAVER: In response to my  
9 Question No. 7 in my Discovery Requests B,  
10 you say that 35 to 37 percent of Black and  
11 Veatch's revenues come from non-municipal  
12 water power, oil and gas claims. I'm  
13 unfamiliar with municipal oil claims.

14 Could you name a few?

15 MS. BUI: Trying to think offhand.  
16 I have to get back to you on that. You  
17 caught me a little bit off guard. But I  
18 have to --

19 MR. HAVER: How about municipal  
20 power companies that you worked for?

21 MS. BUI: Well, we have worked for  
22 municipal power, yes. GE is a municipal.

23 MR. HAVER: Name the names of --

24 MS. BUI: Colorado Springs

1 Utilities is a municipal power, Brownsville  
2 in Texas.

3 MR. HAVER: That must have been --  
4 you answered my question stating that 35 to  
5 37 percent of your revenues come from  
6 not-for-profit utilities. Have I  
7 misunderstood your answer?

8 MS. BUI: I said non-municipal. We  
9 do a number -- we do a lot of work also for  
10 private companies that are not municipal.  
11 And so, that's why I caveated it.

12 MR. HAVER: So, I'm still a little  
13 unclear. Do you work mostly for,  
14 for-profit companies or mostly for  
15 not-for-profit companies?

16 MS. BUI: It depends within the  
17 arena. Within water, we do most of our  
18 work for municipal entities. Within power  
19 and oil and gas, most of our work is  
20 for-profit entities.

21 MR. HAVER: Okay. Do you have a  
22 professional opinion on which is a better  
23 structure?

24 MS. BUI: No, I do not.

1 MR. HAVER: Again, I'm assuming  
2 that's the answer for your panel; is that  
3 correct?

4 MR. MERRITT: Correct.

5 MS. BUI: Yes.

6 MR. HAVER: Can you tell me in the  
7 last five years, have you appeared in any  
8 proceeding to oppose a rate increase?

9 MS. BUI: We have not.

10 MR. HAVER: Is there a reason for  
11 that?

12 MR. DASENT: Do you represent  
13 utilities?

14 MS. BUI: Yeah. Our work is on the  
15 municipal side.

16 MR. HAVER: So, there is no rate  
17 increase that you have reviewed which you  
18 testified was inappropriate; is that  
19 correct.

20 MS. BUI: We are not engaged.  
21 Typically do not take engagements of that  
22 nature.

23 MR. HAVER: I don't think I got  
24 your actual paper. I got your -- I guess

1 it was a PowerPoint presentation on the  
2 valuations of water utilities?

3 MS. BUI: Yes, sir. There was no  
4 paper.

5 MR. HAVER: Okay. I guess I  
6 misread your -- your CV.

7 Does the valuation of a water  
8 utility have anything to do with the  
9 ratings of its bonds?

10 MS. BUI: I'm sorry. Let me  
11 clarify, Mr. Haver. I'm sorry. I did not  
12 realize you had asked for a copy of the  
13 paper. I was referring to the  
14 presentation. We can -- I can provide you  
15 a copy of the paper if you wish.

16 MR. HAVER: I would appreciate that  
17 as I did ask for it.

18 MS. BUI: Okay. I'm so sorry.

19 MR. HAVER: It appears that the  
20 subject matter will be closed after today.  
21 So if it's easy for you to do, please, do  
22 so. If it's a lot of work, I don't know  
23 what I will do with it other than hopefully  
24 learn for the future.

1           Going back to my question, does the  
2           evaluations you do for a water utility have  
3           an impact on the bond ratings?

4           MS. BUI: I cannot speak to how the  
5           rating agencies feedback.

6           MR. HAVER: Right. But when you  
7           are -- when you do your rate cases, when  
8           you are hired as a consultant to justify a  
9           rate increase and you examine the numbers,  
10          is there a correlation between the value of  
11          the water utility and the bond ratings?

12          MS. BUI: No. Because we don't use  
13          valuation in setting of rates. Maybe I can  
14          clarify this, sir, if I could. When I say  
15          valuation, I talk about market value of the  
16          utility. I do not talk about rate base  
17          necessarily or the basis for which rates  
18          are set.

19          So, I just want to clarify in case  
20          we are not communicating on the same terms.

21          MR. HAVER: I appreciate that. I  
22          am just a little surprised to find out that  
23          the value of the asset doesn't have  
24          anything to do with the interest rate of



1 the loan. But that is your testimony,  
2 right there.

3 MS. BUI: I do not know if it has  
4 any bearing, sir.

5 MR. HAVER: You don't know if there  
6 is anything there?

7 MS. BUI: I don't know how the  
8 rating agencies use that information in  
9 determining how to provide a rating to the  
10 utility.

11 MR. HAVER: In response to my  
12 Question 21 -- I'm sorry, in response to my  
13 Question 18, I asked if one of the options  
14 to consider when revenues are insufficient  
15 to cover costs is to consider innovations.  
16 You did not provide a yes-or-no answer.

17 Could you do so now? Is it your  
18 expert opinion that one of the things to  
19 consider when revenues are insufficient, to  
20 implement innovations?

21 MS. BUI: If we are speaking in  
22 hypotheticals, then there is always ways to  
23 take a look at whether innovations are  
24 possible to help reduce costs. But looking

1 at an innovation and implementing an  
2 innovation are different aspects. And  
3 there are monies and approvals that go  
4 along with that. From a context --

5 MR. HAVER: And you --

6 MS. BUI: Sorry. Go ahead.

7 MR. HAVER: I understand you were  
8 not retained to look at any of those, so  
9 I'm not going to ask.

10 MS. BUI: Correct.

11 MR. HAVER: You answered that  
12 correctly. And I just wanted your expert  
13 opinion. Because obviously, if you have  
14 done this for 60 other water utilities, you  
15 know more than I do. But I just wanted to  
16 ask that, and the answer is yes. But you  
17 can't say whether it would be appropriate  
18 for PWD. You weren't retained for that  
19 purpose and you can't opine. And I  
20 understand.

21 MS. BUI: That is correct, sir.

22 MR. HAVER: In your expert opinion,  
23 can a utility negotiate with bond holders  
24 for different rates or for some form of

1 abeyance for payment.

2 MR. DASENT: That is, within your  
3 expertise, Ms. Bui.

4 MS. BUI: It is not within my  
5 direct expertise. I've only been involved  
6 in one situation where that occurred.

7 MR. HAVER: Could you explain that  
8 situation?

9 MS. BUI: That was in a default  
10 workout. And that is in a bankruptcy  
11 situation. Those are very different  
12 situations than what Philadelphia is.

13 MR. HAVER: Again, I understand you  
14 weren't retained to negotiate with the bond  
15 holders. Question is based on your  
16 expertise. If it is possible, to negotiate  
17 with bond holders. And based on your  
18 statement that you have done so in  
19 different situations, the answer is, yes,  
20 it's possible. Whether it's advisable or  
21 not, you don't have a position?

22 MS. BUI: It's in a very, very  
23 specific instance where I have seen that.  
24 And that's very narrow. I do not know if

1 it is possible any other way. And I  
2 would -- frankly, I would defer any further  
3 questions along that line to the City's  
4 bond attorneys and financial advisors.  
5 They are far more experienced in that area.

6 MR. HAVER: Going back to the chart  
7 for the Rate Stabilization Fund. Has your  
8 firm reviewed that chart?

9 MR. DASENT: Are you referring to,  
10 just for the record, LH-A5?

11 MR. HAVER: Yes.

12 MR. DASENT: And do you have that  
13 in front of you Ms. Bui or Mr. Merritt or  
14 Mr. Jagt?

15 MS. BUI: I do not, but I -- Brian  
16 or Dave?

17 HEARING OFFICER CHESTNUT: Posted  
18 on the Rate Board's website is a response  
19 to discovery. Is that -- I'll be honest,  
20 that is where I am looking at documents at  
21 this point. I have -- is that your Set B?

22 Mr. Haver, is that Set B?

23 MR. HAVER: That is, I believe, Set  
24 A. But I'm at this point, it's A5, so I'm

1 assuming it's A.

2 MR. BALLENGER: If I may, I'm  
3 actually not sure that it is posted on the  
4 website.

5 HEARING OFFICER CHESTNUT: Yeah. I  
6 don't see it actually.

7 MR. JAGT: It actually is part of  
8 the response. It's included in the single  
9 PDF. It's, like, one of the last pages.

10 MR. HAVER: Forgive me, sir. I  
11 don't know how to pronounce your name. But  
12 could you share it with your colleagues if  
13 you have the link?

14 MR. JAGT: Yeah. It's included in  
15 the response to Haver's question Set, I  
16 think it was, A. I can actually --

17 MS. BUI: Hey, David --

18 MR. JAGT: We do have it, yes.

19 MR. HAVER: Okay. Are you familiar  
20 with this, the City's Five-Year Plans and  
21 the projections in actual amounts and the  
22 Rate Stabilization Fund?

23 MR. JAGT: Yes.

24 MR. HAVER: In reviewing it, would

1 you say there -- that as a rule, the  
2 projected amount is significantly less than  
3 the actual amount over the last five years?

4 MR. JAGT: If you actually look at  
5 the record over time, the longer term that  
6 you looked at, yes, the performance was  
7 marked, you know -- was better. And recent  
8 years, we have -- it's been much improved  
9 that the performance is a lot closer to  
10 actual. In fact, I think in the last year  
11 or so, the withdrawals from rate  
12 stabilization have been more than  
13 projected.

14 MR. HAVER: So, I'm looking at  
15 Fiscal Years 2017 to 2021.

16 MR. JAGT: Again, that would be --  
17 at this point, that projection is four  
18 years old, sir.

19 MR. HAVER: It's the most recent  
20 projections I was given in response to my  
21 discovery request. So whether it's four  
22 years old or not, it's the answer that the  
23 Water Department gave me.

24 Could I direct you to that?

1 MR. JAGT: Yes.

2 MR. HAVER: Would you agree that  
3 2017, the projection amount was 150 million  
4 roughly; and the actual amount was slightly  
5 over 200 million?

6 MR. JAGT: Correct.

7 MR. HAVER: Okay. Based on this  
8 document, which was prepared by the Water  
9 Department and entered into the record,  
10 would it be unreasonable to suggest that  
11 the projections might be wrong?

12 MR. DASENT: They're projections.

13 MR. JAGT: They are projections and  
14 subject to actual results.

15 MR. HAVER: Again, in your expert  
16 opinion, which is what I'm seeking, because  
17 you are clearly an expert, would it be  
18 reasonable for someone to say these  
19 projections might be wrong? There might be  
20 an over-collection?

21 MR. JAGT: Efforts are made to make  
22 sure that we provide the most reasonable  
23 projections we can based on the available  
24 information at the time. That is correct.

1           MR. HAVER: I'm sure -- I'm sure  
2 you did your best. Wasn't asking about  
3 whether you made your best effort. I'm  
4 just asking in your expert opinion, would  
5 it be reasonable for someone to say, hey,  
6 for so many years it's been wrong. It  
7 might be wrong in the future, as well?

8           Might be. Not necessarily will be.  
9 Not definitely will be. Just might be.

10          MR. MERRITT: Mr. Haver, you're  
11 pointing us to the response to LH-A5,  
12 correct?

13          MR. HAVER: Yes.

14          MR. MERRITT: That's the Mayor's  
15 Five Year Plan. That is not what is used  
16 in setting rates and charges. They are  
17 often separate projections. If you want to  
18 look at the most recent two years, I would  
19 direct you to Ms. LaBuda's testimony. And  
20 the -- and attached to her testimony as  
21 part of Schedule ML-2, there is a  
22 comparison of the past two years of, I  
23 believe it's, Fiscal Year 2019 and 2020.  
24 And the performance of the projected Rate



1 Stabilization Fund withdrawal and what's  
2 actually occurred. It's probably the best  
3 measure of performance.

4 MR. HAVER: Thank you for that  
5 information. But again, my direct question  
6 based on your expertise, is it reasonable  
7 for someone to suggest that these numbers  
8 in the out years might be wrong?

9 MS. BUI: I'm sorry, but I have a  
10 little bit of trouble with the word  
11 "wrong."

12 MR. HAVER: Inaccurate.

13 MS. BUI: I'm being honest here.

14 MR. HAVER: Inaccurate.

15 MS. BUI: I would say that they  
16 are -- clearly, there is a -- it is  
17 reasonable to expect that there will be  
18 variations between actual performance and  
19 that projected.

20 MR. HAVER: Thank you. Do you have  
21 an explanation for why the Five Year Plan  
22 projections are as accurate or inaccurate  
23 as they appear in this exhibit?

24 MS. BUI: Dave?

1 MR. JAGT: I was trying to recall  
2 the projection basis that appears. And the  
3 Mayor's budget is more on a budgetary basis  
4 and not as reflective of, like, the same  
5 level of projection that we would do for  
6 the rates.

7 Where, for example, the rates as we  
8 described in our testimony, we do not  
9 assume that the Department will spend the  
10 entire budget. We do a projection of,  
11 like, an analysis of the historical actual  
12 versus budget spend. And we reduce that  
13 amount from the budget level to the amount  
14 they are actually spending.

15 So, those comparisons, you know,  
16 the projection basis and the basis of the  
17 analysis would be different for a budgetary  
18 basis presentation versus what we do for a  
19 rate study.

20 MS. BUI: Mr. Haver, if I could, I  
21 believe that Ms. LaBuda could probably shed  
22 a little bit more light on the basis for  
23 Mayor's Five Year Plan and that exhibit.

24 MS. LaBUDA: Sure.

1           So when we submit the Five Year  
2 Plan, it's on the original budget. When we  
3 establish rates and charges on performance  
4 as detailed in my testimony, we assume that  
5 the Department will not utilize a hundred  
6 percent of its budget. So what that means  
7 for a Five Year Plan perspective, we don't  
8 set rates to cover a hundred percent of  
9 budget in order to have a balanced budget.  
10 We will typically have larger withdrawals  
11 detailed in the Five Year Plan as presented  
12 by the Mayor then what's in rate filings.

13           Your best point of analysis,  
14 Mr. Haver, is to either look at my  
15 testimony, the Financial Plan PowerPoint  
16 for performance versus rates and charges or  
17 the schedule that they noted below.  
18 Because again, we set rates to cover a  
19 hundred percent of budget. So therefore,  
20 there will be a larger delta in the Rate  
21 Stabilization Fund withdrawals then what's  
22 in the rate filing.

23           MR. HAVER: I'm somewhat confused.  
24 Are the actual numbers in the Mayor's Five

1 Year Plan incorrect?

2 MS. LaBUDA: No. We just don't set  
3 rates to cover a hundred percent of those  
4 numbers. We assume that there's going --  
5 we rely on underspending. So, you should  
6 use my testimony for a best demonstration  
7 of performance of what's used in recent  
8 charges to establish rates versus Five Year  
9 Plan.

10 MR. HAVER: Thank you.

11 MS. LaBUDA: I hope that's helpful.

12 MR. HAVER: Well, again, I just  
13 want to make sure I understand. The actual  
14 numbers in this Five Year Plan that the  
15 Water Department provided as an exhibit are  
16 accurate; is that correct.

17 MS. LaBUDA: They are accurate for  
18 the Five Year Plan purposes. That is  
19 correct.

20 MR. HAVER: So, the numbers -- the  
21 numbers change -- the amount of money in  
22 the Rate Stabilization Fund changes in year  
23 2017 depending upon how that number is  
24 used? Is that what you are suggesting?

1 MS. LaBUDA: No.

2 MR. HAVER: Right. Is there any  
3 other way to -- looking at this, again,  
4 exhibit LH-A5, bottom line, year 2017 says  
5 the actual amount in the Rate Stabilization  
6 Fund is \$201,759,397.28.

7 Is there any other way to look at  
8 that so that number changes?

9 MS. LaBUDA: Mr. Haver, I think  
10 your question, if I understood it correctly  
11 is, why is there such variability in LH-A5.  
12 And the answer is, you asked for Five Year  
13 Plan data. And Five Year Plan data assumes  
14 we use a hundred percent budget. When we  
15 set rates and charges, Mr. Haver, we count  
16 on only using a portion of a hundred  
17 percent of budget, so like 90 percent. But  
18 Black and Veatch can answer that more  
19 clearly.

20 So this table is specific to the  
21 Five Year Plan. And that is why there is  
22 larger variances because rates don't cover  
23 a hundred percent of original budget. It's  
24 that simple.

1 MR. HAVER: All I'm asking is that  
2 the amount in the Fund in 2017?

3 MS. LaBUDA: The actuals are  
4 actuals. The variances will differ than  
5 rate filings. I hope that's of some use.

6 MR. HAVER: The actual amount is of  
7 great use. It's a lot of money.

8 So going back. So as I understand  
9 Black and Veatch's testimony, you don't  
10 expect the Water Department to use its full  
11 allocated budget. Have I misunderstood  
12 that point?

13 MS. BUI: No sir.

14 MR. HAVER: That's correct. What  
15 percentage of the actual budget do you  
16 expect to use?

17 MR. DASENT: Based upon the rate  
18 filing, Dave, you can probably speak to the  
19 percentage, actual budget factors and other  
20 factors that are used.

21 MR. JAGT: Yeah. I mean, from what  
22 I recall, it's right in exhibit our  
23 exhibits in Table C2. We present an actual  
24 budget factor. And that's in the range of

1 90 percent.

2 MR. HAVER: So in -- again, just to  
3 make sure I understand. In the proposed  
4 settlement, you don't expect the Water  
5 Department to use a hundred percent of what  
6 the settlement grants them; is that  
7 correct?

8 MR. DASENT: It's a different  
9 question altogether.

10 MR. HAVER: Excuse me.

11 MR. DASENT: The settlement was  
12 negotiated. These aren't the guys that  
13 negotiated the settlement.

14 MR. HAVER: Excuse me.

15 MR. DASENT: Talk to Rob or me.

16 MR. HAVER: Your expert opinion,  
17 what they think. I'm not asking you, Mr.  
18 Dasent, what you think. I don't want you  
19 to testify.

20 MR. DASENT: I'm not testifying.  
21 I'm telling you the truth, though.

22 MR. HAVER: It doesn't matter what  
23 your opinion or the truth is.

24 HEARING OFFICER CHESTNUT: Do you

1 have a question?

2 MR. HAVER: My question again is,  
3 in the settlement that's being proposed,  
4 does Black and Veatch, excuse me, in their  
5 expert opinion believe that the Water  
6 Department will use less than a hundred  
7 percent of what's being allocated in the  
8 settlement.

9 MR. DASENT: Different question.  
10 Different question.

11 HEARING OFFICER CHESTNUT: I don't  
12 think I understand that question actually.  
13 Maybe you do, but I certainly don't. I  
14 don't even see how that's an appropriate  
15 question for this witness to answer.

16 MR. HAVER: Okay.

17 MS. BUI: Could you rephrase,  
18 Mr. Haver?

19 HEARING OFFICER CHESTNUT: Yeah. I  
20 think you need to rephrase it or something.

21 MR. HAVER: Okay. I will lay the  
22 foundation. Historically, has the Water  
23 Department use a hundred percent of the  
24 rates that it was awarded from the Water



1 Rate Board?

2 HEARING OFFICER CHESTNUT: I'm not  
3 sure what you mean by used. I mean, they  
4 charge it.

5 MR. HAVER: Has it spent it?

6 HEARING OFFICER CHESTNUT: They  
7 spend it --

8 MS. LaBUDA: Could it be possible  
9 maybe for Mr. Haver to look at pdf page of  
10 PWD Statement Two, pdf page 56 of 155 if  
11 you would like a demonstration of  
12 projections used for rate case purposes  
13 versus expenditures? So what you would see  
14 on pdf 56 of 155 --

15 HEARING OFFICER CHESTNUT: Wait,  
16 wait, wait. I'm sorry. I have to get to  
17 this.

18 MS. LaBUDA: Of course.

19 HEARING OFFICER CHESTNUT: It's  
20 going to take me a few minutes to get to  
21 that. Okay. I got your statement. And  
22 I'm sorry, what was the reference to the  
23 exhibit?

24 MS. LaBUDA: This -- I think pdf 56

1 of 155 may help answer the question if I  
2 understood it correctly. Which is how --  
3 how close were the Department's final  
4 results as compared to rate case  
5 projections. And the page I referenced was  
6 in regard to Fiscal Year 2020.

7 MR. HAVER: Well, I certainly  
8 appreciate all the work you did for that.  
9 That wasn't my question. I was asking the  
10 consultants based on their expertise and  
11 their testimony today where they say it's  
12 only 90 percent that's used, whether they  
13 expect only 90 percent to be used going  
14 forward.

15 MR. DASENT: Of the budget?

16 HEARING OFFICER CHESTNUT: Are you  
17 talking about the budget amount because  
18 that is where the 90 percent comes in.

19 MR. HAVER: I'm asking -- I'm  
20 asking the experts, they use the term, use  
21 90 percent.

22 MS. BUI: Okay.

23 MR. HAVER: I'm asking if that's  
24 the figure that can be going forward. It's

1 a very simple yes or no.

2 MS. BUI: So let me -- let me --

3 HEARING OFFICER CHESTNUT: It's not  
4 a very simple yes or no, or we wouldn't  
5 have all this trouble trying to pars it.

6 MS. BUI: So, what you --

7 MR. HAVER: Your Honor only has  
8 trouble parsing it because Your Honor  
9 doesn't want the answer on the record.

10 MS. BUI: No. To be honest the  
11 reason why we were confused is you were  
12 referring to revenues which are different  
13 from expenditures, obviously.

14 So if you are referring to -- we  
15 prepared the rate filing using a number of  
16 different budget to actual factors, which  
17 average out to around the 90 percent figure  
18 that Mr. Jagt provided. That has not  
19 changed.

20 MR. HAVER: And you expect that  
21 90 percent number to be used going forward;  
22 is that correct?

23 MS. BUI: Going forward with  
24 respect to what time frame, sir?

1 MR. HAVER: The next two years.

2 MS. BUI: To the best of the  
3 Department's ability, that's -- and,  
4 please, understand that the 90 is an  
5 overall encompassing number. It does vary  
6 by line item.

7 MR. HAVER: Okay. Again, in your  
8 expert opinion, have you found that  
9 utilities that require additional revenues,  
10 put more resources into finding those  
11 revenues that utilities that don't need  
12 additional revenues?

13 MS. BUI: In my experience base --  
14 and Mr. Jagt and Mr. Merritt can also speak  
15 to this in their work with other  
16 utilities -- that has not been what I have  
17 seen. The ability to find additional  
18 revenue sources tends to be somewhat  
19 limited as a municipal utility.

20 Dave or Brian?

21 MR. DASENT: If you have anything  
22 to add.

23 MR. MERRITT: Do not.

24 MR. JAGT: Not substantially, no.

1 I mean, in the responses, we already  
2 pointed out that there is a miscellaneous  
3 charge study performed as part of the rate  
4 study. And there are -- we do review all  
5 the miscellaneous charges as part of the,  
6 you know, overall rate study so.

7 MR. HAVER: I appreciate the  
8 answer, but I was asking in general based  
9 on your expert opinion.

10 Does the need for money or  
11 additional revenues drive utilities to seek  
12 out additional revenues?

13 MR. MERRITT: I think Ms. Bui  
14 answered the question already.

15 MR. HAVER: It's not clear to me  
16 what the answer was, but all right.

17 MS. BUI: No.

18 MR. MERRITT: If I may.

19 MR. HAVER: The answer is no?

20 MR. MERRITT: If I may, I think  
21 Ms. Bui was saying that retail customers  
22 and specifically for municipal utilities,  
23 their ability to seek revenues from other  
24 sources is limited because they're

1 primarily providing services to the retail  
2 customers.

3 MR. HAVER: Right. I wasn't asking  
4 if it's limited. I was asking if a utility  
5 needs additional revenues, is it more  
6 likely to allocate resources to find those  
7 additional revenues than a utility that  
8 does not need additional revenues?

9 MS. BUI: And the answer would be,  
10 they would not likely allocate more  
11 resources to finding additional revenues.

12 MR. HAVER: So, the more you need  
13 the money, it doesn't matter?

14 MS. BUI: Utilities, in my  
15 experience, tend to focus on the areas in  
16 which they can have greater control.

17 MR. HAVER: Okay. So for example,  
18 they would have greater control over what  
19 type of grants they would get; is that  
20 right?

21 MS. BUI: That's true.

22 MR. HAVER: If they needed the  
23 money, they would expend more resources  
24 trying to get those grants than if they

1 didn't need the money. Is that an accurate  
2 statement?

3 MS. BUI: I think that everybody  
4 when it comes to capital expenditures looks  
5 for every source of funding they can.

6 And to be clear, Mr. Haver, just so  
7 that you and I are speaking the same  
8 language, when we are talking revenues, we  
9 don't consider grants and federal subsidies  
10 of the nature that, you know, we spoke  
11 about with Ms. LaBuda earlier, as revenues.  
12 I consider that and my team considers that  
13 as capital financing, which is a different  
14 category so that we are clear.

15 MR. HAVER: I don't want to belabor  
16 the point any more than I have. And again,  
17 in your expert opinion, if you know or have  
18 an explanation for why PGW has many more  
19 consumers in its low income plan than the  
20 Philadelphia Water Department has?

21 MR. DASENT: That's outside the  
22 scope of their testimony.

23 MR. HAVER: They are experts in the  
24 field. If they have an opinion --

1 HEARING OFFICER CHESTNUT: That is  
2 not what they are presented as experts on.

3 MR. HAVER: In response to my  
4 questions regarding the burden it places on  
5 low income consumers, you say that the  
6 Water Department has plans available.

7 What percentage of the City of  
8 Philadelphia's consumers are classified as  
9 low income?

10 MR. DASENT: This question would  
11 focus more on WRB testimony, Statement V.  
12 If you want a transcript request on this  
13 issue, I can provide you the answer.

14 MR. HAVER: No.

15 HEARING OFFICER CHESTNUT: Can you  
16 answer that, Dave?

17 MR. JAGT: I do not have the  
18 statistics available to answer that  
19 question.

20 HEARING OFFICER CHESTNUT: Okay.

21 MR. HAVER: Okay. Do you know how  
22 many residential water consumer customers  
23 the Philadelphia Water Department has?

24 MR. JAGT: Can you repeat the



1 question?

2 MR. HAVER: Do you know how many  
3 residential consumers the Philadelphia  
4 Water Department has?

5 MR. JAGT: So, accounts?

6 MR. HAVER: Accounts.

7 MR. JAGT: Yes. I mean, within --  
8 it's a large portion of the 450,000  
9 accounts. It's subject to -- I would have  
10 to pull it from our accounts. But we  
11 definitely break out the number of  
12 residential accounts within the cost of  
13 service study.

14 MR. DASENT: Subject to check, over  
15 400,000?

16 MR. HAVER: I accept roughly an  
17 approximation of 450,000.

18 MR. JAGT: Well, 450,000 would be a  
19 high number. Because I know it's --  
20 thereabout 90 some percent of that 450,000  
21 accounts, so.

22 MR. HAVER: Would you say 400,000  
23 would be a fair estimate?

24 MR. JAGT: Subject to check.

1 MR. HAVER: I understand. It's not  
2 an exact number. We are talking about  
3 approximation.

4 MR. JAGT: Right.

5 MR. HAVER: Do you have access to  
6 the response for LH Set B, No. 33? And  
7 again, if you let me, I will just read it  
8 to you. If you accept my reading of it or  
9 if you want to look at it for yourself.

10 MR. DASENT: I would like to hear  
11 you read it, if you don't mind, Mr. Haver.

12 MR. HAVER: This is a summary of  
13 low income consumers as of Fiscal Year 17,  
14 18, 19, 20 and 21 to date.

15 Under the law --

16 HEARING OFFICER CHESTNUT: I'm  
17 sorry. What number was that?

18 MR. HAVER: LH Set B, No. 33.

19 HEARING OFFICER CHESTNUT: 33?

20 MR. HAVER: Yes.

21 Under the low income program under  
22 the line item TAP in year 2021 to date, the  
23 exhibit lists -- and again, this is from  
24 the Water Department -- 16,730 people

1 enrolled.

2 Using your expertise, can you tell  
3 me what percentage of customers are  
4 enrolled in the TAP program?

5 MR. DASENT: You mean, do an  
6 arithmetic calculation?

7 MR. HAVER: Yes.

8 MR. DASENT: You want me to get the  
9 calculator?

10 MR. HAVER: I'm assuming that  
11 Mr. Merritt and, forgive me, Mr. Jagt can  
12 do this in their heads.

13 MR. DASENT: They probably can.

14 HEARING OFFICER CHESTNUT: So,  
15 calculate in your head is never a good  
16 thing for a witness to do.

17 MR. HAVER: If they would take out  
18 their calculator so I can have it on the  
19 record. Could I ask you to take out your  
20 phones and use your calculator and give me  
21 the percentage?

22 HEARING OFFICER CHESTNUT: Is  
23 somebody calculating that?

24 MR. JAGT: Yeah. I'm getting

1 access to the data so we can answer the  
2 question and not have to come back later.

3 MR. HAVER: There will be no later,  
4 that I can assure you.

5 MR. JAGT: Right. That's why  
6 I'm --

7 MR. HAVER: You can go home to your  
8 families after this.

9 MR. JAGT: I apologize. But just  
10 give me a few minutes to pull this up.

11 MR. MERRITT: Mr. Haver, are you  
12 referring just to TAP customers?

13 MR. HAVER: Yes.

14 MR. MERRITT: So including all  
15 residential and senior customers as part of  
16 our residential category, I come up with  
17 roughly 3.8 percent.

18 MR. JAGT: Correct. That's what I  
19 get.

20 MR. HAVER: And if you know, what  
21 is the poverty level in Philadelphia?

22 MR. MERRITT: Mr. Jagt indicated we  
23 don't know that number offhand.

24 MR. HAVER: I missed that. I'm

1 sorry.

2 MR. MERRITT: Mr. Jagt had  
3 indicated we don't have that statistic  
4 offhand.

5 MR. HAVER: I thought he said he  
6 didn't know anything about it anyway. All  
7 right. So that's -- that number  
8 unfortunately is very well known. We are,  
9 unfortunately, the poorest large city in  
10 America. So, that number is well known.  
11 It's a little disappointing that the Water  
12 Department didn't share it with you when  
13 you were doing your analysis.

14 MR. DASENT: They are aware of  
15 that. They are aware of the poverty level  
16 in Philadelphia.

17 MR. HAVER: If you are going to  
18 testify again, Mr. Dasent --

19 MR. DASENT: I don't testify. I'm  
20 just telling you what they are aware of.

21 MR. HAVER: Well, again. They may  
22 be aware of it, but we don't know the  
23 percentage.

24 MR. DASENT: We have to calculate

1 the percentage because it's a precise  
2 number.

3 MR. HAVER: Okay. I do appreciate  
4 the time you have given me. My next round  
5 of questions is for the Public Advocate's  
6 witnesses.

7 HEARING OFFICER CHESTNUT: Okay.  
8 Any further cross for these witnesses?

9 Any redirect, Mr. Dasent?

10 MR. DASENT: No, Your Honor.

11 HEARING OFFICER CHESTNUT: Thank  
12 you. Thank you very much. You are  
13 excused.

14 Mr. Morgan? I guess, Mr. Ballenger  
15 you want to --

16 MR. BALLENGER: Yes, Your Honor.

17 I have with me today Mr. Lafayette  
18 Morgan, Exeter Associates who sponsored  
19 Public Advocates Statement No. One in this  
20 proceeding. And I proffer him for  
21 questioning by Mr. Haver.

22 HEARING OFFICER CHESTNUT:

23 Mr. Morgan, can you state and spell  
24 your name for the record?

1 MR. BALLENGER: You are on mute,  
2 Mr. Morgan.

3 MR. MORGAN: My name is Lafayette  
4 Morgan, Jr. L-a-f-a-y-e-t-t-e, last name  
5 Morgan, M-o-r-g-a-n.

6 HEARING OFFICER CHESTNUT: And by  
7 whom are you employed and in what capacity?

8 MR. MORGAN: I'm employed by Exeter  
9 Associates. I'm a consultant.

10 HEARING OFFICER CHESTNUT: And your  
11 contact information, please. Give me your  
12 email address and your office address?

13 MR. MORGAN: My email address is  
14 lMorgan@exeterassociates.com?

15 HEARING OFFICER CHESTNUT: And you  
16 sponsored testimony in the -- I'm sorry.

17 MR. MORGAN: My business address is  
18 10480 Little Patuxent Parkway, Suite 300,  
19 Columbia, Maryland 21044.

20 HEARING OFFICER CHESTNUT:  
21 Mr. Ballenger, I guess you should take it  
22 from here. I'm sorry. Didn't mean to do  
23 your voir dire for you.

24 MR. BALLENGER: No. I am eager to

1 get started. I think we are anxious to  
2 find out what Mr. Haver would like to know  
3 more.

4 HEARING OFFICER CHESTNUT: Before  
5 we do, do you have any additions or changes  
6 or corrections to your testimony?

7 MR. BALLENGER: Oh, no, Your Honor.  
8 We do not have any additions, changes or  
9 modifications to the testimony that's been  
10 submitted and posted on the Rate Board's  
11 website. Mr. Haver asked to examine  
12 Mr. Morgan. And so, Mr. Morgan is  
13 available for that purpose. Our other  
14 witnesses were not being made available  
15 because of the scope of the  
16 cross-examination Mr. Haver explained to  
17 us.

18 HEARING OFFICER CHESTNUT: Okay.  
19 Mr. Haver.

20 MR. HAVER: Good afternoon,  
21 Mr. Morgan.

22 MR. MORGAN: Good afternoon.

23 MR. HAVER: On what date did you  
24 begin to review the rate hike, the proposed



1 rate hike?

2 MR. MORGAN: I don't know the exact  
3 date. It was probably a week after the  
4 case was filed. Actually, I take that back  
5 because of the advance filings. Sorry. I  
6 don't remember the exact date. Whenever  
7 the advanced filing was made?

8 MR. HAVER: Roughly, do you  
9 remember the month?

10 MR. MORGAN: January. I'm not --  
11 I'm sorry. I don't -- I'm old, so I don't  
12 follow dates.

13 MR. HAVER: I'm sorry. I missed  
14 that. You don't follow dates why?

15 MR. MORGAN: I'm old. I don't  
16 recall dates.

17 MR. HAVER: Oh, you're old.

18 MR. DASENT: He's honorary old.

19 MR. HAVER: I doubt that you are  
20 older than I am, but all right.

21 On the date that you began to  
22 review the proposed rate increase, to the  
23 best of your knowledge, had the American  
24 Recovery Plan Act been signed into law.

1 MR. MORGAN: No, it had not.

2 MR. BALLENGER: Let me just for  
3 point of clarification, are you talking  
4 about the American Rescue Plan Act?

5 MR. HAVER: Yes.

6 MR. BALLENGER: Okay.

7 MR. HAVER: And I am going to refer  
8 to it going forward as the Recovery Act, a  
9 few words.

10 Are you now aware the Recovery Act  
11 has become law?

12 MR. MORGAN: Yes, I am.

13 MR. HAVER: Are you now aware of  
14 how the Recovery Act may impact the Water  
15 Department?

16 MR. MORGAN: Not specifically, no.

17 MR. HAVER: Will there come a time  
18 when you will know that information?

19 MR. MORGAN: The project is just  
20 about over. And so, quite frankly, there  
21 is no budget to do that. This is at the  
22 end.

23 MR. HAVER: Okay. So to summarize,  
24 you don't know and you don't know when you

1 might know. Is that a fair --

2 MR. MORGAN: Correct.

3 MR. HAVER: Okay. I'm going to ask  
4 you also about the bill that was just  
5 passed by the Senate. And I believe, while  
6 we've been talking this morning, signed by  
7 the President. Although, my information  
8 comes from my folks that may not be  
9 absolutely correct.

10 Are you aware of the Drinking Water  
11 and Wastewater Infrastructure Act of 2021  
12 that includes \$35 billion for repairs to  
13 water utilities?

14 MR. MORGAN: Only to the extent  
15 that you mentioned it this morning.

16 MR. HAVER: Did you know about the  
17 bill when you were reviewing the  
18 application for the rate hike?

19 MR. MORGAN: No, I did not.

20 MR. HAVER: Okay. Have you  
21 reviewed the proposed settlement on behalf  
22 of the Public Advocate?

23 MR. MORGAN: Earlier versions of  
24 it.

1           MR. HAVER: Did you know about the  
2 Act before you reviewed that proposed  
3 settlement?

4           MR. MORGAN: Which Act?

5           MR. HAVER: The \$35 billion in  
6 infrastructure repairs.

7           MR. MORGAN: I don't recall when  
8 that became a bill. So, I can't -- I'm  
9 unable to respond to that.

10           HEARING OFFICER CHESTNUT: Isn't  
11 that the bill that was signed today the  
12 35 billion?

13           MR. HAVER: Again, Your Honor, I  
14 want to be clear. On my phone I got a text  
15 from the people I work with saying --

16           HEARING OFFICER CHESTNUT: No. I  
17 think you need to make clear that it's the  
18 Water Bill versus the Rescue Act?

19           MR. HAVER: Yes. This is a bill  
20 that passed -- two bills that provide money  
21 that may be used by Philadelphia Water  
22 Department. One is the American Recovery  
23 Plan Act. The other is the Wastewater  
24 Bill.

1           We've already -- Mr. Morgan was  
2 kind enough to say he already knows the  
3 first one passed and was signed into law,  
4 but he doesn't know how it will affect the  
5 Philadelphia water rates. He's not under  
6 contract for any longer period of time.  
7 And does not think he will be aware of  
8 that.

9           So now I'm asking him about the  
10 Drinking Water and Wastewater  
11 Infrastructure Act. I'm assuming the  
12 answer is no, but I want it on the record.  
13 So forgive me, Mr. Morgan, I'm assuming you  
14 didn't know about that because it just  
15 passed yesterday. But I'm assuming you  
16 didn't know about it before you prepared  
17 your testimony; is that correct?

18           MR. MORGAN: That's correct.

19           MR. HAVER: And I'm assuming you  
20 don't know what impact it will have on the  
21 Water Department; is that correct?

22           MR. MORGAN: I don't specifically  
23 what the impact will be.

24           MR. HAVER: And you don't expect

1 that while you are under contract to the  
2 Public Advocate, you will know that; is  
3 that correct?

4 MR. MORGAN: It's not within my  
5 scope of the work.

6 MR. HAVER: Okay. Did you make a  
7 recommendation to the Public Advocate to  
8 settle the case?

9 MR. MORGAN: No. It's something  
10 that I don't recommend. They may seek my  
11 opinion, but it's not something I  
12 recommend.

13 MR. HAVER: In preparing your  
14 testimony, did you review the public's  
15 testimony during the public hearings?

16 MR. MORGAN: Could you repeat the  
17 question?

18 MR. HAVER: During the preparation  
19 of your testimony, did you listen to and/or  
20 review the testimony the public provided at  
21 the public hearing?

22 MR. MORGAN: I don't recall going  
23 through it.

24 MR. HAVER: Okay. In your expert

1 opinion, is public testimony important in  
2 coming to a conclusion about a rate case?

3 MR. MORGAN: I believe it has an  
4 impact. Our -- my client was present. And  
5 to the extent that there was something that  
6 impacted the case, I -- I'm sure he relayed  
7 that to me.

8 MR. HAVER: But you did not review  
9 any of the public testimony; is that  
10 correct?

11 MR. MORGAN: Not specifically, no.

12 MR. HAVER: Okay. In your analysis  
13 for the Philadelphia Water Department --

14 MR. BALLENGER: Objection. He  
15 didn't do an analysis for the Philadelphia  
16 Water Department. He did an analysis for  
17 the Public Advocate.

18 MR. HAVER: In your analysis for  
19 the Public Advocate, in reviewing the  
20 proposed rate increase, did you find any  
21 operational innovations that would save  
22 money?

23 MR. MORGAN: Again, this was not an  
24 operational audit. So, that's not

1 something that I was seeking. I recall  
2 there being questions regarding savings.  
3 But no, I did not do a -- an operational  
4 review.

5 MR. HAVER: Switching again to the  
6 Mayor's Five Year Plan projections and  
7 actual amounts and the Rate Stabilization  
8 Fund, are you familiar with these numbers?

9 MR. MORGAN: I reviewed that during  
10 the -- I couldn't tell you specifically,  
11 but I looked at it.

12 MR. HAVER: In your memory, was  
13 there more money in the Fund than was  
14 projected for most years?

15 MR. MORGAN: I don't recall.

16 MR. HAVER: Could you now look at  
17 that exhibit.

18 MR. MORGAN: Can you point me to --

19 MR. HAVER: LH-A5.

20 MR. BALLENGER: Objection.

21 Mr. Morgan didn't prepare that. I'm not --  
22 I think we talked a lot about the fact that  
23 this has to do with the Five Year Plan and  
24 not with the assumptions in this case or



1 even any prior case as far as I'm aware of.

2 HEARING OFFICER CHESTNUT: I don't  
3 see the point of the question really with  
4 respect to this witness. If he can answer  
5 it, fine. If not, let's move on.

6 MR. HAVER: The point is to get his  
7 expertise and whether if they have been  
8 wrong for so many years, is it possible --

9 HEARING OFFICER CHESTNUT: He's not  
10 the witness to do this.

11 MR. HAVER: Excuse me?

12 HEARING OFFICER CHESTNUT: He's not  
13 the witness to do this.

14 MR. HAVER: He's the witness for  
15 the Public Advocate. Why wouldn't I ask  
16 them the same questions I asked the Water  
17 Department's witnesses?

18 HEARING OFFICER CHESTNUT: Okay.

19 MR. HAVER: If he doesn't know, he  
20 doesn't know. Just let him say "I don't  
21 know."

22 MR. BALLENGER: If I can direct you  
23 to his testimony, Mr. Haver, there is a  
24 whole section in there that talks about the

1 difference between budgeting and setting  
2 rates. And budgets tend to be  
3 conservative. And Mr. Morgan has examined  
4 the assumptions in this case including the  
5 amounts projected and actually in the Rate  
6 Stabilization Fund.

7 MR. HAVER: Again, that's not my  
8 question.

9 HEARING OFFICER CHESTNUT: Well,  
10 that should be your question, though.  
11 Direct him to -- your question should be  
12 directed to his testimony, which seems to  
13 be the same issue that you're talking  
14 about.

15 MR. HAVER: Your Honor, you're more  
16 than welcome to step down, stop the  
17 paychecks from going to your pocket and  
18 doing what I do. But right now, don't tell  
19 me what my questions are. You can rule  
20 me --

21 HEARING OFFICER CHESTNUT: I can  
22 tell you what are appropriate questions.

23 MR. HAVER: -- you can do whatever  
24 you want, but do not tell me what my

1 interest is.

2 HEARING OFFICER CHESTNUT: I'm not  
3 telling you what your interest is. I'm  
4 saying there is a more productive way to  
5 answer it.

6 MR. HAVER: Again, I'm not asking  
7 for your advice. You can step down and  
8 become a pro se and litigate yourself. You  
9 can represent yourself. You have years of  
10 experience. But you have chosen to be the  
11 hearing examiner, which means you are  
12 supposed to be neutral, not on the side of  
13 the Water Department trying to help them  
14 cover up their mistakes on projections.

15 HEARING OFFICER CHESTNUT: Jesus.  
16 Mr. Haver, you know, I don't even  
17 know what your question is at this point.  
18 This is just counter productive in terms of  
19 the time. It's just redundant. It's  
20 irrelevant. Maybe there is a better way to  
21 ask the question than you're asking it.  
22 Obviously, people are trying to answer your  
23 questions.

24 MR. HAVER: No. They are actually

1 objecting to my questions. I'm asking can  
2 he look at this exhibit. Mr. Ballenger  
3 apparently doesn't want him to look at the  
4 exhibit.

5 MR. BALLENGER: He didn't prepare  
6 the exhibit.

7 MR. HAVER: It doesn't mean --

8 MR. BALLENGER: It's not his  
9 testimony. He's a witness.

10 MR. HAVER: It doesn't mean --

11 MR. BALLENGER: You examine him on  
12 his testimony.

13 MR. HAVER: He can still --

14 MR. BALLENGER: Or on his responses  
15 to discovery.

16 MR. HAVER: He can still look at an  
17 exhibit and opine in his expertise.

18 MR. BALLENGER: I am going to  
19 direct the witness not to respond to  
20 questions outside the four corners of his  
21 testimony or the responses to discovery  
22 that he has provided in this case.

23 He is an expert witness. And I'm  
24 not going to allow you to direct him in any

1 different direction than he's already been  
2 directed. He has done his job, and you can  
3 ask him about his job. And that is all you  
4 can ask him today, Mr. Haver.

5 MR. HAVER: So, Mr. Ballenger, now  
6 you also decide you know what every rate  
7 consumer in Philadelphia knows?

8 MR. BALLENGER: No. I know you are  
9 a participant in this case and you should  
10 act a lot more professionally than you are.

11 MR. HAVER: Now you've decide you  
12 are also the hearing examiner and you can  
13 control what questions --

14 HEARING OFFICER CHESTNUT:

15 Mr. Haver, move on.

16 MR. HAVER: Is there any limit to  
17 what your powers are, Mr. Ballenger?

18 HEARING OFFICER CHESTNUT:

19 Mr. Haver, move on. Ask another  
20 question.

21 MR. HAVER: If the Water Department  
22 gets what it needs in the way of revenues,  
23 how likely is it that they will allocate  
24 resources to find additional revenues going

1 forward?

2 MR. MORGAN: That is something I  
3 can't answer.

4 MR. BALLENGER: Again, this is  
5 not -- and it's not part of his testimony.  
6 His testimony specifically addresses  
7 American Rescue Plan Act funds. And if you  
8 would like to ask him about --

9 HEARING OFFICER CHESTNUT: I don't  
10 see how he can possibly answer it. And  
11 I -- you know, I think that is his answer.  
12 He can't answer it.

13 Move on.

14 MR. HAVER: How much of the  
15 Recovery Act do you expect the Philadelphia  
16 Water Department to get?

17 MR. MORGAN: Based on data  
18 responses, I can't answer that.

19 MR. HAVER: Thank you. That's the  
20 end of my questions.

21 HEARING OFFICER CHESTNUT: Any  
22 further questions for Mr. Morgan?

23 Redirect, Mr. Ballenger?

24 MR. BALLENGER: None, thank you.

1 HEARING OFFICER CHESTNUT: Thank  
2 you. Thank you very much, Mr. Morgan. You  
3 are excused.

4 Any further witnesses or questions  
5 or -- Mr. Haver?

6 MR. HAVER: Not for me, Your Honor.

7 HEARING OFFICER CHESTNUT:

8 Mr. Ballenger?

9 MR. BALLENGER: I am tempted, Your  
10 Honor. But I am -- I think we have -- I  
11 think we can adjourn in my opinion, subject  
12 to any questions you may have, Your Honor.

13 HEARING OFFICER CHESTNUT: Well, I  
14 don't have any questions for specific  
15 witnesses. I think we can talk about --  
16 not sure where we are in terms of issues  
17 that need to be addressed right now as  
18 opposed to the subject of further  
19 discussions.

20 MR. DASENT: We already surveyed  
21 some of the scheduling issues. And so if  
22 we are closing the record today April 30,  
23 except for the transcript requests that are  
24 on the record, I see two from Mr. Haver --

1 outstanding discovery responses, the joint  
2 petition and statements of support or  
3 opposition and proofs of publication for  
4 the technical hearing. All of those can  
5 come in by May 5 if you adopt our schedule,  
6 Your Honor. And the briefing would be May  
7 11.

8 HEARING OFFICER CHESTNUT: Okay.  
9 Any discussion about the schedule as  
10 written or proposed?

11 I'm going to keep my dates open. I  
12 am going to, obviously, get my report out  
13 as soon as I reasonably can so that Rate  
14 Board can address it as soon as it  
15 reasonably can. But I'm not going to  
16 commit to a particular date because, in  
17 part, that would depend on how good a job  
18 you do.

19 MR. DASENT: Exactly.

20 HEARING OFFICER CHESTNUT: So the  
21 way that I see the schedule then, as you  
22 presented, just to clarify that. As of  
23 now, the Term Sheet will be posted --

24 MR. DASENT: Yes.



1 HEARING OFFICER CHESTNUT: -- on  
2 the websites. That you will circulate the  
3 petition itself, including any statements  
4 in support or opposition May 5. But I will  
5 also accept late filed statements in  
6 opposition or support. That's not a hard  
7 date for me because I think people do need  
8 time to analyze the settlement, which I  
9 expect will expound a bit on the Term  
10 Sheet.

11 But by May 11, I expect to hear  
12 everything from everybody so that I can  
13 proceed at that point knowing that nothing  
14 further will be coming in. And I can't  
15 commit that June 16 will be the Board's  
16 determination; but, obviously, will try and  
17 do that.

18 Anything else then before we  
19 adjourn?

20 MR. DASENT: I think that's it.

21 HEARING OFFICER CHESTNUT:

22 Mr. Ballenger?

23 MR. BALLENGER: I think that's it,  
24 Your Honor. Thank you.

1 HEARING OFFICER CHESTNUT:

2 Mr. Haver?

3 MR. HAVER: No, Your Honor.

4 HEARING OFFICER CHESTNUT: Anybody  
5 else? Okay. Thank you all. I appreciate  
6 your time and your efforts.

7 (At this time, the Hearing  
8 adjourned at 1:16 p.m.)

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C E R T I F I C A T I O N

I, hereby certify that the proceedings and evidence noted are contained fully and accurately in the stenographic notes taken by me in the foregoing matter, and that this is a correct transcript of the same.

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ANGELA M. KING, RPR,  
Court Reporter, Notary Public

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