

BEFORE THE
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD

Re Philadelphia Water Department Proposed Charges in Rates and Charges	2022 TAP-R Reconciliation Proceeding
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**PHILADELPHIA WATER DEPARTMENT’S RESPONSE TO
LANCE HAVER’S OBJECTIONS TO THE JOINT PETITION FOR SETTLEMENT
OF THE TAP-R RECONCILIATION PROCEEDING**

I. INTRODUCTION

This Memorandum is submitted on behalf of the Philadelphia Water Department (“Department” or “PWD”) in response to Mr. Haver’s objections (“Objections”) to the proposed Joint Petition for Settlement (“Joint Petition” or “Settlement”) of the Tiered Assistance Program Rate Rider (“TAP-R”) Reconciliation proceeding before the Philadelphia Water, Sewer and Storm Water Rate Board (“Rate Board”).¹

Mr. Haver raises four objections, seeking the rejection of the Settlement, based on the following contentions: (i) the TAP-R surcharge rate is a tax (not a valid surcharge), (ii) the notice of proposed changes in rates in the 2022 TAP-R Reconciliation Proceeding was deficient, (iii) the Public Advocate’s legal representation was ineffective, and (iv) certain financial disclosures should have been provided by the Public Advocate. The Department’s response to each of Mr. Haver’s objections is set forth below.

¹ The Joint Petition was filed and served on April 22, 2022. (<https://www.phila.gov/media/20220425205927/PWD-2022-TAP-joint-settlement-final-Combined.pdf>) The Joint Petition is between the Department and the Public Advocate, who were the only participants who filed written testimony for the technical hearings. See PWD 2022 TAP Main Brief dated April 22, 2022 (<https://www.phila.gov/media/20220425205938/2022-TAP-PWD-main-brief-final.pdf>). Since not all participants signed onto the Joint Petition, the Hearing Officer established a period for objections. In this case, objections to the Joint Petition were to be submitted by no later than April 28, 2022. Mr. Haver filed his objections on April 28, 2022.

II. RESPONSE TO MR. HAVER’S OBJECTIONS

A. TAP-R Surcharge Rate.

Mr. Haver’s contention that the TAP-R surcharge rate is a tax is plainly wrong.² By way of background, the Tiered Assistance Program (“TAP”) is an assistance program that allows low-income customers to pay reduced bills based on a percentage of their income.³ TAP is supported by a Rate Rider (“TAP-R”) which is a surcharge mechanism authorized by the Rate Board.⁴ Section 2.1 of the Department’s Rates and Charges provides, in part, that:

In addition to the service charge, the quantity charge portion of each bill is determined by applying the quantity charge set forth below to all water use. In addition, the quantity charge will also include a Tiered Assistance Program (TAP) Rate Rider Surcharge, as set forth in Section 10.

TAP-R surcharge rates are expressed in a dollar amount per thousand cubic feet (MCF) and relate to the quantity of service (water and sanitary sewer) provided. Section 10.0 of the Department’s Rates and Charges describes the formula for the recovery of TAP billing losses. Section 206.0 of the Department’s regulations describes the program (TAP) itself.

Mr. Haver argues that the TAP-R rate is a tax, not a surcharge.⁵ Other than the above declaration, Mr. Haver offers no explanation (or analysis) as to how and/or why the TAP-R rate is tax (as opposed to a surcharge). Mr. Haver does state, however, that the surcharge must be paid “even if one has no water usage.”⁶ That statement is plainly wrong, and is contradicted by the above-cited Rates and Charges which describe TAP-R surcharge rates as being based on the quantity of service (water and sanitary sewer) provided.

Contrary to Mr. Haver’s argument, the Department submits that the TAP-R rate is a regulatory surcharge intended to recover TAP billing losses as authorized in the Rate Board’s 2018 Rate

² Haver Objections at ¶ 1-2, 9.

³ Joint Petition at ¶ 1.

⁴ Joint Petition at ¶ 2-3.

⁵ Haver Objections at ¶¶ 1-2, 9.

⁶ Haver Objection at ¶ 1.

Determination and codified in the Department's Rates and Charges. The surcharge is discrete, and is considered apart from the Department's other rates and charges. In fact, the formula⁷ used as the basis for calculating and adjusting TAP-R surcharge rates is solely for the purpose of tracking and recovering TAP billing losses. It does not provide the Department with the means to pay other expenses.

It should be noted that, rather than addressing the terms and conditions in the Settlement, Mr. Haver's "taxation" argument attacks the existence of the TAP-R mechanism and resulting surcharge rates.⁸ Arguments challenging the surcharge mechanism, the designated formula and nature of the resulting rates (tax versus surcharge) are beyond the scope of this proceeding. The TAP-R surcharge mechanism, related formula and nature of the rate or surcharge have already been considered and approved. This proceeding is solely for the purpose of making an annual adjustment related to this previously authorized surcharge mechanism for the period beginning on September 1, 2022. Mr. Haver's arguments, as described above, are therefore outside the scope of this proceeding and should be rejected.

B. Notice of Proposed Changes in Rates.

Mr. Haver is mistaken in his contention that the Settlement should be rejected because notice of the TAP-R Reconciliation Proceeding, disseminated to the public, was somehow deficient.⁹ As the Rate Board is aware, the Department works to ensure meaningful access to City services.¹⁰ The Department gave written notice to Philadelphia City Council and the Rate Board of proposed changes in rates. Further, participants in the 2021 Rate Proceeding and the 2021 TAP-R Reconciliation Proceeding were notified by e-mail of the opportunity to participate in the 2022 TAP-R Reconciliation Proceeding.¹¹ The general public was notified through information made available on the Water Department's website, the

⁷ The formula was approved in the Rate Board's 2018 General Rate Determination. <https://www.phila.gov/media/20180713144736/2018-RATE-DETERMINATION-TIMESTAMPED.pdf>.

⁸ As the Rate Board is aware, various forms of automatic adjustment clauses have been included in fixed utility tariffs in Pennsylvania for over 50 years." This includes surcharges for universal service (customer assistance) programs.

⁹ Haver Objection at ¶ 4.

¹⁰ Philadelphia Water Department: Language Access Plan (Updated March 2022) https://www.phila.gov/media/20220322124938/LANGUAGE-ACCESS-PLAN-MARCH-2022_FINAL-Signed.pdf.

¹¹ Joint Petition at ¶ 10.

Department of Records website, the Rate Board’s website as well as publications in Philadelphia newspapers. Legal notices related to the Advance Notice and Formal Notice were also timely published in three local newspapers.¹² In addition, during the course of the proceeding, notices of public input and technical hearings were provided via print and social media as well as posted at the Rate Board and Department websites.¹³

Mr. Haver calls for the rejection of the Settlement based on his allegations that “the notice was defective and the Public not adequately informed according to current law.”¹⁴ Mr. Haver’s objection is primarily based on Section 8-600 of the Philadelphia Home Rule Charter regarding “language access plans.”¹⁵ It should be noted, however, that the Rate Board is not called upon to evaluate compliance with Section 8-600, since Philadelphia’s Office of Immigrant Affairs (“OIA”) evaluates “compliance with their language access plans and all applicable policies and laws, including state and federal law, regarding access to government by individuals with limited English proficiency.”¹⁶ Mr. Haver also argues that notice of the proceeding violates “at least the intent if not the letter” of Section 5 of the Pennsylvania Plain Language Consumer Contract Act, 73 P.S. § 2205.¹⁷ His argument fails to recognize, however, that the notices in question are not “contracts” as defined by Section 3 of the Plain Language Consumer Contract Act, 73 P.S. § 2203. Mr. Haver also fails to recognize that enforcement of the aforesaid Act is not within the Rate Board’s limited jurisdiction.¹⁸ Taken together, Mr. Haver’s objection is outside of the scope of this proceeding and lacks foundation and for those reasons should be rejected.

¹² Joint Petition at ¶ 11.

¹³ See, PWD Exhibit 2.

¹⁴ Haver Objection at ¶ 4.

¹⁵ See Haver Objections at ¶¶ 1, 3-4, 8-10.

¹⁶ Philadelphia Charter, Section 8-600.2(c).

¹⁷ See Haver Objection at ¶¶ 3-4.

¹⁸ Compare, Philadelphia Code §13-101(3) with 73 P.S. § 2207.

C. Effective Representation by the Public Advocate.

Mr. Haver indicates that the Settlement should be rejected because the legal representation of the Public Advocate was, in his view, ineffective.¹⁹ As the Rate Board is aware, Sections I(n) and II.C.2 of its regulations²⁰ provide for the appointment by the Rate Board of a “Public Advocate” to represent the interests of Small User Customers, pursuant to a formal City contract.²¹ The Public Advocate appointed for this proceeding is Community Legal Services of Philadelphia (“CLS”).

Mr. Haver has criticized CLS, for various reasons, in the 2021 General Rate Proceeding, the 2022 Special Rate Proceeding, as well as in the instant proceeding.²² In all prior cases, such criticisms have been found to be baseless and were roundly rejected by the Rate Board. The result should be no different here, as explained below.

In this case, Mr. Haver argues that the Public Advocate is “ineffective” in its representation of the public.²³ This “ineffectiveness” argument appears to be premised upon Mr. Haver’s perception of those tasks that he thinks the Public Advocate must perform to be “effective.”²⁴ Resolution of issues in controversy (by settlement) does not appear to be among those tasks that Mr. Haver believes are required to be “effective” as counsel.²⁵ Therefore, he concludes that the Public Advocate’s representation is ineffective. PWD believes that this conclusion is misplaced, particularly in the context of a TAP-R

¹⁹ See Haver Objections at ¶¶ 4-5.

²⁰ <https://www.phila.gov/media/20220204155914/WRBRegulationsAmended20210908reaffirmed20211013.pdf>.

²¹ See also Rate Board Regulations at II.B.2. The Public Advocate shall be paid reasonable compensation as negotiated with the Board, pursuant to the formal City contract. Rate Board Regulations at II.B.2.(b). The Rate Board Regulations speak for themselves, and any factual allegation in Mr. Haver Objections that is contrary to and/or not corroborated by the above should be denied.

²² These criticisms have related to the appointment of the Public Advocate, the City procurement process, contract extensions and renewals, financial disclosure statements, among other issues. See, Direct Appeal Denying Hearing Examiner’s Order Denying Haver Motion to Remove Public Advocate, dated March 22, 2022 — also herein sometimes referred to herein as the “appeal.”

²³ See Haver Objections at ¶¶ 4-5, 7-10.

²⁴ *Id.*

²⁵ Mr. Haver also appears to assume that his opinion is shared by others, but please recall he is a *pro se* intervener and can only represent himself. Nonetheless, for this jury of one — failure to conform to his perception (opinion) of effective counsel results in the label of “ineffectiveness” being foisted upon the Public Advocate. PWD believes that Mr. Haver’s opinion is misguided.

reconciliation proceeding.

That is, this proceeding is an annual reconciliation (adjustment) of the TAP Rider based upon actual TAP billing losses and Non-TAP revenue related data for the Most Recent Period (September 2021 - August 2022);²⁶ and the estimation of prospective TAP billing losses for the Next Rate Period (September 2022 - August 2023). The TAP-R surcharge recovers these billing losses. These proceedings are undertaken as an annual review of a simple reconciliation or adjustment in surcharge rates. Since the inception of TAP-R, these adjustments have been agreed upon based on a Joint Petition between the participants (historically, the Advocate and PWD). The Department maintains that adjustments of this nature should not be fully litigated matters. Rather, settlements should be the norm. In this year's adjustment proceeding, establishing a reasonable level for TAP increased participation was the primary issue in controversy (i.e., the projected average monthly number of TAP participants during the Next Rate Period). The Department and Advocate were able to find common ground after discussions and the submission of testimony supporting our respective positions. Arriving at a settlement made perfect sense, here because TAP billing losses and TAP-R surcharge revenues will be reconciled during the next annual adjustment. There is no need for extended litigation in this type of proceeding. In point of fact, finding a reasonable compromise demonstrates the effectiveness of counsel (not the opposite).²⁷ Mr. Haver's objection is mistaken and should be rejected.

D. Financial Disclosures

Mr. Haver also objects to the Settlement arguing that "financial disclosures" have not been made by the Public Advocate. He offered no support for his contention that such financial disclosures are

²⁶ Data for the Most Recent Period is a combination of actual and estimated data available at the time of the filing of the Formal Notice in this proceeding.

²⁷ The issue in controversy in the TAP-R proceeding was the projected level of increased TAP participation during the period July 2022 through November 2022, given the anticipated facilitated TAP enrollment in cooperation with the Commonwealth administered Low Income Household Water Assistance Program (LIHWAP) together with the high number of households that may be subject to service termination and are expected to apply for TAP. Taken together, PWD projected 28,731 as the average monthly number of TAP participants during the Next Rate Period (September 2022 through August 2023). The Advocate projected 23,075 average monthly TAP participants during the above period. PWD and the Advocate compromised at 24,199 as the average monthly participation level for the Next Rate Period. See, Joint Settlement Petition (2022 TAP-R Adjustment) at 19, 25.

actually required by the City of Philadelphia. This issue was addressed by the Rate Board on April 13, 2022 in rejecting Mr. Haver’s “appeal” as part of the 2022 Special Rate Proceeding. The Department also addressed this argument in PWD’s 2022 TAP-R Adjustment Main Brief:²⁸

Mr. Haver has not established before the Rate Board that either the Hearing Officer or the Public Advocate are required to file financial disclosures, since they are selected by way of the City’s procurement rules.²⁹ Even if the need to make financial disclosures was established before the Rate Board, this Board (as noted above) is not the body to investigate, administer or enforce that requirement. (footnote renumbered from original).

The Department submits that this objection has been previously addressed and rejected by the Rate Board in the context of Mr. Haver’s appeal from the Hearing Officer’s order in the 2022 Special Rate Proceeding. Mr. Haver’s objection should be denied in this proceeding as well.

III. CONCLUSION

The Department submits that Mr. Haver’s Objections should be dismissed and denied. That being said, if the Rate Board decides otherwise (i.e., rejecting the Settlement), the Department and the Public Advocate have reserved their respective rights to fully litigate this proceeding, so the Rate Board would still need to make a decision on the proposed adjustments to the TAP-R surcharge for FY 2023.

Contrary to Mr. Haver’s Objections, the Department respectfully requests that the Hearing Officer recommend that (1) the Rate Board find that the rates and charges proposed by the Settlement are supported by the record and in compliance with the Rate Ordinance and other applicable requirements and therefore should be permitted to be placed in effect for service rendered on and after September 1, 2022; and (2) the Rate Board reject any remaining issues, proposals, modifications and/or adjustments by

²⁸ PWD Main Brief at 15 (2022 TAP-R Adjustment).

²⁹ The selection process is subject to Section 17-1401, *et seq.* of the Philadelphia Code.

the other participants hereto that are not contained in the Settlement; and (3) the Rate Board authorize the Department to file revised TAP-R rates and charges as contained in the Settlement for service rendered on and after September 1, 2022.

Respectfully submitted,

/s/ Andre Dasent

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