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PHILADELPHIA WATER, SEWER AND STORMWATER
RATE BOARD PREHEARING CONFERENCE

Tuesday, April 26, 2022
Philadelphia, Pennsylvania

TIME: 10:03 a.m.

LOCATION: Virtually

HELD BEFORE: MARLANE R. CHESTNUT
Hearing Officer

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1 HEARING OFFICER CHESTNUT: For the
2 record, I am administrative law Judge Marlane
3 R. Chestnut and I'd like the participants to
4 identify themselves starting with you
5 Mr. Shultz.

6 MR. SCHULTZ: Your Honor, my name is
7 Carl Shultz. I'm here today on behalf of the
8 Water Department.

9 With me today is Andre Dasent. He has
10 some scheduling issues so he may be in and out
11 of the meeting but I will be trying to carry
12 forward.

13 HEARING OFFICER CHESTNUT: Thank you.
14 Mr. Ballenger.

15 MR. BALLENGER: Yes, good morning your
16 Honor. Robert Ballenger on behalf of the
17 Public Advocate.

18 HEARING OFFICER CHESTNUT: Mr. Haver.

19 MR. HAVER: Lance Haver. So Mr. Dasent
20 knows I'm not an attorney. He doesn't have to
21 bill the public, one again, to ask me that
22 question. I am surprised after 35 years he's
23 not known that. I'm here representing myself
24 pro se.

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1 HEARING OFFICER CHESTNUT: Are there
2 any other participants present?

3 MS. YOUNG: My name is Gail Young and
4 I'm with Councilman Jones' Office. I was just
5 a participant that's all listening in. I have
6 the Water Department for my budget.

7 HEARING OFFICER CHESTNUT: Okay,
8 welcome. Anybody else.

9 I guess we should talk about the
10 line-up of witnesses for the hearing. I know
11 that Andre sent out the cross-examination
12 matrix. I haven't seen it returned.

13 MR. SCHULTZ: Your honor what I know on
14 that is Mr. Ballenger on behalf of the Public
15 Advocate has indicated moderate cross for the
16 two panels from the Department and the
17 Department has indicated moderate cross for
18 Mr. Morgan from the Public Advocate.
19 Otherwise I have not heard of any response
20 from anyone else regarding cross-examination.

21 HEARING OFFICER CHESTNUT: So moderate
22 is about an hour.

23 MR. SCHULTZ: We list it as 15 minutes
24 to an hour. It's a very large time block but

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1 I'm hopeful things will be more toward the
2 lower end of that scale.

3 HEARING OFFICER CHESTNUT: Well it's
4 helpful to get an idea in terms of scheduling.
5 Certainly people are not going to hold people
6 to it.

7 MR. HAVER: I have light questioning.
8 Light cross for both panels.

9 HEARING OFFICER CHESTNUT: Okay. So
10 that sounds like two panels. So it sounds
11 like we can do it in a day.

12 MR. SCHULTZ: I think that's entirely
13 possible. I assume not having heard from
14 PLUG, I assume they reserve the right to do
15 some cross-examination.

16 And I haven't heard anything from Mr.
17 Scandalusky (ph) but I don't imagine -- if
18 they were exercising their right to
19 cross-examination that they would do very
20 extensive cross-examination.

21 HEARING OFFICER CHESTNUT: Especially
22 if we start at 9, I think there is a good
23 chance we can wrap up and not have to use the
24 overflow day.

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1 MR. SCHULTZ: Your Honor as to timing I
2 would suggest that if we're going beyond an
3 hour with any witness or panel maybe they get
4 like a five or ten-minute break just incase
5 nature calls.

6 HEARING OFFICER CHESTNUT: I'm old
7 enough that I do want breaks. Absolutely. I
8 will certainly be breaking for myself. Are
9 there any outstanding issues and procedural
10 issues? I think the discovery is all done,
11 right.

12 MR. SCHULTZ: Yes, I made a list of a
13 couple points we could run through but they're
14 fairly standard. Normally we do them at the
15 start of the technical hearing but today seems
16 like a good day to run through those just so
17 everybody is on the same page.

18 HEARING OFFICER CHESTNUT: Sure.

19 MR. SCHULTZ: I think the most
20 important one is the upcoming dates, which the
21 technical hearing set for Thursday of this
22 week the 28th starting at 9:00 a.m. and may be
23 continued to onto Friday even though we're now
24 discussing that may not be needed but that's

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1 still there.

2 I believe the rest of the upcoming
3 dates are in your Honor's prehearing order and
4 I don't think they've been changed since then.

5 What I had listed was the last date for
6 transcript responses if needed was May 2nd.
7 The date for briefs from all participants was
8 May 10th. The target date for the hearing
9 officer report was May 27th and also subject
10 to change would be the acceptance and response
11 the hearing report which are tentatively
12 listed as June 2nd and for the Board to be
13 making deliberations and/or determination
14 around the June 8th, June 15th meetings.

15 HEARING OFFICER CHESTNUT: I will try
16 to meet that target date to get my report out
17 but I'll give you a heads up right now that I
18 do not see this as the type of proceeding that
19 is going to involve an extensive report. I
20 see this as a prehistory forward issue.

21 I don't intend to do a lot of
22 discussion. My goal really is to keep this
23 report to ten pages or less. I think I say
24 this with the sprit of the settlement that

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1 initiated this.

2 MR. SCHULTZ: For the convenience of
3 the parties my organizational point would be
4 -- I would like to suggest that hearing
5 exhibits or cross exhibits be circulated among
6 the participants by noon tomorrow rather than
7 at the end of the day tomorrow so that people
8 have a bit of time to look at things before
9 the early 9:00 a.m. Thursday start.

10 I don't know if that causes any issues
11 or problems for anybody.

12 HEARING OFFICER CHESTNUT: If people
13 can do it, great, I encourage people to work
14 amongst yourselves to make these hearings the
15 smoothest so that we don't have to waste time.

16 The more that you can do amongst
17 yourselves the better.

18 MR. SCHULTZ: Understood. It's a good
19 guideline. As to the close of the hearing
20 record, we normally close the record on the
21 last day of the hearing and leave it open
22 except for transcript request, advertisements
23 or proof of publication and a joint petition
24 for settlement if possible. So I would

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1 suggest we kind of carry forward with that
2 prior practice.

3 HEARING OFFICER CHESTNUT: Well I think
4 the regs identify what is part of the record
5 and what the regs say is what will be in the
6 record. Yes but we can identify that and I
7 don't think it really makes a huge difference
8 but we'll see.

9 Excuse me could people speak up? My
10 neighbor is having their lawn care done now.
11 It's pretty loud.

12 MR. SCHULTZ: One other common
13 stipulation is dealing with the authentication
14 of testimony and we normally just say that
15 that's authenticated. I don't think there's
16 any issues with that. If somebody has an
17 issue please speak up before the hearing.

18 HEARING OFFICER CHESTNUT: I cannot
19 conduct this the way the PUC hearings are
20 conducted because it's a different type of
21 format. That's why I don't do an extensive
22 voir dire. Somebody had to change in their
23 testimony and they can note it but I don't go
24 through the whole questioning that I would

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1 normally have done as a PUC hearing. But it's
2 a different type of process and if people do
3 have changes to their testimony as in fact you
4 did to yours.

5 Speaking of which before I forget this
6 I expect you to have amended copies that can
7 be posted on the website. I don't want to
8 have original statements then the errata. I
9 would like to have one document that
10 incorporates the changes to make it easier for
11 people to refer to.

12 MR. SCHULTZ: We will try to get that
13 done today so that everybody has it no later
14 than tomorrow.

15 HEARING OFFICER CHESTNUT: I think
16 people can stipulate as to authenticity
17 without a problem unless there is an issue.

18 MR. SHULTZ: I don't see an issue or
19 anticipate any issue with that. As to the
20 order of witnesses, we were proposing to
21 follow what was in the cross-examination
22 matrix with the Department's panels coming
23 first then the Public Advocate, PLUG if they
24 had any, which they haven't indicated any

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1 witnesses.

2 Not sure if Mr. Haver is going to be
3 testifying on his own behalf or presenting any
4 witnesses but it would be him next followed by
5 Mr. Scandalusky.

6 HEARING OFFICER CHESTNUT: Mr. Haver,
7 are you intending to testify or present a
8 witness.

9 MR. HAVER: The only witness I would
10 present would be a rebuttal witness if
11 necessary. I will not be testifying myself.

12 HEARING OFFICER CHESTNUT: What do you
13 mean by a rebuttal witness.

14 MR. HAVER: If I ask a question and
15 somebody says something and it's flagrantly
16 wrong then I would bring on an expert to
17 address that point.

18 HEARING OFFICER CHESTNUT: Not sure I
19 like that. I think you need to identify your
20 witness ahead of time.

21 MR. HAVER: I'm shocked to find out you
22 don't like my tactic. Is there gambling in
23 this casino?

24 HEARING OFFICER CHESTNUT: I also don't

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1 like surprise. I don't like ambushes either.

2 MR. HAVER: Then I would suggest people
3 tell the truth.

4 MR. SCHULTZ: On a sidenote, your
5 Honor, we sent discovery to Mr. Haver asking
6 him to identify his witnesses and he responded
7 at that time that he didn't know and I'm not
8 sure if he still knows but to your point I
9 would appreciate knowing who was going to be
10 presented sometime prior to the hearing to
11 prevent surprise and give us the chance to
12 actually prepare for that witness.

13 HEARING OFFICER CHESTNUT: Mr. Haver,
14 you're going to have to disclose your
15 potential witness ahead of the hearing so that
16 people can prepare. If you have someone fine,
17 if you don't have someone then say it.

18 I mean I don't agree with surprises or
19 ambushes and listen you can make all the
20 insults you want it doesn't change things. I
21 proceed in good faith and I assume everybody
22 else is proceeding in good faith including
23 you.

24 MR. HAVER: Then your Honor we'll do

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1 what you have done so many times in the past
2 and just rule me out of order. I intend to
3 put on my case the way I want to put on my
4 case. If you don't allow my witness, you
5 don't allow my witness. I reserve the right
6 to call a rebuttal witness to correct any
7 misstatement.

8 HEARING OFFICER CHESTNUT: Well I'm not
9 sure that's going be possible but we'll deal
10 with it when we see it. But don't forget
11 Mr. Haver, I have the power and authority to
12 exclude irrelevant or redundant testimony or
13 evidence and if I find that your testimony or
14 evidence is redundant it's going be excluded.

15 MR. HAVER: I'm shocked to find that
16 out.

17 HEARING OFFICER CHESTNUT: I think
18 perhaps you should read the regulations. I
19 urge everybody to do that actually but okay if
20 you don't disclose the name of this person I'd
21 say by the end of business tomorrow like I
22 don't know what would be a good time by
23 3 o'clock tomorrow then I'm not sure I'm going
24 to allow it because it doesn't give people a

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1 chance to see who they are and what their
2 background is and whether they actually are
3 experts.

4 This isn't a hearing by surprise.
5 Everybody else disclosed their testimony and
6 I've given you a lot of leeway because you are
7 pro se but at some point you do have to play
8 by the rules. Okay is that clear Mr. Haver?

9 MR. HAVER: I've heard what you said.

10 MR. SCHULTZ: Your honor I have one
11 last point speaking of rules. In the last
12 proceeding regarding TAP, there was a lot of
13 objections going on about the scope of
14 cross-examination.

15 I am hopeful that we can kind of follow
16 the same rule from that proceeding in this
17 proceeding meaning the cross-examination
18 should be limited to the prior testimony of
19 the witness. You know that all the parties
20 would have a continuing objection if the
21 cross-examination question was going beyond
22 that so the attorneys didn't have to
23 constantly object and I believe last time you
24 gave directions that the witnesses could on

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1 their own say I believe that's beyond the
2 scope of my testimony can you point me to
3 where it is in my testimony.

4 I would like those to be kind of the
5 rules of the road for this proceeding to kind
6 of help the record be cleaner.

7 HEARING OFFICER CHESTNUT: We'll see.

8 MR. SCHULTZ: Okay. That was all I had
9 on my list of discussion points for today.

10 HEARING OFFICER CHESTNUT: I do have an
11 issue not an issue but a question. Are you
12 talking settlement? Is there a chance of
13 settlement? It's pretty clear what your
14 positions are.

15 MR. SCHULTZ: At the moment the
16 Department hasn't indicated to me a
17 willingness to move from their position.

18 HEARING OFFICER CHESTNUT: I suggest
19 you urge them forcefully because I think that
20 there are a lot of reasons why perhaps an
21 adjustment might be made or recommended.

22 MR. SCHULTZ: Understood.

23 HEARING OFFICER CHESTNUT:
24 Mr. Ballenger.

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1 MR. BALLENGER: Nothing really to add
2 your Honor. Just looking forward to Thursday
3 and hopefully getting through a smooth hearing
4 and we will get our exhibits if we have any.

5 I'm assuming that if we're referring to
6 filed testimony or responses to discovery
7 requests, that the witnesses will have those
8 at the ready so we don't have to duplicate
9 them for this purpose. If that's a safe
10 assumption, then I may not need additional
11 hearing exhibits at this point but I'll have
12 to look through it as I go through my cross.

13 HEARING OFFICER CHESTNUT: I thought it
14 was really helpful the way that you did your
15 hearing exhibit last time. How you went
16 through the individual discovery responses.

17 MR. BALLENGER: I'll keep that in mind
18 and try to put something together if necessary
19 that makes it a little easier.

20 HEARING OFFICER CHESTNUT: I don't know
21 what anybody else's set up is but I'm using my
22 monitor for this meeting and I use my iPad to
23 access documents off the rate board's website.

24 MR. BALLENGER: I just have a dual

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1 screen setup but I will bear that in mind and
2 try to make sure that it's easy to get
3 through.

4 HEARING OFFICER CHESTNUT: This is not
5 actually involved in this case but in terms of
6 your hearing exhibit from the TAP hearing. I
7 was not going to make that a separate part --
8 identify that specifically as part of the
9 record since it's already -- the discovery
10 responses are part of the record. Is that
11 okay with you or did you want that to be
12 identified separately.

13 MR. BALLENGER: You know I -- just to
14 make the transcript make sense, I think it
15 would be helpful to have it identified
16 separately on the record.

17 So that someone reading through the
18 transcript or viewing the hearing itself can
19 refer to the specific page numbers of the
20 hearing exhibit.

21 HEARING OFFICER CHESTNUT: What I did
22 was I think in my statement where I said the
23 record includes the advance notice, et cetera,
24 and I said responses to discovery and then I

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1 think I had a paragraph saying including
2 Public Advocate hearing Exhibit-1 but I can
3 identified more specifically if necessary.

4 I can't remember if it was listed
5 separately on the website as an exhibit.

6 MR. SCHULTZ: I think it was.

7 HEARING OFFICER CHESTNUT: I'll check
8 when we're done here. But I don't want to
9 overly confuse things since it is already part
10 of the record, the components are.

11 MR. BALLENGER: Right. I don't
12 actually see the -- looking at the tab bar I
13 don't see the technical hearing title for the
14 technical hearing.

15 All I see are the public hearings --
16 oh, wait I'm sorry, it's under public hearings
17 but there is -- I don't see the hearing
18 exhibit there which is where I would imagine
19 Steven would want it to be.

20 Although it's duplicative the
21 transcript doesn't make a whole lot of sense
22 without it unfortunately.

23 HEARING OFFICER CHESTNUT: Is there
24 anything else? Anything you need me to do Mr.

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1 Shultz.

2 MR. SCHULTZ: Nothing else your Honor.

3 HEARING OFFICER CHESTNUT: Mr.

4 Ballenger.

5 MR. BALLENGER: Nothing else your

6 Honor.

7 HEARING OFFICER CHESTNUT: Mr. Haver.

8 MR. HAVER: Yes, let me put on my case
9 in my own way and when you want to rule me out
10 order, rule me out of order. But let me
11 finish my question and then don't give me
12 advice and don't allow other people to testify
13 in place of the witness. Be fair.

14 HEARING OFFICER CHESTNUT: Mr. Haver,
15 all I can say is that I have many decades of
16 experience. I am acting in good faith to
17 conduct this in accordance with not just my
18 experience but the regulations promulgated by
19 the Rate Board and if you don't like that, if
20 you feel that constricts you, I'm sorry.

21 But you have to play by the same rules
22 as everybody else does and my fundamental rule
23 is I won't let people treat other people
24 unfairly. That's what it really all comes

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1 down to.

2 I believe in openness and I believe in
3 fairness and that applies to everybody. All
4 right.

5 I look forward then to seeing you
6 Thursday 9 o'clock. If anything comes up, let
7 me know but I do expect you to work together
8 to make sure that this hearing goes smoothly
9 and that that proceeding itself goes smoothly.

10 So anything you can do please do and I
11 if can do anything let me know, okay. Thank
12 you very much. This prehearing conference is
13 adjourned.

14 * * * * *

15 (Whereupon the meeting concluded at 10:23 a.m.)

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1 C E R T I F I C A T I O N

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4 I hereby certify that the proceedings and
5 evidence noted are contained fully and accurately in
6 the stenographic notes taken by me upon the foregoing
7 matter, and that this is a correct transcript of the
8 same.

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13 Court Reporter-Notary Public

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