

**BEFORE THE
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD**

In the Matter of the Philadelphia Water	:	2022 TAP-R Reconciliation
Department's Proposed Changes in Rates and	:	Proceeding – FY 2023
Related Charges	:	

HEARING OFFICER REPORT

Marlane R. Chestnut
Hearing Officer

May 12, 2022

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I. SUMMARY OF RECOMMENDATION

This report addresses the filing made by the Philadelphia Water Department (PWD or Department)¹ to implement the annual reconciliation adjustment to the Tiered Assistance Program Rate Rider (TAP-R) by revising related water, sewer and fire service connection quantity charges (2022 TAP-R adjustment) in accordance with the TAP-R tariff approved by the Philadelphia Water, Sewer and Storm Water Rate Board (Rate Board) in a prior rate proceeding. As discussed in more detail below, I recommend that the Rate Board accept without modification the proposed TAP-R rates contained in the [Joint Petition for Settlement of the TAP-R Proceeding](#) (Joint Petition) for service rendered on and after September 1, 2022 (FY 2023). The effect is an increase in TAP-R rates and charges for water and sewer service.

II. HISTORY OF THE PROCEEDING

On January 21, 2022, the Department filed an [Advance Notice](#) with Philadelphia City Council and the Rate Board of its request to implement the annual reconciliation adjustment to the Tiered Assistance Program Rate Rider (TAP-R) and to revise related water, sewer, and fire service connection quantity charges accordingly.² [Formal Notice](#) of the proposed reconciliation adjustments was filed with the Department of Records on February 25, 2022. Both Notices contained supporting schedules and exhibits as required by the [regulations](#) (Sections II.A.2 and II.C.1) promulgated by the Rate Board. The Formal Notice updated the Advance Notice to reflect projected increases in TAP enrollment (and associated impacts) as the result of an anticipated ramp up in TAP enrollment during July-November 2022, as well as an additional month of actual data (December 2021). The Formal Notice consisted of schedules (Schs. BV 1-5, Schs. RFC 1-4) and exhibits (Exhs. 1A and 1B) setting forth the calculations of the reconciliation and proposed rates

¹ The Water Department is a City department, with responsibility for provision of water, sewer and stormwater services in the City of Philadelphia. It also makes wholesale water sales to neighboring communities.

² TAP is a customer assistance program, mandated by City Council, that allows low-income customers to pay reduced bills based upon a percentage of their household income. See Philadelphia Code, § 19-1605 (calling the program “IWRAP”). The TAP-R rider, with parameters set by the Rate Board in its [2018 general rate determination](#), tracks revenue losses resulting from application of the TAP discount, in order to permit annual reconciliation if they are greater or less than projected. The TAP-R surcharge is charged to customers who do not receive the discount.

and charges. The proposed TAP-R rates and charges would take effect on September 1, 2022 (FY 2023).

The general public was notified through information made available on the Rate Board's website as well as publication in Philadelphia newspapers. Legal notices related to the [Advance](#) and [Formal](#) Notices were timely published in three local newspapers. As well as the required legal notices published in various Philadelphia newspapers and the postings on the Rate Board's website, participants to PWD's 2021 general rate and TAP-R reconciliation proceedings were notified by e-mail of the instant proceeding and provided an opportunity to participate. Additional outreach was conducted by both PWD and the Public Advocate; see [PWD TAP Exh. 2](#) and [Public Advocate Post-Hearing Exhibit](#).

In addition to the Department, participants included the Public Advocate (Community Legal Services, selected by the Rate Board to represent the concerns of residential consumers and other small users); the City of Philadelphia Department of Revenue, Water Revenue Bureau;³ the Philadelphia Large Users Group (PLUG); and two individual customers, Michael Skiendzielewski and Lance Haver.

A prehearing conference to address preliminary procedural issues was held (remotely via Zoom) in this proceeding on March 9, 2022, following the deadline to register as a participant as of right, per Section I(m) of the Board's regulations. All participants to this proceeding were invited to attend; in addition, notice of the prehearing conference was posted on the Rate Board's website at [Meetings & Hearings | Water, Sewer & Storm Water Rate Board | City of Philadelphia](#). At that prehearing conference, a schedule was adopted, and directives were issued regarding discovery and the holding of hearings. These determinations were memorialized in a [Prehearing Order](#) dated March 9, 2022.

In accordance with the schedule contained in the March 9, 2022 [Prehearing Conference Order](#), the Public Advocate submitted [PA. St. 1](#), the direct testimony of Lafayette K.

³ The Water Revenue Bureau, which is part of the City's Department of Revenue, provides all billing and collection functions for the Water Department.

Morgan, Jr. (Exeter Associates, Inc.). On March 29, 2022, PWD submitted the rebuttal testimony of Jon Pilkenton Davis, Henrietta Locklear, and Brittany Baporis (Raftelis Financial Consultants) ([PWD Rebuttal St. 1](#)).

Written discovery was undertaken by the Public Advocate, to which the Department responded. PLUG also propounded discovery, which was answered. The various sets of interrogatories and responses, as well as PWD's responses to transcript requests, are posted at the Rate Board's [website](#).

After proper notice, public and technical review hearings were held (remotely via Zoom, with the option to participate telephonically) on March 31, 2022. A combined stenographic [transcript](#) of both hearings was produced.

Both Mr. Haver and Mr. Skiendzielewski testified at the public hearing. No other customers expressed interest in attending or participated in the public hearing.

At the technical review hearing, PWD presented two panels of witnesses: (1) Ann Bui, Dave Jagt, and Brian Merritt (Black & Veatch Management Consulting LLC) were cross-examined by the Public Advocate and Mr. Haver; and (2) Jon Pilkenton Davis, Henrietta Locklear, and Brittany Baporis (Raftelis Financial Consultants) were cross-examined by the Public Advocate⁴ and Mr. Haver. The Public Advocate presented its witness, Mr. Morgan, who was cross-examined by Mr. Haver. Mr. Haver did not testify but submitted an exhibit, [Haver Exh. 1](#), a report on the Philadelphia Gas Works universal service programs submitted to the Pennsylvania Public Utility Commission in 2018.

On April 22, 2022, PWD and the Public Advocate (Joint Petitioners) filed a [Joint Petition for Settlement of TAP-R Proceeding](#) (Joint Petition). They agreed to compromise on the projected average number of TAP participants for the next rate period (September 2022 through August 2023), utilizing 24,199 rather than the 29,648 proposed by the Water Department or the

⁴ [Public Advocate TAP-R Hearing Exh. 1](#) consists of selected discovery responses that were used in the Public Advocate's cross-examination of the PWD witness panels.

23,422 suggested by the Public Advocate. Attached to the Joint Petition was Exh. 1, the TAP-R supporting data and calculations. Also on April 22, 2022, PWD filed a separate [Main Brief](#) in support of the Joint Petition; and the Public Advocate submitted a [letter](#) in lieu of a brief in which it requested a “reasonable opportunity” to respond to any objections that “raise matters not previously raised in relevant witness testimony.” A [Main Brief](#) supporting the Joint Petition was filed by PLUG on April 22, 2022, which also requested that the Rate Board “. . . consider the potential future cost impacts of the TAP-R and take steps to improve the existing customer protections for non-TAP customers.”

On April 28, 2022, Mr. Haver filed [Objections](#) to the Joint Petition in the form of a Brief, alleging that the Rate Board failed to provide adequate notice of the filing in violation of the Philadelphia Home Rule Charter and that the Public Advocate provided “ineffective assistance of counsel” and failed to disclose financial “conflicts.” I allowed the participants an opportunity to respond. On May 3, 2022, the Public Advocate submitted a [Post-Hearing Exhibit](#), its public outreach report. On May 4, 2022, the Public Advocate submitted a [Reply](#) to Mr. Haver’s Objections; on that same date, PWD filed a [Response](#) to the Objections.

On May 5, 2022, Mr. Haver filed a [Motion to Strike](#), alleging that the Public Advocate’s [post-hearing exhibit](#) was not only untimely but somehow improper and non-credible, in that it is “identical” to the analogous outreach log submitted by the Public Advocate in the separate special rate proceeding. The Public Advocate on May 5, 2022, filed a [letter](#) in response. As explained in more detail below, this Motion is denied.

As provided in the Rate Board’s regulations at [§II.C.3.b](#), the record in this proceeding includes the [Advance Notice](#), the [Formal Notice](#), [responses to written discovery](#), [Public Advocate St. 1](#) (including attached schedules), [PWD Rebuttal St. 1](#) (including attached schedule), [Haver Exh.1](#), [Public Advocate TAP-R Hearing Exh. 1](#), [PWD Exh. 2](#), the [stenographic transcript of the March 31, 2022 public and technical hearings](#), the [Public Advocate’s Post-Hearing Exhibit](#), the [Joint Settlement Petition](#) (including Exh. 1), PWD’s [Main Brief](#), PLUG’s [Main Brief](#), Mr. Haver’s [Objections](#), the Public Advocate’s [Reply to Objections](#), PWD’s [Response to Objections](#), and this Hearing Report. All of these documents are posted on the Rate Board’s website, [2022 Annual Rate Adjustment | Water, Sewer & Storm Water Rate Board | City of Philadelphia](#).

The Joint Petitioners' position is that the proposed rates contained in the settlement document provide a fair, just and reasonable TAP-R reconciliation adjustment, are supported by the record, are in compliance with all applicable ordinances, and are in the best interest of the Water Department and its customers. I agree. I therefore recommend that the Rate Board permit the Department to put the proposed rates and charges in effect for service rendered on and after September 1, 2022. I commend the parties to the settlement— and the counsel representing them — for their efforts in this proceeding to resolve the issues in an expeditious and reasonable manner, which benefits both PWD and its customers. Further, I find that Mr. Haver's Objections are without merit, and should be dismissed as discussed below, and that his Motion to Strike the Public Advocate's Post-Hearing Exhibit should be denied.

III. PROPOSED RATES

The purpose of this proceeding is to permit an annual reconciliation of the revenue impacts associated with TAP by comparing PWD's actual experience to the projections used to set the rates for the review period. It is purely a calculation in which a formula already adopted by the Rate Board is applied. Depending on the actual revenue experience, the rates and charges for the next rate period may be adjusted up or down.

TAP is an assistance program that allows eligible low-income customers to pay reduced bills based upon a percentage of their household income. Monthly bills are not based on usage; they are capped as a percentage of income and are constant each month while the customer is enrolled in the program.⁵

TAP-R rates are charged to all customers who do not receive the discount and are intended to recover the revenue losses associated with the customer assistance program. The cost of the program (in other words, the lost revenue resulting from the discount) is affected by several factors, such as the number of enrolled customers, water and sewer service usage levels, changes in PWD's non-discounted rate and the level of discount needed to provide affordable bills to the

⁵ The TAP program was approved by the Rate Board as part of PWD's 2016 rate filing. See, [Rate Board 2016 Rate Determination](#). The TAP-R rate rider was approved as part of PWD's 2018 rate filing ([Rate Board 2018 Rate Determination](#)) and was adjusted in the [2019](#), [2020](#) and [2021](#) annual TAP-R reconciliation proceedings.

customers enrolled in the program. The TAP-R Rider tracks revenue losses resulting from application of the TAP discount, in order to permit annual reconciliation if they are greater or less than projected.

The proposed rates and charges contained in the [Joint Petition](#) provide that, for service rendered on and after September 1, 2022, the following charges will become effective:

Table 1 – Current and Proposed TAP-R Rates

TAP-R Rate	Current	Proposed	Difference
Water (\$/Mcf)	\$0.69	\$1.03	+\$0.34
Sewer (\$/Mcf)	\$1.09	\$1.63	+\$0.54

The table below summarizes bill impacts associated with proposed TAP-R rates for typical residential,⁶ senior citizen⁷ and small business customers.⁸

Table 2 – Bill Impact Analysis by Customer Class

Customer Class	Monthly Bill		Change in Bill (\$)	Percent Change
	Current Base and TAP-R Rates	Current Base and Proposed TAP-R Rates		
Residential	\$66.15	\$66.59 ⁹	\$0.44	0.6%
Senior Residential	\$39.80	\$40.00	\$0.20	0.5%
Small Business	\$111.59	\$112.11	\$0.52	0.5%

⁶ A typical PWD residential customer has a 5/8-inch meter and uses approximately 5 Ccf/monthly.

⁷ A typical PWD senior residential customer has a 5/8-inch meter and uses approximately 3 Ccf/monthly; includes the senior discount of 25%.

⁸ A typical small business customer has a 5/8-inch meter and uses approximately 6 Ccf/monthly. A parcel with gross area of 5,500 square feet and impervious area of 4,000 square feet was assumed for development of the typical bill comparison.

⁹ Incorrectly noted as \$69.59 in the Joint Petition, ¶36.

Other terms and conditions were contained in the [Joint Petition](#), including the standard disclaimers that the settlement agreement is made without prejudice to each participant in this or other proceedings, and that the Joint Petitioners reserve their rights to withdraw from the proposed settlement in the event the Rate Board disapproves it or to file exceptions should the hearing officer modify or misstate any of the agreement's terms and conditions.

IV. DISCUSSION

A. Haver Objections

The first item to address is Mr. Haver's [Motion to Strike](#) the [Public Advocate's Post-Hearing Exh. 1](#), the outreach report, alleging that it was not only untimely but somehow improper and non-credible, in that it is "identical" to the analogous outreach log submitted by the Public Advocate in the separate, Special Rate proceeding. The Public Advocate on May 5, 2022, filed a letter in response. This Motion is **DENIED**: this issue of how the Public Advocate performs its contracted activities is not within the scope of this limited proceeding. Even if it were, the exhibit was not untimely, and in no manner prevented Mr. Haver from conducting discovery or submitting direct or rebuttal testimony on the merits of the proposed TAP-R rates. The exhibit on its face is not identical with that submitted in the special rate proceeding; it was supplemented with additional information relating specifically to the TAP-R.¹⁰ Finally, as noted by the Public Advocate in its May 5, 2022 letter-response, the Post-Hearing Exhibit contains no probative information relative to the setting of the TAP-R rates.

Next, Mr. Haver [objected](#) to the proposed [settlement](#). None of his objections are directed to the substantive issues presented in this proceeding. Rather, they focus on his allegations that the surcharge is a "tax," that the notice provided by the Rate Board at its website is inadequate and therefore violative of the [Home Rule Charter, Sec. 8-600](#) (Language Access Plans), as well as his on-going dissatisfaction with the performance of Community Legal Services as Public

¹⁰ "All members of the public expressing an interest in the Special Rate Proceeding were provided information directly regarding the opportunity to participate in the TAP-R Reconciliation proceeding. This determination was made in order to avoid confusion among those potentially providing public input, by focusing outreach efforts first on the Special Rate Proceeding (with hearings taking place on March 23), with follow up outreach for the TAP-R proceeding (with the hearing taking place on March 31)." Public Advocate May 5, 2022 letter-response.

Advocate. None of these allegations has merit; they are simply incorrect and certainly provide no reason for rejection of the Joint Settlement, and the proposed rates.

First, it is incorrect to characterize the TAP-R surcharge as a “tax.” No support is provided by Mr. Haver for this simply wrong assertion. It is a volumetric surcharge, based on water and sewer usage, and is a legitimate City cost of providing service to the public. Even if Mr. Haver had been correct, issues directed to the design and implementation of the TAP tariff are clearly outside the scope of this limited annual reconciliation. As explained in PWD’s [Response](#) at 2-3: “The surcharge is discrete and is considered apart from the Department’s other rates and charges. In fact, the formula [footnote omitted] used as the basis for calculating and adjusting TAP-R rates is solely for the purpose of tracking and recovering TAP billing losses.”

Next, Mr. Haver’s allegations concerning the notice provided, and the alleged violation of the Philadelphia Home Rule Charter are without merit.¹¹ The Rate Board’s notice uses plain language to clearly explain that the subject of this annual reconciliation are the rates charged pursuant to the TAP-R rider: “On January 21, 2022, the Philadelphia Water Department filed Advance Notice of the Department’s proposed changes to its Tiered Assistance Program Rate Rider Surcharge rates (TAP-R), proposed to become effective September 1, 2022.” This is purely a straightforward, formulaic reconciliation, in which rates may be adjusted up or down depending on the actual revenue experience during the preceding rate period, and there has been no showing on the record of any customer unable to understand the scope of this proceeding.

Further, the website uses plain language to inform those who may be affected by this potential change in rates how to participate in the proceeding: “Persons affected by the rates may become participants in this annual reconciliation proceeding to consider changes to TAP-R by sending their names, addresses, email addresses and on whose behalf they are participating to: TAP-R Reconciliation Proceeding, Water Rate Board, % Steven Liang, City of Philadelphia Law Dept. 1515 Arch St., 17th Fl. Philadelphia, PA 19102 or WaterRateBoard@phila.gov.”

¹¹ His allegation that the notices provided violated “the spirit” of the Plain Language Consumer Contract Act, 73 P.A. § 2205, is clearly unwarranted and irrelevant.

As shown on both Public Advocate [Post-Hearing Exhibit](#) and [PWD Exh. 2](#), there was a substantial amount of public outreach conducted: the required notices were placed in various newspapers (the Philadelphia Inquirer, the Legal Intelligencer, Al Dia) and social media (Facebook, Twitter, Instagram, Nextdoor, LinkedIn) as well as the Department’s own website and e-notification system. See, for example, the [e-notification](#).

In addition, as noted by PWD in its Response at 4, the purpose of [Section 8-600 of the Philadelphia Home Rule Charter](#) is to ensure that individuals with “limited English proficiency” are able to access City services, and alleged violations are within the purview of the Philadelphia Office of Immigrant Affairs. There has been no showing – by Mr. Haver or anyone else – that the plain language of the Rate Board’s website is inadequate in this respect.

Finally, Mr. Haver’s factually incorrect and meritless allegations concerning the Public Advocate (and me as Hearing Officer) have been addressed and rejected numerous times by the Rate Board¹² and will not be further considered.

B. Proposed Settlement

As explained above, the proposed settlement rates result in a small increase in the TAP-R rates for the affected customer classes for the next rate period. These proposed settlement rates appear to be fair and reasonable and are consistent with the relevant ordinance and regulations established by the Rate Board. They are amply supported by the record, which establishes that they will provide an appropriate level of funding for the TAP program.

The rates are based on a projected average monthly number of TAP participants for the next rate period (September 2022 to August 2023) of 24,199¹³ that is reasonable in light of the City of Philadelphia’s planned ramp up of TAP enrollment during July – November 2022. It

¹² See, for example, the Rate Board’s rejection of Mr. Haver’s [Motion to Remove Public Advocate](#) and associated [Direct Appeal](#) at its [April 13, 2022 meeting](#).

¹³ See [Joint Petition](#) at ¶25.

represents a reasonable compromise from the Department's projected average monthly enrollment of the 29,648 proposed by the Water Department or the 23,422 suggested by the Public Advocate.

Aside from Mr. Haver (who did not challenge the rates themselves), the other active participants (PWD, the Public Advocate, PLUG) have found the proposed rates appropriate or acceptable after discovery and thorough review. The proposed rates represent a just and fair resolution as accepted by participants who represent a variety of interests, from small customers (the Public Advocate) to large users (PLUG).

Therefore, the proposed rates and charges contained in Exhibit 1 to the [Joint Petition](#) should be approved without modification by the Rate Board for service rendered on and after September 1, 2022.

V. CONCLUSION

1. As provided in the Rate Board's regulations at [§II.C.3.b](#), the record in this proceeding includes the [Advance Notice](#), the [Formal Notice](#), [responses to written discovery](#), [Public Advocate St. 1](#) (including attached schedules), [PWD Rebuttal St. 1](#) (including attached schedule), [Haver Exh.1](#), [Public Advocate Hearing Exh. 1](#), [PWD Exh. 2](#) (the required notices of publication and notification), the [stenographic transcripts of the March 31, 2022 public and technical hearings](#), the [Public Advocate's Post-Hearing Exhibit](#), the [Joint Settlement Petition](#) (including Exh. 1), PWD's [Main Brief](#), PLUG's [Main Brief](#), Mr. Haver's [Objections](#), the Public Advocate's [Reply to Objections](#), PWD's [Response to Objections](#), and this Hearing Report. All of these documents are posted on the Rate Board's website, [2022 Annual Rate Adjustment | Water, Sewer & Storm Water Rate Board | City of Philadelphia](#).

2. I recommend that the Rate Board approve the [Joint Petition for Settlement](#) without modification and find that the modified TAP-R rates are supported by the record and are just and reasonable.

3. I recommend that the Rate Board authorize the Water Department to file revised TAP-R rates and charges as contained in [Joint Settlement Petition Exh. 1](#), as set forth in Table 1 above, for service rendered on and after September 1, 2022.

Marlane R. Chestnut
Hearing Officer

May 12, 2022