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By Records Dept. at 4:54 pm, Jun 15, 2022

MEMORANDUM

TO: James Leonard, Records Commissioner
FROM: Sonny Popowsky, Chair, Philadelphia Water, Sewer and Storm Water Rate Board *SP*
DATE: June 15, 2022
RE: 2022 TAP-R Reconciliation Proceeding – Determination of Water Department Tiered Assistance Program Rate Rider Surcharge Rates Beginning 9/1/2022

Pursuant to Section 5-801 of the Philadelphia Home Rule Charter, Section 13-101 of the Philadelphia Code, and the Regulations of the Philadelphia Water, Sewer and Storm Water Rate Board, and at the direction of the Rate Board in its public meeting of June 15, 2022, I am forwarding herewith for filing the Rate Determination of the Philadelphia Water, Sewer and Storm Water Rate Board on the 2022 TAP-R Reconciliation Proceeding, which constitutes the Rate Report and Rate Determination of the Rate Board, along with a memorandum of approval from the Law Department. The Rate Board has modified the changes in rates and charges previously set to take effect on September 1, 2022.

On February 25, 2022, following Advance Notice filed with City Council and the Rate Board on January 21, 2022, the Water Department filed a “Formal Notice of Proposed Changes in Rates and Charges; Annual Adjustment of Tiered Assistance Program Rate Rider Surcharge Rates (TAP-R); Final Proposed TAP-R Reconciliation Statement,” commencing a TAP-R Reconciliation Proceeding as defined in Section I(v) of the Rate Board’s Regulations.

In accordance with the Charter, Code, and Regulations noted above, the Rate Board’s Hearing Officer held a procedural conference and supervised discovery among the four entities and two individuals registered as participants in the rate proceeding. A public hearing was held on this matter were held on March 31, 2022, at which one customer spoke. A technical hearing was held on the same day, and the participants added additional documents to the record. The Water Department and Public Advocate filed a Joint Petition for Settlement on April 22, 2022. One participant objected to the settlement, and its parties filed statements in response.

On or about May 12, 2022, the Hearing Officer filed her Report, summarizing the record and making recommendations for the resolution of the proceeding. One participant filed exceptions. The Rate Board then deliberated the issues in its monthly public meeting on June 8, 2022, and adopted this Rate Determination at a special public meeting on June 15, 2022. All meetings and hearings were duly noticed.

We expect that the Water Department will timely file Rates and Charges in conformance with the Rate Determination.

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The City of Philadelphia
Law Department
Diana P. Cortes, City Solicitor

MEMORANDUM

TO: Sonny Popowsky, Chair, Philadelphia Water, Sewer and Storm Water Rate Board

FROM: Daniel W. Cantú-Hertzler, Senior Attorney *DWCH*

DATE: June 15, 2022

RE: 2022 TAP-R Reconciliation Proceeding – Determination of Water Department Tiered Assistance Program Rate Rider Surcharge Rates Beginning 9/1/2022

I have reviewed the attached Rate Determination of the Philadelphia Water, Sewer and Storm Water Rate Board. The Water Department commenced this TAP-R Reconciliation Proceeding by filing a [Formal Notice](#) on February 25, 2022 following its [Advance Notice](#) of January 21, 2022. The Rate Board concluded this proceeding by adopting this Rate Determination on June 15, 2022.

The Rate Board is the independent rate-making body established by [ordinance](#) of City Council pursuant to [Section 5-801](#) of the Philadelphia Home Rule Charter to fix and regulate rates and charges for water and sewer services. The attached document is the Rate Board's Rate Report under [Section 13-101\(8\)](#) of the Philadelphia Code, and is the Rate Board's Rate Determination pursuant to Sections I(o) and II.A.3 of the [Rate Board Regulations](#). I find the attached Rate Determination to be legal and in proper form.

In accordance with Section 13-101(8) of the Philadelphia Code and Section II.A.3(c) of the Rate Board Regulations, you may forward the Rate Determination to the Department of Records for filing. As stated in the Rate Determination and consistent with Section 13-101(3)(e) of the Code and Section II.A.3(d) of the Rate Board Regulations, the effective date of the changes in the rates and charges will be September 1, 2022 if the Water Department files its conforming Rates and Charges at least ten days prior to that date.

Attachment

cc (w/att): All Rate Board Members (via E-mail)

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**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 :

RATE DETERMINATION

The subject of this Rate Determination is the request of the Philadelphia Water Department (PWD or the Department) to implement its annual reconciliation adjustment to the Tiered Assistance Program Rider (TAP-R) surcharge. On January 21, 2022, the Department filed an [Advance Notice](#)¹ with Philadelphia City Council and the Philadelphia Water, Sewer and Storm Water Rate Board (Rate Board) of its request to implement the annual reconciliation adjustment to the TAP-R and to revise related water, sewer, and fire service connection quantity charges accordingly. [Formal Notice](#)² 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 and charges. The proposed TAP-R rates and charges were proposed to take effect on September 1, 2022 (FY 2023).

TAP is a customer assistance program mandated by City Council³ that allows low-income customers to pay reduced bills based upon a percentage of their household income. The TAP-R rider tracks revenue losses resulting from application of the TAP discount, to permit annual

¹ <https://www.phila.gov/media/20220124130703/TAP-R-2022-ADVANCE-NOTICE-2022-01-21.pdf>

² <https://www.phila.gov/media/20220225145809/PWD-FY2023-TAP-R-Formal-Notice-Final.pdf>

³ See [Philadelphia Code, § 19-1605](#) (calling the program “IWRAP”).

reconciliation if they are greater or less than projected. The TAP-R surcharge is charged to customers who do not receive the discount.

Before us is the [Hearing Officer Report](#)⁴ of Hearing Officer Marlane R. Chestnut, dated May 10, 2022. We will adopt and incorporate that Report, which contains the history of the proceeding, and, after a complete discussion and review of the record, recommends that we approve the proposed rates and charges for the TAP-R surcharge contained in the [Joint Petition for Settlement of TAP-R Proceeding](#)⁵ (Joint Petition) submitted by PWD and the Public Advocate, dated April 22, 2022.⁶ The proposed rates are based on actual TAP-R participation in the past and reasonable projections of participation in the coming year, and find substantial support in the record.

Hearing Officer Chestnut addressed the [Objections](#)⁷ to the Proposed Settlement raised by Lance Haver, an individual participant, who did not challenge the proposed rates but rather alleged that the surcharge was a “tax,” that the notice provided by the Rate Board at its website was inadequate under the [Home Rule Charter, Sec. 8-600](#)⁸ (Language Access Plans), and that the organization and performance of Community Legal Services as Public Advocate were unsatisfactory. After consideration and discussion, Hearing Officer Chestnut determined that these allegations provided no reason for rejection of the Joint Settlement, and the proposed rates. She also discussed and denied Mr. Haver’s [Motion to Strike](#)⁹ the [Public Advocate’s Post Hearing Exh. 1](#)¹⁰, the outreach report.

The only [Exceptions](#)¹¹ submitted to the Hearing Report were by Mr. Haver. These Exceptions, as were the case with his Objections, are not addressed to the rates which are the subject of this limited reconciliation proceeding. Rather, he again alleges that the notice provided

⁴ <https://www.phila.gov/media/20220512191447/TAP-R-Report-2022-May-10-final.pdf>

⁵ <https://www.phila.gov/media/20220425205927/PWD-2022-TAP-joint-settlement-final-Combined.pdf>

⁶ The proposed settlement also was supported by the Philadelphia Large Users Group (PLUG), which filed a [Brief](#) in support. The only participant to object to the proposed settlement was Lance Haver, an individual participant, who did not object to the rates but to other aspects of the proceeding.

⁷ <https://www.phila.gov/media/20220428173952/haver-tap-brief-final.pdf>

⁸ https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-183661

⁹ <https://www.phila.gov/media/20220505184540/TAP-Post-hearing-objection.pdf>

¹⁰ <https://www.phila.gov/media/20220503163417/Post-TAP-R-Hearing-Exhibit.pdf>

¹¹ <https://www.phila.gov/media/20220520160548/TAP-R-haver-exception-2022-final.pdf>

by the Rate Board is in violation of the Philadelphia Home Rule Charter, that the Public Advocate provided “inadequate representation” violating Mr. Haver’s constitutional right to effective counsel and that the Hearing Officer is biased in favor of the Public Advocate and committed reversible error. None of these allegations provide any reason for rejecting the rates and charges as set out in the proposed settlement.¹²

At its regular public monthly meeting on June 8, 2022, the Rate Board deliberated on the proceeding, including the Hearing Officer Report and the Exceptions, and voted as set forth in the polling sheet attached as Appendix A hereto, which we incorporate by reference in this Rate Determination.

First, Hearing Officer Chestnut thoroughly examined and discussed the allegation that the Rate Board’s notice was in violation of the City’s Home Rule Charter, [Section 8-600 of the Philadelphia Home Rule Charter](#). Exception II (“Violation of Philadelphia Home Rule Charter Section 8-600”) We adopt her discussion ([Hearing Officer Report](#) at 8-9) and conclusion. There has been no showing on the record that any customer “of limited English proficiency” has had any difficulty in understanding the plain language of the notices – explaining both the subject matter of this filing and how to participate - posted on the Rate Board’s website. Further, any violation of Section 8-600 would appear to be within the purview of the Philadelphia Office of Immigrant Affairs.¹³

Mr. Haver’s second Exception (“Inadequate Representation”) merely repeats his continuing dissatisfaction with the Public Advocate, which we have addressed and rejected a number of times. We reiterate that neither the “public” in general nor Mr. Haver in particular is the “client” of Community Legal Services (CLS), a vendor providing certain specified services

¹² Any exception or argument that is not specifically addressed shall be deemed to have been duly considered and denied without further discussion.

¹³ As correctly stated by the Public Advocate in its [Response](#) to Mr. Haver’s Objections, “. . . the Board’s obligation to provide public notice does not originate from Section 8-600 of the Charter. Instead, as provided in the Board’s regulations, the Board has committed to provide public notice by advertising in accordance with Section 8-407 of the Charter and Section 21-1703 of the Philadelphia Code. Haver has failed to demonstrate a violation of the Board’s applicable regulations concerning public notice.” See Rate Board regulations, [§ II.A.2\(d\)](#)

under contract with the Rate Board.¹⁴ If the Rate Board is dissatisfied with the services rendered, it can take whatever appropriate action is available under that contract. The fact that Mr. Haver as an individual is dissatisfied because the Public Advocate failed to take certain actions he promoted in this and prior proceedings does not warrant denial of the Joint Petition here.

Mr. Haver is simply incorrect when he alleges that he is entitled to “adequate representation” ([Exceptions](#) at 2, 5-6) or his statement that “The argument that ineffective counsel is limited to criminal law, where a member of the Public is appointed a lawyer, like the public is appointed a public advocate, not administrative law, is a case of first impression and it is prejudicial and impermissible for a lower court judge to decide on an issue without foundations for ruling.” [Exceptions](#) at 3. The 6th Amendment right to effective counsel does not apply to civil cases, much less administrative ones. Of more relevance here, the services provided pursuant to the contract are explicitly non-legal services; CLS as the Public Advocate simply has no attorney-client relationship in rate proceedings with either “the public” or any other participant, including Mr. Haver. Public Advocate [Response](#) to Haver Objections at 6-7.

Mr. Haver’s third Exception (“Conflicts of Interest”) is similarly without merit. We do not know the source of the graphic at 6, or what it is intended to represent. It was not presented during the course of the proceeding, so there was no opportunity for any other participant to address it. There is no support for his contention that there is any conflict at all, or that CLS in its performance of its general services contract with the Rate Board is influenced inappropriately by PWD’s “owner” [the City]. [Exceptions](#) at 6-7,9. The applicable contract grants CLS the duty and independence to advocate forcefully for the interests of small customers, and CLS has consistently done so. Moreover, the contract does not provide for CLS to provide legal representation, so Rule 1.7 of the Rules of Professional Conduct would not apply in any event.

We have previously found that Mr. Haver’s criticisms of how CLS has fulfilled its contractual responsibilities as Public Advocate are incorrect and unsupported by the record. Most

¹⁴ For a description of the scope of the contracted services, see Public Advocate’s [Response](#) to Haver Objections at 6-8.

recently, we denied his [Motion to Remove Public Advocate](#)¹⁵ and associated [Direct Appeal](#)¹⁶ at our [April 13, 2022 meeting](#).¹⁷ See also our [2021 Rate Determination](#)¹⁸ at 17-29 (2021 General Rate Proceeding). In any event, they provide no reason for us to find that the process used to develop the Joint Petition here was flawed or inadequate, or that the proposed rates are unreasonable.

With respect to the final [Exception](#) (Biased Hearing Officer), we find that there is no basis whatsoever for Mr. Haver’s allegation of bias on the part of the Hearing Officer as the result of her denial of his Motion to Strike the Public Advocate’s Post Hearing Exhibit. We find that Hearing Officer Chestnut correctly discussed and denied the Motion. To allege that her ruling is the result of her “attempt to help” the Public Advocate and that she “. . . aided and abetted the public advocate’s attempt to cover up its inadequate counsel” is an unwarranted and totally unfounded personal attack on Ms. Chestnut.¹⁹ An adverse procedural ruling – especially when correctly discussed and resolved – is not indicative of bias.

As we have found repeatedly, there is no basis for these unwarranted allegations, based on mischaracterized facts²⁰ and false insinuations,²¹ directed to the Public Advocate and the Hearing Officer. Going forward, such baseless attacks will be dismissed.

After full consideration of the [Exceptions](#) submitted by Mr. Haver and a full review of the record, we agree with the Hearing Officer’s recommendation that, for service rendered on and after September 1, 2022, the Department should be permitted to increase the current TAP-R

¹⁵ <https://www.phila.gov/media/20220217171233/Motion-to-Remove-Public-Advocate.pdf>

¹⁶ <https://www.phila.gov/media/20220325160241/edited-quid-pro-quo-water.pdf>

¹⁷ <https://www.phila.gov/media/20220512191446/April-13-2022-Meeting-Minutes.pdf>

¹⁸ <https://www.phila.gov/media/20210618105014/2021-General-Rate-Determination-as-filed-with-Records-Dept-20210616.pdf>

¹⁹ The allegation that she “should have known that Participant Haver would raise” an issue is on its face irrelevant and unreasonable.

²⁰ For example, he continues to characterize the Public Advocate’s contract with the Rate Board as “no bid” ([Exceptions](#) at 5) despite being repeatedly informed that the contract was solicited via the Board’s Request for Proposals, which was duly posted on the City’s public eContract Philly website. It was lawfully entered into pursuant to the City’s procurement rules and renewed pursuant to its terms.

²¹ For example, he suggests ([Exceptions](#) at 6-7) that opposing a PWD position could somehow lead the City to defund all of its contracts with CLS.

water surcharge rates from \$0.69/Mcf to \$1.03/Mcf²² and to increase the sewer surcharge rate from \$1.09/Mcf to \$1.63/Mcf. See [Joint Petition](#), Exh. 1.

The rates and charges are in compliance with applicable ordinances and regulations and our [2018 Rate Determination](#)²³, which set forth the basis for calculating and adjusting the TAP-R surcharge to fund this low-income customer assistance program.. The record of this proceeding fully supports the conclusion that these rates provide a reasonable basis for recovery of TAP-R costs, and therefore are just and reasonable.

We note that these rates, after a full opportunity for review and discovery, were either agreed to (PWD, the Public Advocate) or supported (the Philadelphia Large Users Group) by participants who represent a broad range of interests. Other than Mr. Haver, no participants objected to [the May 29, 2021 Hearing Officer Report](#), and no active or inactive participant objected to the proposed rates.²⁴

Therefore, we find the modified TAP-R rates contained in Exhibit 1 to the [Joint Petition](#) to be just and reasonable and authorize the Department to file revised rates and charges as proposed, effective for service rendered on and after September 1, 2022.

Date: June 15, 2022

Irwin Popowsky, Chair
Tony Ewing, Vice-Chair
Abby L. Pozefsky, Secretary
McCullough Williams III, Member
Debra McCarty, Member

²² Fire protection customers are also subject to a TAP-R surcharge rate, and which is incorporated in the quantity charge. Therefore, the change in the water rate will also apply to the Fire Protection TAP-R surcharge.

²³ <https://www.phila.gov/media/20180713144736/2018-RATE-DETERMINATION-TIMESTAMPED.pdf>

²⁴ During the TAP-R public hearing, Mr. Haver commented that it was improper to fund the TAP-R program by imposing what he called “the equivalent of a sales tax” on non-TAP customers’ water usage. Mr. Ballenger pointed out that TAP-R is funded similarly to the Universal Service Fund Charge imposed to fund the low-income customer assistance programs of every regulated utility in Pennsylvania. See TAP-R [Public and Technical Hearing](#), March 31, 2022, <https://www.phila.gov/media/20220421170110/Tap-R-technical-hearing-transcript-2022-03-31.pdf>. As noted in the Hearing Officer Report at 8, “It is incorrect to characterize the TAP-R surcharge as a ‘tax’.” We further note that the structure of TAP-R rates, as with all other rates and charges, is determined in General Rate Proceedings.

BOARD POLLING SHEET JUNE 8, 2022 – TAP-R PROCEEDING

	Hearing Report Recommendations	Exceptions	Mr. Popowsky	Mr. Ewing	Ms. Pozefsky	Mr. Williams	Ms. McCarty
1	The Rate Board should 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.	Mr. Haver: The settlement is not in the public interest and should be rejected, because the TAP-R surcharge represents an improper tax; the notice of the TAP-R rate increase provided to the public was inadequate; the Public Advocate had undisclosed conflicts of interest, and provided inadequate and ineffective representation; the Hearing Officer was biased and acted prejudicially by, inter alia, permitting the Public Advocate to file an exhibit after the close of the hearings.	Findings	Findings	Findings	Findings	Findings
			Accept	Accept	Accept	Accept	Accept
			Exceptions	Exception	Exception	Exception	Exception
			Deny	Deny	Deny	Deny	Deny
2	The Rate Board should 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, for service rendered on and after September 1, 2022.	[Same]	Findings	Findings	Findings	Findings	Findings
			Accept	Accept	Accept	Accept	Accept
			Exceptions	Exception	Exception	Exception	Exception
			Deny	Deny	Deny	Deny	Deny