

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

Re: Philadelphia Water Department Proposed Charges in Rates and Charges	2023 TAP-R Adjustment Proceeding
--	----------------------------------

**MAIN BRIEF OF THE
PHILADELPHIA WATER DEPARTMENT**

Andre C. Dasent, Esquire
Commerce Square
2001 Market Street, 25th Floor
Philadelphia, Pennsylvania 19103
(267) 624-3503

Ji Jun, Esquire
Kevin Birriel, Esquire
Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102

Carl R. Shultz, Esquire
Sarah C. Stoner, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

Date: April 20, 2023

Counsel to Philadelphia Water Department

Table of Contents

	Page
I. INTRODUCTION	1
A. The Proposed TAP-R Adjustment	1
B. Procedural History	2
II. LEGAL STANDARDS	5
III. THE PROPOSED TAP-R ADJUSTMENT	6
A. The Settlement Between PWD and the Public Advocate	7
B. Annual Adjustment Issues Raised By Other Participants.....	9
IV. CONCLUSION	10

I. INTRODUCTION

A. The Proposed TAP-R Adjustment

The Philadelphia Water Department (“PWD” or “Department”) submits this Brief in support of its proposals in the Formal Notice, as amended by the Joint Petition for Settlement (“Joint Petition” or “Settlement”) (collectively, the “2023 TAP adjustment”) to implement the annual reconciliation adjustment to the Tiered Assistance Program Rate Rider (“TAP” or “TAP-R”) by revising related rates and charges in accordance with the rider approved by the City of Philadelphia Water, Sewer and Storm Water Rate Board (“Rate Board” or “Board”) in a prior rate proceeding.

The Department’s position is that the proposed rates contained in the 2023 TAP adjustment (i) provide a fair, just and reasonable TAP reconciliation adjustment, (ii) are supported by the record, (iii) are in compliance with all applicable ordinances and (iv) are in the best interest of the Department and its customers. Specifically, the Department proposes that the Rate Board accept without modification the proposed TAP rates contained in the Settlement for service rendered on and after September 1, 2023. The effect is a decrease in water and wastewater TAP-R surcharges, as described in the Settlement and summarized in the table below.

Table 1: TAP-R Rates from the Settlement		
	Current 2022 TAP Rate Determination	Settlement 2023 TAP Adjustment
Water TAP-R Surcharge	\$1.03/MCF	\$0.15/MCF
Wastewater TAP R-Surcharge	\$1.63/MCF	\$0.24/MCF

B. Procedural History

On January 24, 2023, the Department filed Advance Notice¹ of the proposed changes to its TAP-R rates to become effective for the period September 1, 2023 to August 31, 2024 (“Next Rate Period”). Formal Notice² of the proposed reconciliation adjustments was filed with the Department of Records on February 23, 2023. Both Notices contained supporting statements, schedules, and exhibits as required by the regulations (Sections II.A.2 and II.C.1) promulgated by the Rate Board.

The general public was notified through information made available on the Rate Board’s website,³ and legal notices related to the Advance and Formal Notices were timely published in three local newspapers. In addition to these legal notices published in various Philadelphia newspapers and the postings on the Rate Board’s website, participants to PWD’s 2022 special rate proceeding and PWD’s 2022 TAP-R proceeding were notified by e-mail of the instant proceeding and provided an opportunity to participate.

The participants in this proceeding included the Department; the Public Advocate (represented by Community Legal Services, selected by the Rate Board to represent the concerns of residential consumers and other small users); the Philadelphia Large Users Group (“PLUG” or “Large Users Group”);⁴ and, one individual customer, Lance Haver.

¹ <https://www.phila.gov/media/20230124153640/TAP-R-Reconciliation-Proceeding-Advance-Notice-2023-01-24.pdf>

² <https://www.phila.gov/media/20230224210019/TAP-R-Reconciliation-Proceeding-Formal-Notice-final.pdf>

³ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2023-annual-rate-adjustment/>

⁴ The Philadelphia Large Users Group is an *ad hoc* group of large volume customers receiving water, sewer, and stormwater service from the Department under the Industrial and Hospital/University Rate Schedules.

The Public Advocate submitted (by email) written discovery requests to the Department on February 21, 2023 as to which PWD responded on February 27, 2023. No other participant conducted discovery. Copies of the discovery requests and the responses thereto were posted on the Rate Board's website.

The schedule⁵ for the proceeding provided that written testimony in response to the Department's proposed annual adjustment, if any, would be submitted by March 21, 2023. On that date, the Public Advocate filed testimony (Public Advocate Statement 1) stating its disagreement with the Department's projected TAP participants. In Public Advocate Statement 1, Mr. Lafayette Morgan, recommended a lower projected number of TAP participants for the Next Rate Period than the Department's projected number of TAP participants for the Next Rate Period. No other participant submitted written testimony.

On April 7, 2023, the Department notified the Hearing Officer and the other participants that a settlement between the Department and the Public Advocate was being negotiated. Given that tentative settlement, the Department indicated that it would not be filing rebuttal testimony to Public Advocate Statement 1. No other participant submitted written rebuttal testimony.

On April 10, 2023, a draft of the terms of the Settlement was provided to the Hearing Officer and the other participants.

On April 11, 2023, upon proper notice being provided, a technical hearing and a separate public input hearing were convened to allow PWD customers the opportunity to express their concerns or opinions concerning the proposed TAP-R adjustment were held. These hearings were conducted remotely via Zoom online.

⁵ <https://www.phila.gov/media/20230307190111/TAP-Prehearing-Conference-Order-2023-03-07.pdf>

No customers registered for or attended the public input hearing.

The Department, the Water Revenue Bureau, and the Public Advocate participated in the technical hearing. Two witness panels were available from the Department, Black & Veatch Management Consulting LLC (“Black & Veatch” or “BV”) and Raftelis Financial Consultants (“Raftelis” or “RFC”). The witness presented by the Public Advocate, Lafayette Morgan, was also available. No participant had cross-examination for any of the witnesses during the technical hearing on April 11, 2023.

On April 18 2023, an executed copy of the Settlement⁶ was provided to the Hearing Officer and the other participants. The agreed upon surcharge rates and supporting documentation including PWD Exhibit 1 - Proposed Settlement TAP-R Reconciliation Calculations (Tables 1, 2, 3(W), 3(WW), 3(W-A), 3(WW-A), 4(W), 4(WW), 4(W-A) and 4(WW-A) are incorporated by reference with the Settlement and are submitted for Rate Board approval.

The Hearing Officer indicated (by email on April 18, 2023) that any participant could submit a statement in support or opposition to the Settlement on or before April 28, 2023.

PWD submits this Brief in support of the Settlement.

⁶ <https://www.phila.gov/media/20230418152239/PWD-TAP-R-Joint-Settlement-Agreement-APR18-Combined.pdf>

II. LEGAL STANDARDS

The TAP-R rates must be fair and reasonable and are consistent with the Philadelphia Home Rule Charter⁷ and with relevant ordinances⁸ and regulations.⁹ The governing legal standards are discussed more fully in the Department's Brief in the 2021 General Rate Proceeding,¹⁰ which is incorporated herein by reference.

Consistent with the foregoing and the Rate Board's 2018 General Rate Determination¹¹ (which set forth the basis for calculating and adjusting the TAP-R rates), PWD reviews and proposes adjustments to the TAP-R rates annually to account for changes in actual and projected TAP costs and the extent to which those costs were over- or under-collected during a prior period.¹²

The program and rider¹³ have been described as follows:

TAP is a customer assistance program 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 reconciliation if they are greater or less

⁷ Sections 5-800 and 5-801 of the Charter.

⁸ Philadelphia Code, Sections 13-101 (Fixing and Regulating Rates and Charges) and 19-1605 (Limitation on Action to Enforce Collection; Income-Based Water Rate Assistance Program).

⁹ Rate Board Regulations; Water Department Regulation 206.0 (Income-Based Water Rate Assistance Program); Water Department Rates and Charges, 10.0 (Provisions for recovery of TAP costs).

¹⁰ <https://www.phila.gov/media/20210513093206/Brief-May-11-2021.pdf>.

¹¹ <https://www.phila.gov/media/20180713144736/2018-RATE-DETERMINATION-TIMESTAMPED.pdf>.

¹² TAP was approved by the Rate Board as part of PWD's 2016 rate filing. The TAP-R rate rider and the means of its calculation were approved as part of PWD's 2018 rate filing. The Rate Board adjusted the TAP-R rates and charges in the 2019 and 2020 TAP-R annual reconciliation proceedings.

¹³ The terms "rider" or "tariff" refer to Water Department Rates and Charges, 10.0 (Provisions for recovery of TAP costs).

than projected. The TAP-R surcharge is charged to customers who do not receive the discount.¹⁴

The formula within the rider has been generally described as follows:

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 [(i.e., the projected number of TAP Participants)], 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 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.¹⁵

Annual adjustment proceedings, such as this, are limited to the application of the formula.

Changes to TAP and TAP-R rider are proposed, reviewed and made in general rate proceedings.¹⁶

III. THE PROPOSED TAP-R ADJUSTMENT

The purpose of this proceeding is to permit an annual reconciliation of the revenue impacts associated with TAP-R by comparing PWD's actual experience to the projections used to set the TAP-R rates for the Next Rate Period. TAP costs, are recovered outside the general rate case by means of a separately-administered rider that provides for a reconciliation of revenues and expenses. This is not a general rate case, which establishes base rates using the fully projected test year (and lacks a reconciliation mechanism).

¹⁴ 2021 TAP-R Determination, at p.1.

¹⁵ 2021 TAP-R Adjustment Proceeding, Hearing Officer Report, at pp. 4-5.

¹⁶ *Id.* See also the 2021 general rate determination which addressed two unsettled issues relating to TAP arrearage forgiveness.

A. The Settlement Between PWD and the Public Advocate

The proposed TAP rates contained in the Settlement result in a decrease in the TAP-R surcharge for the affected water and wastewater customers for the Next Rate Period. The proposed settlement rates are 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 Department supports the Settlement. PWD reviews and proposes adjustments to the TAP Rate Rider annually to account for changes in actual and projected TAP costs and the extent to which those costs were over- or under-collected during a prior period. The proposed TAP rates are reasonable in light of the projected TAP enrollment during the Next Rate Period.

TAP enrollment was 15,032 in January 2023.¹⁷ For the Next Rate Period (September 2023 to August 2024), the Department projects that the successful completion of the “pre-qualification” effort to enroll Low Income Household Water Assistance Program (“LIHWAP”) recipients in TAP (in conjunction with other efforts) will increase enrollment in TAP. Mr. Morgan does not know if or when those efforts will result in increased enrollment.¹⁸ That being said, it is likely — based on Philadelphia’s demographics — that some low income customers who were eligible for TAP were not enrolled as of January 2023.¹⁹ In addition, it should be noted that TAP enrollment was higher than 17,000 in December 2021.²⁰

¹⁷ PWD Response to PA-I-3.

¹⁸ *See* Public Advocate Response to PWD -TAP-I-7.

¹⁹ *See* Public Advocate Response to PWD -TAP-I-6.

²⁰ *See* Public Advocate Response to PWD -TAP-I-5.

The Department and Public Advocate agreed that the projected average monthly number of TAP Participants for the Next Rate Period **should be 16,479**. This agreement does not endorse any of the methodologies or calculation methods employed by any party to project the number of TAP Participants. The agreed-upon projected average monthly number of TAP Participants for the Next Rate Period is near the mid-point between the original projections. The Department's original projection would result in average monthly number of TAP participants (for September 2023 to August 2024) of 17,289.²¹ The Public Advocate's original projection would result in the average monthly number of TAP participants (for September 2023 to August 2024) of 15,485.

Please note that the agreed-upon projected average monthly number of TAP Participants remains below the highest participation levels experienced by the Department (in December 2021), and may be viewed as incremental movement towards future (anticipated) higher levels of participation. Generally speaking, increased participation means higher costs for the program.²² With that in mind, it should be explained why TAP rates will be lower in Next Rate Period when there will be more TAP Participants. The 2022 Annual TAP Adjustment projected higher enrollment levels for the most recent period (September 2022 to August 2023) based upon new City initiatives.²³ Actual enrollment was less than the projections for that period.²⁴ That missed projection is being reconciled in this proceeding. In fact, the agreed-upon projected average monthly number of TAP Participants for the Next Rate Period is lower than the 2022 enrollment

²¹ See Schedule RFC-1 at p. 1; PWD Response to PA-I-1(A) (Workbook); PWD Response to PA-I-3.

²² 2022 TAP-R Annual Rate Adjustment Public Presentation, at pp. 3,5. <https://www.phila.gov/media/20220329124629/TAP-R-Public-Presentation-2022.pdf>

²³ *Id.*

²⁴ See Schedule RFC-1 at p. 1; PWD Response to PA-I-1(A) (Workbook); PWD Response to PA-I-3.

projections for the Reconciliation Period and, therefore, results in lower surcharge for the Next Rate Period.

The Department and Public Advocate have also agreed upon the TAP-R rates as shown and as summarized in the table below. This agreement does not endorse any of the methodologies or calculation methods employed by any party for calculating TAP-R rates.

Table 2: Comparison of Proposals for TAP-R Surcharge Rates			
	Department's Original Proposal	Settlement 2023 TAP	Public Advocate's Original
Water TAP-R Surcharge	\$0.21/MCF	\$0.15/MCF	\$0.09/MCF
Wastewater TAP R-Surcharge	\$0.34/MCF	\$0.24/MCF	\$0.14/MCF

B. Annual Adjustment Issues Raised By Other Participants

The Settlement resolves all issues as between the Department and the Public Advocate, as explained above.

PLUG did not raise substantive issues regarding the annual reconciliation and adjustment of TAP-R. PLUG did not submit written testimony, as noted in the procedural history. Nor did PLUG present any issues at the hearings on April 11, 2023.

Mr. Haver did not raise substantive issues regarding the annual reconciliation and adjustment of TAP-R. Mr. Haver did not submit written testimony, as noted in the procedural history. Nor did Mr. Haver present any issues at the hearings on April 11, 2023.

IV. CONCLUSION

For all of the reasons stated in this Brief (together with the facts and information contained in the record), 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, are 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, 2023; (2) the Rate Board reject any remaining issues, proposals, modifications and/or adjustments by 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, 2023.

Respectfully submitted,

/s/ Andre C. Dasent

Andre C. Dasent, Esquire
Commerce Square
2001 Market Street, 25th Floor
Philadelphia, Pennsylvania 19103
(267) 624-3503

Ji Jun, Esquire
Kevin Birriel, Esquire
Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102

Carl R. Shultz, Esquire
Sarah C. Stoner, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

Counsel to Philadelphia Water Department