

4/11/2023

1 PHILADELPHIA WATER, SEWER AND STORM WATER
2 2023 TAP-R RECONCILIATION PROCEEDING
3 TECHNICAL HEARING
4
5

6 Tuesday, April 11, 2023
7 Philadelphia, Pennsylvania
8

9 TIME: 10:00 a.m.

10 LOCATION: Virtually

11 HELD BEFORE: Marlane R. Chestnut
12 Hearing officer
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1 HEARING OFFICER CHESTNUT: We
2 will go on the record then. Good
3 morning, my name is Marlane Chestnut, I
4 have been selected by the Water, Sewer
5 and Storm Water Rate Board to oversee the
6 hearing process and write a
7 recommendation for the Rate Board to
8 consider with respect to the Philadelphia
9 Water Department's annual reconciliation
10 of the Tiered Assistant Program Rate
11 Rider Surcharge or TAP-R, scheduled to
12 become effective September 1, 2023.

13 This public hearing has been
14 scheduled by the Rate Board and will be
15 followed by a technical hearing on the
16 statements, exhibits submitted by the
17 Water Department and the Public Advocate.
18 Notice and instruction for participating
19 in both hearings were posted and
20 advertised as required.

21 There is a court reporter present
22 who will produce a stenographic record of
23 both hearings.

24 Now I would like the participants

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1 to just note your appearance for the
2 record, I don't think we need any kind of
3 statement. Just note your appearance for
4 the record I think is sufficient. We
5 will start with you Mr. Dasent.

6 MR. DASENT: Yes, thank you your
7 Honor. Andre Dasent for the Philadelphia
8 Water Department. With me today is Carl
9 Shultz, I think I see Kevin Birriel and
10 Glen Abrams, our Deputy Commissioner for
11 Communication and Engagement.

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

14 MR. BALLENGER: Good morning.
15 Thank you your Honor, Robert Ballenger
16 here for the Public Advocate. I have our
17 witness, Mr. Morgan, present in case he's
18 needed.

19 I just wanted to note that I
20 think the court reporter dropped off but
21 hopefully she can make due with the audio
22 of this meeting.

23 HEARING OFFICER CHESTNUT: You're
24 right, I don't see her now. Okay.

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1 You're right though, I think the fact
2 that there is a recording should be
3 sufficient for them to produce a
4 transcript, especially since I hope this
5 will be brief.

6 I don't see any other
7 representatives from any of the
8 participants here. So why don't we
9 proceed then to the technical hearing.

10 If any member of the public does
11 appear and want to make a statement then
12 we can pause and take that, if that's
13 okay. I expect there to be one
14 transcript, that should make it easier.

15 Okay. Let's start the technical
16 hearing then.

17 MR. DASENT: Well, for purposes
18 of the technical hearing, your Honor, we
19 have a few housekeeping matters. As
20 you're aware, the Public Advocate and the
21 Department have negotiated a joint
22 settlement petition and it's in draft
23 form right now, but it's pretty close to
24 final in the sense that the wording and

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1 the narrative that we provided you is
2 final, and the attachments are being
3 reviewed by the Public Advocate and his
4 expert now, we hope to have their review
5 completed in short order.

6 We first notified the
7 participants of the possibility of a
8 settlement on April 7th. We circulated a
9 draft joint petition on April 10th. The
10 joint petition reflects chiefly the
11 adjustment of TAP projected participants
12 for the next rate year. And that begins
13 September 1, 2023 and continues through
14 August 31, 2024.

15 Please recall our initial filing
16 of the estimated or projected TAP
17 participation rate for the next rate
18 period was 17,289, that's the
19 Department's projection. The Advocate
20 projected a lesser number, 15,670 TAP
21 participants by the end of the next rate
22 period. We compromised at the midpoint,
23 which is 16,479, and the narrative
24 reflects that.

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1 You'll note that in the original
2 proposal the TAP surcharge rates for
3 water and waste water was decreasing and
4 significantly decreasing and with the
5 settlement it will be decreasing even
6 more than the Department originally
7 proposed. The Department's original
8 proposal is set forth in paragraph 20 of
9 the joint petition. The compromise is
10 set forth in paragraph 26. And it shows
11 basically at the end of the day, we are
12 at 15 cents per MCF for the water TAP-R
13 surcharge and the waste water TAP-R
14 surcharge is 24 cents per MCF.

15 We think that is a compromise in
16 the midpoint that your Honor indicated
17 you look for when seeking out compromises
18 and we got exactly where you wanted us to
19 be.

20 HEARING OFFICER CHESTNUT: Well,
21 I appreciate receiving the draft.
22 Obviously 98 percent of it is history and
23 standard terms, but that's -- certainly
24 splitting the difference is a reasonable

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1 compromise in light of the fact this is
2 reconcilable.

3 I'm a little concerned because
4 the person who said they wanted to
5 reserve his right to cross-examine about
6 the settlement is not present.

7 MR. DASENT: I did reach out to
8 him this morning requesting that he look
9 at the cross-examination matrix and
10 indicate whether he wanted to
11 cross-examine any witness he indicated he
12 reserved the right to participate or to
13 cross-examine because he hadn't reviewed
14 the joint settlement petition, perhaps
15 he's satisfied now, we don't know.

16 HEARING OFFICER CHESTNUT: Yeah,
17 I'm kind of surprised, this would have
18 been a very good opportunity to discuss
19 his concerns.

20 MR. DASENT: The joint petition
21 also suggests, your Honor, that we offer
22 everyone the opportunity to comment
23 between now and April 20th when the brief
24 would be due, so that everyone can weigh

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1 in in writing if not in person today.

2 HEARING OFFICER CHESTNUT: Well,
3 my concern I guess is a little more
4 practical, which is if we have to have
5 another hearing or not. If Mr. Haber
6 expresses some concern about having the
7 ability to cross-examine whatever witness
8 I'm not quite sure what that would be.
9 I'm not sure he understands this is
10 reconcilable and what the issue is,
11 that's why I thought this would be a good
12 opportunity to explain it. My concern is
13 if he does want to have another hearing,
14 that's kind of complicated from our
15 perspective in terms of has to be posted
16 and court reporter attained. I'm not
17 real sure how to do this since you didn't
18 provide it until last night, however it
19 is very brief and to the point and should
20 have plenty of time to review it before
21 now.

22 MR. BALLENGER: Your Honor, if
23 may --

24 HEARING OFFICER CHESTNUT: He

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1 would have had time to review the
2 testimony before now.

3 MR. BALLENGER: Your Honor,
4 that's exactly the direction I was going
5 in. I think that if there are questions
6 of the witnesses, they should be related
7 to the discovery or their testimony in
8 this proceeding. I'm not sure that it
9 would be appropriate to examine the
10 witnesses on the settlement being
11 negotiated here other than perhaps to
12 verify that they are aware of it and
13 don't have any concerns with it. But I
14 think that's really not terribly helpful
15 to bring out in cross-examination. I
16 think we have found the exact midpoint
17 between our two positions and that's
18 pretty easy to see and understand.

19 I also note that the only two
20 parties that conducted any discovery or
21 put forward any testimony in this TAP-R
22 are PWD and the Public Advocate. So
23 having waived examination of each other's
24 witnesses, I don't see a need for future

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1 hearing if it's requested but we
2 certainly can accommodate it if your
3 Honor would like to have it.

4 HEARING OFFICER CHESTNUT: Well,
5 like I said, I don't think he understands
6 the nature of the proceeding given the
7 language that he used in his E-mail.
8 But, again, my concern is just really
9 more procedural and legalistic, I have
10 been informed that if we continue this
11 hearing, it's a lot easier than if we
12 finish today and have another new hearing
13 in terms of notice requirements.

14 MR. DASENT: I would just --

15 HEARING OFFICER CHESTNUT: So
16 what I'm going to suggest is, you know,
17 your suggestion Mr. Dasent, which is
18 maybe we can just schedule another brief
19 session so that if it's necessary we can
20 have it and then cancel it if not.

21 MR. DASENT: Well, I think in the
22 first instance because the posted notice
23 indicates the technical hearing starts at
24 10:30, we should wait until at least then

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1 to give them an opportunity to appear
2 because that could possibly be his
3 motivation, maybe he's running late, and
4 after that if you want to accommodate him
5 in other ways, we are open to it, but we
6 quite frankly think he's been in these
7 proceedings before, he understands the
8 timelines associated with the
9 proceedings, he's seen the prehearing
10 order. He knows that, you know, he has
11 not presented any testimony in this case
12 and he knows by two notices that he had
13 an opportunity to cross today and that
14 witnesses would appear. The witnesses
15 have appeared. Every other participant
16 has been governed by the guidelines that
17 your Honor set. So you're being
18 generous, but I understand. And I just
19 want to make a point for the Department
20 that we believe today is the hearing for
21 the technical hearing.

22 HEARING OFFICER CHESTNUT: I
23 agree 100 percent Mr. Dasent but like I
24 said, I'm just trying to avoid potential

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1 legal issues down the line.

2 MR. DASENT: I understand.

3 HEARING OFFICER CHESTNUT: I
4 think that way if we schedule a hearing
5 and then cancel it it might be easier.
6 Honestly, I don't think another hearing
7 would be justified. I don't think there
8 is any kind of showing that he could make
9 that and justify another hearing. We are
10 all here.

11 MR. DASENT: Yes.

12 HEARING OFFICER CHESTNUT: Your
13 witnesses are here, so I guess I won't
14 schedule another hearing. But then
15 again, if we have to have one, it's going
16 to be complicated in terms of -- it's
17 easy for us to post it but in terms of
18 the notice in the paper kind of thing.

19 So how do you feel about that
20 Mr. Ballenger?

21 MR. BALLENGER: I feel like it
22 may be a little bit hard to make the time
23 for it in the balance of the schedule
24 that we have in the general proceeding.

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1 We are up against the wire with testimony
2 there and I know the Department will be
3 very challenged to conduct its rebuttal
4 and do the discovery it needs to do.

5 I think if we are going to
6 reschedule it, I would suggest that
7 perhaps it would be best to do it after
8 the technical hearings and the general
9 proceeding. But I don't know how that
10 effects the balance of the schedule and I
11 think we have to look at that a little
12 bit before we come up with a date and
13 time for this.

14 MR. DASENT: I would also suggest
15 as your Honor I think was thinking in any
16 event, that we continue this hearing as
17 opposed to conclude it and then the
18 advertising requirements are not the
19 problem that would be presented. It will
20 be just a question --

21 HEARING OFFICER CHESTNUT: That's
22 what I'm going to do, I'm going to
23 continue it. I don't know if it's
24 necessary to say another date or not.

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1 I'm thinking it's not. Maybe if I just
2 continue it and then it would be some
3 further issuance. But I can't imagine
4 any circumstance where another hearing
5 would be productive.

6 So why don't we just proceed
7 then. And if he ever shows up -- I can't
8 imagine we will be done -- well, it is
9 almost -- it's 10:18, we might be done by
10 10:30 but we can certainly stay until
11 10:35.

12 MR. DASENT: Yes, give him an
13 opportunity.

14 HEARING OFFICER CHESTNUT: I do
15 have some things to talk about. So why
16 don't we go on and talk about what the
17 record will consist of in this case and
18 that's pursuant to the Rate Board's
19 regulations.

20 The hearing will be -- the record
21 will consist of the advanced and formal
22 notices, including any supporting
23 documents and documents incorporated by
24 reference. Evidence of proper

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1 advertising and posting.

2 All information accepted by the
3 Rate Board will be made into the record,
4 which at this point really isn't anything
5 except for the filing and the testimony
6 and I guess your settlement petition when
7 it's filed.

8 The stenographic record of
9 today's hearing. My hearing officer
10 report. And any briefs, exceptions,
11 written statements or arguments.

12 So that's what the record will
13 consist of at this point.

14 Now pursuant to the schedule we
15 adopted, your settlement petition isn't
16 actually due until the 20th. But I
17 appreciate having the draft so I can at
18 least get start on my hearing notes,
19 things are very tight after this week.
20 But please provide a copy in Word.

21 MR. DASENT: Will do.

22 HEARING OFFICER CHESTNUT: As
23 well as PDF. And that's generally true
24 of anything that you file.

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1 I will try to -- since you have
2 given me the draft, I don't think there
3 is going to be a problem with me having
4 my hearing report by May 11th, it might
5 be sooner.

6 And we will still keep to the
7 exception period though, even if it's
8 before May 11th, your exceptions will be
9 due on May 16th and the Board will
10 consider it in June.

11 Are there any questions about
12 scheduling or further actions in this
13 case?

14 MR. DASENT: Just your Honor, if
15 we can have leave to provide attachments
16 also to the joint petition, because our
17 schedules and our rates will flow from
18 the narrative in the joint petition that
19 Rob and I agreed to.

20 HEARING OFFICER CHESTNUT: Sure.
21 Sure. And this isn't technically -- not
22 related to this case but since you're
23 here, I did want to mention about the
24 General Rate proceeding. As you know,

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1 this is my first -- I assume you're not
2 settling it or withdrawing it. This will
3 be my first actual litigated Rate Report,
4 and what I'd like you to do if you
5 haven't done it in the past or haven't
6 done it already, is I'd like you to come
7 up with some kind of standard briefing
8 format, a uniform briefing format. I
9 don't care what it is, but I don't want
10 you to address issues in the same order
11 that I will follow it in my Rate Report.

12 MR. DASENT: We will talk about
13 that immediately. Thank you.

14 HEARING OFFICER CHESTNUT: Yeah.
15 And frankly anything else you think of to
16 make it easier because it's a real tight
17 schedule for me, as you know it is just
18 me. And I'd appreciate your help, you
19 know, appreciate just making things go
20 smoothly. Again, I think you're in the
21 process -- I assume the normal process is
22 that you wait until the non-Department
23 participants file testimony and narrow
24 issues down so you see what's left and

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1 what you can agree to and not agree to.
2 That kind of twiddling process.

3 Hopefully there might be as many
4 issues to address that I'm afraid there
5 will -- that looks like it at this point.
6 In fact, I will tell you also I have been
7 working on my prompts for ChatGPT to see
8 how much of that I can generate.

9 MR. BALLENGER: That's how we are
10 preparing our testimony as well Judge.

11 HEARING OFFICER CHESTNUT: Well,
12 I tried to get it to write an ode to the
13 RSF but it didn't come out very well. It
14 was factually correct though.

15 MR. BALLENGER: Interesting.

16 HEARING OFFICER CHESTNUT: It
17 didn't scan. No, seriously, and I guess
18 I'm really concerned about the formatting
19 and the process.

20 MR. BALLENGER: Andre can
21 probably correct me if I'm mistaken, but
22 I do think we have done a common brief.
23 We may not have needed to utilize it in
24 the past, but I think we have come up

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1 with a format in the past, so we can dust
2 that off.

3 HEARING OFFICER CHESTNUT: I
4 think you did one in the 2020 filing, it
5 turned out to be not necessary. I mean,
6 a very cursory kind of one. But that's
7 all I'm kind of really looking at. I
8 just want to address issues in the same
9 order. And then they can be addressed in
10 the same order.

11 All right. Is there -- because
12 you're right, I think we do have to wait
13 until 10:30.

14 MR. DASENT: Yes.

15 HEARING OFFICER CHESTNUT: Is
16 there anything else you want to bring up?
17 Oh, thanks for the heads up about the
18 City Council, Rob.

19 MR. BALLENGER: Yes, we are -- we
20 have been in touch with a couple of staff
21 members at City Council so we are aware
22 that there are some -- there is obviously
23 during the budget process it's a little
24 bit hard to schedule something so that's

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1 why it's kind of going to be tight. But
2 I am in touch with some staff there who
3 are going to try to make sure that there
4 is a relatively quick turn around on the
5 transcript from that hearing, it does
6 happen in early May, that it would be
7 something that would be available prior
8 to the close of the record.

9 HEARING OFFICER CHESTNUT: And
10 could you clarify for me, is that like a
11 public hearing where members of the
12 public come and speak?

13 MR. BALLENGER: Yes, it is a
14 public hearing on a resolution that was
15 passed by Council regarding PWD rates and
16 charges.

17 HEARING OFFICER CHESTNUT: Okay.
18 So the question then would be about
19 incorporating the transcript into the
20 record of the General Rate proceeding.

21 MR. BALLENGER: That's right your
22 Honor.

23 HEARING OFFICER CHESTNUT: We'll
24 deal with it. I mean certainly we'll

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1 accommodate whatever is necessary, but
2 sure.

3 Anything you want to bring up
4 Andre or Rob, or anybody at this point?

5 MR. DASENT: Not so much at the
6 moment.

7 HEARING OFFICER CHESTNUT: At the
8 General Rate Case or the TAP-R really,
9 since we are here.

10 MR. DASENT: Not so much, no. We
11 are just anticipating the participant
12 testimony coming up shortly.

13 MR. BALLENGER: I'm anticipating
14 it too, I'm anticipating a long night.

15 No, but I do want to recognize
16 that from the Public Advocate's
17 perspective the reconciliation of the
18 TAP-R every year makes it a little bit
19 easier to come to agreement, and I
20 appreciate the Department's willingness
21 to meet us halfway. I think it's the
22 right answer. And can't -- it's the kind
23 of thing where we can't necessarily
24 predict exactly how many people are going

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1 to be in the program, we want it to
2 expand, we think it's cost beneficial to
3 all customers to have this program and to
4 maintain service for its participants and
5 we do appreciate the efforts the
6 Department has undertaken to improve the
7 program over the years. We think there
8 is still work to do, but that's more
9 something I think we will be talking
10 about in the Base Rate case. But for
11 purposes of this reconciliation, we think
12 we found the appropriate middle ground,
13 so we are pleased with the outcome and
14 hope that it's going to work.

15 HEARING OFFICER CHESTNUT: Well,
16 the fact that it's reconcilable makes all
17 the difference, it gives you some leeway.
18 Obviously you want to avoid large swings
19 in the new rates, but really you're not
20 -- that's being done here. I think the
21 big difference is from the current rates
22 to either of your proposed rates, so I
23 guess that's a good thing. Yeah.

24 How about if we take a break

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1 until 10:40 and come back.

2 MR. DASENT: Okay.

3 MR. BALLENGER: Sounds good.

4 HEARING OFFICER CHESTNUT: Is
5 there -- we took a brief recess, and
6 continue with the technical hearing. Is
7 there anything else then before we
8 adjourn?

9 MR. DASENT: Nothing that the
10 Department can add.

11 MR. BALLENGER: Nothing from the
12 Public Advocate.

13 HEARING OFFICER CHESTNUT: Well
14 thank you both very much for resolving
15 this in a reasonable timely fashion, I
16 appreciate it. I'm sure the customers
17 appreciate it.

18 Obviously when I get your formal
19 -- when your finalized settlement
20 petition, I will review it and issue my
21 hearing report. Okay.

22 MR. DASENT: Thank you.

23 HEARING OFFICER CHESTNUT: Thank
24 you all. Have a good day.

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1 MR. BALLENGER: Thank you.

2 - - -

3 (Whereupon, the proceeding
4 adjourned at 10:42 a.m.)

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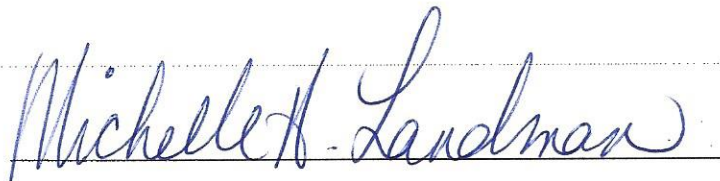
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C E R T I F I C A T I O N

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

A handwritten signature in blue ink, reading "Michelle H. Landman", is written over a horizontal line.

Court Reporter - Notary Public

(The foregoing certification of
this transcript does not apply to any
reproduction of the same by any means,
unless under the direct control and/or
supervision of the certifying reporter.)

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