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PHILADELPHIA WATER, SEWER, AND STORM WATER
RATE BOARD PUBLIC HEARING

THURSDAY, MAY 4, 2023
9:00 A.M. TO 2:21 P.M. EDT
ZOOM TELECONFERENCE

On Thursday, May 4, 2023, the following
proceedings came on to be heard in the
above-entitled matter before the Honorable Marlane
R. Chestnut, Hearing Officer

Proceedings were reported by stenographic method by:
DEBRA A. DIBBLE, RDR, CRR, CRC
Job No. 31287

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P R O C E E D I N G S
May 4, 2023, 9:00 a.m. EDT

HEARING OFFICER CHESTNUT: I am
Hearing Officer Marlane R. Chestnut, and this
is the continued hearing with respect to the
2023 general rate filing made by the
Philadelphia Water Department.

We have a witness ready, I guess.

Mr. Dasent, do you want to start
that?

MR. DASENT: Yes. If Your Honor
please, we have our next witness is Water
Commissioner Randy Hayman, and he's proffered
for cross-examination with respect to the
limited subject matter of his testimony.

And with that, the witness is
available for cross.

HEARING OFFICER CHESTNUT: Thank you.

Mr. Ballenger, do you have any cross?

MR. BALLENGER: Yes, I have a light
cross for Commissioner Hayman. I wondered
whether -- I think Mr. Haver indicated he had
cross as well, whether it would be more

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1 efficient if he went first, but I don't see
2 him. So I suppose we'll just jump into it.

3 WATER COMMISSIONER

4 CROSS-EXAMINATION BY MR. BALLENGER

5 MR. BALLENGER: Good morning,
6 Commissioner Hayman.

7 COMMISSIONER HAYMAN: Good morning.

8 MR. BALLENGER: Thank you for joining
9 us. I really did have just a few questions.
10 I wanted to touch base on some of the
11 information from discovery that we received.

12 I think PWD stated in response to one
13 question that none of management's
14 compensation is tied to cost control or
15 revenue enhancements. Is that correct?

16 COMMISSIONER HAYMAN: That is
17 correct. But there are other reviews and
18 evaluations that are tied to us through HR as
19 far as the evaluation of our employees.

20 MR. BALLENGER: Performance
21 evaluation?

22 COMMISSIONER HAYMAN: Yes.

23 MR. BALLENGER: Okay. And, you know,
24 has the department considered whether some
25 form of performance-based compensation could

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1 be implemented to help control costs and
2 enhance revenues?

3 COMMISSIONER HAYMAN: We have not.
4 We are a department within the City. We
5 follow how the City operates within those
6 parameters, but we're open to consider
7 anything that is positive as far as allowing
8 us to work better for the customer.

9 MR. BALLENGER: Okay. So can you
10 explain what mechanisms there are that are
11 used to help PWD management control costs?

12 COMMISSIONER HAYMAN: Well, our
13 budget process is very robust in cost
14 controls, but I will allow -- I'll defer to
15 Mr. Yangalay, who is closer to it, to answer
16 that question for you.

17 MR. BALLENGER: That's fair. Thank
18 you.

19 MR. YANGALAY: Good morning. I'm
20 Lawrence Yangalay, deputy commissioner of
21 finance.

22 Our cost control process actually
23 starts with our budget. Every year we have
24 about 43 cost centers submit their report to
25 management which is reviewed and vetted before

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1 it is submitted to central budget. There it
2 is reviewed before it goes to the city council
3 for approval. So we have these quality
4 controls set within our budget process.

5 Also, everyone, we produce what we
6 call budget monetary report, which compares
7 our budget to our performance on each of the
8 budget lines as for the 43 units to just alert
9 them of how their budgets are being spent to
10 make sure that we're not overspending or
11 underspending on lines.

12 Just about this time, we also review
13 the whole budget to see which units are
14 underspending so another priority can be set
15 to other units that need the funding to
16 enhance the service of the Water Department.

17 So it's a year-round process of cost
18 monitoring, cost control within our budgetary
19 process.

20 MR. BALLENGER: Okay. For a
21 commercial entity with over \$760 million in
22 annual revenues and frequent rate cases, do
23 you think it would be reasonable to evaluate
24 management performance relative to the cost
25 control?

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1 COMMISSIONER HAYMAN: Again, I would
2 ask Mr. Yangalay to respond to that.

3 MR. YANGALAY: Our focus on service
4 delivery, every quarter we put to use what we
5 call performance measure, which is we evaluate
6 how PWD is reaching its performance goals.
7 And there are -- there are almost 20 or so
8 assessment measures as a service delivery for
9 each things, how quickly do we respond to many
10 line breaks, how many fire hydrants are
11 operational.

12 So these are service level goals that
13 we monitor every quarter to make sure that we
14 are reaching these goals.

15 This is one tool that we use to make
16 sure that we are providing the needed services
17 to our customers. We also, in that process,
18 review how much vacancies we have, of course,
19 how much manpower you deploy, also signals the
20 ability to deliver services to your customers.
21 These are measures that we use to make sure
22 that we are meeting our service obligation to
23 our customers.

24 MR. BALLENGER: Thank you for the
25 explanation. I guess what I'm getting at is

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1 whether it would be worthwhile for the
2 department to consider having an outside
3 evaluator review management performance
4 relative to cost control or whether that's
5 something the department would not agree to do
6 or consider.

7 MR. YANGALAY: As the commissioner
8 said, we are open to anything that can make us
9 perform better.

10 MR. BALLENGER: Thank you.

11 MR. YANGALAY: We have always said we
12 are open to that. I think I do agree.

13 MR. BALLENGER: Thank you. That's
14 helpful.

15 So moving on, Commissioner, I wanted
16 to ask -- and I'm going to read a quote from
17 PWD Rebuttal Statement 1. And I recognize
18 that that was not your testimony, but I'd like
19 to just run it by you.

20 And the quote says: If Exeter is
21 advocating that outside support, either in the
22 form of outside revenues or direct
23 investments, be provided to aid in
24 assessing -- I'm sorry -- aid in addressing
25 the requirements of the consent order

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1 agreement, such support would be welcome. The
2 Water Department has vigorously pursued
3 alternative funding sources from state and
4 federal grants and low-interest loans and
5 welcomes any outside support which could be
6 leveraged to mitigate some of those costs to
7 our customers. PWD acknowledges the
8 significant costs of these programs and
9 investments to its customers and the potential
10 impact it may have now and in the future.

11 I just wanted to confirm that that's
12 a statement that you also agree with. Is that
13 correct?

14 COMMISSIONER HAYMAN: Yes. As a
15 general proposition, yes, we are already
16 seeking aggressively external support in the
17 form of PennVest loans and WIFIA loans.

18 MR. BALLENGER: So if additional
19 capital funds from sources other than customer
20 revenues or debt supported by revenues were
21 made available to PWD for purposes of
22 stormwater infrastructure, would you accept
23 and spend those funds?

24 COMMISSIONER HAYMAN: Absolutely.
25 We're seeking external support wherever we can

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1 lawfully acquire it, and I will add that I
2 also just spoke before United States Senate
3 about two months ago pushing for additional
4 money for water utilities, especially in
5 Philadelphia.

6 MR. BALLENGER: Thank you,
7 Commissioner. I'm actually familiar with your
8 testimony in Washington, and I appreciate it.
9 On behalf of all of the small user customers,
10 I appreciate your efforts.

11 COMMISSIONER HAYMAN: Thank you.

12 MR. BALLENGER: That is all of the
13 cross I have for Commissioner Hayman.

14 HEARING OFFICER CHESTNUT: Thank you,
15 Mr. Ballenger.

16 Mr. Haver, did you have questions?

17 CROSS-EXAMINATION BY MR. HAVER

18 MR. HAVER: Yes, I do. Good morning,
19 Commissioner.

20 COMMISSIONER HAYMAN: Good morning.

21 MR. HAVER: In the previous days'
22 testimony, your staff said that there has not
23 been management or revenue or operational
24 audit done for PWD in the last ten years.

25 Why is that?

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1 MR. DASENT: Please note our
2 objection to testimony -- I mean,
3 cross-examination outside the bounds of the
4 Commissioner's testimony. In this particular
5 instance, he hasn't spoken to that issue.
6 Others have in the department. He delegates
7 authority to them. They address the specific
8 issues like operational audits.

9 His testimony only deals with the
10 service territory, its description, and
11 introduction of the various witnesses and an
12 overview of the system. That's it.

13 HEARING OFFICER CHESTNUT: I
14 understand that, but I do think it's within
15 the scope of his authority to answer that
16 question.

17 COMMISSIONER HAYMAN: Can you repeat
18 your question, please?

19 MR. HAVER: In the last -- according
20 to your staff, within the last ten years, PWD
21 had not undergone a management operation or
22 revenue audit. Why is that?

23 COMMISSIONER HAYMAN: Well, I would
24 have to go back to the record and double-check
25 and see and evaluate what audits have been

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1 done, when they have been done. I do not have
2 that list in front of me. I know that it can
3 be said we were going through COVID, and at
4 that time we bunkered down and made sure we
5 could get the essentials done so we could
6 protect the health and safety of the
7 community.

8 But I am a believer in having audits.
9 I grew up having audits. You may know I'm a
10 former general counsel for two major
11 utilities, and so I don't oppose going forward
12 and having an audit. I'll go back and we'll
13 evaluate that.

14 MR. HAVER: Would it be fair to say
15 that you've, from time to time, have found
16 audits to be helpful?

17 COMMISSIONER HAYMAN: I have, yes.

18 MR. HAVER: Thank you. Does the
19 Water Department have a program that rewards
20 your workers for coming up with cost-saving
21 strategies and programs?

22 MR. DASENT: Note our continuing
23 objection. This is beyond the scope of
24 Mr. Hayman's testimony. He may have spoken
25 indirectly to this a minute ago. Mr. Haver

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1 could benefit from reading the transcript.

2 HEARING OFFICER CHESTNUT: Well, I
3 think certainly Commissioner Hayman can answer
4 in a general manner.

5 COMMISSIONER HAYMAN: Okay. Repeat
6 the question, please.

7 MR. HAVER: Does the Philadelphia
8 Water Department have specific programs that
9 reward your workers for coming up with cost
10 savings?

11 COMMISSIONER HAYMAN: Not a specific
12 program, but we do evaluate and have
13 performance reviews. And should someone do
14 something that is outstanding that highlights
15 and benefits the organization, that would be
16 considered.

17 MR. HAVER: Within the scope of your
18 many, many years of being counsel to
19 utilities, have you ever seen such programs?

20 COMMISSIONER HAYMAN: I have not.

21 MR. HAVER: Thank you.

22 COMMISSIONER HAYMAN: They were not
23 instituted in the -- I do not believe they
24 were instituted in the organizations I've
25 worked for.

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1 MR. HAVER: So you are unfamiliar
2 with those programs?

3 COMMISSIONER HAYMAN: I know of them.

4 MR. HAVER: What do you think of the
5 ones that you know of?

6 MR. DASENT: Note our continuing
7 objection.

8 HEARING OFFICER CHESTNUT: I don't --

9 MR. DASENT: I mean, we're going far
10 afield now. I understood the first couple of
11 questions. But now we're going to prior
12 experience, and I don't understand how that
13 has anything to do with this rate case.

14 HEARING OFFICER CHESTNUT: If you can
15 answer the question, Commissioner, but I'm not
16 sure you can.

17 COMMISSIONER HAYMAN: I cannot.

18 MR. HAVER: Thank you.

19 Commissioner, during your city
20 council testimony, you stated that PWD will be
21 meeting with PennVest to see if PWD could
22 become eligible for grants.

23 Did I understand your testimony
24 correctly? Is that right?

25 COMMISSIONER HAYMAN: That's correct.

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1 We will pursue monies wherever we can locate
2 them.

3 MR. HAVER: I understood you to say
4 during your city council testimony that you
5 were optimistic, that you thought you would be
6 successful. Is that a correct understanding
7 of your testimony?

8 COMMISSIONER HAYMAN: Say that again,
9 please.

10 MR. HAVER: I understood from your
11 testimony before city council that you
12 believed that you would be successful, you
13 were optimistic that you would be successful
14 in your efforts.

15 COMMISSIONER HAYMAN: Optimistic in
16 general. I professionally cannot say one way
17 or the other which way they're going to go
18 with it. But we would enter the room with
19 optimism and be positive and try to direct
20 them to assist the City of Philadelphia.

21 MR. HAVER: Yes, sir, I appreciate
22 that. But my question was, did I understand
23 your testimony correctly, that you told the
24 council you were optimistic?

25 COMMISSIONER HAYMAN: I don't

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1 remember that exact quote.

2 MR. DASENT: And please note our
3 objection. That's completely irrelevant.

4 HEARING OFFICER CHESTNUT: It is, but
5 he's answered it, so...

6 MR. HAVER: Did you ask council for
7 help with getting PennVest to agree to your
8 proposals?

9 COMMISSIONER HAYMAN: Did I ask
10 council for help?

11 MR. HAVER: Yes.

12 COMMISSIONER HAYMAN: We have had
13 general conversations with council, and I've
14 always asked for assistance wherever anyone
15 can assist us in getting additional funding.

16 MR. HAVER: Specifically, did you ask
17 council for help with PennVest?

18 COMMISSIONER HAYMAN: We have in
19 other conversations, yes.

20 MR. HAVER: In your testimony,
21 though.

22 COMMISSIONER HAYMAN: In my
23 testimony?

24 MR. HAVER: Yes.

25 COMMISSIONER HAYMAN: I do not

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1 remember if I specifically requested help from
2 them at that time. I told them that we would
3 be holding meetings with the -- with PennVest
4 to pursue it, and the conversation was
5 congenial. It was basically that we -- that
6 we've had, consistent with other
7 conversations, that they work with us; we're
8 all on the same page that we want to benefit
9 Philadelphia Water. So with the understanding
10 that we are one city, I believe that they
11 would help. And I, in general, remember
12 positive expressions in past conversations.

13 MR. HAVER: Okay. But you made no
14 specific ask. That's your testimony; is that
15 correct?

16 COMMISSIONER HAYMAN: Sir, I do not
17 remember.

18 MR. HAVER: Are you aware of who's on
19 the PennVest board?

20 MR. DASENT: Objection, irrelevant.

21 HEARING OFFICER CHESTNUT: That is
22 irrelevant, completely irrelevant.

23 MR. HAVER: Normally Your Honor would
24 let somebody explain the relevancy before
25 making a ruling, but it doesn't surprise me

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1 that you don't give me that opportunity.

2 HEARING OFFICER CHESTNUT: Because
3 it's irrelevant on its face. There's nothing
4 you can say that will change that.

5 MR. HAVER: How would you know that
6 there is nothing that can be said if you don't
7 hear it?

8 HEARING OFFICER CHESTNUT: Mr. Haver,
9 move on.

10 MR. HAVER: Is that your order?

11 HEARING OFFICER CHESTNUT: Yes.

12 MR. HAVER: Commissioner, would it
13 surprise you to find out that there's a former
14 city council staffer on the PennVest board?

15 MR. DASENT: Objection again,
16 irrelevant.

17 HEARING OFFICER CHESTNUT: Again, I
18 don't see how that's relevant.

19 MR. HAVER: Are you asking me to
20 explain or are you saying I don't have a right
21 to explain?

22 HEARING OFFICER CHESTNUT: I think
23 we're going to move on, because I think the
24 composition of the PennVest board is
25 irrelevant to PWD's efforts to obtain funding

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1 through them.

2 MR. HAVER: You don't see the
3 relevancy in knowing who's on the board when
4 you split --

5 HEARING OFFICER CHESTNUT: I don't.
6 No, I don't, so why don't you move on.

7 MR. HAVER: Commissioner, have you
8 asked the Philadelphia delegation to
9 Harrisburg for help in pursuing the changes at
10 PennVest for which you are advocating?

11 COMMISSIONER HAYMAN: I know that
12 conversations have been held with the
13 governor's office and that we will be meeting
14 with individuals in Harrisburg in the future.

15 MR. HAVER: When will that happen?
16 Before or after your meeting with PennVest?

17 MR. DASENT: Objection, completely
18 outside the bounds of testimony. The fact
19 that they're meeting is enough. The timing of
20 it is irrelevant.

21 HEARING OFFICER CHESTNUT: If he can
22 answer it, let him answer it. If he can't, he
23 can't.

24 COMMISSIONER HAYMAN: It hasn't been
25 calendared yet.

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1 MR. HAVER: Thank you.

2 During your city council testimony,
3 is it correct that you didn't ask for help
4 from council allocating ARPA funds to the
5 Philadelphia Water Department?

6 MR. DASENT: Objection. We've
7 covered this in prior testimony. Mr. Yangalay
8 did reach out to the department of finance.
9 The issue of the budget is sort of irrelevant
10 to all of this. We've asked before the
11 budget, pursuant to the direction of city
12 council. This is completely irrelevant, and
13 outside the bounds of his testimony.

14 HEARING OFFICER CHESTNUT: It's
15 outside the bounds of his testimony, but on
16 the other hand, he is the commissioner and I
17 assume that the scope of responsibilities is
18 broad.

19 COMMISSIONER HAYMAN: If you'd repeat
20 the question, please.

21 MR. HAVER: During your council
22 testimony, did you ask council for help in
23 allocating money for PWD from the ARPA funds?
24 In other words, from changing the proposed
25 budget and the proposed mayoral budget so that

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1 you would get funds?

2 COMMISSIONER HAYMAN: Okay. I do not
3 remember if I made a specific request at the
4 hearing. The hearing was a time for me to
5 present information to them, which we did. I
6 do know that the city council, when we
7 presented our budget -- or had discussions
8 about the rate with them on other occasions,
9 it was from the city council that there was a
10 push for us to pursue our money, and that's
11 also been in the newspapers and all. So the
12 city council and PWD are on the same page,
13 that if we can receive additional funds, that
14 are legal, from wherever they may be, we will
15 pursue them.

16 MR. HAVER: How did you and city
17 council press the mayor to get the ARPA funds
18 allocated for PWD?

19 MR. DASENT: Objection. The
20 deliberations of the department within the
21 administration are irrelevant to all of this.

22 HEARING OFFICER CHESTNUT: If he can
23 answer it, fine.

24 COMMISSIONER HAYMAN: I would say we
25 followed proper protocol in having discussions

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1 internally within PWD. We've had
2 conversations with the city council, and we
3 wrote to the department of finance to request
4 the monies.

5 MR. HAVER: Am I correct that the
6 water commissioner is appointed by the mayor
7 and serves at the pleasure of the mayor?

8 COMMISSIONER HAYMAN: Yes, sir.

9 MR. HAVER: Thank you.

10 In previous testimony, Philadelphia
11 Water Department says it has not joined a
12 buying cooperative to keep the costs of its
13 chemicals and consumables down; is that
14 correct?

15 MR. DASENT: Objection. Another
16 witness has already spoken to this.

17 HEARING OFFICER CHESTNUT: That's
18 already been responded to, yes.

19 MR. DASENT: And it's well below his
20 authority.

21 HEARING OFFICER CHESTNUT: I'm
22 allowing you a broad scope of questions to
23 issues that are within the scope of
24 Commissioner Hayman's authority, but not
25 questions that have already been answered by

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1 other witnesses.

2 Mr. Yangalay has already been
3 presented for cross-examination and you did
4 cross-examine him on this issue.

5 MR. HAVER: I don't know that the
6 commissioner has heard all of the testimony.

7 HEARING OFFICER CHESTNUT: I don't
8 care. It's not an appropriate question for
9 this witness at this time.

10 MR. HAVER: So you don't care whether
11 the commissioner knows what the other
12 testimony was?

13 HEARING OFFICER CHESTNUT: That is
14 irrelevant.

15 MR. HAVER: You don't care?

16 HEARING OFFICER CHESTNUT: That --
17 what I care about is irrelevant. What I care
18 about is that you ask appropriate questions of
19 this witness that are within, not the scope of
20 his testimony, but I am allowing you quite a
21 bit of latitude there.

22 MR. HAVER: Commissioner, would it
23 be --

24 HEARING OFFICER CHESTNUT: Ask
25 questions that are appropriate.

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1 If you do not want to further
2 question him, that's fine.

3 MR. HAVER: Oh, I have plenty of
4 questions.

5 HEARING OFFICER CHESTNUT: Then why
6 don't you move on.

7 MR. HAVER: I'm trying to.

8 Commissioner, would it be helpful to
9 the Water Department to develop a strategy to
10 lower costs for chemicals and consumables?

11 MR. DASENT: Objection, continuing
12 objection. This is beyond the scope of his
13 testimony.

14 HEARING OFFICER CHESTNUT: It's such
15 a general question. I mean, seriously,
16 it's -- of course, any -- of course, you're
17 going to say yes, aren't you, Commissioner?

18 COMMISSIONER HAYMAN: It's our goal
19 to lower costs wherever it's possible.

20 MR. HAVER: And have you met with the
21 revenue commissioner to discuss strategies to
22 lower costs?

23 MR. DASENT: Objection. I'm not even
24 sure if the revenue commissioner is the person
25 to meet with as opposed to Procurement or

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1 department of finance or people higher up the
2 food chain. The revenue commissioner is a
3 peer.

4 HEARING OFFICER CHESTNUT: There has
5 to be a foundation for your questions,
6 Mr. Haver. I mean, you know, you have to show
7 that there actually is -- well, I'll let you
8 go on, but -- go ahead.

9 MR. HAVER: I'm waiting for an
10 answer.

11 COMMISSIONER HAYMAN: Repeat the
12 question, please.

13 MR. HAVER: I'll try and make
14 Mr. Dasent a little more happy.

15 COMMISSIONER HAYMAN, who have you met
16 with in the City administration to seek a way
17 of purchasing at lower costs?

18 COMMISSIONER HAYMAN: That is done
19 daily at the staff level and manager level.
20 When they evaluate what chemicals are needed
21 and they go through the process of
22 procurement, they go through the procurement
23 process through the City's process and
24 protocols, and they try to find the least
25 expensive chemicals or whatever the item is

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1 that we have to purchase for the benefit of
2 the organization and our customers.

3 MR. HAVER: So you yourself have not
4 met with anyone regarding finding ways of
5 lowering your consumable costs?

6 COMMISSIONER HAYMAN: I'm sure I've
7 had high-level conversations and comments, but
8 the actual rolling up the sleeves and looking
9 at the cost of individual chemicals, again, is
10 done at the staff and management level, is
11 done daily as we try to procure reasonable
12 costs for chemicals and other items that we
13 need to operate as a water utility.

14 MR. HAVER: But certainly the
15 escalation of those costs is a primary concern
16 of the Philadelphia Water Department. Isn't
17 that correct?

18 COMMISSIONER HAYMAN: Rising costs
19 are a primary concern to the utility, and we
20 do our best to lower them and seek lower costs
21 wherever we can.

22 MR. HAVER: But it's not something
23 that you personally take on; you staff it out.

24 MR. DASENT: Objection,
25 argumentative.

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1 HEARING OFFICER CHESTNUT: It is
2 argumentative. And I think it's already been
3 answered that it's addressed at the staff
4 level. So why don't you have -- do you have
5 another question?

6 MR. HAVER: Oh, yes.

7 Commissioner, have you met with the
8 mayor to discuss the difficulties the Water
9 Department is having at procuring supplies at
10 affordable rates?

11 COMMISSONER HAYMAN: We speak with
12 the mayor -- we've spoken with the mayor's
13 office on that issue, and our staff again and
14 managers deal with the Procurement Office
15 daily. We try to hash out any problems or
16 roadblocks that we see, and so, yes, we have a
17 good relationship -- working relationship with
18 them and we are doing our best to make sure
19 that we are able to procure the items that we
20 need in a timely manner and a cost-effective
21 manner.

22 MR. HAVER: What strategies did you
23 bring to the mayor or his staff that would
24 allow you to lower your purchasing costs?

25 MR. DASENT: Objection. Again,

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1 outside the scope of testimony. He's --

2 HEARING OFFICER CHESTNUT: If he
3 can't answer it, he can just say that.

4 He can say -- I don't understand.
5 The question should be submitted to
6 Commissioner Hayman as an individual, not you
7 as the department.

8 COMMISSIONER HAYMAN: Repeat the
9 question, please.

10 MR. HAVER: Yes, sir.

11 What proposals did you personally
12 bring to the mayor or his staff that would
13 allow you to purchase chemicals or -- and
14 consumables at lower rates?

15 COMMISSIONER HAYMAN: Again, that is
16 an item that is evaluated very closely by the
17 engineers who are looking at the details of
18 the amount of chemicals, the type of chemicals
19 that we need, the duration of time that we
20 need the chemicals, and those are very
21 sensitive and exact conversations that are
22 held with the Procurement Office.

23 MR. HAVER: Are you personally aware
24 of any strategies that were advocated so that
25 you would have lower costs for purchasing

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1 consumables --

2 COMMISSIONER HAYMAN: There are
3 strategies advocated every day, again, at that
4 level as they try to work with the Procurement
5 Office to pursue and obtain chemicals and
6 other items for the water utility at a
7 reasonable cost, especially in the
8 inflationary times that we are operating
9 under.

10 MR. HAVER: I'd like to make a
11 transcript request for those documents that
12 outline those strategies.

13 HEARING OFFICER CHESTNUT: Is there
14 such a document?

15 MR. DASENT: Well, we'll certainly
16 search our records to find it. If it exists,
17 we'll provide it.

18 MR. HAVER: Well, Commissioner Hayman
19 is referencing something, so I was assuming it
20 was a written document.

21 COMMISSIONER HAYMAN: No, I'm saying
22 that there are conversations held.

23 MR. HAVER: There's --

24 COMMISSIONER HAYMAN: We purchase
25 chemicals of -- Ben Jewell is on. Ben, did

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1 you want to address it?

2 HEARING OFFICER CHESTNUT: Mr. Jewell
3 has already been presented for
4 cross-examination.

5 MR. JEWELL: Correct, and I did want
6 to refer back to some of the conversations
7 that were had yesterday with the Finance Panel
8 about our inquiries under cooperative
9 purchasing agreements and our ongoing work
10 with the procurement department as it relates
11 to those available options for procuring
12 equipment and materials.

13 And I believe we did agree yesterday
14 that we would provide some of that
15 communication.

16 MR. HAVER: My questions are to
17 elicit a response that would allow people to
18 know to what level these issues have been
19 raised. If the commissioner --

20 MR. DASENT: The documents will speak
21 to that issue. I mean, you can see from the
22 documents who is authoring them, who they're
23 directed to. And we'll take it from there.

24 MR. HAVER: And I'm exploring whether
25 the commissioner has found that this is such a

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1 serious issue that he personally has become
2 involved. And he has said he's not. And I've
3 asked him about other documents. He says he's
4 not aware of them.

5 If I've misunderstood, please correct
6 me.

7 COMMISSIONER HAYMAN: I think you've
8 misunderstood that as commissioner, I take the
9 responsibility of operating the utility in an
10 effective manner that is cost-effective, that
11 we obtain chemicals at a lower cost so that
12 we're able to maintain the monies needed to
13 protect the health and safety of this
14 community.

15 As a result, I've talked with my
16 commissioners, my -- I'm sorry, my deputy
17 commissioners, and push them to make sure that
18 they are getting the best price that they can
19 for the items that we need to operate. That
20 is a mandate of the organization. They
21 understand very clearly that is their goal,
22 and we pursue that goal on a daily basis when
23 we're working with the Procurement Office to
24 determine what chemicals we need, how much of
25 the chemical we need, and what time period we

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1 need it.

2 And so those conversations are held
3 back and forth with procurement and are
4 evaluated at the plant on a daily basis so
5 that we can get the best costs for our
6 customers.

7 So is it important to me?
8 Absolutely. Is it important to the
9 organization? Absolutely.

10 MR. HAVER: But you personally are
11 not involved in those conversations with
12 procurement or finance or anyone else; is that
13 correct?

14 COMMISSIONER HAYMAN: I'm involved as
15 the commissioner, directing them and charging
16 them with that duty to make sure that we get
17 the most cost-effective prices for -- be it
18 chemicals or any other item that we need to
19 operate as a utility.

20 MR. HAVER: Thank you.

21 Do you believe that the Philadelphia
22 Water Department should be an economic engine
23 for the City of Philadelphia?

24 MR. DASENT: Objection, beyond the
25 scope of his testimony. Well beyond.

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1 HEARING OFFICER CHESTNUT: Such a
2 meaningless question, frankly. If you can
3 answer it, go ahead.

4 I don't understand the value of that
5 type of question, considering what we were
6 looking at are the prospective rates for
7 fiscal years 2024 and 2025 as opposed to any
8 kind of operational deficiencies or management
9 deficiencies.

10 MR. HAVER: Are you ruling I can't
11 look at operational expenses and management
12 decisions as cost drivers?

13 HEARING OFFICER CHESTNUT: I said
14 that you could look at expenses, but I think
15 that any kind of managerial impropriety is
16 certainly outside the scope of this case. I
17 don't think you could establish it anyway, but
18 you're not.

19 Let's get back to the actual question
20 here. I think it's pretty clear the scope of
21 Commissioner Hayman's responsibilities, and
22 he's not directly involved in these activities
23 that you're talking about. He has a staff to
24 do that. There are deputy commissioners and
25 department heads and however else it's

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1 organized.

2 If you want to ask him policy
3 questions about his role as commissioner, go
4 right ahead.

5 MR. HAVER: I am. I was asking him
6 whether he considers the Philadelphia Water
7 Department a part of the economic engine for
8 the City of Philadelphia.

9 HEARING OFFICER CHESTNUT: I don't
10 see how he can answer that.

11 MR. DASENT: Note our objection.

12 HEARING OFFICER CHESTNUT: I don't
13 see how that's relevant. If you want to
14 answer it, you may, but you certainly don't
15 have to.

16 MR. HAVER: Does Your Honor not want
17 to afford me the right to explain how it's
18 relevant?

19 HEARING OFFICER CHESTNUT: I said
20 that if he was able to answer -- if he wanted
21 to give an answer, he could.

22 MR. HAVER: Yes, but you have --

23 HEARING OFFICER CHESTNUT: But I'm
24 not directing him to answer that because I
25 don't think it's relevant to the proposed

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1 rates.

2 MR. HAVER: And just to make sure the
3 record is clear, you have not given me an
4 opportunity to explain how it's relevant.

5 HEARING OFFICER CHESTNUT: I've read
6 your testimony. And, sure, I think -- you're
7 right, yes, I am assuming that it's consistent
8 with your testimony. But I think we're
9 wasting a lot of time here, frankly, and if
10 you have a proper question for the
11 commissioner, why don't you get on it.

12 MR. HAVER: I'm waiting for a
13 response to this question.

14 MR. DASENT: One will be forthcoming.

15 HEARING OFFICER CHESTNUT: Can you
16 answer that, Commissioner, so we can move on?
17 Either yes, no, it's irrelevant, or something?

18 COMMISSIONER HAYMAN: Repeat the
19 question, please.

20 MR. HAVER: Do you believe that the
21 Philadelphia Water Department can be an
22 economic engine for the City of Philadelphia?

23 COMMISSIONER HAYMAN: Should the
24 opportunity arise.

25 MR. HAVER: Okay. Are you aware of

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1 how many companies Philadelphia Water
2 Department hires that are outside -- that have
3 their offices outside of the City of
4 Philadelphia?

5 MR. DASENT: Objection, irrelevant,
6 outside the scope of his testimony, and this
7 is something that was raised, I think, with
8 other witnesses yesterday, Mr. Yangalay,
9 perhaps. Asked and answered.

10 HEARING OFFICER CHESTNUT: I don't
11 see this as an issue that is specifically --
12 can only be answered by the commissioner. I
13 think it's already been addressed by the
14 Financial Panel.

15 MR. HAVER: The only person who can
16 tell me whether he's aware of something or not
17 is the commissioner himself.

18 HEARING OFFICER CHESTNUT: But it
19 doesn't matter if he's personally aware. It's
20 a matter -- you've already asked the people
21 who know this.

22 MR. HAVER: It doesn't matter whether
23 the commissioner knows that his department is
24 hiring out-of-state companies? That's
25 irrelevant?

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1 HEARING OFFICER CHESTNUT: Yes, it is
2 irrelevant to the proposed rates issue.

3 MR. HAVER: And it doesn't matter.

4 HEARING OFFICER CHESTNUT: I'm not
5 saying that because that's not relevant
6 either, frankly.

7 If you have an appropriate question
8 for Commissioner Hayman, I really would like
9 you to move on.

10 MR. HAVER: These are appropriate
11 questions.

12 HEARING OFFICER CHESTNUT: No,
13 they're not questions that he can answer.

14 MR. HAVER: He can't answer
15 whether --

16 HEARING OFFICER CHESTNUT: You've had
17 other witnesses who have answered them.

18 MR. HAVER: He can't --

19 HEARING OFFICER CHESTNUT: It's
20 already been asked and answered
21 by witnesses --

22 MR. HAVER: Madam Hearing Examiner,
23 the -- I did not ask anyone else what the
24 commissioner knows. I am asking --

25 HEARING OFFICER CHESTNUT: It doesn't

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1 matter what the commissioner knows. What
2 matters is what the commissioner does.

3 MR. HAVER: I want to make that clear
4 on the record.

5 HEARING OFFICER CHESTNUT: That's
6 been answered by the witnesses.

7 MR. HAVER: I just want to make that
8 clear on the record. Your ruling is it
9 doesn't matter what the commissioner knows.
10 That's your ruling.

11 HEARING OFFICER CHESTNUT: That is
12 misstating this completely.

13 MR. HAVER: Well, what did you say,
14 then?

15 HEARING OFFICER CHESTNUT: What I am
16 saying is that the -- your question has
17 already been answered by the appropriate
18 witness.

19 MR. HAVER: It has not. I am asking
20 the commissioner what he knows. No other
21 witness can answer --

22 HEARING OFFICER CHESTNUT: What he
23 knows is irrelevant. What is relevant is what
24 the department does.

25 MR. HAVER: Okay.

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1 HEARING OFFICER CHESTNUT: And that
2 has been answered.

3 MR. HAVER: I just want to make sure
4 that that's clear on the record. Your
5 ruling --

6 HEARING OFFICER CHESTNUT: I think
7 I'm already clear on the record.

8 Mr. Haver, if you want to move on,
9 move on. Otherwise, we're just going to stop
10 doing this.

11 MR. HAVER: I want to make it clear
12 on the record, your ruling is it doesn't
13 matter what the commissioner knows.

14 HEARING OFFICER CHESTNUT: I'm saying
15 it's already been asked and answered.

16 MR. HAVER: Commissioner, can you
17 explain why you're refurbishing your office
18 for slightly under \$2 million while you're
19 seeking rate increases of 20%?

20 MR. DASENT: Objection. I mean, he's
21 mischaracterized the facts that are presented
22 in discovery. Over a number of years there
23 have been renovations, nothing over
24 \$2 million. And the facts are to be
25 addressed, I thought, by other witnesses.

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1 It's in the rebuttal statement, in fact, of
2 Mr. Abrams and Mr. Leatherman. It's not the
3 commissioner's --

4 HEARING OFFICER CHESTNUT: It's been
5 addressed by other witnesses, not
6 Commissioner Hayman.

7 MR. HAVER: I'm asking the
8 commissioner --

9 HEARING OFFICER CHESTNUT: No, you
10 can't ask him something that is so completely
11 outside the scope of his testimony when it's
12 addressed by other witnesses.

13 I've allowed you to ask questions
14 outside the scope of his testimony because I
15 didn't think other witnesses could answer
16 them. But this has already been addressed in
17 other people's testimony, and they were
18 presented for cross-examination.

19 MR. HAVER: I'm asking the
20 commissioner's personal opinion.

21 HEARING OFFICER CHESTNUT: No. No.
22 It doesn't matter.

23 MR. HAVER: I'm sorry?

24 HEARING OFFICER CHESTNUT: It's not
25 that it's irrelevant; it's already been

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1 answered by other witnesses. So there's no
2 need to ask the commissioner for this.

3 MR. HAVER: Again, that's not true.
4 It's a factually untrue statement. I am
5 asking specifically what the commissioner
6 thinks.

7 HEARING OFFICER CHESTNUT: It doesn't
8 matter what he thinks.

9 MR. HAVER: Okay. Commissioner, do
10 you oversee the outreach effort that
11 Philadelphia Water Department conducts
12 regarding public hearings?

13 COMMISSIONER HAYMAN: That's
14 Mr. Abrams.

15 MR. DASENT: That's Mr. Abrams'
16 testimony.

17 HEARING OFFICER CHESTNUT: Well, I
18 think he's asking how far up the review of
19 that goes, and that's a question I think
20 Commissioner Hayman can answer.

21 COMMISSIONER HAYMAN: Well, I'll say
22 I meet with all of my deputies, usually once a
23 week. And during those meetings, if I'm
24 meeting with the deputy of -- assistant deputy
25 of -- I'm sorry, deputy of communications, and

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1 there's a hearing coming up, they will outline
2 for me what they're doing as far as outreach,
3 and then we'll discuss it.

4 MR. HAVER: Do you have an acceptable
5 level of public participation?

6 MR. DASENT: Objection. Again,
7 beyond the scope of his testimony. If he's
8 looked at, you know, the transcript or the
9 hearing record from the public input hearings,
10 or the hearings -- the technical hearings,
11 perhaps he can answer. But if not, he's not
12 prepared to answer that. And it's outside his
13 testimony.

14 HEARING OFFICER CHESTNUT: Are you --
15 can you answer that?

16 COMMISSIONER HAYMAN: I don't have
17 that information in front of me, no.

18 MR. HAVER: Can you supply it?

19 MR. DASENT: The transcript? Sure.
20 I'd direct you to the Rate Board website.

21 MR. HAVER: No, that's not my
22 question, Mr. Dasent, as you well know.

23 My question is: Can you supply your
24 judgment of what acceptable public
25 participation is?

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1 HEARING OFFICER CHESTNUT: No. No.
2 No.

3 MR. HAVER: Again, that is my
4 question.

5 HEARING OFFICER CHESTNUT: That would
6 have been an appropriate information request
7 if it had been in his testimony. That would
8 have been an appropriate information request
9 for Mr. Abrams, but that is not at all within
10 the scope of Commissioner Hayman's testimony.

11 MR. HAVER: If you would like, the
12 Hearing Examiner, we can have the court
13 reporter read back Commissioner Hayman's
14 testimony where he said it was not available
15 to him at this time.

16 HEARING OFFICER CHESTNUT: I'm not
17 sure what that means.

18 MR. HAVER: Well, that's why I'm
19 asking him to supply it in the future.

20 HEARING OFFICER CHESTNUT: Wait, what
21 did he say? In response to what?

22 MR. HAVER: Rather than have a
23 discussion about what he said, why don't we
24 have the court reporter read it back.

25 HEARING OFFICER CHESTNUT: No, I'm

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1 not having the court reporter read back
2 anything.

3 MR. HAVER: Why is that?

4 HEARING OFFICER CHESTNUT: It's
5 unnecessary.

6 MR. DASENT: Just tell us what you
7 want. Tell us what you want in the
8 transcript. We can possibly help you.

9 MR. HAVER: As you helped with the
10 US Bank question?

11 The commissioner has said that he
12 doesn't have in front of him now what an
13 acceptable level of public participation is in
14 the public hearings. I've asked him to supply
15 that information when he has it available to
16 him.

17 MR. DASENT: Mr. Abrams, in
18 discovery --

19 HEARING OFFICER CHESTNUT: Is that
20 some kind of document?

21 MR. DASENT: I don't think so.

22 COMMISSIONER HAYMAN: No, I wasn't
23 referencing necessarily a document as much as
24 he asked about outreach in public hearings.
25 I'm saying I don't have any of that

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1 information in front of me at this time.

2 To the extent that we monitor
3 outreach and participation, we can gladly
4 offer that in written form, to the extent we
5 have it.

6 MR. HAVER: So there are no written
7 regulations, guidelines, imperatives as to how
8 well the public outreach works; is that
9 correct?

10 MR. DASENT: Objection. There's a
11 legal question in there, and the commissioner
12 is a lawyer by training, but in his capacity
13 today, he's going to have to speak to
14 regulations of the Rate Board, which do exist
15 on this point, and other regulations that
16 might be applicable. We can certainly provide
17 that to you, if you need that education, sir.

18 HEARING OFFICER CHESTNUT: No, that's
19 not the way I read the question. It was more
20 like -- and I'm not sure how far to go with
21 this, but I think it's more do you evaluate
22 Mr. -- the efforts of your communications
23 department. I mean, Mr. Abrams is what, a
24 deputy commissioner or --

25 MR. DASENT: Yes.

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1 HEARING OFFICER CHESTNUT: And I
2 assume at some point you monitor and evaluate
3 his work, right?

4 COMMISSIONER HAYMAN: Yes.

5 HEARING OFFICER CHESTNUT: And I
6 assume -- I think that's what the question is,
7 isn't it?

8 MR. HAVER: The question is: What
9 benchmarks are used to evaluate the deputy
10 commissioner's outreach efforts. What's
11 acceptable? What's not?

12 If there are no such benchmarks, just
13 say there are no such benchmarks.

14 COMMISSIONER HAYMAN: As we go
15 forward with any type of program that outreach
16 is needed for, one thing that I'm especially
17 proud of is our department of communications
18 and the way that they have structured very
19 professionally to organize the information
20 that we have and to distribute it. And then
21 they also do -- keep notes as far as
22 participation.

23 Now, I do not have any information in
24 front of me. They would have to present that
25 to you.

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1 MR. HAVER: Right. I'm not asking
2 about that, sir. I'm asking about what -- the
3 benchmarks you use to evaluate their
4 effectiveness.

5 MR. DASENT: Note our continuing
6 objection. I mean, we've talked about
7 performance reviews, we talked about
8 evaluations, we talked about so many things,
9 and all of it is beyond the scope of his
10 testimony. And I don't know that he's
11 prepared to answer this question. This isn't
12 a gotcha moment. We -- we're prepared to
13 answer his testimony, questions with respect
14 to his testimony, not anything that comes into
15 the mind of Mr. Haver at this particular
16 moment.

17 And we continue to object because
18 this is completely outside the scope of what
19 he is supposed to be here today.

20 HEARING OFFICER CHESTNUT: It is.
21 And I'm not going to allow further questions
22 on this. You had the opportunity to talk to
23 Mr. Abrams directly about this. You
24 cross-examined him about this.

25 MR. HAVER: Again --

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1 HEARING OFFICER CHESTNUT: But I'm --
2 it doesn't matter -- stop interrupting me,
3 please. It doesn't matter what
4 Commissioner Hayman thinks or how he does
5 this. I know you want to show that the
6 department doesn't do a good job with
7 outreach, and you can make that argument. But
8 this isn't the witness to do it and this isn't
9 the way to do it.

10 So if you have another question, I'd
11 suggest you go on with it.

12 MR. HAVER: I'm not satisfied with
13 the answer. I could not --

14 HEARING OFFICER CHESTNUT: Well,
15 that's --

16 MR. HAVER: So --

17 HEARING OFFICER CHESTNUT: I think
18 you've got as much as you can. You had the
19 opportunity to cross Mr. Abrams yesterday and
20 the Communications Panel.

21 MR. HAVER: Mr. Abrams cannot tell me
22 what the commissioner is thinking and what the
23 commissioner uses as his benchmarks --

24 HEARING OFFICER CHESTNUT: And that's
25 completely irrelevant to the scope of this

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1 proceeding.

2 MR. HAVER: So it's irrelevant to the
3 scope of this proceeding whether the outreach
4 was done sufficiently to satisfy the
5 commissioner? That's outside the scope of
6 this hearing?

7 MR. DASENT: Mr. Abrams spoke to
8 this.

9 HEARING OFFICER CHESTNUT: You're
10 misstating what I said, you're misstating
11 everything, and I just don't think it's
12 appropriate to spend more time on this. Why
13 don't you -- do you have another question
14 actually for the commissioner?

15 MR. HAVER: Unless you're going --

16 HEARING OFFICER CHESTNUT: He doesn't
17 have to answer that. If he wants to answer
18 it, he can, but I think he's already answered
19 as much as he's able to do and is appropriate
20 to do.

21 You really need to confine yourself
22 to his testimony. I know you're trying to use
23 him to make your case, and there's a limit to
24 how much you can do that.

25 So do you have a specific question?

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1 MR. HAVER: I'm waiting for a
2 response.

3 HEARING OFFICER CHESTNUT: And I
4 already said that he has a --

5 Can you respond, COMMISSIONER HAYMAN,
6 Commissioner Hayman, more than you have? I
7 think you --

8 COMMISSIONER HAYMAN: My testimony is
9 my testimony at this time.

10 HEARING OFFICER CHESTNUT: Hmm? I'm
11 sorry, go ahead.

12 COMMISSIONER HAYMAN: I've presented
13 my testimony.

14 MR. DASENT: He has nothing further.

15 HEARING OFFICER CHESTNUT: Well,
16 Mr. Haver, come on. Do you have another
17 question?

18 MR. HAVER: Well, I'm waiting for
19 your ruling to say that I cannot continue to
20 ask about this.

21 HEARING OFFICER CHESTNUT: He was
22 already asked -- he's already answered it.
23 And he has nothing -- he said he has nothing
24 further to say.

25 MR. HAVER: I don't -- I just want to

5/4/2023

1 make the record clear. Are you ruling that I
2 cannot continue this line of questioning and I
3 must move on to other questions?

4 HEARING OFFICER CHESTNUT: Because he
5 has already answered your question.

6 MR. HAVER: You haven't said on the
7 record whether that's your ruling.

8 HEARING OFFICER CHESTNUT: I don't
9 need a ruling. He has answered your question.

10 MR. HAVER: Well, then I want to
11 continue to ask about these issues.

12 Unless you're going to rule that I
13 can't, on the record, I want to continue to
14 ask --

15 HEARING OFFICER CHESTNUT: Why are
16 you wasting everybody's time with this
17 argument?

18 MR. HAVER: Why is there --

19 HEARING OFFICER CHESTNUT: I don't
20 understand.

21 MR. HAVER: I certainly don't believe
22 I'm wasting my time. I certainly don't
23 believe I'm wasting the public's time. It may
24 be wasting your time, but you could simply
25 make a ruling on the record and then I would

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1 have to move on.

2 HEARING OFFICER CHESTNUT: There's
3 nothing outstanding for me to rule on.

4 MR. HAVER: Okay. Commissioner, I
5 would like to continue to ask you about the
6 public outreach.

7 How many members of the public do you
8 expect to show up at the public input
9 hearings?

10 MR. DASENT: Objection, beyond the
11 scope of his testimony. This is nothing that
12 was in his testimony he will prepare for
13 today, and he has no expectation of the
14 interests of the public. How can he infer
15 what the public likes? I mean, they may even
16 endorse the increase in some instances, like
17 in TAP-R. That means there's no controversy.
18 But Mr. Abrams can best speak to this issue.

19 HEARING OFFICER CHESTNUT: Yeah, I
20 don't think it's an answerable question by
21 this witness. I really don't.

22 MR. HAVER: I'm asking the
23 commissioner how many people he believes would
24 be an acceptable number of people to prove the
25 outreach was a quality outreach at the public

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1 input hearings.

2 MR. DASENT: And we note our
3 objection. He can't speak to that issue.

4 HEARING OFFICER CHESTNUT: I'll
5 sustain the objection. I don't see how he can
6 give you a specific number. There's no -- you
7 have to have a reasonable basis for your
8 question.

9 MR. HAVER: Commissioner, would it
10 surprise you to find out that at one of the
11 public input hearings no member of the public
12 showed up --

13 HEARING OFFICER CHESTNUT: Okay. You
14 have to correct that because that is not the
15 case for this proceeding. There was
16 substantial participation at every public
17 hearing.

18 MR. HAVER: At the TAP hearings there
19 was no public participation.

20 MR. DASENT: Please note our
21 continued objection.

22 HEARING OFFICER CHESTNUT: That's not
23 relevant to this proceeding at all.

24 MR. HAVER: It's a question again --

25 HEARING OFFICER CHESTNUT: It's a

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1 completely different proceeding, completely
2 different transcript.

3 MR. HAVER: It's a question for the
4 commissioner of what level of public
5 participation --

6 HEARING OFFICER CHESTNUT: It doesn't
7 matter. This is not a TAP-R proceeding.

8 MR. HAVER: Again, it's not a
9 question about the TAP-R proceedings. It's a
10 question about the level of public outreach
11 that the --

12 HEARING OFFICER CHESTNUT: And I'm
13 saying that you have to have -- you have to
14 have an accurate foundation for your question.
15 There has been no public hearing that there
16 has been no public input in this case.

17 MR. HAVER: Right. And I'm
18 referencing the TAP-R hearing.

19 HEARING OFFICER CHESTNUT: And the
20 TAP-R is irrelevant to this case.

21 MR. HAVER: It's not irrelevant to
22 the judgment of the commissioner. I'm asking
23 about the commissioner's judgment, what he
24 finds acceptable --

25 HEARING OFFICER CHESTNUT: No, it's

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1 outside the scope of this hearing. This is
2 not a TAP-R proceeding; it's the general rate
3 increase.

4 MR. HAVER: Right. And I'm asking --

5 HEARING OFFICER CHESTNUT: And it
6 doesn't matter what he believes or feels about
7 the TAP-R proceeding.

8 MR. HAVER: I'm not asking about what
9 he believes about the TAP-R proceeding; I'm
10 asking what he believes about public
11 participation.

12 HEARING OFFICER CHESTNUT: Right,
13 public participation in a TAP-R proceeding is
14 irrelevant to this proceeding.

15 MR. HAVER: In any public input
16 proceeding, in any public input hearing, not
17 limited to TAP-R, not limited to this one.

18 HEARING OFFICER CHESTNUT: But
19 it's -- it hasn't happened.

20 MR. HAVER: Are you saying --

21 HEARING OFFICER CHESTNUT: The
22 question has to have a nexus to this
23 proceeding, Mr. Haver, you know.

24 MR. HAVER: The nexus is what does
25 the commissioner find acceptable.

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1 HEARING OFFICER CHESTNUT: Can you
2 possibly answer that, Commissioner Hayman? I
3 don't see how you can, but...

4 MR. DASENT: I'll note the --

5 COMMISSIONER HAYMAN: As a utility,
6 we have the responsibility to inform people of
7 an event, of a hearing. And we follow our
8 steps and follow through to make sure that the
9 people understand and know that it is taking
10 place. Whether people decide to attend or
11 not, we cannot control. And I've seen that
12 happen in other jurisdictions that I've worked
13 at.

14 MR. HAVER: Commissioner, do you know
15 how much water is lost after it's processed by
16 the PWD plants and does not pass through a
17 meter?

18 MR. DASENT: Objection, again, beyond
19 the scope of his testimony.

20 HEARING OFFICER CHESTNUT: Yes.
21 There's already been witnesses that have
22 answered that.

23 MR. HAVER: I'm asking --

24 HEARING OFFICER CHESTNUT: Do you
25 have a question within the scope of

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1 Commissioner Hayman's testimony?

2 MR. HAVER: I'm asking the
3 commissioner if he's aware of how much water
4 is lost.

5 HEARING OFFICER CHESTNUT: It doesn't
6 matter whether he's aware. You've had other
7 witnesses testify to that.

8 MR. HAVER: It doesn't matter whether
9 the commissioner knows how much water is lost
10 or not?

11 HEARING OFFICER CHESTNUT: It doesn't
12 matter for purposes of this cross-examination
13 because other witnesses have already answered
14 that.

15 If you have questions that can only
16 be answered by Commissioner Hayman as a result
17 of his position, please ask them.

18 MR. HAVER: I am. The only person
19 who can tell me whether the commissioner is
20 aware of something is the commissioner
21 himself. Nobody else --

22 HEARING OFFICER CHESTNUT: But it
23 doesn't matter if he's personally aware. It
24 really doesn't.

25 MR. HAVER: Commissioner, why is it

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1 that the City doesn't bear the cost of the
2 lost water?

3 MR. DASENT: Objection. Again, that
4 deals with the Financial Panel testimony.
5 Asked and answered.

6 HEARING OFFICER CHESTNUT: I don't
7 see how a policy question like that -- I --
8 that's a ratemaking question.

9 MR. DASENT: Yes. Black & Veatch and
10 Mr. Yangalay already addressed that. The
11 ratepayer -- it's our only source of income,
12 Mr. Haver. It's just the fact.

13 MR. HAVER: Mr. Dasent, you are not
14 supposed to be testifying, and I'm always
15 amazed that the Hearing Examiner allows you to
16 do so.

17 MR. DASENT: It's a speaking
18 objection, and you're being objectionable.

19 HEARING OFFICER CHESTNUT: Yeah. Do
20 you have questions, policy questions for the
21 commissioner? If you do, ask them.

22 MR. HAVER: I do. I am asking them.

23 HEARING OFFICER CHESTNUT:
24 Commissioner Hayman, you know, seriously, even
25 if it's an improper question, even if there's

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1 not even a proper basis for it, can you just
2 answer it so we can maybe move on?

3 COMMISSIONER HAYMAN: I'll look for
4 direction from counsel.

5 MR. DASENT: I think it's outside the
6 record, and I would not respond unless I had
7 personal knowledge of what I was speaking to.

8 You have staff, senior staff that has
9 addressed this issue. That's why you have
10 them. They're the experts on that subject
11 matter. You run the utility as CEO. It's a
12 different aspect of the job than getting into
13 the weeds with all of the various questions
14 that Mr. Haver is raising. So very different.

15 I suggest you -- if you do not have
16 an answer, just indicate that.

17 HEARING OFFICER CHESTNUT: Now, are
18 you accepting your counsel's advice there?
19 Because if that's --

20 COMMISSIONER HAYMAN: I'm accepting
21 counsel's advise.

22 HEARING OFFICER CHESTNUT: Okay.

23 COMMISSIONER HAYMAN: There's staff
24 that have worked on these issues.

25 MR. HAVER: Commissioner, have you

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1 asked the mayor if the City operating budget
2 can bear the cost of the lost water?

3 MR. DASENT: Objection. Again, this
4 is an extension of the last question. It
5 falls within the same framework.

6 HEARING OFFICER CHESTNUT: No, I
7 think it's a little bit different. I'm not
8 sure that's something you would raise with
9 them, but have you or not or should you have
10 or --

11 COMMISSIONER HAYMAN: I have not.
12 But at the same time, I'm -- staff may have,
13 managers may have, just in discussions
14 regarding water issues.

15 MR. HAVER: Are you aware --

16 COMMISSIONER HAYMAN: I've not had a
17 meeting on that issue.

18 MR. HAVER: Are you aware of any of
19 your staff who asked the mayor if the
20 budget -- if the City budget can bear the cost
21 of the lost water?

22 COMMISSIONER HAYMAN: I would answer
23 I am not aware of that.

24 MR. HAVER: Thank you.

25 In the last fiscal year, 2023, what

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1 new technologies or processes did the
2 Philadelphia Water Department develop to save
3 ratepayers money?

4 MR. DASENT: Objection. Again, I
5 think this is asked and answered. A staff
6 person -- I think it's the Operations Panel
7 has addressed this.

8 HEARING OFFICER CHESTNUT: I want him
9 to try and answer it, if he can, but --

10 COMMISSIONER HAYMAN: One thing I
11 would point to -- I'm sorry.

12 HEARING OFFICER CHESTNUT: Go ahead,
13 Commissioner Hayman. Answer it again.

14 COMMISSIONER HAYMAN: The one thing I
15 would point to is the AMI. Even during COVID,
16 I'm very proud of staff, what they were able
17 to do. Even during COVID we worked very hard
18 to put in our AMI system.

19 Now, what AMI does, it allows you,
20 the homeowner, to monitor your -- through
21 technology, to monitor your water usage.

22 So often an individual has a broken
23 toilet or there's a plumbing issue, they're
24 losing a lot of water, and they don't know it
25 until they get the bill. And what AMI -- the

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1 technology of AMI does, allows them to monitor
2 that on the website and to make corrections
3 when needed. So I think that's an example.

4 We also use ultraviolet now when
5 processing -- we're looking at different
6 programs to use ultraviolet in processing the
7 water.

8 So there's a number of things that
9 are done on the -- with technology that allows
10 us to do it cheaper, and we're -- and allows
11 us to be more effective, and so those are
12 things we're trying to implement.

13 We also have our 25-year,
14 \$2.5 billion water revitalization plan. It is
15 going to allow us to remodel and upgrade our
16 system. That's something we take very
17 seriously at Philadelphia Water, and we take
18 the expense of it all very seriously.

19 But wherever we can use -- this is a
20 mandate I've given people across the
21 organization. Whenever we can use technology
22 to our advantage, and it is cost-effective, it
23 is something that we must consider.

24 MR. HAVER: When did the department
25 start using the ultraviolet light? What year?

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1 MR. DASENT: Objection. The year is
2 irrelevant. It may even predate Mr. Hayman's
3 tenure.

4 HEARING OFFICER CHESTNUT: Look, if
5 he can answer it, fine.

6 COMMISSIONER HAYMAN: No, I would
7 have to look to engineers to respond to that.

8 MR. HAVER: But was it in the last
9 fiscal year? Did it exist before you arrived
10 as water commissioner?

11 COMMISSIONER HAYMAN: Ultraviolet?

12 MR. HAVER: Yes, sir.

13 COMMISSIONER HAYMAN: Well, I know
14 that we're reviewing it, and I'd have to
15 wait -- let the engineers talk to the extent
16 it's been implemented. But I know it's
17 something that's come across my desk and we
18 have had different meetings about different
19 remodeling of plants and are incorporating
20 ultraviolet in those areas.

21 MR. JEWELL: Correct, Commissioner.
22 We are evaluating the potential implementation
23 of UV disinfection technologies and projects
24 that are in planning and design, but have not
25 yet currently implemented that technology.

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1 MR. HAVER: Is -- okay.

2 Would it be correct to say that the
3 Water Department is very concerned about its
4 bond ratings and the comfort of its
5 prospective bondholders?

6 MR. DASENT: Note our continuing
7 objection. This was addressed by the
8 Financial Panel. The financial advisors
9 addressed that extensively yesterday.

10 HEARING OFFICER CHESTNUT: I think
11 Commissioner Hayman can answer this generally.

12 COMMISSONER HAYMAN: Yes, we want to
13 keep our bond rating as high as possible.

14 MR. HAVER: And one of the criteria
15 for bond ratings is the affordability of the
16 bill; is that correct?

17 MR. DASENT: Objection. I don't
18 understand that question. I mean, are you
19 talking about bond ratings, if they fall, it
20 will cost the ratepayers more and the utility
21 more to borrow money? Is that your question?

22 HEARING OFFICER CHESTNUT: Yeah, I
23 don't understand either. Are you talking
24 about uncollectibles?

25 MR. HAVER: No. I'm asking the

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1 commissioner if he believes that how
2 affordable a water bill is to a customer has
3 an impact on the bond rating and the comfort
4 of prospective borrowers.

5 HEARING OFFICER CHESTNUT: I think
6 you need to show a source for that, saying
7 that that is considered by them.

8 MR. HAVER: I'm asking the
9 commissioner whether he --

10 HEARING OFFICER CHESTNUT: No, you
11 need to show a source. You need to have a
12 source, not whether or not he's aware of it or
13 not. Because there has to be a foundation for
14 your question. He can't be aware of something
15 that doesn't exist.

16 MR. HAVER: Well, I was assuming
17 because he meets regularly with his staff he
18 would have gotten that information from his
19 staff. But perhaps it was an erroneous
20 assumption.

21 HEARING OFFICER CHESTNUT: No, you
22 need to show us that that is a factor
23 considered by the rating agencies.

24 MR. HAVER: That is in fact what the
25 Water Department's consultants said yesterday.

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1 MR. DASENT: And there's your answer.

2 MR. HAVER: And I'm now asking if the
3 commissioner is knowledgeable of what his
4 consultants have said.

5 MR. DASENT: The transcript will be
6 available to us in the next day or so. We
7 will read it. The commissioner will read it,
8 and we can then report back. He wasn't in the
9 room. He's not clairvoyant, to my knowledge.

10 MR. HAVER: That wasn't a question of
11 whether he was clairvoyant; it was a question
12 of whether his deputy commissioners informed
13 him of that.

14 MR. DASENT: Overnight?

15 MR. HAVER: No, sir. I don't believe
16 that this was the first time --

17 HEARING OFFICER CHESTNUT: I think
18 you're just getting afield from what your
19 question originally was, which was is
20 Commissioner Hayman aware.

21 What your question should have
22 been -- I mean, I'm not sure there is a
23 basis -- a foundation for your question, which
24 is do the rating agencies -- your question was
25 do they consider affordability. And I'm not

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1 sure that's established by anybody. What I
2 thought the testimony was they consider
3 collections and revenue.

4 MR. HAVER: Yes, you are
5 ill-informed, Hearing Examiner. The record
6 was clear yesterday that affordability is one
7 of the components of bond ratings.

8 HEARING OFFICER CHESTNUT: It is if
9 it isn't. It doesn't --

10 MR. HAVER: And my question is: Is
11 the commissioner aware of that?

12 HEARING OFFICER CHESTNUT: Are you,
13 Commissioner Hayman? I mean, is this even
14 something that you would be --

15 COMMISSIONER HAYMAN: A bond
16 rating -- one, I would defer to Mr. Yangalay
17 and to Black & Veatch, because they addressed
18 this issue for him earlier, I understand.

19 But the bottom line is, bond ratings
20 are based on your ability to raise the monies
21 through your rates to cover the operations of
22 the organization.

23 And so affordability and knowing that
24 you will be able -- people will be able to pay
25 what the rate is, which is backing the bond,

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1 is a factor.

2 MR. HAVER: Thank you.

3 Commissioner, what do you define as
4 an affordable water bill?

5 MR. DASENT: Objection. I don't even
6 know what that means, and it's certainly
7 outside the scope of his testimony.

8 And affordability, there are measures
9 of affordability. The EPA has a measure of
10 affordability. There's an assortment of ways
11 to -- and the TAP organization and poverty
12 tells you about affordability, and the
13 participants in TAP and the fact that we need
14 more participants in TAP. All of that speaks
15 to affordability. It has nothing to do with
16 Mr. Hayman's testimony.

17 HEARING OFFICER CHESTNUT: Your
18 response, Mr. Haver?

19 MR. HAVER: I'm seeking the judgment
20 of the water commissioner, what he believes is
21 afford- -- an affordable water bill. I'm not
22 asking about --

23 HEARING OFFICER CHESTNUT: The
24 objection is sustained, because his personal
25 opinion is irrelevant. Measures of

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1 affordability have already been established,
2 as Mr. Dasent has said.

3 MR. HAVER: Mr. Dasent just
4 referenced the low-income plans.

5 Commissioner, are you satisfied with
6 the number of people, low-income families or
7 households, that are employed in PWD's
8 low-income plans?

9 COMMISSIONER HAYMAN: When COVID
10 started, we went out of our way to make sure
11 that we were able to protect those who were in
12 need. Philadelphia is known for having a very
13 strong safety net for those in our
14 neighborhoods and in our communities who need
15 help.

16 We have the TAP program that allows
17 people to pay through a -- within 250% of the
18 federal poverty line, are able to become part
19 of the TAP program. We expanded how people
20 are able to get into the TAP program. We've
21 expanded how we're able to reach out and
22 communicate the existence of the program to
23 them in the community.

24 And so we're doing a lot of changes
25 since COVID, which may have already been

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1 delineated in other testimony, to assist those
2 who are in need.

3 MR. HAVER: Thank you, sir. I'm sure
4 your efforts are greatly appreciated. But my
5 question was, are you satisfied with the
6 number of enrollments in the low-income plans
7 that the Philadelphia Water Department
8 currently offers?

9 MR. DASENT: I think that's really a
10 question for Mrs. Crosby, who will be on on
11 Friday. She's WRB.

12 HEARING OFFICER CHESTNUT: I'm not
13 sure what you mean by satisfied, you know.
14 That is such a subjective term, I'm not sure
15 that an answer would tell us.

16 COMMISSIONER HAYMAN: All I can say
17 is we can present to you what the numbers are,
18 and I'll let the numbers speak for themselves.

19 MR. HAVER: Well, again, I'm not
20 asking about the numbers; I'm asking about
21 your judgment, sir. You are in fact the water
22 commissioner. I'm asking, in your judgment,
23 as the person who is in charge of and
24 ultimately responsible for the operations of
25 the Water Department, if you are satisfied

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1 with the number of people enrolled in the
2 programs.

3 MR. DASENT: Please note our
4 continuing objection. Mrs. Crosby does
5 address that issue. She talks about
6 pre-qualification and how we're trying to
7 expand TAP in every way, shape, or form to get
8 as many poor folks on the TAP program as
9 possible. And she is the best person to speak
10 to that issue.

11 MR. HAVER: It would be impossible
12 for her to tell me what the commissioner
13 believes or thinks. Only the commissioner --

14 HEARING OFFICER CHESTNUT: Do you
15 have -- is there a target number? Is that
16 what you're trying to get at?

17 MR. HAVER: I'm first asking if he's
18 satisfied with the current enrollment.

19 HEARING OFFICER CHESTNUT: If you can
20 answer -- I don't see how you can. But again,
21 if you possibly could answer that, that would
22 be great, but --

23 COMMISSIONER HAYMAN: My answer is
24 that we've made big changes to the TAP program
25 through -- since the beginning of COVID, and

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1 that we are looking at ways for automatic
2 enrollment and we're looking at ways to make
3 sure that we're -- if a person's water is shut
4 off that we're able to meet with them and try
5 to pull them into the TAP program to give them
6 whatever applications they need.

7 And so we're doing a lot of things to
8 make sure that people are taken care of, that
9 there is a safety net. Again, the numbers are
10 what they are. But I want, as commissioner,
11 anyone who is available, anyone who fits in
12 the category of being eligible for TAP, I want
13 them to know about the program and I want them
14 to -- and I encourage them to enter the
15 program. It's there for their benefit.

16 MR. HAVER: Yes, sir. Again, my
17 question was are you satisfied with the
18 current enrollment in the program.

19 HEARING OFFICER CHESTNUT: He's
20 already answered. He's already answered that.

21 MR. HAVER: He has not. He has
22 not --

23 HEARING OFFICER CHESTNUT: He has.
24 He has answered your question. Please move
25 on.

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1 MR. HAVER: He has not answered my
2 question.

3 HEARING OFFICER CHESTNUT: He has.

4 MR. HAVER: Unless you rule me out of
5 order, I'm going to continue to ask.

6 HEARING OFFICER CHESTNUT: Then
7 you're out of order. Yes, please move on.
8 He's answered your question.

9 MR. HAVER: Again, I want you on the
10 record to say that you are out of order
11 following up that line of questioning.

12 HEARING OFFICER CHESTNUT: That is
13 not necessary. He has answered the question.

14 MR. HAVER: Then I'm -- unless you
15 put that on the record, I'm going to continue
16 to ask about it.

17 MR. DASENT: If Your Honor please, I
18 would ask my witness not to respond any
19 further to questions other than his answer
20 that he's already provided fully, the extent
21 of his knowledge. It's not what Mr. Haver
22 wants to hear, but it is his answer.

23 HEARING OFFICER CHESTNUT: Just
24 because you're not satisfied with an answer
25 doesn't mean you can continue to ask about it.

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1 He's answered the question. If you have
2 another question, you can move on.

3 MR. HAVER: Unless Your Honor says --

4 HEARING OFFICER CHESTNUT: If you
5 don't have another question, then we're going
6 to -- then we'll excuse --

7 MR. HAVER: I have plenty more
8 questions. But I want the record to be clear:
9 Is Your Honor telling me I cannot continue
10 this line of questioning?

11 HEARING OFFICER CHESTNUT: I am
12 telling you that we will evaluate your
13 questions when you ask them. But this
14 question has been answered.

15 MR. HAVER: Right. Not to my
16 satisfaction. I want to continue to pursue
17 this line of questioning. May I do so?

18 HEARING OFFICER CHESTNUT: I will
19 look at each question as you ask them.

20 MR. HAVER: Okay. Commissioner, do
21 you know how many people are currently
22 enrolled in TAP?

23 MR. DASENT: That is a question in
24 the TAP-R filing. The filing actually
25 reflects the number of subscriptions that are

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1 currently involved and projected to be
2 involved in the next year. That is the forum
3 to ask that question.

4 As I remember, you did not
5 participate. You were a participant, but did
6 not participate.

7 MR. HAVER: Thank you, Mr. Dasent.

8 But my question is: Commissioner, do
9 you know how many people are enrolled in the
10 TAP program?

11 HEARING OFFICER CHESTNUT: I'll be
12 honest, I do think this is an improper
13 question, way outside the scope both of your
14 testimony and in your role as commissioner.

15 But if you can answer it, answer it.
16 If not, just say that.

17 MR. DASENT: Mrs. Crosby will address
18 it.

19 COMMISSIONER HAYMAN: As
20 commissioner, I read a number of reports. In
21 my readings, I have a number in my mind. I'm
22 not going to say because I'm not sure it's
23 correct. But there are more than enough
24 experts in the organization, be it
25 Mr. Yangalay or Black & Veatch and others, who

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1 can answer that question to the exact person.
2 So if you want us to respond in writing, we'd
3 be more than happy to.

4 HEARING OFFICER CHESTNUT: That's not
5 necessary. It's already been addressed by
6 other people.

7 MR. HAVER: No. Commissioner, the
8 question --

9 HEARING OFFICER CHESTNUT: Mr. Haver
10 is not interested in the information. He's
11 interested in showing that you don't know.

12 COMMISSIONER HAYMAN: And I'm not
13 saying I don't know. I'm saying I read a lot
14 and I study a lot, and I have an idea what
15 that number is, but to be accurate in a public
16 forum, we can look at the testimony of others
17 who are working on it on a daily basis.

18 HEARING OFFICER CHESTNUT: Okay.
19 He's answered your question. Move on.

20 MR. HAVER: Madam Hearing Examiner,
21 how do you know what I want? Are you
22 clairvoyant?

23 HEARING OFFICER CHESTNUT: No, but I
24 can make judgments.

25 MR. HAVER: And your judgments are --

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1 HEARING OFFICER CHESTNUT: Okay, stop
2 arguing with me and -- if you have a question
3 for this witness, please go on.

4 MR. HAVER: Again, I continue to want
5 to ask about these -- about TAP enrollment and
6 enrollment in other low-income plans. And
7 again, my question is, how can you decide
8 whether your staff is doing an adequate job
9 enrolling people in the TAP program if you
10 don't have an understanding -- a clear
11 understanding of how many people are currently
12 enrolled?

13 MR. DASENT: Objection. We've
14 already addressed this particular issue.
15 Please also note that TAP is administered by
16 the revenue department, under the Water
17 Revenue Bureau, and Ms. Crosby is here
18 tomorrow to address those issues. This is
19 really not an issue appropriate for the
20 commissioner.

21 HEARING OFFICER CHESTNUT: Okay, your
22 objection is sustained.

23 Do you have another question?

24 MR. HAVER: Yes. Are you satisfied
25 with the outreach that your department is

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1 doing to help low-income households enroll in
2 the low-income plans?

3 COMMISSIONER HAYMAN: We will
4 continue to push to make sure that everyone
5 who is eligible for TAP knows of it and has an
6 opportunity to enroll in the program. So
7 until we're in a situation where everyone has
8 enrolled who is eligible, we want to continue
9 being positive and giving them that
10 opportunity.

11 MR. HAVER: Does that mean you're not
12 satisfied with the current enrollment numbers?

13 MR. DASENT: Asked and answered,
14 argumentative.

15 HEARING OFFICER CHESTNUT: Yes, I --
16 I think it also misstates his answer. So your
17 objection is sustained.

18 MR. HAVER: What benchmarks will you
19 use in judging how your outreach department is
20 doing in regards to helping low-income
21 households enroll in the TAP program?

22 COMMISSIONER HAYMAN: The hard
23 numbers that come through participation in TAP
24 is best answered through the revenue
25 department.

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1 MR. HAVER: Again, I'm not asking
2 about that. I'm asking you in your judgment
3 for the staff that you manage, what benchmarks
4 will you use in deciding whether they're doing
5 an adequate outreach job for the low-income
6 plans?

7 COMMISSIONER HAYMAN: We want to make
8 sure that everyone who is eligible is actually
9 enrolled in the program. That is the goal;
10 that everyone who has a need is able to avail
11 themselves of this benefit. And so we'll
12 continue with outreach until we're -- we reach
13 that point, in cooperation with the City and
14 the department of revenue.

15 MR. HAVER: It's greatly appreciated,
16 but that wasn't my question. My question is
17 what benchmarks will you use to evaluate the
18 work that your staff is doing?

19 COMMISSIONER HAYMAN: That is a
20 technical question as far as looking at the
21 size of the community and the number of
22 individuals who are eligible and the number of
23 individuals we have contacted. That is a
24 statistical question that needs to be asked to
25 the department of revenue.

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1 MR. HAVER: Well, sir, isn't -- isn't
2 it your -- isn't it the Water Department that
3 does the outreach for the Water Department's
4 low-income plans?

5 MR. DASENT: That's true, and that's
6 addressed by Mr. Abrams. His testimony and
7 his -- his input will be more helpful to you
8 here in terms of the particulars of outreach
9 and the standards that are applied. I think
10 that's the first instance, you know, where we
11 need to direct questions.

12 MR. HAVER: And I'm not asking for
13 Mr. Abrams' input. I've already watched him
14 testify at a public hearing.

15 I'm interested in what the
16 commissioner's benchmarks are for deciding
17 whether Deputy Commissioner Abrams or anyone
18 else in the outreach or public relations
19 department is doing an adequate job.

20 HEARING OFFICER CHESTNUT: Is that an
21 answerable question? Because it seems to me
22 like you're talking about an HR kind of issue
23 in terms of employee evaluations. I'm sure
24 you -- the commissioner evaluates the
25 effectiveness of his staff on a periodic

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1 basis. And to go any more than that I think
2 is completely improper.

3 MR. HAVER: I'm asking what
4 benchmarks the commissioner uses. If he
5 doesn't use --

6 MR. DASENT: That --

7 HEARING OFFICER CHESTNUT: I don't
8 think that's an appropriate question.

9 MR. HAVER: You don't think it's
10 appropriate to ask what benchmarks the water
11 commissioner uses to decide if his staff is
12 doing an adequate job?

13 MR. DASENT: HR evaluations are done
14 periodically, probably annually, and I don't
15 know if there's any more that we can say at
16 the CEO level. Mr. Abrams, though, can speak
17 to this issue in particularity, and we even
18 have transcript requests that we're responding
19 to on this subject.

20 MR. HAVER: Again, I'm asking the
21 commissioner what benchmarks he uses. If he
22 doesn't use any benchmarks, let him say: I
23 don't use any benchmarks.

24 MR. DASENT: Note our continuing
25 objection. It's outside of the scope of his

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1 testimony. We're being basically ambushed by
2 a lot of questions that are coming into
3 Mr. Haver's mind that have nothing do with the
4 testimony presented. We object.

5 HEARING OFFICER CHESTNUT: Yeah, I
6 think you've already tried to ask this, and
7 it's already been answered and responded to
8 and objected to. I know you want to show
9 that because it's in your testimony that you
10 feel that the department does an inadequate
11 job, but it doesn't matter what benchmarks
12 Commissioner Hayman uses.

13 What you have to focus on is what the
14 Water Department actually does. And if in
15 your opinion it's inadequate, fine; you're
16 entitled to your opinion. But to badger this
17 witness with these questions that are so
18 clearly outside the scope of his testimony is
19 just wrong. And I'm not -- not going to allow
20 it.

21 I've given you a lot of scope here, I
22 really have, and I recognize that it's
23 somewhat unfair to Commissioner Hayman, but I
24 thought by virtue of his position he could
25 answer some of these high-level questions, but

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1 that's not what you're asking. You're asking
2 him to get into the weeds. And I don't want
3 to do that. I don't want you asking him what
4 benchmarks he has for evaluating his staff
5 performance. It's not relevant to the rates.

6 It's relevant to issues you think are
7 appropriate, but it's not relevant to the
8 rates. And I've really let you have a lot of
9 latitude here, and I do apologize to
10 Commissioner Hayman for allowing him to be
11 subjected to this, but if you have a
12 legitimate question for the commissioner,
13 please go ahead.

14 MR. HAVER: Are you saying I can no
15 longer pursue that line of questioning?

16 HEARING OFFICER CHESTNUT: Yes. Yes.
17 I think you've had every opportunity to ask
18 him appropriate questions on that.

19 MR. HAVER: Thank you.

20 HEARING OFFICER CHESTNUT: That's as
21 far as we can go.

22 MR. HAVER: Commissioner, if you
23 don't receive every penny of the requested
24 rate increase, will the Water Department be
25 able to continue to operate?

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1 MR. DASENT: Objection. That's a
2 question for Mr. Yangalay. And in fact, he
3 addressed it yesterday.

4 HEARING OFFICER CHESTNUT: I think
5 the commissioner can answer that on a very
6 high-level basis, I'm sure.

7 COMMISSIONER HAYMAN: Well, at a very
8 high level, let me add -- in determining the
9 rate that we made, that we presented, the
10 department is requesting relief because we
11 face an operating deficit in 2004 -- I'm
12 sorry, 2024 and 2025. Additional revenues are
13 needed to meet significantly increasing costs
14 in fiscal year 2024 and '25 related to the
15 operation of the water and wastewater system
16 as well as becoming aware of inflation is
17 widespread throughout the economy, and
18 anticipated to continue during the coming
19 years. We need the additional resources to
20 pay increasing costs of operations, for
21 upgrades, for repairs, for improvements, for
22 maintenance activities. These increasing
23 costs are driving the department's application
24 for increased rates.

25 So to the extent that we do not

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1 receive the monies that we request, the items
2 that I noted, we would have to decrease, which
3 means the amount of service that we would be
4 able to provide and the amount of time that
5 we'd be able to provide it within could be
6 affected.

7 MR. HAVER: Is it possible that you
8 would find cost savings?

9 COMMISSIONER HAYMAN: We look for
10 cost savings every day.

11 MR. HAVER: So it's possible --

12 COMMISSIONER HAYMAN: To the extent
13 we find them, we would apply them.

14 MR. HAVER: Thank you.

15 Would you be in a position to direct
16 your staff to look for cost savings if you
17 were not able to receive every penny that you
18 have asked for in this rate increase?

19 COMMISSIONER HAYMAN: We would have
20 to look at cost savings; we'd have to look at
21 reductions. But I want to make this very
22 clear, that my staff knows me, and I have a
23 reputation for using a phrase with them,
24 "sharpen your pencils."

25 And so as we went forward with the

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1 rate process, I would tell them, sharpen your
2 pencil, go back to it. And so they have
3 sharpened and tried to be as exact and as
4 efficient and effective as they can.

5 And they are professionals. They are
6 true professionals. And so I am confident
7 that the number that we came up with and we
8 submitted is what we need.

9 To the extent we don't receive it, it
10 will affect the level of -- that we are able
11 to accomplish some of the goals that I just
12 listed for you.

13 MR. HAVER: Thank you for your time,
14 Commissioner. I have no more questions.

15 COMMISSIONER HAYMAN: Thank you, sir.

16 HEARING OFFICER CHESTNUT: I don't --
17 do you want to do redirect?

18 MR. DASENT: No, Your Honor.

19 HEARING OFFICER CHESTNUT: Thank you
20 very much, Commissioner. I appreciate your
21 time.

22 COMMISSIONER HAYMAN: Thank you.

23 HEARING OFFICER CHESTNUT: You're
24 excused.

25 COMMISSIONER HAYMAN: Thank you very

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1 much.

2 HEARING OFFICER CHESTNUT: Okay. So
3 that takes us to the --

4 MR. DASENT: To the Exeter Panel.

5 HEARING OFFICER CHESTNUT: Are you
6 going to present them as a panel, I assume?

7 MR. DASENT: It will be Mr. Morgan
8 and Ms. Rogers, I think.

9 HEARING OFFICER CHESTNUT: Are you
10 going to have them together and then the other
11 witnesses separate? Or do you want to do them
12 all together?

13 MR. BALLENGER: I would defer to
14 Andre to an extent, but I thought the plan was
15 to have cross on PA's Statement 1 and 1R, to
16 the extent applicable, which is Morgan and
17 Rogers.

18 HEARING OFFICER CHESTNUT: Okay.

19 MR. DASENT: That's correct.

20 MR. BALLENGER: And so I believe both
21 witnesses are present. Yes, there's
22 Mr. Morgan, and I see Ms. Rogers as well. And
23 as has been the case for PWD witnesses, we
24 would just like to acknowledge that all have
25 stipulated to the authenticity of their

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1 testimony on the record that was prefiled, and
2 as a result, I make them available for
3 cross-examination by Mr. Dasent.

4 HEARING OFFICER CHESTNUT: Can you
5 just identify them for the record, please --
6 or actually, you could identify yourselves for
7 the record, Mr. Morgan and Ms. Rogers. State
8 by whom you're employed and in what capacity.

9 MR. DASENT: Mr. Morgan, I think
10 you're muted.

11 MR. MORGAN: Good morning. I'm
12 Lafayette Morgan. I'm a consultant. I work
13 with Exeter Associates in Columbia, Maryland.

14 MS. ROGERS: Good morning, I'm
15 Jennifer Rogers. I also work for Exeter
16 Associates in Columbia, Maryland.

17 (Discussion off the record.)

18 EXETER PANEL ON PA-1

19 CROSS-EXAMINATION BY MR. DASENT

20 MR. DASENT: Good morning,
21 Mr. Morgan. Good morning, Ms. Rogers. It's
22 sort of a privilege to have you here.

23 But, Mr. Morgan, first of all, have
24 you been involved in PWD rate proceedings and
25 for a number of years now, am I correct? It's

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1 been a long time in my recollection.

2 MR. MORGAN: Yes. I believe the
3 first proceeding was in 2016.

4 MR. DASENT: And during this period,
5 have you had a number of normalization
6 adjustments and inflation adjustments and
7 policy recommendations?

8 MR. MORGAN: Yes.

9 MR. DASENT: And I take it you're
10 also aware of the Rate Board decisions in key
11 areas related to your testimony, like
12 financial metrics, for example?

13 MR. MORGAN: Yes.

14 MR. DASENT: Now, I want to direct
15 your attention to the hearing exhibit. I'm
16 going to talk a bit about revenue and expense
17 adjustments.

18 Now, if you look at page 2 -- and
19 page 2 is at the bottom of the hearing
20 exhibit. It's in red. Cross-examination
21 Exhibit page 2. And that will be the
22 reference that I will be using when I sort of
23 walk through this particular exhibit.

24 Now, referring to the page 2, there
25 you provide a summary of -- or a schedule with

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1 a summary of adjustments, revenue and expense
2 adjustments, that you recommend in this case,
3 am I correct, or the Public Advocate actually
4 recommends in this case. Am I correct?

5 MR. MORGAN: Correct.

6 MR. DASENT: There are 18 in all.

7 And the first 11 are explained in PA
8 Statement 1, and the last seven are explained
9 in Mr. Colton's testimony. Am I right?

10 MR. MORGAN: That's correct.

11 MR. DASENT: Okay. And is it also
12 correct that although the table showing the
13 adjustments recommended by Mr. Colton is shown
14 in your testimony, that you have not
15 independently reviewed Mr. Colton's revenue
16 and expense adjustments. Am I right?

17 MR. MORGAN: Correct.

18 MR. DASENT: And I take it that these
19 adjustments are, however, included in the
20 calculation of your revenue requirements in
21 this case. Am I right?

22 MR. MORGAN: That is correct.

23 MR. DASENT: Now, to be clear, the
24 summary schedule on page 2 of Hearing
25 Exhibit 1 that we're referring to now shows

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1 all of the expense adjustments, revenue and
2 expense adjustments. Am I right?

3 MR. MORGAN: To the best of my
4 knowledge, yes.

5 MR. DASENT: Now, turning your
6 attention to PA Statement 1, this is your
7 testimony. And I'm sorry, it's not a part of
8 the hearing exhibit, but if you look at the
9 schedule at the end of your testimony, it's
10 JR -- I'm sorry, LM_JR-1.

11 And I'll give you a moment to get
12 there. It's right after page 23.

13 Now, if you look at LM_JR-1, that
14 exhibit.

15 MR. MORGAN: I'm still trying to get
16 to it.

17 HEARING OFFICER CHESTNUT: I'm sorry,
18 you're taking about his direct or rebuttal? I
19 lost track.

20 MR. DASENT: I'm sorry, his direct
21 testimony.

22 HEARING OFFICER CHESTNUT: Okay.

23 MR. DASENT: And scrolling past
24 page 23, you get to exhibits. And LR -- I'm
25 sorry, LM_JR-1 is the first exhibit, in page 2

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1 of 2.

2 HEARING OFFICER CHESTNUT: Okay.

3 MR. MORGAN: It's open. I had the
4 wrong file open.

5 MR. DASENT: Take your time.

6 MR. MORGAN: Okay. I've got it.

7 MR. DASENT: Okay. Now, looking at
8 Statement 1, Mr. Morgan, Schedule LM_JR-1,
9 line 34X. That's on the second page.

10 Is the adjustment shown there at line
11 34X -- and it's captioned Additional Revenue
12 Requirement Needed. Does that -- is that
13 related to debt service coverage, subject to
14 check?

15 MR. MORGAN: Mr. Dasent, I'm still --
16 I have the wrong schedule -- okay. What --
17 can you refer me to the schedule again?

18 MR. BALLENGER: I'm sorry,
19 Mr. Dasent, you're looking at the lines within
20 the Residual Fund?

21 MR. DASENT: No, I'm looking at 34X.
22 It's Schedule LM_JR-1, page 2 of 2.

23 MR. BALLENGER: And that falls under
24 the heading of Residual Fund?

25 MR. DASENT: Ah, yes, it does. Yes.

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1 MR. BALLENGER: I just wanted to make
2 sure we are looking at the same thing.

3 MR. DASENT: Yes. I'm sorry, I'm not
4 focused. But line 34X, Additional Revenue
5 Requirement Needed, does that relate to an
6 adjustment for debt service coverage, subject
7 to check?

8 MR. MORGAN: And maybe Jen can help
9 me here, but I would say I'm not positive that
10 is -- that is solely the debt service
11 coverage, but subject to check, I can accept
12 that.

13 MR. DASENT: Okay. And those two
14 numbers that are reflected on that line for
15 2024 and 2025 are 8,729,000 -- I'm sorry,
16 yeah, 8,729,000 for '24 and 8,543,000 for
17 2025; is that right?

18 MR. MORGAN: Correct.

19 MR. DASENT: Now, that adjustment or
20 those amounts, I don't see on your schedule on
21 page 2 of hearing Exhibit 1. Am I correct
22 that they're not there? They're not shown
23 there?

24 MR. BALLENGER: I'm going to object.
25 I think this goes to the working of the model

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1 itself, which follows the flow of funds. It
2 has nothing to do with a revenue adjustment.

3 MR. DASENT: Well, it's one of the
4 adjustments you're going to need to figure out
5 what's the impact of Mr. Morgan's
6 recommendation in this rate case, and that's
7 all I'm walking through. Just to try to make
8 sure for purposes of the record, when we tally
9 up the final adjustments, that we include
10 everything. And it's not shown in your
11 schedule on page 2 of Hearing Exhibit 1.
12 Isn't that true, Mr. Morgan?

13 MR. MORGAN: It's true, but I -- let
14 me add, and quite candidly, you are aware that
15 we asked for an extension of one day, and part
16 of the problem we have is we begin with
17 Black & Veatch's model, and then we transfer
18 over to the simplified model. And in all
19 instances, we were having problems with being
20 able to make sure that everything we had in
21 one model was reflected in the other.

22 So the way I look at this, and the
23 way that I have approached the recommendation
24 is to say that there are certain issues that
25 we recommend that the Board adopts. And to

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1 the extent that -- I'll back up a little bit.
2 In our direct testimony we state that we do
3 not vouch for the algorithms that are in both
4 models.

5 So to the extent that there might be
6 instances where we were unable to isolate
7 specific amounts, it does not negate our
8 recommendation to the Board.

9 The way we calculated that schedule
10 that you refer to, we primarily would go
11 through each model and try to isolate the
12 revenue impact based on what we made.

13 MS. ROGERS: 34X was not an
14 individual change. That's a flowthrough
15 that's not a solid -- or indicated we were
16 allowed to modify anyway.

17 MR. MORGAN: Okay.

18 MR. DASENT: Thank you for that.

19 But I think you're telling me there
20 are limitations in your models, and you're
21 trying to use them as best you can, and we'll
22 get to some of those questions later.

23 Turning your attention back to --

24 HEARING OFFICER CHESTNUT: I'm sorry,
25 I just wanted to clarify. I understand you're

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1 talking about the translation from one
2 modeling parameter to another, and that they
3 may not display the same. And that this is --
4 I think what you said, a callout number that
5 you couldn't input. Is that right? Because I
6 wanted to -- I got excited when I saw this
7 summary schedule on the cross-examination
8 exhibit. I thought that was a really nice way
9 to display all of your proposed adjustments.
10 Is that the case?

11 MR. MORGAN: Yes. But as Mr. Dasant
12 is indicating, he is stating that there are
13 certain items that are missing.

14 HEARING OFFICER CHESTNUT: Missing or
15 just displayed differently, I guess was my
16 question.

17 MR. DASENT: Missing.

18 HEARING OFFICER CHESTNUT: Missing,
19 okay.

20 MR. DASENT: And that just means for
21 no other purpose than in doing the tally, for
22 purposes of determining the impact of these
23 various adjustments in the rate case, we have
24 to look beyond this particular table. And I
25 think Mr. Morgan is agreeing with that.

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1 Now, turning your attention,
2 Mr. Morgan, to the table in Hearing Exhibit 1,
3 page 2, where we are, I'm referring to the
4 tenth line. It's called: Increased the bond
5 interest rate by 1% from the rate experienced
6 in fiscal 2023, 5%.

7 Now, you say increased bond interest
8 rate. Do you mean actually it's a decrease in
9 the PWD proposal for bond interest rates in
10 that particular adjustment? Am I correct in
11 understanding that?

12 It's a decrease. You're going from
13 5.5 down to 5%. It's just a title,
14 Mr. Morgan, and so I'm just trying to make
15 sure I'm clear.

16 MR. BALLENGER: Refer to page 21 of
17 your direct testimony.

18 MR. MORGAN: Okay. I think the
19 problem was we're using two different
20 computers.

21 MR. DASENT: Yeah. And you're
22 decreasing -- that adjustment decreases our
23 proposal 5.5% down to your proposal, 5%. It's
24 sort of just a passing question. That's a
25 fact, it's a decrease?

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1 MR. MORGAN: It's a decrease from
2 what you present.

3 MR. DASENT: That's right. And I
4 take it you also agree that the adjustment is
5 not solely related to bond interest rates in
6 making that recommendation? And I can direct
7 you to Hearing Exhibit page 30, to sort of
8 walk through that.

9 MR. BALLENGER: The hearing exhibit,
10 the cross exhibit?

11 MR. DASENT: Yeah, the Cross Exhibit
12 30, and look at the bottom right-hand page in
13 red, Cross-Examination Page 30, and that's
14 your JR -- I'm sorry, LR_JR-4, page 4 of 4.

15 If you look at lines 3a and 4a of
16 that exhibit, you see the bond interest rate
17 you're proposing, 5%, affects not only that
18 particular interest rate, but the bond sizing
19 is also changed there. And I assume that's
20 driven by the model as well?

21 MR. MORGAN: The size is driven by
22 the model.

23 MR. DASENT: Okay. And both changes
24 are shown there?

25 MR. MORGAN: Correct.

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1 MR. DASENT: Okay. Now, let me
2 change the subject a little bit and talk about
3 the TAP-R revenue adjustment.

4 Now, in the schedule attached to your
5 testimony, where we were a few minutes ago --
6 and I'm sorry for jumping around. It's
7 LM_JR-1, page 1 of 2.

8 There it seems like you're
9 presenting -- and tell me when you get
10 there -- you're presenting basically an
11 exhibit that -- or schedule that corresponds
12 to PWD Schedule Table C-1A. Am I right?

13 MR. MORGAN: Correct.

14 MR. DASENT: Okay. Now, do you agree
15 that lines 1a through 11a in the -- this
16 particular exhibit that we're referring to,
17 LM_JR-1, page 1 of 2, do not include TAP
18 revenue? C-1A doesn't include TAP revenue.

19 MR. BALLENGER: Doesn't include the
20 recovery of his accounts via the TAP-R.

21 MR. DASENT: That's what I mean. I'm
22 sorry. Yes.

23 MR. BALLENGER: I believe -- and I
24 don't want to object, but just to say that
25 these are, as you know, adjustments proffered

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1 by Mr. Colton in his testimony.

2 MR. DASENT: Yeah, but they're
3 presented in this testimony. I'm just trying
4 to make sure that in the schedules that we see
5 and we rely on, that I have a complete
6 understanding of where they're going and what
7 adjustments are being made. So if this deals
8 with TAP-R revenues, I just want to know that.

9 MR. BALLENGER: Okay. Is the
10 question whether they -- those amounts are
11 flowed through in the total service revenue
12 under existing rates? Is that the question?

13 MR. DASENT: No, the question is, did
14 you include any TAP-R revenues in lines 1a and
15 11a in this particular table.

16 And the answer is they're not there.
17 It's -- there's no TAP-R revenue there. And
18 subject to check, do you agree, Mr. Morgan?

19 MR. MORGAN: Subject to check, I'll
20 agree.

21 MR. DASENT: But do you agree, if,
22 you know, you look at TAP-R revenues and
23 credits, they're not considered as revenue
24 requirements in base rates? I mean, that's
25 just sort of an axiom of C-1A and what it

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1 represents.

2 MR. MORGAN: That's correct.

3 MR. DASENT: Okay. And isn't it also
4 correct, if I look at 12a on this schedule,
5 Other Operating Revenue?

6 MR. MORGAN: Okay.

7 MR. DASENT: Right there, it seems
8 like in 2024 and 2025 it includes an
9 adjustment associated with TAP-R revenues.
10 That's where Mr. Colton's adjustments appear.
11 Am I right?

12 MR. MORGAN: That's true. That's --
13 the adjustments that he proposes are reflected
14 there.

15 MR. DASENT: Okay. Thank you.

16 Now, let me turn to billed usage per
17 account in some of your revenue adjustments.

18 Now, I'm going to turn you back and
19 hopefully we can stay for a while with the
20 hearing exhibit.

21 And page 6 in particular is where I'm
22 going next.

23 And you answered a few
24 interrogatories, thank you, with respect to
25 your testimony. And if you refer to the

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1 Hearing Exhibit 1, page 6, there you confirmed
2 that billed usage per account for 5/8-inch
3 meter residential customers has been
4 consistently declining before the pandemic,
5 prior to 2220.

6 Am I correct, you confirmed that?

7 MR. MORGAN: You are correct, but I
8 will point out also that the number of
9 customers have been increasing for that same
10 period.

11 MR. DASENT: Okay.

12 HEARING OFFICER CHESTNUT: I'm sorry,
13 customers have been decreasing?

14 MR. MORGAN: Increasing.

15 HEARING OFFICER CHESTNUT:
16 Increasing.

17 MR. MORGAN: Yes.

18 MR. DASENT: But usage has been
19 declining per account?

20 MR. MORGAN: Correct.

21 MR. DASENT: Okay. Now, if I look
22 to -- excuse me. Page 7, the next page of the
23 hearing exhibit. Is it also correct that you
24 confirm, finding nothing to the contrary, that
25 the Rate Board has found that 2016 and 2018

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1 rate in its rate determinations, that there is
2 declining usage due to lower usage per
3 account? You confirmed that there. Am I
4 correct?

5 MR. MORGAN: Yes, we did.

6 MR. DASENT: Okay. Now, referring to
7 the next page, Hearing Exhibit page 8, I take
8 it you also confirmed that residential billed
9 volume per account is a primary driver of
10 operating revenues, given that there are over
11 400,000 residential accounts. Am I correct?

12 MR. MORGAN: You are correct.

13 MR. DASENT: Okay. And would you
14 also agree that in using a three-year average
15 for billed volume usage as you recommend in
16 the 2024 -- for 2024 and 2025, that billed
17 volume usage for residential and commercial
18 customers actually increase?

19 MR. MORGAN: Jen, do you want to
20 address that?

21 MS. ROGERS: Could you say that one
22 more time? I'm sorry.

23 MR. DASENT: Sure. Using a
24 three-year average for billed volume usage, as
25 you recommend in your testimony, billed volume

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1 usage for residential and commercial customers
2 in 2024 and 2025 actually increases?

3 MS. ROGERS: Over 2022?

4 MR. DASENT: Yes.

5 MS. ROGERS: Yes, it's the average of
6 the most recent three years.

7 MR. DASENT: Okay.

8 MR. BALLENGER: Just a point of
9 clarification. It's the projection of
10 increases.

11 MS. ROGERS: Yes, a projection.

12 MR. DASENT: Yes, it is a projection.
13 Thank you.

14 Now, turning your attention to CIP
15 adjustments, Mr. Morgan, and page 9 of the
16 hearing exhibit.

17 MR. MORGAN: Okay.

18 MR. DASENT: You indicate there that
19 it is a -- in the discovery response -- that
20 it's generally accepted practice or generally
21 standard practice to account for expected
22 costs in the future, which would therefore
23 account for inflation.

24 Let me see if I got that right. It's
25 generally standard practice to account for

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1 expected costs in the future, which would
2 therefore account for inflation.

3 Is that a correct statement?

4 MR. MORGAN: That's a correct
5 statement.

6 MR. DASENT: And have you
7 specifically confirmed in this proceeding that
8 the CIP budget for fiscal 2024 through 2029,
9 the capital program, were actually escalated
10 for inflation after 2024?

11 MR. MORGAN: 2024, I did not see an
12 escalation. 2025 and beyond were escalated,
13 circulated by --

14 MR. DASENT: By Black & Veatch.

15 MR. BALLENGER: I'm unclear as to
16 what we're talking about. Are we talking
17 about the capital program as presented to
18 counsel or the capital estimates presented in
19 the case?

20 MR. DASENT: We're talking about the
21 capital program. I am intending to direct
22 Mr. Morgan to the capital program that -- it's
23 part of the budget, and whether those amounts
24 for 2024 to 2029, has he made an independent
25 evaluation or gotten confirmation that those

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1 have been escalated for inflation?

2 MR. MORGAN: Okay. So your question
3 pertains to the budget as opposed to the case?
4 Just to be clear.

5 MR. DASENT: The budget, yes.

6 MR. MORGAN: I did not go back and
7 make an independent verification of the
8 budget. I relied on the data responses which
9 indicated that with respect to what was
10 presented in the case, 2025 was not part of a
11 budget. So there would not be a 2025 budget
12 to verify.

13 MR. DASENT: But you did not confirm
14 that in the budget, which includes not only
15 the 2024 year but shows you the out years as
16 well, '25 and subsequent years, that those
17 were escalated for inflation in the budget by
18 the department. Am I right?

19 MR. MORGAN: So this is where I think
20 maybe we -- there's a gap in communication.
21 Because as far as I know, 2025 is not a
22 budget, so I could not go to verify that
23 budget amount.

24 What I was told was that the 2025
25 amount was taken from the capital plan, and

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1 that that amount did not -- was not separately
2 escalated. It was presented, I believe, in
3 2024 dollars.

4 MR. DASENT: That's correct.

5 MR. MORGAN: So I assumed that PWD
6 was accurate, and so I did not do an
7 independent verification.

8 MR. DASENT: Thank you.

9 Now, I don't recall you making an
10 adjustment, you know, some inflation
11 adjustment for the CIP budget in prior cases
12 we've been involved in.

13 Do you recall that also?

14 MR. MORGAN: Yes. The case -- not
15 the special rate case, but I believe the case
16 before, I did make an adjustment to remove the
17 inflation from the CIP budget term.

18 MR. DASENT: Okay. Now, please refer
19 now to PW -- your statement, your testimony.
20 PWD Statement 1, Schedule LM_JR-4, at page 1.
21 And I'm sorry, that's not a part of the
22 hearing exhibit.

23 HEARING OFFICER CHESTNUT: I'm sorry.

24 MR. DASENT: It's right after your
25 testimony, your direct testimony.

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1 HEARING OFFICER CHESTNUT: What
2 schedule was it?

3 MR. DASENT: It's JR -- I'm sorry,
4 LR_JR-4, page 1.

5 HEARING OFFICER CHESTNUT: 4, okay.

6 MR. DASENT: Okay. Give me one
7 second because I think it is actually in two
8 places.

9 Okay. In referring to that, would
10 you accept, subject to check, that your
11 adjustment actually eliminated the
12 carryforward adjustments in fiscal 2024 and
13 2025?

14 And I'm looking now at line 17a.

15 MR. MORGAN: Yes.

16 MR. DASENT: Okay. Let me turn your
17 attention now to expense escalations.

18 Now, in your testimony at pages 18
19 and 19, you indicate that you utilized a
20 Federal Open Market Committee core inflation
21 projections -- I refer to them as PCE -- for
22 purposes of expense escalations in your
23 adjustments. Am I right?

24 MS. ROGERS: Correct.

25 MR. DASENT: Thank you, Ms. Rogers.

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1 Directing your attention to PWD
2 Hearing Exhibit 1 at 12, there you provide a
3 description of the Federal Open Market
4 Committee core inflation projections, or PCE.
5 Isn't that right?

6 MS. ROGERS: Correct.

7 MR. DASENT: Now, is the Federal Open
8 Market Committee a part of the Federal Reserve
9 system? That's my assumption.

10 MS. ROGERS: Yes, they are a
11 subgroup.

12 MR. DASENT: And are the participants
13 in the committee composed of approximately
14 seven Fed board members and 12 Fed Reserve
15 bank presidents, assuming there are no
16 vacancies?

17 MS. ROGERS: Subject to check.

18 MR. DASENT: Yes. And the FOMC, or
19 Federal Open Market Committee, meets about
20 eight times a year, subject to check?

21 MS. ROGERS: Subject to check.

22 MR. DASENT: And in connection with
23 FOMC meetings, the participants submit
24 economic projections in a number of areas,
25 including overall inflation and core

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1 inflation. Am I right?

2 MS. ROGERS: Correct.

3 MR. DASENT: Now, as I understand it,
4 the FOMC publishes a summary of economic
5 projections, we just discussed, without
6 attribution to individual participants. Isn't
7 that right?

8 MS. ROGERS: Correct.

9 MR. DASENT: And am I also correct
10 that FOMC summary of economic projections
11 reflect the participant's view of where the
12 economy is heading?

13 MS. ROGERS: Correct.

14 MR. DASENT: Do you know what the
15 Federal Reserve target rate for inflation is?
16 I believe it's 2%.

17 MS. ROGERS: I believe it's 2%,
18 subject to check.

19 MR. DASENT: And is the Fed adjusting
20 interest rates in order to reach this target?

21 MS. ROGERS: I'm not privy to their
22 internal discussions, but they have stated
23 goals for inflation, yes.

24 MR. DASENT: Okay. And has the Fed
25 made a number of adjustments to increase

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1 interest rates this year, about five times?

2 MS. ROGERS: Yes.

3 MR. DASENT: And has the U.S. economy
4 reached the targeted inflation rate?

5 MS. ROGERS: Not --

6 MR. DASENT: If it's 2% now.

7 Is the Fed's decision to increase
8 interest rates affected by a variety of
9 factors, including the unemployment rate,
10 inflation, bank regulatory failures, the
11 possibilities of recession, wars, like in
12 Ukraine; a lot of different other factors
13 impact, you know, where -- how far -- how much
14 success we will enjoy in terms of getting to
15 the inflation rate they targeted. Am I right?

16 MS. ROGERS: I can't speak to each
17 item you listed, but there are multiple
18 factors, which I presume when they put
19 together their forecasts, they are aware of.

20 MR. DASENT: Okay. And those
21 multiple factors include possibly a recession,
22 all the normal things you would think the Fed
23 would be concerned with is trying to steer the
24 economy in the right direction and to the
25 inflation target?

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1 MS. ROGERS: Can you restate the
2 question?

3 MR. DASENT: Sure.

4 The Feds' interest here is in
5 directing the economy to an acceptable place
6 in terms of inflation rates, and monetary
7 policy is set for that purpose, at least in
8 part. Am I right?

9 MS. ROGERS: Yes.

10 MR. DASENT: Okay.

11 MR. MORGAN: And I may just add that
12 what we're seeing now with the lower inflation
13 rate does indicate that the Feds' policy is
14 taking effect.

15 MR. DASENT: Okay. Fair enough.

16 And the Federal Reserve's central
17 goal is to set monetary policy; is that
18 correct?

19 MS. ROGERS: Yes.

20 MR. DASENT: Okay. Now, I want to
21 refer you now to PWD Hearing Exhibit 1,
22 page 14. See if I can get there as quick as
23 you can.

24 MR. MORGAN: Okay.

25 MS. ROGERS: I'm there.

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1 MR. DASENT: Is it correct that price
2 for items such as phosphoric acid, sodium
3 hydroxide, sodium hypochlorite, blended sodium
4 phosphate and activated carbon are not
5 included in the PCE inflation projections? I
6 believe you've indicated that already.

7 Do you confirm that?

8 MS. ROGERS: Confirmed, the core PCE
9 does not specifically identify those items.

10 MR. DASENT: And is it also true,
11 referring to the next page, that such -- items
12 such as equipment and related services are
13 also not included in the PCE inflation
14 projections? That's at page 15.

15 I'm sorry?

16 MS. ROGERS: That's correct.

17 MR. DASENT: And please refer also to
18 the next page, at 16, in the same exhibit. Is
19 it correct that prices for material, such as
20 ductile pipe, are not included in the PCE
21 inflation projections?

22 MS. ROGERS: That's correct.

23 MR. DASENT: Okay.

24 MR. MORGAN: I would just like to add
25 also that those inflation factors that were

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1 used by the company in those instances are all
2 based on backward-looking inflation rates.
3 The company has made no attempt to develop
4 forward-looking rates, and so we had to use
5 the best rate possible to look forward.

6 MR. DASENT: All right. Fair enough,
7 Mr. Morgan.

8 But let me refer you now to page 17
9 of the hearing exhibit. Is it correct that
10 generally reported rates of inflation, the
11 Consumer Price Index, have ranged from 7.7% in
12 October down to 5% in the recent past? I
13 think it's March. And, in fact, you confirmed
14 that in your response to discovery -- this
15 discovery request that's stated on page 17 of
16 Hearing Exhibit 1.

17 Am I correct?

18 MS. ROGERS: Yes. As we note in the
19 response, the span of eight years prior, it
20 ranged between negative 2.2 and positive 2.9%,
21 and now you can see it was 7.7 in October and
22 it is starting to come down, we confirm.

23 MR. DASENT: Okay. Directing your
24 attention to page 17 of the same hearing
25 exhibit. I'm sorry, page 18 of the same

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1 hearing exhibit. I take it you do not dispute
2 the fact that the cost per ton of chemicals
3 experienced by the department in 2023 is what
4 it is, it's stated at the percentage increase
5 of 26.7% up to 141.8% over fiscal '22 levels.
6 You don't dispute that; am I correct?

7 MS. ROGERS: Correct, although as we
8 note in the response, the point of an
9 inflation adjustment is not to recover past
10 costs; it's to project inflation that is yet
11 to come. But no, we do not dispute your
12 actual costs.

13 MR. DASENT: But where we are today
14 is in this range of costs from 26.7% to
15 141.8%, and you're projecting that we'll get
16 down to 2.1% or 2.6% in the next fiscal year.
17 Am I correct?

18 MS. ROGERS: The FOMC is projecting
19 that, yes.

20 MR. DASENT: And you're endorsing
21 those projections for purposes of inflation
22 escalations in this case?

23 MS. ROGERS: We believe they're the
24 most reasonable, yes.

25 MR. DASENT: And referring to page

5/4/2023

1 19. You're also stating there, I take it, you
2 don't dispute the 43% increase in costs for
3 materials in 2023 the department is paying for
4 valves and couplings and ductile iron pipe.
5 Am I correct, there's no dispute there?

6 MS. ROGERS: Correct.

7 MR. MORGAN: And as Ms. Rogers said
8 earlier, we're not -- in this case we're not
9 looking to recover past costs; we're setting
10 rates based on costs going forward. And to
11 now artificially escalate those costs based on
12 increases that the department is no longer
13 experiencing, it's not reasonable.

14 MR. DASENT: Okay. But you've also
15 indicated that in several instances, you have
16 not found an indices of inflation that you
17 found, you know, that was like, on all fours,
18 comparable to or capturing the costs that
19 you're trying to escalate. And so you've used
20 other indices, in fact, uniformly used the PCE
21 for purposes of inflation in this case. Am I
22 correct?

23 MR. BALLENGER: I don't believe the
24 witnesses have said that their projections
25 don't accurately, you know, estimate future

5/4/2023

1 costs. I don't think that's the testimony
2 that they've given.

3 MR. DASENT: They're indicating, I
4 believe, that inflation is going to be
5 significantly lower than the department has
6 projected using different indices, and that's
7 all I'm -- that's my only point.

8 And I think we're in agreement on
9 that, Mr. Morgan?

10 MR. MORGAN: I -- yeah, that we're
11 using different indices, yes, and I think
12 we're able to show yesterday that the
13 department indices or the rates that the
14 department used were simply unreasonable.

15 MR. DASENT: All right. Well, we can
16 agree to disagree on that one, sir.

17 Because inflation has been spiralling
18 in our experience, and in your experience it's
19 abating. So it's a different world.

20 MS. ROGERS: Is there a question?

21 MR. DASENT: I'm sorry?

22 MS. ROGERS: I'm sorry, I missed
23 what -- if there was a question.

24 MR. BALLENGER: There was no
25 question, Jen.

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1 MS. ROGERS: I'm sorry, I didn't mean
2 to interrupt you.

3 MR. DASENT: No, it's okay. But the
4 question was, you know, if there's a
5 divergence in views with respect to inflation,
6 and we've observed it here. And our
7 experience is quite different, dramatically
8 different, than yours.

9 We're trying to spread on the record
10 the fact that, you know, our view of the
11 world and our view of inflation and its impact
12 and whether it abates are quite different, and
13 that's my only point.

14 Now, I want to turn you back to the
15 simple rate model. We talked earlier about
16 how it works and how useful it is, and you've
17 indicated in your testimony that you've relied
18 upon the simple model and the B&V model for
19 various projections. Am I right?

20 MR. MORGAN: That's correct.

21 MR. DASENT: Am I correct that you
22 relied on the BV model for certain adjustments
23 such as interest earnings, for example?

24 MR. BALLENGER: We may need to
25 restate that question. And I apologize, but I

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1 think you said that we've relied upon those
2 models for certain estimations? I believe
3 we've utilized them for certain projections.

4 MR. DASENT: Yes. Estimations. I'm
5 using -- you're right, it's projections.

6 And, Mr. Morgan, have I understood
7 your testimony in terms of projections, you've
8 relied upon those models?

9 MR. MORGAN: Correct.

10 MR. DASENT: And I'm referring to
11 your testimony at page 1. I'm sorry, at
12 page 11, but, I mean, it basically says that
13 you relied on both models. Correct?

14 MR. MORGAN: Correct.

15 MR. DASENT: And am I also correct
16 that you relied upon the Black & Veatch model
17 for certain adjustments, such as interest
18 earnings and liquidated encumbrance
19 adjustments?

20 MR. MORGAN: We ran the numbers
21 through the Black & Veatch model to develop
22 the 2024 and '25 amounts, which we then put
23 into the simplified model.

24 MR. DASENT: Okay. And am I correct,
25 then, stating the simple model does not

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1 calculate interest earnings based upon --
2 earnings based on adjustments made through
3 revenue and revenue requirements?

4 MR. MORGAN: Just one minute.

5 [Document review.]

6 MR. MORGAN: Could you repeat your
7 question?

8 MR. DASENT: Sure.

9 The simple model does not calculate
10 interest earnings based on adjustments made to
11 revenue and revenue requirements?

12 MR. BALLENGER: Is that -- are you
13 referring to line 14a of the model?

14 MR. DASENT: I wasn't referring to a
15 specific line of a model. I was just trying
16 to describe its usefulness, because you have
17 to use different models for different things
18 here. And Mr. Morgan relied on both.

19 MR. MORGAN: That's correct. I
20 believe what we did in there was to take the
21 numbers from the Black & Veatch-based model
22 and transfer it to the simplified model.

23 MR. DASENT: Okay. And finally, am I
24 correct that in stating the simple model does
25 not calculate adjustments to liquidated

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1 encumbrances based on adjustments in, let's
2 say, Class 200 and Class 300? That's labor
3 and -- or personnel and materials.

4 MR. MORGAN: I'm sorry, I was looking
5 at the model. So the question again?

6 MR. DASENT: Yeah. The simple model
7 does not calculate adjustments to liquidated
8 encumbrances for Class 200 and Class 300
9 expenses.

10 MR. MORGAN: That's correct.

11 MR. DASENT: Okay. Now, just for an
12 area of agreement, sir, with regard to
13 stormwater policy recommendations. You state
14 in your testimony sort of an overview of
15 stormwater cost responsibility and its impact
16 on customers.

17 And so I wanted to ask you with
18 reference to Hearing Exhibit 1 at 25. Do you
19 agree that the recommendation for stormwater
20 cost recovery is a part of the larger -- a
21 larger policy discussion, including the City,
22 city council, and other stakeholders?

23 MR. MORGAN: I agree. And that's --
24 I believe it was appropriate to raise it now
25 because this is becoming an issue that's

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1 impacting the costs that the utility customers
2 are facing.

3 MR. DASENT: And I thank you,
4 Mr. Morgan. Thank you, Ms. Rogers. Good to
5 meet you. And that's all we have.

6 MR. MORGAN: All right. Thanks.

7 MS. ROGERS: Thank you.

8 HEARING OFFICER CHESTNUT: Mr. Haver,
9 do you have any questions for these witnesses?

10 (Off the record.)

11 MR. BALLENGER: I was just curious if
12 we were going to do redirect of Mr. Dasent's
13 or I'll just wait until the end after
14 Mr. Haver's cross. We can do it either way.

15 HEARING OFFICER CHESTNUT: Why don't
16 we take a ten-minute break. Mr. Haver can
17 cross then.

18 MR. BALLENGER: And then we'll
19 redirect? Okay. Thank you.

20 HEARING OFFICER CHESTNUT: Sure.
21 Let's resume at 11:10.

22 (Recess taken, 11:00 a.m. to
23 11:10 a.m. EDT)

24 HEARING OFFICER CHESTNUT: Mr. Haver,
25 did you want to go ahead, then?

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1 CROSS-EXAMINATION BY MR. HAVER

2 MR. HAVER: Yes, thank you.

3 May I start by asking Ms. Rogers to
4 list her last name on her screen for those of
5 us who are not so good with names? Would that
6 be possible?

7 MS. ROGERS: I'm not sure where to go
8 to do that. I apologize. It's Rogers,
9 R-O-G-E-R-S.

10 MR. HAVER: I wanted to start out
11 this morning by asking Mr. Morgan and
12 Ms. Rogers, in your filed testimony, you're
13 recommending a rate increase over two years;
14 is that correct?

15 MR. MORGAN: That's correct.

16 MR. HAVER: And the amount that
17 you're recommending over two years is
18 92,555,000 and change; is that correct?

19 MR. MORGAN: I'll accept that amount,
20 subject to check. The amount that we're
21 recommending is also less than the utility is
22 asking for.

23 MR. HAVER: Yes. Is there anything
24 that you've heard at these hearings that has
25 changed your recommendation for a \$92 million

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1 rate increase?

2 MR. MORGAN: No.

3 MR. HAVER: And I'm assuming --
4 again, I don't mean to be impolite to
5 Ms. Rogers. I would ask her the same
6 questions, but I'm assuming that Mr. Morgan,
7 when he is answering, is speaking for the two
8 of you. Is that a correct assumption?

9 MS. ROGERS: Yes. We're speaking as
10 a panel.

11 MR. HAVER: Okay. So I just don't
12 want to not ask you. But if asking Mr. Morgan
13 is the same as asking both of you --

14 MS. ROGERS: Yes.

15 MR. HAVER: -- and you're both
16 satisfied with that, then I'm not showing
17 disrespect toward you by not asking you
18 directly.

19 So I'd like to call your attention to
20 your testimony on page 8, lines 13 through 23,
21 where you address the issue of who should pay
22 for the stormwater runoff.

23 HEARING OFFICER CHESTNUT: I'm sorry,
24 could you state that reference again.

25 MR. HAVER: Page 8, lines 13 through

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1 23. And I'll also be referencing page 9,
2 lines 15 through 17.

3 Would you like a moment to look at
4 that, Mr. Morgan, before I ask a question, or
5 are you familiar with it so that you don't
6 need that time?

7 MR. MORGAN: Go ahead. If I need
8 some time, I'll ask you.

9 MR. HAVER: Thank you.

10 In the last ten years, has the City
11 ever paid for stormwater costs?

12 MR. MORGAN: I don't have the answer
13 for that.

14 MR. HAVER: And again, help me
15 understand, Mr. Morgan, if I should also wait
16 to hear Ms. Rogers' response or I don't have
17 to wait for that.

18 MR. MORGAN: Not with regard to the
19 stormwater costs on this issue. I primarily
20 looked at it, so...

21 MR. HAVER: Okay. So on page 9,
22 lines 15 through 17, you write: While there
23 are a number of programs designed that can be
24 used to recover the costs of stormwater
25 runoff, the first step in the process is to

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1 determine who bears responsibility for
2 covering the costs. We believe that the cost
3 recovery should be borne by the City rather
4 than only the customers of PWD.

5 Would that be -- do you remember
6 writing that?

7 MR. MORGAN: Yes.

8 MR. HAVER: Would you like to look?

9 MR. MORGAN: No, I remember writing
10 that.

11 MR. HAVER: Okay. When was the last
12 time the City bore the costs rather than the
13 water rate base? When was the last time the
14 City, out of its general operating budget,
15 paid for stormwater runoff costs?

16 MR. MORGAN: I don't have an answer
17 to that. What I do know is that the point of
18 this whole testimony is to find a solution for
19 the general ratepayers being the ones that
20 bear the burden of the cost.

21 And so this is primarily an effort to
22 start to begin to take a look at the overall
23 policy with regard to stormwater cost
24 recovery.

25 MR. HAVER: So it would be a change

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1 in the policy; is that correct?

2 MR. MORGAN: For the most part, yes.

3 MR. HAVER: Thank you.

4 Does the Water Department have the
5 power on its own to force the City to pay for
6 the stormwater runoff costs?

7 MR. MORGAN: I do not believe so.

8 MR. HAVER: Okay. If the City is
9 unsuccessful -- I'm sorry, excuse me. If the
10 Water Department is unsuccessful at getting
11 the City to pay out of the general operating
12 budget for those costs, would that impact how
13 much you're recommending the rate increase
14 should be?

15 MR. MORGAN: No, because as it stands
16 right now, those costs are being borne by the
17 ratepayers.

18 MR. HAVER: So if the Water
19 Department is successful at persuading the
20 City to absorb those costs -- and again, when
21 I say the City, I mean the City's operating
22 budget -- how much would that reduce your
23 recommended rate increase?

24 MR. MORGAN: I don't have that number
25 available now.

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1 MR. HAVER: Could you give me the
2 scope? Is it in the millions? Tens of
3 millions?

4 MR. MORGAN: It's tens of millions.

5 MR. HAVER: What would I have to do
6 to get that number?

7 MR. MORGAN: I remember -- I can go
8 back into the work papers and look. I believe
9 there's that say -- there's a source that will
10 provide an approximate figure.

11 MR. HAVER: Would it help if city
12 council, Philadelphia City Council, supported
13 this policy change?

14 MR. MORGAN: It would be a help.

15 MR. BALLENGER: I think this is -- I
16 mean, I don't want to object, but I think sort
17 of speculative at this point, but Mr. Morgan,
18 if you have an opinion.

19 MR. MORGAN: You know, while you're
20 making your objection, I said it would, and
21 the reason is because city council approves
22 the budget, so ultimately they -- if they
23 approve -- if they support the idea, it makes
24 it easier.

25 MR. HAVER: Sir, did you meet with

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1 the chair of city council's transportation and
2 utility committee to seek support for your
3 idea?

4 MR. MORGAN: No. That's beyond the
5 scope of my work.

6 MR. HAVER: Are you aware of anyone
7 from the Water Department's Public Advocate
8 who met with Counselman Kenyatta Johnson, the
9 chair, to advocate for this position?

10 MR. BALLENGER: Objection. And also,
11 I know that you have our contract; you can see
12 in it that we are not permitted to lobby. So
13 meeting with council president or any council
14 person regarding the matters subject to the
15 determination by the independent Rate Board
16 would not be permissible activity under our
17 contract, and so to the extent anyone at CLS
18 may have met with anyone in city council, it
19 would not be reported as a public advocate
20 activity, because it would constitute
21 lobbying, which we're not permitted to do.

22 MR. HAVER: Madam Hearing Examiner,
23 are you going to allow counsel to testify?

24 HEARING OFFICER CHESTNUT: He's not
25 testifying; he's explaining the basis for his

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1 objection.

2 MR. HAVER: There was no explanation
3 there.

4 HEARING OFFICER CHESTNUT: There was
5 a total explanation there about the contents
6 of your question.

7 MR. HAVER: Your bias is showing once
8 again.

9 So, Mr. Morgan, if the Public
10 Advocate had a client group, would that client
11 group be able to lobby on behalf of these
12 changes?

13 MR. BALLENGER: Objection,
14 speculation.

15 HEARING OFFICER CHESTNUT: Yeah, I
16 don't understand how he could possibly answer
17 that. It's so speculative. There's just no
18 basis for it.

19 MR. HAVER: What's speculative about
20 asking a question if there was a client group
21 could it lobby for changes?

22 MR. BALLENGER: What's speculative
23 about it is I don't know the composition of
24 this supposed group. Many nonprofits are not
25 permitted to lobby. It's sort of a legal

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1 question. I have no idea what that would look
2 like and neither does Mr. Morgan. It's way
3 beyond the basis of his testimony.

4 MR. HAVER: Is it possible? Is it
5 possible?

6 MR. BALLENGER: We are not here to
7 engage in theoreticals. You can please direct
8 any questions you have to Mr. Morgan and
9 Ms. Rogers based on their testimony, or
10 perhaps the discovery. Or anything else on
11 the record other than your case-in-chief that
12 you're trying to build on cross here today.

13 MR. HAVER: Well, is not the changes
14 in the way water runoff is -- the costs are
15 borne speculative?

16 MR. BALLENGER: That's a proposal in
17 their testimony. Are you asking me or are you
18 asking the witness? You can ask the witness.

19 MR. HAVER: I'm asking the witness.
20 I don't know why you're answering.

21 MR. BALLENGER: I have no idea why
22 you're asking.

23 HEARING OFFICER CHESTNUT: At this
24 point, yeah, I'm going to sustain the
25 objection to that question about the client

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1 group, but if you want to ask him the basis
2 for his proposal concerning the stormwater
3 cost recovery, go ahead.

4 MR. HAVER: Are you ruling that I can
5 no longer ask questions about the most
6 effective way to get the changes that
7 Mr. Morgan is recommending?

8 HEARING OFFICER CHESTNUT: I'm not
9 accepting that statement for a minute.
10 There's no showing that that's the most
11 effective way to do it. We're not going to
12 talk about that.

13 MR. HAVER: Mr. Morgan, what is the
14 most effective way to get the change that you
15 are recommending put into effect?

16 MR. BALLENGER: Objection,
17 speculation. If you know, Mr. Morgan.

18 HEARING OFFICER CHESTNUT: If you
19 know, Mr. Morgan, answer it.

20 MR. MORGAN: I don't know. I do not
21 know.

22 MR. HAVER: Would there be any other
23 witness of the Water Department's Public
24 Advocate that would know?

25 MR. BALLENGER: Objection, you're

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1 asking a witness whether there are other
2 witnesses. I don't know how they could
3 possibly answer that question.

4 HEARING OFFICER CHESTNUT: Am I
5 supposed to rule on that? Is that still an
6 outstanding question?

7 MR. HAVER: Yes.

8 HEARING OFFICER CHESTNUT: Because if
9 I am, then the objection is sustained.

10 MR. HAVER: Thank you.

11 HEARING OFFICER CHESTNUT: I don't
12 know how he can possibly answer a speculative
13 question like that.

14 MR. HAVER: Mr. Morgan, have you
15 examined the other witnesses' testimony, the
16 other Public Advocate witnesses' testimony?

17 MR. MORGAN: Yes.

18 MR. HAVER: Can you help me
19 understand, your proposal for stormwater cost
20 allocation is different than Mr. Mierzwa's
21 proposal; is that correct?

22 MR. BALLENGER: Objection to the form
23 of the question. Mr. Morgan's testimony has
24 nothing to do with cost allocation.

25 HEARING OFFICER CHESTNUT: That's

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1 correct. Do you want to rephrase your
2 question?

3 MR. HAVER: Mr. Morgan, are you
4 familiar with Mr. Mierzwa's recommendations on
5 stormwater cost allocations?

6 MR. MORGAN: Yes.

7 MR. HAVER: And how does he recommend
8 stormwater costs would be borne?

9 MR. MORGAN: I think Mr. Mierzwa
10 should be the one to answer it. I make no
11 cost allocation recommendation in my
12 testimony. My testimony with respect to
13 stormwater costs, it's at a higher level, and
14 basically, I'm asking that the discussion
15 begin so that there is an alternative way to
16 provide funding for stormwater. It has --
17 cost allocation basically refers to how you
18 collect those costs, and I don't make any
19 recommendation in that regard.

20 MR. HAVER: So you are -- you
21 don't -- you're familiar with Mr. -- forgive
22 me. I'm not pronouncing it correctly, I
23 guess. Mr. Mierzwa's -- you're familiar with
24 his testimony but you have no judgment on
25 whether his recommendations and your

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1 recommendations are both -- are the same or
2 different?

3 HEARING OFFICER CHESTNUT: I'm not
4 going to allow that question because it's
5 completely incorrect.

6 MR. HAVER: Let me read -- let me --

7 HEARING OFFICER CHESTNUT: Wait.
8 Stop. There are two witnesses for the same
9 client who presented testimony for different
10 reasons. Mr. Mierzwa's testimony was a cost
11 of service study that included allocations.
12 Mr. Morgan and Ms. Rogers' testimony contains
13 a proposal about future allocation of those
14 costs.

15 MR. HAVER: They contradict each
16 other so I'm asking.

17 HEARING OFFICER CHESTNUT: They don't
18 contradict each other, not in the least.

19 MR. HAVER: Okay. Let me read to you
20 from page 4, lines 11 through 18 from
21 Mr. Mierzwa's testimony: While PWD's
22 stormwater CCOS study and analysis is
23 generally reasonable, I recommend that the
24 stormwater rates adopted in this proceeding be
25 designed so that all customers share in the

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1 stormwater management incentive program.

2 HEARING OFFICER CHESTNUT: Yes,
3 exactly, how to allocate the costs in this
4 proceeding.

5 MR. HAVER: Mr. Morgan --

6 HEARING OFFICER CHESTNUT: Mr. Morgan
7 is saying in the future, the policy should be
8 changed, and in that case, then the cost of
9 service study will reflect that.

10 MR. HAVER: Well, when I asked
11 Mr. Morgan about the assumption of how much
12 money would be saved if his recommendations
13 were adopted, he says he can give me a dollar
14 figure.

15 HEARING OFFICER CHESTNUT: Well,
16 Mr. Mierzwa can tell you what the dollars are
17 in his cost of service study.

18 MR. HAVER: So then they would both
19 be proposals for this rate case.

20 HEARING OFFICER CHESTNUT: They are
21 two different things. I don't know how many
22 more times we can explain that to you. They
23 are two different things for two different
24 purposes.

25 MR. HAVER: Mr. Morgan's testimony is

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1 not for this rate case?

2 HEARING OFFICER CHESTNUT: He's
3 presenting proposals for future --

4 MR. BALLENGER: Can I ask just one
5 quick question on redirect? If I can direct a
6 redirect question to Mr. Morgan and
7 Ms. Rogers.

8 Your recommendation --

9 MR. HAVER: It's not appropriate.
10 It's not appropriate. I object. He can have
11 redirect after I am finished. He cannot
12 interrupt my testimony.

13 HEARING OFFICER CHESTNUT: I suspect
14 it would make your life easier, frankly. It
15 would help you. But okay.

16 MR. HAVER: It does not help me to
17 have Mr. Ballenger trying to clarify any of my
18 ideas.

19 MR. BALLENGER: I would never propose
20 to --

21 Please carry on.

22 HEARING OFFICER CHESTNUT: Yes, carry
23 on. Go ahead. Do you have a question or not?

24 MR. HAVER: Thank you. I'm asking
25 the question.

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1 HEARING OFFICER CHESTNUT: Well,
2 we've moved beyond that because you've
3 explained the basis of your question is
4 incorrect. And I hope you understand that
5 now.

6 MR. HAVER: I completely disagree
7 with you. All I think it does is show your
8 bias.

9 HEARING OFFICER CHESTNUT: Okay.
10 Fine.

11 MR. HAVER: Mr. Morgan, is your
12 recommendation for this current rate case
13 about changing who pays for the stormwater
14 runoff costs?

15 MR. MORGAN: I am not --

16 MR. BALLENGER: Objection. If you
17 look at page 10 of your testimony, your
18 recommendation is set forth on your testimony.

19 MR. HAVER: So, sir, you're not
20 arguing that it should be adopted for this
21 current rate case; is that correct?

22 MR. MORGAN: At the beginning of my
23 testimony, I -- of that section, I should say,
24 I state that the water company, the Rate
25 Board, are not in the position to make this

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1 decision on their own.

2 So recognizing that, there's no way I
3 could be recommending that it be adopted in
4 this proceeding.

5 MR. HAVER: Okay. Do you support
6 charging consumers both a service charge and a
7 usage charge?

8 MR. MORGAN: That's outside my scope.
9 That's Mr. Mierzwa.

10 MR. HAVER: Okay. Mr. Morgan, are
11 you familiar with the concept of lost water,
12 water that is processed but does not pass
13 through a water meter?

14 MR. MORGAN: Yes.

15 MR. HAVER: In terms of
16 recommendations, as you've made for stormwater
17 costs, do you have any policy recommendation
18 for who should pay for lost water?

19 MR. MORGAN: Lost water is the -- is
20 part of the costs of providing service, so it
21 is part of -- it's part of the rates that
22 customers spend.

23 MR. HAVER: Yes, sir, that was not my
24 question. Just like your other testimony
25 where you make recommendations for the future,

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1 I'm asking if you have any recommendations for
2 the future, who should pay for lost water.

3 MR. MORGAN: It's not in my
4 testimony, no.

5 MR. HAVER: I recognize it's not in
6 your testimony. That's why I'm asking you.

7 HEARING OFFICER CHESTNUT: It's not
8 in his testimony. He just answered you. If
9 it's not in his testimony, you can't ask him
10 about it.

11 MR. HAVER: Of course I can ask him
12 about it. You can rule me out of order if you
13 want. Go right ahead and rule me out of
14 order, but I am asking him specifically if he
15 has a recommendation about who should bear the
16 cost of lost water in future --

17 MR. BALLENGER: And he answered.
18 Asked and answered.

19 HEARING OFFICER CHESTNUT:
20 (Crosstalk) -- his recommendations.

21 MR. HAVER: I couldn't hear you both.

22 HEARING OFFICER CHESTNUT: His
23 statement contains his recommendations.

24 MR. HAVER: And I'm asking him after
25 hearing the testimony if he has any additional

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1 recommendations regarding lost water.

2 MR. BALLENGER: Asked and answered.

3 Sorry, we need to move on.

4 HEARING OFFICER CHESTNUT: I'm sorry,
5 what did you say, Mr. Ballenger?

6 MR. BALLENGER: I said that's been
7 asked and answered. Sometimes my microphone
8 takes a second to pick up. I believe
9 Mr. Morgan directly answered that question
10 that it's included in the cost of service.

11 MR. HAVER: Again, that's not my
12 question. My question is, as he has a policy
13 recommendation for the future regarding
14 stormwater costs, I'm asking if he has --
15 after hearing the testimony in the last two
16 days, if he has a recommendation for who
17 should bear the cost of lost water.

18 MR. BALLENGER: I'm going to object
19 because he's not here to formulate new
20 recommendations. He's here to answer
21 questions on his testimony.

22 HEARING OFFICER CHESTNUT: And I'll
23 sustain that objection. He has his proposals
24 and he has his testimony.

25 MR. HAVER: Mr. Morgan, why did you

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1 not address lost water in your testimony?

2 MR. BALLENGER: Objection, relevance.

3 HEARING OFFICER CHESTNUT: Yeah, I --
4 again, I don't see how you can ask him about
5 something that he hasn't put in his testimony.

6 MR. HAVER: Well, he clearly makes
7 decisions about what to include and what not
8 to include, and I'm asking why this was not
9 worthy of inclusion. He has made other --

10 HEARING OFFICER CHESTNUT: You know,
11 maybe it's better if you do try and answer
12 that, Mr. Morgan. I think we all know.

13 MR. BALLENGER: I maintain my
14 objection, but if Mr. Morgan would like to
15 answer --

16 HEARING OFFICER CHESTNUT: Yeah.

17 MR. BALLENGER: -- I defer to him.

18 MR. MORGAN: Lost --

19 HEARING OFFICER CHESTNUT: You need
20 to understand that this is not his
21 recommendations.

22 MR. MORGAN: Lost water did not
23 appear to be an issue to be addressed in my
24 opinion.

25 MR. HAVER: Thank you.

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1 Sir, are you satisfied with the
2 Philadelphia Water Department's efforts to cut
3 costs?

4 MR. MORGAN: I did not do an audit
5 that would give me the information to say that
6 I'm satisfied or not satisfied. So --

7 MR. HAVER: Would it be fair to say
8 that's outside of the scope of your contract
9 with Community Legal Services?

10 MR. BALLENGER: The contract is a
11 document that speaks for itself. Again, I
12 think we are getting beyond the scope of
13 testimony here.

14 HEARING OFFICER CHESTNUT: Yeah, I --
15 at this point, I'll be honest, I lost track of
16 what the question was.

17 What did you say, Mr. Haver?

18 MR. HAVER: Mr. Morgan says he did
19 not conduct an audit or look at possible cost
20 savings, so he could not make a judgment as to
21 whether he was satisfied or not. And I'd
22 asked him if the reason why he hasn't done
23 that was that was outside the scope of his
24 contract with Community Legal Services.

25 HEARING OFFICER CHESTNUT: I think he

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1 can answer that. I mean, it's a simple
2 question, frankly. His testimony speaks for
3 itself.

4 If you want to answer it, go ahead,
5 Mr. Morgan.

6 MR. MORGAN: It's outside the scope
7 of this proceeding. This was a revenue
8 requirement review, and as a result, what
9 you're suggesting is outside the scope of that
10 review.

11 MR. HAVER: Did Community Legal
12 Services retain your company for the services
13 of looking at cost savings through changes in
14 processes?

15 HEARING OFFICER CHESTNUT: I don't
16 understand that. I really don't understand
17 that at all.

18 MR. BALLENGER: Object to the form of
19 the question. I don't understand it.

20 HEARING OFFICER CHESTNUT: Yeah. You
21 may need to reword that.

22 MR. HAVER: Did Community Legal
23 Services contract with your company to examine
24 cost-cutting devices, processes, ideas, that
25 would reduce the request of the Water

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1 Department in this rate case?

2 MR. BALLENGER: Object to the form.
3 But, Mr. Morgan, you're free to answer about
4 your analysis of operating expenses in this
5 case, if you'd like to.

6 MR. MORGAN: Could you repeat the
7 question?

8 MR. HAVER: I'll try and make it
9 simpler. I won't repeat it word-for-word.

10 Did Community Legal Services hire
11 your company to examine cost-cutting
12 strategies in this rate case for the
13 Philadelphia Water Department?

14 MR. MORGAN: Cost-cutting strategies
15 was not one of the issues that we as -- that
16 we looked at. And the reason is that that
17 goes beyond the scope of the rate case review.

18 MR. HAVER: Yes, sir, I understand
19 that, but I'm asking you if -- were you
20 contracted to do that, whether it was used in
21 this rate case or it was something like a
22 policy recommendation that you made with the
23 stormwater cost allocations?

24 MR. MORGAN: Mr. Haver, you may not
25 believe me, but that's the -- the contract is

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1 above my pay grade, so I personally have not
2 looked at that, the contract.

3 MR. HAVER: You have not looked at
4 the contract. Okay. So you decided not to
5 look at cost-saving strategies because you
6 thought it was not part of these hearings,
7 part of the scope of these hearings; is that
8 correct?

9 MR. MORGAN: I disagree. I disagree.

10 MR. HAVER: Okay. So, then again,
11 let's go back. What cost-cutting strategies
12 have you examined?

13 MR. MORGAN: I have not because that
14 was not part of the scope of this proceeding.

15 MR. HAVER: That's what I just asked
16 you but you said you didn't agree. Okay.

17 MR. MORGAN: No, I didn't -- you said
18 I decided, and that connotes that I either --
19 the way you phrased the question connotes that
20 I decided to either be negligent or something
21 of that sort.

22 MR. HAVER: Okay.

23 MR. MORGAN: And so that's why I
24 disagreed.

25 MR. HAVER: I appreciate that. But

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1 you could have looked at cost-cutting services
2 had you wanted to, right?

3 MR. BALLENGER: Objection. I don't
4 know the relevance of this.

5 HEARING OFFICER CHESTNUT: Yeah.

6 I --

7 MR. BALLENGER: I don't think we're
8 anywhere within the bounds of testimony. Way
9 out of it.

10 HEARING OFFICER CHESTNUT: I don't
11 see -- well, I don't understand why -- well, I
12 guess I'm going to back up on that. But
13 Mr. Morgan has already answered your questions
14 about this. I know you want to establish your
15 case by using him as your expert, but it's not
16 appropriate and it's not going to be allowed.

17 His testimony is his testimony. The
18 issues --

19 MR. HAVER: Your Honor --

20 HEARING OFFICER CHESTNUT: -- that
21 are within the scope of this proceeding are
22 the issues that are within the scope of this
23 proceeding.

24 Now, if you want to testify that
25 there are additional cost-cutting measures

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1 that the Water Department is not doing, that's
2 fine. But that's not within the scope of his
3 testimony, and that's not why he was retained.

4 Now, I know you're going to make an
5 issue out of that. That's fine. You can do
6 that.

7 MR. HAVER: So Your Honor has no
8 right to tell the public what I think. Only I
9 have access to that. You cannot --

10 HEARING OFFICER CHESTNUT: That's
11 true. That's true.

12 MR. HAVER: So when you say you know
13 what I'm doing, Your Honor, you have certainly
14 shown your biases. You have decided before
15 the hearing, before the testimony, what you
16 think of what I'm doing.

17 HEARING OFFICER CHESTNUT: Why don't
18 you -- do you have a question for this -- a
19 real question for this witness?

20 MR. HAVER: These are real questions.

21 HEARING OFFICER CHESTNUT: Then why
22 don't you ask one.

23 MR. HAVER: I have. I'm waiting for
24 an answer.

25 HEARING OFFICER CHESTNUT: He's

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1 already answered it.

2 MR. HAVER: He has not answered it.

3 HEARING OFFICER CHESTNUT: He has
4 answered it.

5 MR. HAVER: I'm asking specifically,
6 would it be possible with Mr. Morgan's skill
7 set for him to look at cost-saving strategies.

8 HEARING OFFICER CHESTNUT: I guess,
9 are you asking if he was retained to do an
10 operations audit?

11 MR. BALLENGER: Mr. Morgan, if you
12 were retained to root out some cost savings,
13 would you potentially find some? Would
14 anyone? Is that the question?

15 MR. MORGAN: Let me give this a try.

16 HEARING OFFICER CHESTNUT: Okay.

17 MR. MORGAN: Given the time, given
18 the case that we have before us, it would have
19 been imprudent for me to go down the route of
20 trying to identify cost savings, because the
21 time would simply not be sufficient to do that
22 in addition to the rate case review.

23 I did inquire about cost savings in
24 the discoveries that we've sent, and the PWD
25 responded. But for me to look at the time

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1 that we were provided to do the rate case, to
2 be able to do that and be effective as well as
3 do an analysis and operational audit to
4 determine cost savings, it would have been
5 imprudent to even attempt.

6 MR. HAVER: Yes, sir. It's within
7 the scope of your abilities, though, to do an
8 operational/revenue/management audit; is that
9 correct?

10 MR. MORGAN: That's not what I
11 normally do.

12 MR. HAVER: Okay. Are you familiar
13 with those type of audits?

14 MR. MORGAN: I've read them.

15 MR. HAVER: Have you found them
16 helpful?

17 MR. MORGAN: In instances, yes.

18 MR. HAVER: Do you have any
19 experience with these audits saving ratepayers
20 money?

21 MR. MORGAN: Quite honestly, I can't
22 give you something that can be quantified.
23 Typically what happens in these audits is that
24 the auditor would come up and make
25 recommendations for changes that would save

5/4/2023

1 money.

2 MR. HAVER: If you want to belabor
3 the point, that's fine.

4 HEARING OFFICER CHESTNUT: No, please
5 let him finish -- let him finish his answer.

6 MR. HAVER: Excuse me.

7 HEARING OFFICER CHESTNUT: No, let
8 him finish his answer.

9 MR. HAVER: If you'd like --

10 HEARING OFFICER CHESTNUT: Mr. Haver,
11 stop. Stop. Stop.

12 MR. HAVER: If you'd like to belabor
13 the point, you're more than welcome to, but I
14 have enough.

15 HEARING OFFICER CHESTNUT: Heather,
16 you need to mute him because Mr. Morgan is
17 entitled to complete his answer, if he can
18 remember it at this point.

19 MR. MORGAN: Maybe he doesn't like
20 the answer, but the -- so the company will
21 indicate that they accept or did not accept
22 the audit findings. Whether accepting the
23 audit findings yield the savings that the
24 auditors estimate, I can't quantify that at
25 all or tell you that, you know, it can be

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1 done. So...

2 HEARING OFFICER CHESTNUT: Are you
3 done with your answer?

4 MR. MORGAN: Yes.

5 HEARING OFFICER CHESTNUT: Okay.
6 Heather, you can unmute Mr. Haver now that
7 Mr. Morgan has finished his answer.

8 Mr. Haver, do you want to proceed?

9 MR. HAVER: Again, I think your
10 biases are very clear, but, of course I want
11 to proceed.

12 Mr. Morgan, do you believe that cost
13 cutting by utility should come before a rate
14 increase is filed?

15 MR. BALLENGER: Object, but if you
16 have an opinion as to that, it's beyond the
17 scope of your testimony, but if you have an
18 opinion.

19 MR. MORGAN: I don't believe that to
20 be the case.

21 MR. HAVER: I'm sorry, I don't
22 understand your answer. So you don't --

23 MR. MORGAN: No, I do not believe it.

24 MR. HAVER: Okay. Thank you.

25 Mr. Morgan, are you familiar with the

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1 Public Bank of North Dakota?

2 MR. MORGAN: No.

3 MR. HAVER: Are you aware of
4 lower-cost ways of selling bonds other than --

5 MR. MORGAN: No.

6 MR. HAVER: There's -- so in your
7 expert opinion, there's nothing else that can
8 be done?

9 MR. MORGAN: I wouldn't say that.
10 You asked me if I was aware of lower cost
11 savings for selling bonds, and I've said no.

12 MR. HAVER: Thank you.

13 What could be done to lower the costs
14 of selling bonds?

15 MR. MORGAN: I don't have a
16 recommendation for that.

17 MR. HAVER: Have you studied that
18 issue, sir?

19 MR. MORGAN: No.

20 MR. HAVER: So you have no expertise
21 in that field?

22 MR. MORGAN: That's correct.

23 MR. HAVER: Thank you.

24 Do you believe that Philadelphians
25 who make a living wage are better able to pay

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1 their water bills?

2 MR. MORGAN: Could you repeat the
3 question?

4 MR. BALLENGER: I'm going to object
5 to the relevance of this for this witness. I
6 don't think there's anything in his testimony
7 about a living wage, and I don't think that's
8 why he's here today.

9 HEARING OFFICER CHESTNUT: Wouldn't
10 Mr. Colton be a better witness for this?

11 MR. BALLENGER: I think to the extent
12 that's a question that's relevant, Mr. Colton
13 would likely be the better witness to address
14 it.

15 I'm not waiving the relevancy of that
16 question.

17 MR. HAVER: I'm asking Mr. Morgan
18 what he believes.

19 MR. BALLENGER: And I'm objecting.

20 MR. HAVER: I understand.

21 HEARING OFFICER CHESTNUT: I'll see
22 if he can answer it. It's just way outside
23 the scope of his testimony, but...

24 MR. MORGAN: I didn't quite
25 understand the question, so he needs to repeat

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1 it.

2 MR. HAVER: In your opinion, are
3 Philadelphiaans who earn a living wage as
4 defined by city council and the mayor, are
5 they more able to pay their water bill than
6 those who make less than a living wage?

7 MR. MORGAN: From a logical
8 perspective -- in fact, I don't think I can
9 say that. I don't know how to prioritize the
10 wages spending, so I can't answer.

11 MR. HAVER: Well, you have. I
12 appreciate it. You can't answer the question.

13 Mr. Morgan, do you support
14 Philadelphia Water Department buying from
15 businesses located in Philadelphia?

16 MR. BALLENGER: Objection,
17 irrelevant. Beyond the scope.

18 HEARING OFFICER CHESTNUT: Yeah, I
19 don't see how that's relevant to his
20 testimony. That's a general policy statement
21 that he's not addressed at all.

22 And any answer he gives just has no
23 probative weight.

24 MR. HAVER: Well, I certainly believe
25 it does have probative weight. And maybe not

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1 in your court, maybe just in some other court,
2 but it has probative weight.

3 HEARING OFFICER CHESTNUT: No. You
4 know, we've let you -- I've let you have a ton
5 of latitude in terms of asking questions.
6 It's way beyond the scope.

7 MR. HAVER: I do not agree with your
8 opinion.

9 HEARING OFFICER CHESTNUT: I know you
10 don't agree, but that -- this is my job, and
11 at some point, though, there has to be some
12 kind of nexus. He's not --

13 MR. HAVER: If you asked me for the
14 nexus --

15 HEARING OFFICER CHESTNUT: He's not
16 your witness.

17 MR. HAVER: If you ask me for the
18 nexus, I will give you the nexus.

19 HEARING OFFICER CHESTNUT: No. He is
20 not your witness, and I don't think you
21 understand what that means. You're trying to
22 get him to establish your case, and that's not
23 why he's here. He's here to answer questions
24 about the testimony that he submitted.

25 MR. HAVER: Your Honor doesn't --

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1 HEARING OFFICER CHESTNUT: He's made
2 no recommendations concerning that.

3 MR. HAVER: Then that's all he has to
4 say. I made no recommendations concerning
5 that.

6 HEARING OFFICER CHESTNUT: Is that
7 even within the scope --

8 MR. BALLENGER: I don't believe he
9 needs to say that. There's no need for him to
10 speak to something that's not in his testimony
11 and not even close.

12 HEARING OFFICER CHESTNUT: Just --
13 okay, just to make life easier, maybe to move
14 this on, Mr. Morgan, just say that.

15 MR. MORGAN: The water utility should
16 purchase from the vendors that will provide
17 the lowest cost, best quality for the
18 customers.

19 MR. HAVER: Regardless if they're
20 minority owned or locally located; is that
21 correct?

22 MR. MORGAN: I'll repeat my answer.

23 MR. HAVER: Thank you.

24 MR. MORGAN: They should buy from the
25 lowest cost, best quality.

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1 MR. HAVER: And there's no
2 qualifications in your answer; is that
3 correct?

4 MR. MORGAN: My answer speaks for
5 itself.

6 MR. HAVER: Thank you, sir.

7 If the Water Department successfully
8 recruited water-intense businesses into the
9 city of Philadelphia, and those businesses
10 purchased water from the Philadelphia Water
11 Department in creating living wage jobs, would
12 that increase Philadelphia Water Department's
13 revenues?

14 MR. BALLENGER: I'm going to object,
15 this is again beyond the scope. It's entirely
16 hypothetical. I don't know that there is a
17 way that Mr. Morgan could ever measure a
18 response to that without actual information to
19 utilize, and there is none.

20 HEARING OFFICER CHESTNUT: Yeah, I
21 don't see how he can answer that without any
22 information to base a judgment on.

23 MR. HAVER: If you're asking me to
24 explain, I will.

25 HEARING OFFICER CHESTNUT: No, you

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1 don't have to explain. I think your question
2 is pretty clear, and I'm just saying that I
3 don't think that he's able to answer it.

4 Anybody would be not able to answer it.

5 MR. HAVER: Let him try and answer
6 it.

7 HEARING OFFICER CHESTNUT: No, I'm
8 not --

9 MR. HAVER: If he says he cannot
10 answer it, that becomes part of the record.

11 HEARING OFFICER CHESTNUT: No. No,
12 I'm --

13 MR. HAVER: No what?

14 HEARING OFFICER CHESTNUT: I'm
15 disallowing the question.

16 MR. HAVER: You're disallowing the
17 question which I've asked is if the Water
18 Department could recruit water-intensive
19 industries, would that help the Water
20 Department's revenues?

21 HEARING OFFICER CHESTNUT: Yes.

22 MR. HAVER: You're not allowing that
23 question?

24 HEARING OFFICER CHESTNUT: Yes.

25 MR. HAVER: Okay.

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1 HEARING OFFICER CHESTNUT: It's
2 speculative and there are all kinds of other
3 factors that you're not mentioning.

4 MR. HAVER: What other factors am
5 I not mentioning?

6 HEARING OFFICER CHESTNUT: No. I
7 don't have to respond to you. I've sustained
8 the objection so if you have another question,
9 ask it.

10 MR. HAVER: Mr. Morgan, your
11 recommendation for two successive years of
12 rate increases is lower than what the
13 Philadelphia Water Department has requested;
14 is that correct?

15 MR. MORGAN: My -- repeat the
16 question. I'm sorry.

17 MR. HAVER: Okay. Yes, sir.

18 In the beginning, this morning when I
19 began questioning you, I asked you about the
20 Public Advocate's position was supporting two
21 consecutive years of rate increases totaling
22 \$92,557,000, and you said subject to check,
23 you thought that was the correct amount.

24 And then you went on to say that was
25 less than what the Water Department was

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1 seeking. And I'm now confirming that that was
2 correct and I've understood your testimony.

3 MR. MORGAN: That's correct.

4 MR. HAVER: Okay. Sir, how do you
5 expect the Water Department to be able to
6 operate with less than what they've asked for?

7 MR. MORGAN: Based on the analysis
8 that I've done, I have determined that in
9 certain instances costs may have been
10 projected incorrectly. So example, the
11 inflation factors that they use. I have
12 reviewed their approach and weighed it against
13 what I believe to be reasonable. And so that
14 goes -- that's an instance of where there is a
15 reduction that is reflected in the lower
16 revenue requirement.

17 So based on that, the numbers speak
18 for itself.

19 MR. HAVER: Okay. Would the Water
20 Department be -- would it be necessary for the
21 Water Department to change some of their
22 projected actions if the recommendations
23 you've made are accepted by the Water Rate
24 Board?

25 MR. MORGAN: I don't think I can

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1 answer that, because there are tools that they
2 have and it's -- I think it's up to them to
3 make that judgment. I don't -- so I can't
4 answer your question.

5 MR. HAVER: Thank you very much for
6 your time. Just to make sure, I want to ask
7 Ms. Rogers if she has anything to add. I've
8 concluded my testimony, but I feel
9 uncomfortable with only addressing my
10 questions to a man, so I just want to make
11 sure I ask Ms. Rogers if she has anything to
12 add. You'll forgive me, Mr. Morgan.

13 MR. MORGAN: No, there's nothing to
14 be forgiven about. I think you're doing the
15 right thing.

16 MS. ROGERS: Thank you, no. I agree
17 with everything Mr. Morgan said today.

18 MR. HAVER: I do appreciate your
19 time. And, Mr. Morgan, for what it is worth,
20 I do appreciate your efforts on behalf of the
21 public. While I found them lacking doesn't
22 mean that I don't appreciate what your efforts
23 are. Thank you for your time, sir.

24 HEARING OFFICER CHESTNUT:
25 Mr. Ballenger, did you want a break or --

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1 MR. BALLENGER: I think we have a
2 couple of things. If we could just maybe
3 take --

4 HEARING OFFICER CHESTNUT: I'm sorry,
5 Mr. Dasent, did you raise your hand?

6 MR. DASENT: No.

7 HEARING OFFICER CHESTNUT: Or were
8 you just stretching? Okay.

9 MR. BALLENGER: If we could take just
10 maybe five minutes so I can just organize for
11 any redirect.

12 HEARING OFFICER CHESTNUT: Okay. Why
13 don't we take a five -- we'll resume at 12:00
14 o'clock.

15 MR. DASENT: Thank you.

16 (Recess taken, 11:55 a.m. to
17 12:00 p.m. EDT)

18 HEARING OFFICER CHESTNUT: Okay.
19 Shall we resume, then, Mr. Ballenger.

20 MR. BALLENGER: Yes. Thank you.
21 Just a few quick questions on redirect.

22 REDIRECT EXAMINATION BY MR. BALLENGER

23 MR. BALLENGER: Yes. Thank you.
24 Just a few quick questions on redirect.

25 Mr. Morgan and Ms. Rogers, you were

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1 asked whether you could independently verify
2 the amounts included in the fiscal 2025 and
3 beyond capital program, and I believe you
4 answered that you relied on PWD, but can you
5 elaborate on your response?

6 MR. MORGAN: I do not think it's
7 possible to be able to do it. It's a
8 completely different venture in terms of
9 having access to the City's budgeting process,
10 and it will be virtually impossible to --
11 within the confines of a rate case.

12 MR. BALLENGER: And you were also
13 asked some questions about declining usage of
14 water for various accounts. And I wondered
15 whether you'd like to explain why you believe
16 use of an average over three years is an
17 appropriate methodology.

18 MS. ROGERS: Yes. So in making a
19 normalization adjustment over a period, the
20 aim is to account for anomalies in any given
21 year. If you look at the other customer
22 classes beyond residential, they go up, they
23 go down, year over year.

24 And so in looking at what is it going
25 to be in 2024, it's more appropriate to look

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1 at the previous three years and take an
2 average instead of relying on, say, the lowest
3 current year, which is 2022 for residential.

4 MR. BALLENGER: Okay. Then I had
5 just a couple of questions about inflation
6 adjustments. When you were asked about
7 whether certain specific chemicals are
8 included in the core index you used in your
9 testimony, you indicated they aren't.

10 Are there any other things that
11 aren't specifically included in the core index
12 that you utilized?

13 MS. ROGERS: Yes. Thousands upon
14 thousands of items. It would be impossible to
15 include every item in an economy in any given
16 index. It's an indicator of underlying
17 inflation, which, of course, impacts more
18 broadly.

19 MR. BALLENGER: And wouldn't -- am I
20 correct that the experienced costs that PWD
21 has had for chemicals over time have not
22 simply reflected the producer's costs but have
23 also reflected other inflationary factors?

24 MS. ROGERS: Yes. As the
25 department's Financial Panel spoke to

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1 yesterday, the PPI used by the company to
2 project chemical inflation in 2025 does not
3 capture the full costs. So its specificity
4 isn't necessarily an indicator of its
5 usefulness. The core PCE indicates there's
6 underlying inflation, which does apply to all
7 aspects of the supply chain.

8 MR. BALLENGER: Thank you, that's all
9 I had. I appreciate you hanging in there
10 today, Mr. Morgan and Ms. Rogers.

11 HEARING OFFICER CHESTNUT:
12 Mr. Dasent, do you have any recross based on
13 the redirect?

14 MR. DASENT: Nothing further,
15 Your Honor.

16 HEARING OFFICER CHESTNUT: Mr. Haver?

17 MR. HAVER: No, Your Honor.

18 HEARING OFFICER CHESTNUT: Okay. Oh,
19 thank you very much, Ms. Rogers and
20 Mr. Morgan. I would say it's nice of you to
21 come, but that is your job. But we appreciate
22 you.

23 MR. BALLENGER: Feel free to hang out
24 with us for the rest of the day.

25 HEARING OFFICER CHESTNUT: Yes.

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1 MR. HAVER: I would ask Ms. Rogers to
2 consider finding out how to add her last name
3 to her screen. I --

4 MS. ROGERS: Yes, I will do that as
5 soon as I can.

6 MR. HAVER: It's very difficult to
7 address you respectfully without having your
8 last name listed.

9 HEARING OFFICER CHESTNUT: Okay.
10 That takes us to your next witness.

11 MR. BALLENGER: Okay. I believe the
12 next witness is Mr. Mierzwa.

13 MR. MIERZWA: Yes.

14 MR. BALLENGER: You're in stereo,
15 Mr. Mierzwa. Let me make sure. Joline, can
16 you check? I'm not sure.

17 Mr. Mierzwa, if you have the Teams
18 link up, can you maybe see it and make sure
19 that the microphone is muted on your Teams
20 app?

21 Oh, I think Joline took care of it.

22 MR. MIERZWA: Yeah, somebody just
23 muted me.

24 MR. BALLENGER: All right. Well, as
25 has been the case for the last couple of days,

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1 I just want to reflect for the record that
2 Mr. Mierzwa's prefiled testimony is accepted
3 with the, you know -- without the customary
4 need for authentication, we've stipulated to
5 that. And as a result, he's here to answer
6 questions on cross-examination.

7 So, Mr. Dasent?

8 MR. DASENT: We have no cross.

9 HEARING OFFICER CHESTNUT: Before you
10 do, could you identify yourself for the
11 record, state by whom you're employed and in
12 what capacity.

13 MR. MIERZWA: Sorry, are you talking
14 to Mr. Mierzwa?

15 HEARING OFFICER CHESTNUT: Yeah.

16 MR. MIERZWA: Yeah, my name is Jerome
17 D. Mierzwa. That's spelled M-I-E-R-Z-W-A, and
18 I'm vice president and a principal at Exeter
19 Associates.

20 HEARING OFFICER CHESTNUT: Okay.
21 Mr. Dasent.

22 MR. DASENT: We have no cross at this
23 time. We'd defer to Mr. Haver. By agreement,
24 the Public Advocate and ourselves were
25 deferring all issues to the brief, but

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1 Mr. Haver may raise some issues that we need
2 to question.

3 HEARING OFFICER CHESTNUT: Okay.

4 Mr. Haver, do you have any cross for this
5 witness?

6 MR. HAVER: Yes, thank you.

7 JEROME D. MIERZWA

8 CROSS-EXAMINATION BY MR. HAVER

9 MR. HAVER: I want to put on the
10 record that Mr. Mierzwa was kind enough to
11 talk with me the other day to see if I could
12 get enough information from him so he did not
13 have to appear. Despite his best efforts, I
14 was not satisfied with his answers and have
15 asked for this cross-examination.

16 It should not be held against
17 Mr. Mierzwa. He did whatever was asked of
18 him. That being said, Mr. Mierzwa, I am going
19 to be asking some of the same questions that
20 you tried to answer for me in our Zoom
21 discussion.

22 Referring to your testimony, page 3,
23 lines 8 through 10. Again, it's very short.
24 I'm happy to read it to you, if that's easier.
25 Or if you want to take the time to look it up.

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1 Whichever you prefer.

2 MR. MIERZWA: I've looked at it,
3 thank you.

4 MR. HAVER: In that wording, you use
5 the term "entitled" regarding the overall
6 revenue increase, if any, to which PWD is
7 entitled for its water, wastewater and
8 stormwater operations for its rate period.

9 Could you please define the word
10 "entitled" in that context?

11 MR. MIERZWA: What PWD can
12 demonstrate that they're authorized to -- how
13 much they're authorized to increase their
14 revenues before the Board.

15 MR. HAVER: Are consumers entitled to
16 affordable rates?

17 MR. MIERZWA: Yes.

18 HEARING OFFICER CHESTNUT: Let me
19 back up. To make it clear, you're not using
20 that in the legal sense as a legal opinion in
21 terms of affordability as a factor?

22 MR. HAVER: I'm asking it under the
23 definition that Mr. Mierzwa used in his
24 testimony.

25 HEARING OFFICER CHESTNUT: Okay.

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1 Because that does have a specific legal
2 connotation. I want to be clear, though, that
3 you're doing this as a nonlawyer.

4 MR. HAVER: So let me help you out,
5 Ms. Chestnut. I am not a lawyer. I did
6 not --

7 HEARING OFFICER CHESTNUT: No, no,
8 I'm not saying you're a lawyer. It's Mr.
9 Mierzwa's --

10 MR. HAVER: I did not --

11 HEARING OFFICER CHESTNUT: It's
12 Mr. Mierzwa's answer that I'm concerned about.

13 MR. HAVER: I'll fully disclose, I
14 did not go to an Ivy League college.

15 HEARING OFFICER CHESTNUT: We don't
16 care about that, Mr. Haver. We don't care
17 about that. You have full rights as a
18 participant in this case whether you're a
19 lawyer or not. I wanted to be clear, though,
20 that Mr. Mierzwa's answer was given as a
21 nonlawyer.

22 MR. HAVER: Is that --

23 HEARING OFFICER CHESTNUT: I don't
24 think he is. Is that right?

25 MR. MIERZWA: That's correct, I'm not

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1 an attorney.

2 HEARING OFFICER CHESTNUT: Right.

3 MR. HAVER: So I've asked, are
4 consumers entitled to affordable rates under
5 your definition of the word "entitled," and
6 you've said yes.

7 Are consumers entitled to a well-run
8 Philadelphia Water Department under your
9 definition of the word "entitled"?

10 MR. MIERZWA: Yes.

11 MR. HAVER: You make recommendations
12 for costs. Who bears the cost of stormwater
13 runoff? On lines -- on page 4, lines 11
14 through 18. I'll wait for you to have a look
15 at that.

16 MR. MIERZWA: I'm sorry, what line
17 numbers?

18 MR. HAVER: 11 -- page 4, lines 11
19 through 18.

20 MR. MIERZWA: Yes, I do.

21 MR. HAVER: Thank you.

22 Does the Water Department have
23 control over those charges?

24 MR. MIERZWA: Of stormwater charges?

25 MR. HAVER: No, sir, of having the

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1 City or some other entity pay for those
2 stormwater charges.

3 MR. MIERZWA: I do not -- that's not
4 my recommendation. I don't address
5 Mr. Lafayette's recommendation.

6 MR. HAVER: Okay.

7 MR. MIERZWA: My recommendation
8 relates to the costs that are passed on to
9 ratepayers, whatever that amount is.

10 MR. HAVER: So you're not suggesting
11 that the City operating budget bear any of the
12 costs of the stormwater runoff?

13 MR. MIERZWA: That's not in my
14 testimony. I only address charges to
15 ratepayers. Mr. Morgan addresses charges to
16 the City.

17 MR. HAVER: Okay. Why don't you
18 address that issue?

19 MR. MIERZWA: Because it's addressed
20 by Mr. Morgan.

21 MR. HAVER: Okay. Are you -- does
22 that mean you are in agreement with
23 Mr. Morgan's recommendations?

24 MR. MIERZWA: I didn't make those
25 recommendations. I don't know everything that

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1 went behind it or authorized -- I don't
2 disagree with the recommendation that it
3 should be considered.

4 MR. HAVER: Okay. You do work for
5 the same firm; is that correct?

6 MR. MIERZWA: Yes.

7 MR. HAVER: And you have some
8 internal meetings; is that correct?

9 MR. MIERZWA: Well, we generally
10 don't have internal meetings on cases. We
11 communicate by phone or e-mail.

12 MR. HAVER: Okay. I would include
13 those as meetings, but all right.

14 So your recommendation isn't that
15 something other than the rate base bear the
16 cost of the stormwater runoff; it's just a
17 reallocation of those costs; is that correct?

18 MR. MIERZWA: My recommendations
19 address costs that are passed through to
20 ratepayers.

21 MR. HAVER: So it has --

22 MR. MIERZWA: I don't make a
23 recommendation as to the amount of those
24 costs.

25 MR. HAVER: Does it have any impact

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1 on the general revenue needs of the Water
2 Department? Again, I'll rephrase it to make
3 it simpler.

4 Does your particular recommendation
5 in line -- in page 4, lines 11 through 18,
6 have any impact on the revenue requirements
7 for the Water Department?

8 MR. MIERZWA: The Water Department
9 says it does.

10 MR. HAVER: Okay. I'm not asking
11 what the Water Department thinks. I'm asking
12 what you say.

13 MR. MIERZWA: It could.

14 MR. HAVER: And what would those
15 ramifications be?

16 MR. MIERZWA: It would potentially
17 decrease those revenues.

18 MR. HAVER: By how much?

19 MR. MIERZWA: I have not calculated
20 that.

21 MR. HAVER: So you don't know the net
22 effect on the requested rate increase?

23 MR. MIERZWA: No, my recommendations
24 go onto the sharing of benefits.

25 MR. HAVER: How much would -- how

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1 much benefit -- what's the total dollar value
2 of the benefits that will be shared?

3 MR. MIERZWA: I don't know.

4 MR. HAVER: Are you familiar with the
5 new meter reading system that the Water
6 Department is implementing?

7 MR. MIERZWA: I know they are
8 implementing. I'm not sure of the details of
9 the program -- of the new installations.

10 MR. HAVER: Okay. Page 8, lines 18
11 through 20.

12 MR. MIERZWA: I see that.

13 MR. HAVER: Customers' costs such as
14 meters and services?

15 MR. MIERZWA: Yes.

16 MR. HAVER: Are you familiar with how
17 much the new meter reading system costs?

18 MR. MIERZWA: No, I'm looking at the
19 costs. They're included in this rate case.

20 MR. HAVER: So how much in this -- is
21 there any cost in this year's requested rate
22 increase to cover the cost of the new meter
23 installations?

24 MR. MIERZWA: I do not know. That
25 would be reflected in the department's revenue

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1 requirement claim. And when you do cost
2 allocation of rate design, you generally
3 accept what the revenue requirement claim is
4 so that an apples-to-apples comparison can be
5 made between what you said, the revenues of --
6 the costs of serving one class as compared to
7 the next.

8 But then when the final amount of the
9 revenue increase is determined, you're -- the
10 total revenues will go down. So I don't make
11 any, you know, generalized -- I say that I'm
12 not endorsing the revenue requirements; I just
13 do an apples-to-apples comparison so that --
14 or use the department's revenue requirement so
15 that an apples-to-apples comparison can be
16 made. I don't express any judgment on the
17 revenue requirement claim itself.

18 MR. HAVER: Okay. I have other
19 questions about the revenue requirements, but
20 understanding you saying that you make no
21 judgments about that, I will forgo them rather
22 than wasting your time on them, sir.

23 You said you're vaguely familiar with
24 the new meter system. Do you know if the new
25 meter system allows for time-of-day charges?

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1 MR. MIERZWA: I do not know.

2 MR. HAVER: In your experiences,
3 are -- is there any cost savings achieved by
4 time of day or normalization of usage?

5 MR. MIERZWA: I frankly have never
6 seen time-of-day usage for water.

7 MR. HAVER: Have you seen it for any
8 utility?

9 MR. MIERZWA: For electricians. And I
10 don't do a lot -- I do some electric work but
11 not much, and I've never -- and I do a lot of
12 gas work. I don't recall ever seeing time of
13 day for gas either. Not to say I didn't miss
14 one here, or two, but it's not very common.

15 MR. HAVER: Yes, sir, I don't think
16 it's realistic to expect you to know
17 everything or be perfect, but that's not what
18 I was asking. I was asking about time-of-day
19 metering and cost savings for consumers by
20 using water at off-peak times.

21 Are you familiar with that concept?

22 MR. MIERZWA: I'm familiar with the
23 concept. I don't know what the potential cost
24 savings would be.

25 MR. HAVER: Have you explored that?

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1 MR. MIERZWA: No, it's not part of
2 this -- it's not been proposed in this case.

3 MR. HAVER: Right. But as to your
4 proposal, as -- correct me if I'm wrong, but
5 your proposal to share stormwater costs was
6 not a recommendation from the Philadelphia
7 Water Department; it was your recommendation.
8 Is that correct?

9 MR. MIERZWA: Correct.

10 MR. HAVER: And I'm asking you, sir,
11 if you have investigated time of day and load
12 sharing for water usage.

13 MR. MIERZWA: No, I have not. I've
14 not. I'm, just like I said, not familiar with
15 any water utilities who do that.

16 MR. HAVER: Right. And I'm asking if
17 you've investigated it, and you're saying no,
18 you have not.

19 There's a difference between saying
20 I've investigated it and I haven't found
21 anyone who is doing it versus saying I haven't
22 investigated it. And I just want to make sure
23 the record is clear.

24 MR. MIERZWA: Well, if I'm not aware
25 of anybody doing it, I can't investigate it.

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1 MR. HAVER: Well, that's not true,
2 sir. You could certainly investigate if
3 anyone is doing it and then start looking for
4 them.

5 MR. MIERZWA: It's just not -- I'm
6 not aware of anybody doing it.

7 MR. HAVER: Okay. Under your
8 testimony, how much is the rate base paying
9 for the fire department and fire protection
10 water?

11 MR. MIERZWA: I'm not sure what that
12 question means.

13 MR. HAVER: Unmetered water that is
14 used by -- through the hydrants and fire
15 protection services.

16 MR. MIERZWA: I put quantities in my
17 testimony, and those numbers are mentioned on
18 page 15.

19 MR. HAVER: I was asking about the
20 revenue. The costs, not the numbers of the
21 accounts.

22 Did you calculate what the value of
23 that water was based on current pricing?

24 MR. MIERZWA: I did not calculate the
25 value of the water directly, but we had the

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1 Water Department do a cost analysis, but that
2 included allocating the costs associated with
3 that water to the public and private fire
4 departments. And I believe it's the response
5 of 14-1 -- PA 14-1 that showed the impact, and
6 it was very minor.

7 MR. HAVER: Yes, sir. But you
8 yourself didn't calculate it; is that correct?

9 MR. MIERZWA: No, we had the
10 department calculate it.

11 MR. HAVER: Okay. Is there any cost
12 saving for the City having fire protection
13 services?

14 MR. MIERZWA: I don't -- cost savings
15 compared to what?

16 MR. HAVER: Well, suppose there were
17 more fires because fire hydrants have no
18 water, or suppose the fires were more extreme
19 or --

20 MR. BALLENGER: I'm going to go ahead
21 and object here. I mean, this is really
22 speculative, and I don't know where it goes
23 from here, but this is not part of
24 Mr. Mierzwa's testimony.

25 HEARING OFFICER CHESTNUT: It isn't,

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1 but he can try to answer it. Again, it's
2 speculative, and I don't understand the
3 foundation for it. Really. I don't know, can
4 you answer that question or...

5 MR. MIERZWA: I'm not sure I
6 understand the question.

7 HEARING OFFICER CHESTNUT: Yeah, I
8 don't see the point, but...

9 MR. HAVER: Would the City bear --

10 HEARING OFFICER CHESTNUT: -- I
11 really don't see it as within the scope of
12 your testimony.

13 MR. HAVER: Would the City budget
14 bear greater costs if there was no water to
15 the fire hydrants in the fire protection
16 systems in the City?

17 MR. MIERZWA: I've never heard of
18 such a thing for fire -- for hydrants. I
19 suppose fires would get more out of control
20 and it would cost the City more money, but
21 I've never heard of that or have no idea as to
22 how much.

23 MR. HAVER: Thank you.

24 Are you aware of any other water
25 systems in the nation that charge different

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1 classes of customers other than the rate base
2 for the hydrant water?

3 MR. MIERZWA: I'm sorry, are you
4 saying that other customers get charged for
5 the costs of providing fire service?

6 MR. HAVER: From what I understand of
7 your testimony, currently these costs are
8 borne by the water rate base; is that correct?

9 MR. MIERZWA: I'm not sure what you
10 mean by water rate base. They are borne -- as
11 far as my understanding, they are borne by the
12 people who provide fire and -- or who take
13 private fire and public fire service.

14 MR. HAVER: The fire hydrants, sir.
15 Who pays for the costs of water to the fire
16 hydrants?

17 MR. MIERZWA: It's my understanding
18 the City does --

19 MR. BALLENGER: I'm not sure that's a
20 question for Mr. Mierzwa, but I think -- my
21 recollection is the same as his, I believe the
22 City does, and we litigated that in 2018. But
23 we can check the transcripts from then as
24 well.

25 MR. HAVER: So would that be

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1 reflected in a payment from the City operating
2 budget to the Philadelphia Water Department's
3 budget?

4 MR. BALLENGER: Objection. I don't
5 know that this is really within the scope of
6 testimony, but if you have any -- I don't want
7 you to guess, Mr. Mierzwa.

8 MR. MIERZWA: I would only be
9 guessing. I don't know for certain. We're
10 just trying to determine the cost of providing
11 public fire service.

12 MR. HAVER: Well, I understand that,
13 but wouldn't part of that be who bears that
14 cost? Wouldn't that be an important component
15 of the costs?

16 MR. MIERZWA: Not in the cost of
17 service, though. You're looking for cost
18 responsibility.

19 MR. HAVER: So you have not examined
20 cost responsibility?

21 MR. MIERZWA: No -- well, in their --
22 it's examined in the cost of service studies
23 that were filed in this case.

24 MR. HAVER: And you yourself were not
25 asked to look at those?

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1 MR. MIERZWA: I looked as those, and
2 I made changes to the cost of service study.

3 MR. HAVER: Right. And that's what
4 I'm asking you about, sir. Under the cost of
5 service study, you are saying that to the best
6 of your knowledge, the City's operating budget
7 pays for water that flows through the fire
8 hydrants; is that correct?

9 MR. MIERZWA: To the best of my
10 knowledge, yes, but it doesn't matter who is
11 paying. We're just trying to determine the
12 cost of providing the service.

13 MR. HAVER: Well, I would suggest
14 that to some people it would matter who is
15 paying for it. I'm not quite sure whether
16 anyone -- how many people would agree with you
17 that it doesn't matter who pays for it.

18 MR. MIERZWA: Well, when you're
19 determining the cost of service, that's all
20 I'm doing.

21 MR. HAVER: So your testimony --

22 MR. MIERZWA: I mean, in some
23 jurisdictions, customers pay for the cost of
24 fire service.

25 MR. HAVER: And in other

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1 jurisdictions, how does it work?

2 MR. MIERZWA: The municipality or the
3 City pays for it.

4 MR. HAVER: And in Philadelphia, the
5 City pays for it?

6 MR. MIERZWA: That's my
7 understanding, but it doesn't matter because
8 you're only trying to determine the costs
9 associated with providing the service. I
10 don't see an allocation, reallocation to other
11 customers in this case.

12 MR. HAVER: Right. And then I was
13 asking the next question was, was that a
14 transfer of funds from the City's general
15 operating budget to the Philadelphia Water
16 Department?

17 MR. MIERZWA: I'm not sure where the
18 money comes from. I'm only doing the cost of
19 service --

20 MR. HAVER: Okay.

21 MR. MIERZWA: -- not the source of
22 the money.

23 MR. HAVER: Are you familiar with the
24 concept of lost water, water that's processed
25 by the Philadelphia Water Department that does

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1 not --

2 MR. MIERZWA: Yes.

3 MR. HAVER: Okay.

4 MR. MIERZWA: Yes, I am.

5 MR. HAVER: In our private
6 conversation, you estimated what the size of
7 that loss was. I'm going to ask you on the
8 record, do you have a sense of how large that
9 loss is, what percentage?

10 MR. MIERZWA: Since we had our
11 conversation, I went back and looked at the
12 numbers. As I said when we were speaking, I
13 used a common number for water utilities. And
14 my calculation showed it was about 40%.

15 MR. HAVER: I'm sorry, I may have
16 misheard you. There's a 40% loss?

17 MR. MIERZWA: That's what my
18 calculations show.

19 MR. HAVER: Okay.

20 Under your testimony, who bears the
21 cost of that 40% loss?

22 MR. MIERZWA: Customers who currently
23 take water service.

24 MR. HAVER: Okay. Is 40% low,
25 average, or high for lost water based on other

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1 municipal utilities?

2 MR. MIERZWA: In my experience, it's
3 a bit high.

4 MR. HAVER: I'm sorry to be so
5 difficult, sir, but when you say "a bit high,"
6 I don't know what "bit" means in that
7 sentence.

8 MR. MIERZWA: I've seen ranges, 20, a
9 little higher, and they're around 40. I don't
10 have a -- I didn't do a survey, but by my
11 definition in the 20s is not uncommon.

12 MR. HAVER: And Philadelphia, to make
13 the record clear, is it 40?

14 MR. MIERZWA: That's what the data
15 request showed.

16 MR. HAVER: Yes, sir.

17 Is there a national average?

18 MR. MIERZWA: I'm not aware of one.

19 MR. HAVER: Is there a national
20 benchmark for what water departments should
21 try and strive to reach?

22 MR. MIERZWA: Not that I am aware of,
23 but -- I just don't recall there being --
24 there's no national benchmark, but there may
25 be some benchmarks out there.

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1 MR. HAVER: Thank you.

2 Can you explain the logic of having
3 the rate base pay for the lost water as
4 opposed to the owner of the utility paying for
5 the lost water?

6 MR. MIERZWA: Well, it's part of the
7 cost of providing service. You're going to
8 have losses no matter how sound your system
9 is. I mean, you have water -- you have losses
10 in gas, you have losses in water.

11 But what you've got to consider in
12 taking -- or take into consideration is that
13 to correct for those losses, or to eliminate
14 the losses, I believe the department would
15 have to do a lot of replacing of distribution
16 mains and other -- possibly other equipment.

17 You know, part of loss is associated
18 with meter inaccuracies. And, you know, I'm
19 not an engineer, and I haven't done this
20 study, but my understanding is that, you know,
21 the marginal -- the variable or marginal costs
22 associated with lost water are pretty low, and
23 the costs of replacing all of these, you know,
24 distribution mains to reduce that is probably
25 going to be pretty high.

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1 MR. HAVER: Yes, sir.

2 MR. MIERZWA: So you might be better
3 off losing the water than fixing the leaks.

4 MR. HAVER: Yes, sir, I appreciate
5 that testimony, but that didn't really address
6 my question.

7 I'm asking you based on your
8 experience to explain the public policy of
9 placing the burden for lost water on the rate
10 base rather than on the owner of the utility.

11 MR. MIERZWA: I don't know if it's --
12 it's done everywhere else I'm aware of.

13 MR. BALLENGER: And I'm also going to
14 object to that. I think that's the question
15 you just answered, Mr. Mierzwa, so I don't
16 know why we're asking the same question over
17 again.

18 HEARING OFFICER CHESTNUT: I think
19 he's answered it, to the extent that he can.
20 He's not here to talk about regulatory policy.
21 He's talked about it in terms of the system,
22 but...

23 He's not a policy witness; he's a
24 cost of service witness.

25 MR. HAVER: Right, and I'm asking him

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1 specifically about his cost of service, who
2 should bear --

3 HEARING OFFICER CHESTNUT: Now you're
4 asking him about the reasons why the
5 allocation is made the way it is and class
6 recovery, and that's just not what he's here
7 for.

8 MR. HAVER: So again, let me go over
9 his expertise. It is in allocating costs to
10 different classes; is that correct?

11 MR. MIERZWA: That's correct.

12 MR. HAVER: And I'm asking about
13 allocating this cost to a different class; is
14 that correct?

15 MR. MIERZWA: You're allocating it to
16 the owner?

17 MR. HAVER: Yes. A different class.

18 MR. MIERZWA: The owner is not a
19 class, but -- like I say, I'm not aware of a
20 single water utility that doesn't get to
21 recover the costs associated with losses from
22 its ratepayers.

23 MR. HAVER: So it would be an
24 innovative program, much like what Mr. Morgan
25 was suggesting, with allocating costs for the

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1 stormwater runoff being borne by the City.

2 MR. MIERZWA: I don't know if I'd
3 call it innovative because ratepayers' costs
4 are going to go up.

5 MR. HAVER: So, sir, is there a
6 difference between a ratepayer base and a City
7 operating budget base?

8 MR. BALLENGER: Objection. I think
9 we're way outside of the scope.

10 HEARING OFFICER CHESTNUT: I don't
11 see how he can answer that. That's not why
12 he's here as a witness. It's not his
13 testimony.

14 That's your testimony. It's not his.

15 MR. HAVER: My question remains.
16 Sir, is there a difference between the water
17 rate base of consumers and the City operating
18 budget's tax base?

19 HEARING OFFICER CHESTNUT: I'm going
20 to disallow that. I don't see how he can
21 possibly answer that. And his answer would
22 have no value if he did. He doesn't know what
23 the City's operating budget tax base is.

24 MR. HAVER: Is that true, sir, you
25 are unaware of tax rates?

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1 MR. MIERZWA: Yes, I'm unaware of the
2 City's tax rates.

3 MR. HAVER: And you are unaware of
4 the difference between operating budgets for
5 cities and operating budgets of utilities?
6 You are unaware of those?

7 MR. BALLENGER: The objection here
8 has to do with the relevance of that to his
9 testimony, and it's simply not relevant. It's
10 beyond the scope of what he's testified to.

11 HEARING OFFICER CHESTNUT: He's
12 testified to the cost of service study here,
13 And if you have a question relating to that,
14 fine.

15 MR. HAVER: This does relate directly
16 to that.

17 HEARING OFFICER CHESTNUT: It
18 doesn't.

19 MR. BALLENGER: I think he answered
20 your question that there is no class for the
21 General Fund within the cost of service study.
22 I believe that was clear.

23 MR. HAVER: That was not his
24 testimony, but okay, if that's his testimony,
25 let him say it.

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1 HEARING OFFICER CHESTNUT: Well, he
2 did say it. But if you want to say it again,
3 Mr. Mierzwa, go ahead.

4 MR. MIERZWA: There is no class --
5 the City is not one of the classes in the cost
6 of service study.

7 MR. HAVER: And why is that, sir?
8 Why did you not consider the City's general
9 operating budget? You say under previous
10 testimony -- and I could refer you to line --
11 page 15, lines 20 to 24 -- that the public
12 fire protection services are -- those costs
13 are borne by the City of Philadelphia, by that
14 class.

15 Have I misunderstood your testimony?

16 MR. MIERZWA: No, you have not.

17 MR. HAVER: So there are -- in other
18 costs, the City is considered a class; is that
19 correct?

20 MR. MIERZWA: There's a difference
21 here. We are talking about water that isn't
22 used. It's lost.

23 MR. HAVER: I'm not asking you about
24 that right now, sir. I'm just asking, based
25 on your prior testimony, in your filed

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1 testimony, you have said that the general
2 operating budget of the City bears the cost of
3 public fire protection and therefore is a
4 class of customer of the Philadelphia Water
5 Department; is that correct?

6 MR. MIERZWA: It's my understanding,
7 yes.

8 MR. HAVER: So then the Philadelphia
9 City's general operating budget is a class of
10 customer for the Water Department; is that
11 correct?

12 MR. MIERZWA: It's a fire class.
13 It's not a retail class.

14 MR. HAVER: Didn't describe what kind
15 of class it was; just wanted to make clear
16 that under your testimony, it is a class.

17 MR. MIERZWA: There is the fire
18 class, yes.

19 MR. HAVER: Yes, sir.

20 So under your testimony, it may be a
21 bad idea, you may not agree with it, but it
22 would be possible to bill the City of
23 Philadelphia as the owner of the Philadelphia
24 Water Department as a class for lost water.
25 Is that true?

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1 MR. BALLENGER: Are you suggesting
2 that all of the lost water be billed to the
3 fire department? Is that -- is that what
4 you're getting at, Mr. Haver? Because I don't
5 understand the premise of the question
6 otherwise.

7 HEARING OFFICER CHESTNUT: I thought
8 it was that the lost water be billed to the
9 City as a separate customer class, which does
10 not exist.

11 MR. HAVER: That's correct,
12 Your Honor.

13 No, it does -- the City -- we've just
14 ascertained that the City general operating
15 budget is a class.

16 HEARING OFFICER CHESTNUT: No. Only
17 for fire protection service.

18 MR. HAVER: That's not what the
19 witness has said.

20 HEARING OFFICER CHESTNUT: That's
21 exactly what the witness said. Isn't that
22 what the case is, Mr. Mierzwa?

23 MR. MIERZWA: Yes, it is, and that's
24 what I did say.

25 HEARING OFFICER CHESTNUT: Yeah.

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1 MR. HAVER: So let me go back, then,
2 and again explore that.

3 Is it impossible for the City to have
4 other things that it pays for that are
5 services the Water Department supplies?

6 MR. MIERZWA: I don't know.

7 MR. HAVER: Okay. Are you familiar
8 with the City paying for some of the expenses
9 of the Water Department?

10 MR. MIERZWA: No, I'm not. I'm
11 not --

12 MR. HAVER: Okay.

13 MR. MIERZWA: I've not followed the
14 regulation requirements.

15 MR. HAVER: So just to wrap up so I
16 can move on, the City is a class, but you say
17 it's limited to fire. It cannot be used for
18 any other expenses.

19 HEARING OFFICER CHESTNUT: That's not
20 correct.

21 MR. BALLENGER: Misstates testimony.
22 I'm going to object to that characterization.

23 HEARING OFFICER CHESTNUT: Yeah.

24 You can't have an incorrect premise.
25 The City is not a customer class itself.

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1 MR. HAVER: Your Honor, Mr. Mierzwa,
2 who is the expert, just said it is.

3 HEARING OFFICER CHESTNUT: No, that
4 isn't what he said.

5 MR. HAVER: Okay, let's go back and
6 ask it again.

7 HEARING OFFICER CHESTNUT: No. No.
8 You've already asked this a million times, and
9 it's been answered. I'd suggest maybe you
10 move on and think about this.

11 MR. HAVER: I'm not willing to move
12 on until I make a clear record.

13 Mr. Mierzwa said that the fire
14 protection water was billed to the City's
15 general operating budget.

16 HEARING OFFICER CHESTNUT: That's not
17 what he said. He doesn't know that's the
18 source of those funds.

19 MR. BALLENGER: Objection --

20 MR. HAVER: Mr. Mierzwa.

21 HEARING OFFICER CHESTNUT: No, he
22 can't testify to that. He doesn't know the
23 source of the City's funds to pay that.

24 MR. HAVER: He doesn't -- the City
25 pays it but he doesn't know where it comes

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1 from, from the City? Is that your testimony?

2 HEARING OFFICER CHESTNUT: Exactly.

3 MR. HAVER: Is that your testimony?

4 Is that your testimony, Your Honor? You're
5 now testifying on his behalf?

6 HEARING OFFICER CHESTNUT: Isn't it
7 outside the scope of your testimony, the
8 source of the funds?

9 MR. HAVER: No, Your Honor. I'm
10 asking, are you testifying on his behalf that
11 he doesn't know where the money comes from for
12 the City's general operating budget?

13 HEARING OFFICER CHESTNUT: Of course,
14 I'm not.

15 MR. HAVER: Okay. So then let him
16 answer.

17 HEARING OFFICER CHESTNUT: Please,
18 Mr. --

19 MR. HAVER: Let him answer.

20 HEARING OFFICER CHESTNUT: No. Stop
21 trying to twist things. I'm not just going to
22 let you misstate things.

23 MR. HAVER: I'm asking him for
24 clarification, and you're interfering.

25 HEARING OFFICER CHESTNUT: But you're

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1 not. You're not.

2 MR. HAVER: You are testifying on his
3 behalf.

4 Again, I'm drawing from page 15,
5 lines 20 to 24 of his filed testimony.

6 HEARING OFFICER CHESTNUT: No. His
7 testimony --

8 MR. HAVER: I'll give Your Honor an
9 opportunity --

10 HEARING OFFICER CHESTNUT: It's --

11 MR. HAVER: I'll give Your Honor an
12 opportunity to actually read it.

13 HEARING OFFICER CHESTNUT: His
14 testimony will speak for itself.

15 If you have a question related to his
16 testimony, move on. Ask it. Move on.

17 MR. HAVER: I am. I am asking
18 specifically --

19 HEARING OFFICER CHESTNUT: This is
20 wasting everybody's time.

21 MR. HAVER: Well, it's certainly not
22 wasting my time, and I certainly don't think
23 it's wasting consumers time who are facing a
24 20% rate increase, which I know Your Honor
25 isn't going to have to pay for. I understand

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1 that.

2 But I think those of us who are going
3 to have to struggle to find money to pay that
4 are very concerned about these issues, so I
5 don't think it's a waste of time.

6 Again, your testimony, sir, page 15,
7 lines 20 to 24.

8 MR. MIERZWA: The question?

9 MR. HAVER: Does the City pay for the
10 water that's used in the public fire
11 protection services?

12 MR. MIERZWA: That is my
13 understanding, but where the money comes from,
14 how the City gets the money, I do not know.

15 MR. HAVER: So you're unaware of
16 where a municipality gets its money?

17 MR. MIERZWA: I don't know what funds
18 the City has set up.

19 MR. HAVER: Okay.

20 MR. MIERZWA: And it's not part of a
21 cost allocation rate design study. You're
22 only looking at -- the revenues are coming in,
23 and that's -- for the cost study, that's all
24 that matters.

25 MR. HAVER: But it's coming in from

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1 the City, right?

2 MR. MIERZWA: Somewhere from the City
3 is my understanding.

4 MR. HAVER: Yes. And would -- why,
5 then, are you saying that the City is not a
6 class of customers? Not a member of a class?

7 MR. MIERZWA: The class in the study
8 is called public fire protection.

9 MR. HAVER: Okay.

10 MR. MIERZWA: And it's paid for by
11 the City. Whether that makes them a class or
12 not, I don't know. I don't think it matters.

13 MR. HAVER: Fair enough. But just
14 say that and then I can move on. You're not
15 sure if it's a class or not.

16 MR. BALLENGER: That's not what he
17 said. Public fire protection is a class.
18 That is a definitive response.

19 MR. HAVER: Sir, again, you are not
20 to be testifying.

21 Again, your bias is clear. But you
22 are not allowed --

23 MR. BALLENGER: I'm hoping that
24 you're near the end.

25 MR. HAVER: I'm sure you are, but I

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1 am not. I have many questions left to ask.

2 HEARING OFFICER CHESTNUT: Then why
3 don't you ask them?

4 MR. HAVER: I am.

5 HEARING OFFICER CHESTNUT: No. Look,
6 this is ridiculous, because it's been asked,
7 it's been answered, it's been asked, it's been
8 answered. He's tried to give you an answer
9 even though it's outside the scope of his
10 testimony. He's done -- he's been a very
11 goodwill witness here in terms of trying to
12 respond to you, but I don't think you're
13 listening.

14 I don't see how many more times we
15 have to go over this. The record is very
16 clear in terms of the scope of his testimony.

17 MR. HAVER: Are you ruling me that I
18 have to move on?

19 HEARING OFFICER CHESTNUT: I'm
20 telling you to ask a question. There's no
21 outstanding question at this point.

22 MR. HAVER: Okay. Again, I'm asking
23 you about lost water. If the City of
24 Philadelphia pays for some water usage, would
25 it be possible, in your opinion, for the City

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1 to pay for lost water?

2 MR. MIERZWA: I'm sorry, if the City
3 does what?

4 MR. HAVER: If the City pays for the
5 water used in the public fire protection
6 service, would it be possible for the City to
7 pay for other water, for example, the lost
8 water?

9 MR. BALLENGER: If you have any
10 opinion on this whatsoever, Mr. Mierzwa --

11 HEARING OFFICER CHESTNUT: Seriously.

12 MR. BALLENGER: -- please share it,
13 but this is beyond the scope. It's not
14 relevant.

15 MR. MIERZWA: I'm not aware of
16 anywhere that the costs associated with lost
17 water are recovered from the entity that pays
18 for public fire protection service. You could
19 certainly set up the cost of service study to
20 recover lost water -- the costs associated
21 with lost water however you want.

22 MR. HAVER: Thank you, sir.

23 I want to draw you to your testimony,
24 page 20, line 23 through 25.

25 MR. MIERZWA: I have it.

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1 MR. HAVER: Thank you.

2 You say one of the principles of a
3 sound rate design is gradualism; is that
4 correct?

5 MR. MIERZWA: That's correct.

6 MR. HAVER: What size rate increase
7 would you consider gradual?

8 MR. MIERZWA: As I said here,
9 anything that's -- generally it's -- generally
10 through -- with cost allocation of rate
11 designs, anything that's one point -- no
12 greater than 1.5 to 2.0 times the system
13 average increase.

14 MR. HAVER: Yes, sir. I'm not asking
15 you among the different classes. I'm asking
16 you only specifically about what would be a
17 gradual increase for a residential water
18 consumer.

19 MR. MIERZWA: I just said,
20 anything -- you just said, it is about -- you
21 just mentioned residential class. So anything
22 that was 1.5 to 2.5 -- or less -- between --
23 no greater than 1.5 to 2.0 times the system
24 average increase would be considered gradual.

25 MR. HAVER: So under your principle

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1 of gradualism, it doesn't matter how large the
2 rate increase is; it only matters the ratio of
3 which class pays for what parts of it; is that
4 correct?

5 MR. MIERZWA: This is an industry, in
6 essence, standard. Obviously, if you are
7 proposing a 50% increase, to promote
8 gradualism, you wouldn't go with a two times
9 the system average increase, you would go
10 closer to 1.5. If you're proposing a 10%
11 increase, you would go probably -- it would be
12 okay -- consistent with gradualism to go two
13 times the system average increase rather than
14 the 1.5.

15 There's no industry standard on this
16 subject.

17 MR. HAVER: And again, I'm asking for
18 your expert opinion. Is there any definition
19 of gradualism in the rate increase for
20 consumers, not between the classes, but the
21 rate increase for consumers?

22 MR. MIERZWA: I'm not aware of one
23 and I don't have one myself.

24 MR. HAVER: Thank you.

25 Am I correct, sir, that the proposal

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1 is for a 21% rate, for approximately 21% rate
2 increase?

3 You can say "subject to check."

4 That's fine.

5 MR. MIERZWA: Subject to check, it's
6 around 20%.

7 MR. HAVER: I don't need to take your
8 time on such things. Subject to check, that
9 seems right. And if I've got it wrong, and
10 your counsel who is supporting a large rate
11 increase wants to correct me, he's more than
12 welcome to do so.

13 Again, you write as principles of
14 sound revenue allocation, you have different
15 points; is that correct?

16 MR. MIERZWA: You're talking about
17 the Bonbright points?

18 MR. HAVER: Yes.

19 MR. MIERZWA: Yes.

20 MR. HAVER: And you explained that to
21 me, that that was not your definition, that
22 was a quote from somebody else that you
23 included in your testimony; is that correct?

24 MR. MIERZWA: Yeah, it's from
25 Professor Bonbright, who -- James Bonbright,

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1 who is often quoted as an expert on cost of --
2 or on rate design. He's an authoritative
3 expert, often quoted.

4 MR. HAVER: Often quoted, yes, sir.

5 In those statements, principles of
6 sound revenue allocation, is there a -- which
7 you quoted from the professor, is there a line
8 for affordability?

9 MR. MIERZWA: There's no mention of
10 affordability in those.

11 MR. HAVER: Why is that, sir?

12 MR. MIERZWA: I don't know. You'll
13 have to ask -- well, we'll never know because
14 he is deceased.

15 MR. HAVER: I see. I'm sorry to hear
16 that.

17 You personally, sir, do you agree
18 that affordability should be one of the
19 principles of a sound revenue allocation?

20 MR. MIERZWA: Yes -- yes, and you'd
21 usually do that after you set the rates and
22 you develop programs to help people who are --
23 who need assistance.

24 MR. HAVER: So I'm a little confused.
25 Your testimony is you worry about

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1 affordability after the rate increase; is that
2 correct?

3 MR. MIERZWA: That's generally how
4 it's handled.

5 MR. HAVER: Right.

6 MR. MIERZWA: And you adjust the
7 rates if people need assistance, and
8 Mr. Colton is the expert on that subject.

9 MR. HAVER: Yes, sir. Would it make
10 sense to you to try and limit the size of the
11 rate increase as a way of making the rates
12 more affordable?

13 MR. MIERZWA: That's one approach,
14 but generally utilities are authorized to
15 recover the cost of providing service.

16 MR. HAVER: So you don't stress that
17 in your testimony; you don't stress saving
18 money, cutting costs, finding ways to lower
19 the needed revenues?

20 MR. MIERZWA: No, that's a revenue
21 requirement issue that's addressed by
22 Ms. Rogers and Mr. Morgan.

23 MR. HAVER: Right.

24 But again, sir, you don't address
25 that in your testimony; is that correct?

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1 MR. MIERZWA: No, because I address
2 cost allocation and rate design of the
3 relevant requirement.

4 MR. HAVER: And so your testimony is,
5 if I've understood it correctly, what do we do
6 after the rates go up; is that correct?

7 MR. MIERZWA: No, I determine how --
8 once the revenue requirement -- well, I
9 determine, once the revenue requirement is
10 established, how that revenue requirement will
11 be recovered.

12 And you can put in different revenue
13 requirement proposals for people who are --
14 need assistance.

15 MR. HAVER: Okay. I have a number of
16 additional questions, but understanding what
17 you just said, and I've gotten it correctly,
18 it seems to be a waste of your time. You
19 don't deal with any before-the-rate-increase
20 questions; your testimony is limited to how do
21 we allocate costs after the rates are set.

22 Have I understood you correctly?

23 MR. MIERZWA: That's correct.

24 MR. HAVER: All right. Well, then I
25 don't want to waste your time. I do

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1 appreciate whatever courtesies you have given
2 me. I am not satisfied at all with your
3 answers regarding billing the Water
4 Department -- billing the City of
5 Philadelphia, the owner of the Water
6 Department, for the Water Department's failure
7 to meet industry standards on lost water, and
8 I also am very skeptical, sir, that a man with
9 your background doesn't know where the City
10 gets its revenue base from.

11 MR. MIERZWA: According to that, we
12 don't do -- there are not a lot of cities with
13 their own water department.

14 MR. HAVER: Well, then let me ask you
15 one final question. In a private
16 profit-making water department, does the
17 regulatory body look at lost water as an issue
18 in setting rates?

19 MR. MIERZWA: Sometimes.

20 MR. HAVER: Thank you. I have no
21 more questions for Mr. Mierzwa.

22 HEARING OFFICER CHESTNUT:

23 Mr. Dasent, did you have any questions?

24 MR. HAVER: He doesn't know he is on
25 mute, Your Honor.

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1 MR. BALLENGER: Andre, you're on
2 mute.

3 MR. DASENT: Thank you.

4 CROSS-EXAMINATION BY MR. DASENT

5 MR. DASENT: First of all, good
6 afternoon, Mr. Mierzwa. It's good to see you
7 again.

8 You mentioned on cross-examination
9 water losses. On a pressurized system, will
10 the water utility always have some losses? I
11 think that's your testimony.

12 MR. MIERZWA: Yes, I've never -- like
13 I said, it's generally in the neighborhood of
14 20%, my experience, although I've not done a
15 formal study, that 20% is common.

16 MR. DASENT: Okay. And I take it you
17 are aware that PWD is an older system? You
18 even mentioned that before. And the average
19 age of our facilities is probably older than a
20 lot of other urban utilities. Isn't that
21 true?

22 MR. MIERZWA: That would not -- I
23 don't know exactly the age, but that would not
24 surprise me, and that's -- I would think
25 contributes to your higher -- slightly higher

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1 loss percentage.

2 MR. DASENT: Okay.

3 MR. HAVER: I'd object to Mr. Mierzwa
4 testifying on areas outside of his testimony
5 and outside of his areas of expertise.

6 HEARING OFFICER CHESTNUT: You
7 brought it up on cross.

8 MR. DASENT: Are you aware,
9 Mr. Mierzwa, of the department's efforts to
10 minimize water losses?

11 MR. MIERZWA: I have not investigated
12 as part of this cost -- as part of the cost
13 allocation and rate design in this proceeding.

14 MR. DASENT: And you mentioned a
15 calculation of water losses. Was that based
16 upon the limited information you had available
17 to you? Because I don't remember that being
18 explored in your testimony.

19 MR. MIERZWA: Yes. As one of the
20 data requests we asked about nonrevenue water.

21 MR. DASENT: Okay. And finally, in
22 your experience, are water losses generally
23 recovered from all customers in a given
24 utility?

25 MR. MIERZWA: Yes, they are.

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1 MR. DASENT: Okay. Thank you,
2 Mr. Mierzwa. That's all I have.

3 HEARING OFFICER CHESTNUT: All right.
4 Did you want a short break before we decide on
5 redirect?

6 MR. BALLENGER: I would appreciate
7 just, you know, five minutes, and we can come
8 back and maybe adjourn for lunch or something.

9 HEARING OFFICER CHESTNUT: Well, I'd
10 rather we push on with Mr. Colton if we can.
11 He's the only witness remaining.

12 MR. BALLENGER: Okay. That's fine.
13 I don't need that long of a break. Let me
14 just caucus with Mr. Mierzwa and come back.

15 HEARING OFFICER CHESTNUT: Okay.
16 Because I need a break. So why don't we come
17 back at 1:00 o'clock?

18 MR. BALLENGER: Fine. Yes.
19 (Recess taken, 12:51 p.m. to
20 12:59 p.m. EDT)

21 HEARING OFFICER CHESTNUT:
22 Mr. Ballenger, did you want to have any
23 redirect?

24 MR. BALLENGER: I actually am pleased
25 to state that I don't think we'll be engaging

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1 in redirect, and I want to thank Mr. Mierzwa
2 for being with us and for answering the
3 questions posed to him.

4 HEARING OFFICER CHESTNUT: Okay.
5 Great. Thank you very much, Mr. Mierzwa.

6 You're welcome to stay, but you
7 certainly don't have to.

8 That takes us to your next witness,
9 then?

10 MR. BALLENGER: Unfortunately, we
11 can't hear you, Joline.

12 I'm actually going to ask Joline
13 Price to take the lead here, if we can get her
14 audio working.

15 MS. PRICE: Can you hear me now?

16 MR. BALLENGER: Yes.

17 MS. PRICE: Yes. As noted, I'm --
18 we're offering Roger Colton up for
19 cross-examination. And we'll just, again,
20 note his prefiled testimony and assume that it
21 will be accepted. So...

22 MR. BALLENGER: We can't hear you,
23 Your Honor. You're on mute.

24 HEARING OFFICER CHESTNUT: Sorry
25 about that.

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1 Mr. Colton, do you want to state by
2 whom you are employed and in what capacity?

3 MR. COLTON: My name is Roger,
4 R-O-G-E-R, D. Colton, C-O-L-T-O-N.

5 I own the firm Fisher Sheehan &
6 Colton, public finance and general economics,
7 and I am appearing as a witness for the Public
8 Advocate.

9 HEARING OFFICER CHESTNUT: Mr. --
10 Ms. Price?

11 MS. PRICE: Well, I believe it -- we
12 would offer to --

13 HEARING OFFICER CHESTNUT: That's
14 right, you don't have to offer him.

15 MS. PRICE: Yeah, I --

16 HEARING OFFICER CHESTNUT: Yeah.

17 Mr. Dasent? I'm sorry.

18 MR. DASENT: We'll defer to
19 Mr. Haver. I have limited cross, but I'd like
20 to follow, if I might, Your Honor.

21 HEARING OFFICER CHESTNUT: Sure.

22 Mr. Haver, go ahead.

23 ROGER D. COLTON

24 * * *

25 * * *

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1 CROSS-EXAMINATION BY MR. HAVER

2 MR. HAVER: Mr. Colton, I would like
3 to start by thanking you with my full heart
4 for all of your efforts on behalf of people
5 like me and other poor and working people in
6 the city of Philadelphia and across the
7 nation. I can think of no person who has done
8 more to help people in my situation, my
9 family's situation, and the people that I love
10 than you have, sir.

11 So for whatever it's worth, before I
12 begin my testimony, I hope you hear that. I
13 cannot think of a better person who has done
14 more than you have, sir.

15 MR. COLTON: Thank you.

16 MR. HAVER: That being said, I would
17 say you're welcome but, to be honest, I know
18 people who, without your help, would have had
19 their utilities shut off, would have had to
20 move out of their homes, would tremendously
21 struggle, and I would be amiss if I did not
22 thank you directly for all your efforts.

23 I recognize a man with your education
24 and your skill set could have easily done
25 something else. He could have chosen to work

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1 for utilities to try and raise rates, could
2 have worked for a company like Black & Veatch
3 or somebody else in an attempt to raise rates,
4 and you have done the exact opposite.

5 So again, I apologize for having to
6 ask you questions. I believe you have been
7 put in a very unfortunate position by your
8 employer, but I don't want to go without
9 saying how much I appreciate all your efforts.
10 And I would say for the last 40 years, but it
11 may be more than that.

12 So to begin with, sir, if I may --
13 and how do you like to be addressed?

14 MR. COLTON: There's probably a
15 protocol. I don't know what the protocol is.
16 Is it Roger? Is it Mr. Colton? It is
17 Mister and not Doctor. So let me acknowledge
18 that.

19 MR. HAVER: So I'll just call you
20 Mr. Colton.

21 Mr. Colton, in your testimony on
22 page 11, lines 6 through 9, you describe the
23 size of the rate increase as 21.1%, the
24 proposed rate increase as 21.1%. Is that
25 accurate?

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1 MR. COLTON: I'll accept that. I
2 don't have that page and line number. I can
3 get that page and line number in front of me.

4 MR. HAVER: Sir, to make it easier,
5 if you just say subject to check.

6 MR. COLTON: No, actually, page 11,
7 line 10, 21.1%, yes.

8 MR. HAVER: Yes. But for all the
9 references to your testimony, if you just want
10 to say subject to check, I know Mr. Ballenger
11 really enjoys correcting me when he has an
12 opportunity, so feel free -- I'm sure he will
13 take advantage of that if I make a mistake in
14 reading your testimony.

15 So we're -- the public is facing a
16 proposed 21.1% rate increase. And then, sir,
17 you write on page 14, lines 19 through 20, and
18 I'm quoting you: It's clear that Philadelphia
19 Water Department's requested rate hikes is not
20 only driving unaffordability deeper in
21 Philadelphia; it's spreading unaffordability
22 more broadly throughout the city as well.

23 MR. COLTON: I see that.

24 MR. HAVER: Okay. Sir, does
25 unaffordability under this definition refer to

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1 people above 150% of the poverty level who
2 would not qualify for any of the low-income
3 plans?

4 MR. COLTON: "Unaffordability," the
5 way I use the term, is measured in terms of
6 bill burdens. One puts the bill in the
7 numerator, the income in the denominator, and
8 you obtain what's called a bill burden. The
9 bill is a percentage of income.

10 So there is not -- using that
11 measure, there is not an income ceiling on
12 what could be considered unaffordable or
13 affordable.

14 MR. HAVER: Thank you.

15 So it's -- if I understand your
16 testimony correctly, there are some people who
17 make too much to be enrolled in any of the
18 low-income programs who would be burdened with
19 an unaffordable bill if the 21.1% rate
20 increase went through.

21 Is that your testimony?

22 MR. COLTON: Can you repeat that
23 question?

24 MR. HAVER: Okay. I'll try and make
25 it easier. Some people who are not eligible

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1 for the low-income plans will be burdened with
2 an unaffordable bill if the 21% -- 21.1% rate
3 increase is approved.

4 MR. COLTON: I would only disagree
5 with your question to the extent that the
6 question implies that they would not be
7 burdened without the rate increase but will be
8 burdened with the rate increase.

9 MR. HAVER: Would you --

10 MR. COLTON: With that
11 acknowledgment -- with that acknowledgment, I
12 would agree that whenever you set an income
13 eligibility ceiling there will be some person
14 or persons who will be just over that income
15 eligibility ceiling that could benefit from
16 providing benefits but who would not be
17 eligible for those benefits.

18 And it doesn't make any difference
19 whether you've set the line at 150% or 180% or
20 200%. Wherever you set the line, somebody
21 will be just over the line.

22 MR. HAVER: Thank you.

23 And you go on to write -- and again,
24 I'm going to read and you can say subject to
25 check: Even when people pay their water

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1 bills, the unaffordability of service may
2 force consumers to make extraordinary
3 tradeoffs. For example, the 2021 Water
4 Affordability Plan, I -- meaning Mr. Colton --
5 recently authored for Toledo, Ohio, found that
6 customers who paid their bills on time often
7 resorted to measures such as borrowing money,
8 reducing spending on their life essentials or
9 forgoing necessary home or auto repairs in
10 order to have sufficient money to make those
11 payments.

12 Do you recall --

13 HEARING OFFICER CHESTNUT: Excuse me,
14 what's that reference? What page?

15 MR. HAVER: I believe it's further
16 down on page 15. I do not have those numbers.
17 But if Mr. Colton recalls writing that, or
18 agrees with that, subject to check, that's
19 sufficient for me.

20 MR. COLTON: Subject to check, I
21 would agree that I -- subject to check, I
22 would agree that I wrote that.

23 MR. HAVER: Thank you.

24 Would the burden disappear if the
25 rate increase went up only \$92 million over

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1 two years?

2 MR. COLTON: The burden being --

3 MR. HAVER: The burden of
4 unaffordability.

5 MR. COLTON: So if your question is
6 if this rate increase was denied in whole or
7 in part, would customers have affordable
8 bills?

9 MR. HAVER: Well, I'm asking you
10 specifically if the bills only went up by
11 92.557 million, would the bills be affordable
12 for low-income and working people?

13 MR. COLTON: The experience in
14 Philadelphia is that there are people facing
15 unaffordable bills prior to this rate case,
16 and there will be people -- and when I say
17 people, I mean households or customers, not
18 population -- there will be people facing
19 unaffordable bills after the rate increase,
20 should it be approved.

21 MR. HAVER: So again, understanding
22 what I said was heartfelt, and I appreciate
23 that I'm putting you in a difficult position,
24 but are you aware that Community Legal
25 Services is recommending a \$92,557,000 rate

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1 increase over two years?

2 MR. BALLENGER: I'll go ahead and
3 object there. Community Legal Services has
4 not made any recommendations. Our witnesses
5 have filed testimony.

6 MR. HAVER: I'll rephrase.

7 Mr. Colton, are you aware that the
8 witnesses hired by Mr. Ballenger and Community
9 Legal Services are recommending a rate
10 increase of \$92,557,000 over two years?

11 MR. COLTON: I'm not aware one way or
12 the other, no.

13 MR. HAVER: Okay. Subject to check,
14 would you believe me that that is what the
15 testimony says?

16 MR. COLTON: The testimony says what
17 it says. It doesn't make any difference what
18 I believe or not. The testimony speaks for
19 itself.

20 MR. HAVER: I certainly agree with
21 that, but I'm -- I assume because of your
22 answer you have not had a chance to read
23 Mr. Morgan and Ms. Rogers' testimony. So I'm
24 saying that's in their testimony, and I'm
25 saying, subject to check, would you assume --

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1 would you agree that it could be there and it
2 is there, and I'm accurately reporting it?

3 MS. PRICE: Objection, asked and
4 answered.

5 HEARING OFFICER CHESTNUT: Yeah, you
6 asked if he was aware of the amount of the
7 Public Advocate's recommendation, and I
8 thought he said he wasn't aware.

9 MR. HAVER: And now I am making him
10 aware of it and asking if he accepts what I am
11 saying as being accurate.

12 MR. COLTON: I have no basis to
13 accept or deny what you've said. I have
14 looked at the Public Advocate's testimony, but
15 I have not studied the other witnesses'.

16 MR. HAVER: Again, I appreciate all
17 of the work you have done on my behalf and on
18 other people's behalf and do not expect you to
19 know everything. I think that would be --
20 someone who has done so much, an unrealistic
21 expectation.

22 But I do want to ask you, do you
23 believe increasing rates by \$92.557 million
24 would add to the burden of ratepayers?

25 MS. PRICE: Objection, asked and

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1 answered.

2 HEARING OFFICER CHESTNUT: I'll let
3 him answer it, but I'm not sure -- I don't --
4 is that something you could answer,
5 Mr. Colton?

6 MR. COLTON: I think the answer to
7 that question is that there's -- there is a
8 phrase for it. An increasing rate will --
9 your question is will increasing rates by the
10 dollar amount you said add to the burden.

11 Clearly, yes, the answer to that
12 question is yes, increasing the rates by half
13 of that amount would increase the burden.
14 Increasing the rates at all would, by
15 definition, increase the burden.

16 MR. HAVER: I --

17 MR. COLTON: So it is a question that
18 answers itself.

19 MR. HAVER: Thank you, sir.

20 And as a general principle, you are
21 opposed to increasing the burden; is that
22 correct?

23 MR. COLTON: No. No, I can't say
24 that as a general -- as a general principle.
25 Absolutely not.

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1 MR. HAVER: I'm a little confused. I
2 thought you said earlier that you thought
3 people were already overburdened. Did I
4 misunderstand?

5 MR. COLTON: I -- what I have said is
6 that there are people who have unaffordable
7 bills. There are circumstances, however,
8 where the rates need to go up in order to
9 cover costs.

10 And to the extent that there are
11 people who have unaffordable bills, you have
12 programs and initiatives, such as the ones
13 that I have recommended, that address that.

14 But you can't -- but I -- strike the
15 word "you." But I would never say, as a
16 general principle, that utility rates should
17 never go up because, in approving an increase,
18 that would increase the burden on customers.
19 That's clearly wrong.

20 MR. HAVER: Is it -- in your opinion,
21 should it be the last thing that a utility
22 does, increase rates?

23 MR. COLTON: Oh, I would need -- the
24 last thing among what? That question
25 doesn't --

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1 MR. HAVER: Cost cutting, finding
2 lower costs of capital, finding innovative
3 ways to do purchasing.

4 MS. PRICE: Objection. I believe
5 this is outside the scope of Mr. Colton's
6 testimony.

7 HEARING OFFICER CHESTNUT: Yeah, it
8 is, but I think he's a nice person who can
9 handle this.

10 MR. COLTON: I would say that a
11 utility has an ongoing obligation to operate
12 in an efficient and effective manner, and that
13 there should be ongoing processes to
14 determine whether there are ways to increase
15 efficiencies and to reduce costs.

16 That obligation is beyond the -- my
17 testimony, which addresses affordability.
18 That obligation would exist whether or not
19 there was an unaffordability problem to
20 address. So I believe that answers your
21 question.

22 MR. HAVER: Again, from somebody else
23 I would continue to go down the questions, but
24 I'm going to just agree -- I'm just going to
25 accept what you say based on your history.

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1 I want to call your attention to
2 page 24, lines 6 through 12.

3 MR. COLTON: I'm there.

4 MR. HAVER: So you write: TAP
5 participants reported issuing 15,177 TAP
6 bills. In contrast, an estimated 170,000
7 customers with income at or below 150% of the
8 federal poverty level. In short, while TAP
9 provides important protections to low-income
10 consumers, TAP serves only 9% of the customers
11 with income below 150% of poverty.

12 Do you --

13 MR. COLTON: I see that. I see that.

14 MR. HAVER: Do you believe that the
15 Philadelphia Water Department is aware that
16 there is -- 9% of the eligible TAP customers
17 are enrolled?

18 MS. PRICE: Objection. Mr. Colton
19 can't speak to what the Water Department is
20 aware of.

21 MR. HAVER: I didn't ask him that. I
22 asked him if he believes they were aware of
23 it.

24 HEARING OFFICER CHESTNUT: Well, he
25 can't say whether they're aware of it or not.

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1 MR. HAVER: I didn't ask him if they
2 were aware --

3 HEARING OFFICER CHESTNUT: No, you
4 asked him if he thought they were aware of it.

5 MR. HAVER: Yes, I'm asking him --

6 HEARING OFFICER CHESTNUT: And that's
7 not something he can answer.

8 MR. HAVER: He can't answer what he's
9 aware of?

10 HEARING OFFICER CHESTNUT: It's not
11 what he's aware of. You're asking him is he
12 aware of the Water Department being aware of
13 it.

14 MR. HAVER: Right.

15 HEARING OFFICER CHESTNUT: And he
16 doesn't know what they are aware of or not
17 aware of.

18 MR. HAVER: Let him say it.

19 HEARING OFFICER CHESTNUT: Well, do
20 you want to say it, Mr. Colton, so we can move
21 on?

22 MR. COLTON: I have --

23 MR. HAVER: And again, my question is
24 do you believe that the Philadelphia Water
25 Department is aware of the facts that you've

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1 submitted in your testimony?

2 MR. COLTON: I have no basis to
3 believe one way or another about what the
4 Philadelphia Water Department does or does not
5 know.

6 MR. HAVER: Okay. Do you have any
7 targets for how many people should be enrolled
8 in the TAP program?

9 MR. COLTON: Quantitative targets?

10 MR. HAVER: Forgive me, I did not
11 understand what you said.

12 MR. COLTON: What do you mean by
13 targets?

14 MR. HAVER: How many number of
15 households should be enrolled? What should
16 be -- what should be the attempt of the number
17 of households that should be enrolled?

18 MR. COLTON: I have not offered a
19 quantitative target, no.

20 MR. HAVER: Do you believe such
21 targets are helpful as benchmarks at finding
22 out how a utility is doing in enrolling people
23 in its low-income plans?

24 MR. COLTON: I am a firm believer in
25 measuring outcomes. There is a federal law

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1 called GPRA, the Government Performance and
2 Accountability -- GPRA.
3 Government Performance and Reporting Act,
4 perhaps.

5 And it establishes perform- -- it
6 establishes the principle of continuous
7 improvement through the adoption of
8 performance measurements, outcome performance
9 measurements.

10 You establish a goal, you measure the
11 extent to which you've achieved that goal, and
12 if you have not achieved it, you can then
13 inquire as to what changes might be beneficial
14 in order to help you better achievement.

15 So, yes, I believe in establishing
16 outcome measurements, performance outcome
17 measurements.

18 MR. HAVER: Thank you.

19 Under your just-now testimony, has
20 PWD fulfilled that obligation.

21 MR. COLTON: To my knowledge, PWD
22 does not have internal outcome measurement --
23 performance measurement goals, and it does not
24 have an internal process -- continuous
25 improvement process to determine what should

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1 occur if those goals were not met -- were not
2 achieved.

3 MR. HAVER: Thank you. And I think
4 that's the crux to the next question.

5 What happens when PWD fails to meet
6 those benchmarks?

7 MR. COLTON: That question is so
8 broad, I could -- I could spend the rest of
9 the afternoon talking about the answer to that
10 question.

11 MR. HAVER: Well, I'll --

12 MR. COLTON: So it needs to be a
13 little narrower.

14 MR. HAVER: I would certainly benefit
15 from your expertise, but I will do my best to
16 not waste your time. I recognize I'm already
17 wasting Mr. Ballenger and Ms. Chestnut's time,
18 but I don't want to waste yours.

19 So specifically, what consequence is
20 there to the Philadelphia Water Department if
21 it fails to set a benchmark for enrollment in
22 its low-income plans and achieving those
23 goals?

24 MR. COLTON: There are a couple of
25 elements to the question you just asked. The

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1 first question -- the first element is what
2 consequence is there if PWD fails to set a
3 benchmark.

4 And the answer to that is setting the
5 benchmark of the outcome performance isn't a
6 goal unto itself, isn't an action unto itself.

7 The significance of setting an
8 outcome performance benchmark is that that
9 outcome performance benchmark is then used in
10 a continuous improvement process by which the
11 desired performance is measured against the
12 actual performance, and if the actual
13 performance isn't at the benchmark, the
14 continuous improvement process would seek to
15 decide what, if anything, could and should be
16 modified in order to more fully meet that
17 performance benchmark.

18 MR. HAVER: Thank you.

19 In your long career, have you ever
20 worked for -- to develop a low-income program
21 for a stockholder-owned utility?

22 MR. COLTON: Sure. Yes. The answer
23 is yes.

24 MR. HAVER: Thank you.

25 If a stockholder-owned utility, which

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1 was regulated by public service or Public
2 Utility Commission, failed to meet its
3 benchmarks, is the commission likely to take
4 some action against the utility?

5 And by action, I mean block a rate
6 increase or have it take money out of its
7 dividends or out of its retained earnings to
8 compensate for its failure to meet its
9 benchmarks.

10 MR. COLTON: That's an unanswerable
11 question. It is -- the commission is a
12 commission. What any given commission would
13 do in any given circumstance would be subject
14 to so many factors that that -- I couldn't
15 answer that question in the abstract.

16 MR. HAVER: So let me try and make it
17 a little more in reality, then. Have you ever
18 seen a service commission or a utility
19 commission penalize the owner of the utility
20 for not meeting a benchmark?

21 MR. COLTON: Penalize the utility of
22 the question -- or that issue was presented in
23 a water case, actually, in Connecticut, that I
24 was involved with in 2022/2023. So the case
25 was filed in 2022, was decided in 2023, where

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1 the water company had been -- had obligations
2 imposed upon it five years ago in 2022, so in
3 2017, when it was acquired by a larger
4 utility. The commission believed that the
5 water company, Aquarion of Connecticut, had
6 not abided by or fulfilled the conditions that
7 had been imposed as a precondition of the
8 merger, and had established a process of
9 penalties, yes. A process of penalties, a
10 penalty framework. So yes.

11 MR. HAVER: Just to be clear,
12 financial penalties, right? No one was put in
13 jail? No one was fired?

14 MR. COLTON: But you're closer than
15 you might imagine. It was penalties relating
16 to management compensation.

17 MR. HAVER: Okay. But -- so their
18 financial compensation -- the financial
19 penalties for management. Understood.

20 MR. COLTON: Actually, if --

21 MR. HAVER: You're welcome --

22 MR. COLTON: Let me extend it just
23 one moment.

24 MR. HAVER: Sure.

25 MR. COLTON: Remember that in a

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1 utility rate case, Aquarion could still pay
2 whatever management compensation it wanted.
3 In a utility rate case, the question would be
4 whether those costs were recoverable from
5 ratepayers.

6 MR. HAVER: Thank you for the
7 clarification. Once again, you're -- I
8 appreciate your wisdom.

9 I wanted to ask you about the
10 difference between a rate base for a utility
11 and the tax base for a municipality. Is that
12 something you would feel comfortable answering
13 and helping me understand?

14 MR. COLTON: I am perfectly willing
15 to hear the question, and if I don't
16 understand it or if I don't have the
17 expertise, I will tell you that.

18 MR. HAVER: Thank you. Is the tax
19 base of a municipality, city/county/state,
20 broader than the rate base of a utility, even
21 if they're in the same jurisdiction?

22 More concretely, if I may.

23 Is it true that a tax base includes
24 different types of taxes that can be collected
25 from people who visit the municipality, who do

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1 business in the municipality, who buy
2 amusements or go to sporting events in a
3 municipality, and that is beyond the rate base
4 for utility customers who live in the
5 municipality? Is that accurate?

6 MR. COLTON: On a very, very, very
7 abstract basis, I would agree with what you
8 just said.

9 MR. HAVER: Thank you.

10 I don't know if where you are it's a
11 nice day, but if it is, I'm going to try and
12 get you out for the afternoon.

13 So saying that, would you agree that
14 tax bases are a more progressive, meaning more
15 based on an ability to pay, than utility bills
16 are based on an ability to pay?

17 MR. COLTON: I don't think I could
18 say that as a general principle. But I would
19 not -- I not only think I couldn't say that,
20 but I would not say that as a general
21 principle. I think the answer to that is it
22 depends.

23 MR. HAVER: Are income taxes, for
24 example, based on income and utility rates,
25 not based on income? Is that a fair statement

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1 to make?

2 MR. COLTON: I would -- oh, no. This
3 gets way beyond my expertise. The extent to
4 which income taxes are based on income, I
5 think there would be a lot of people who would
6 argue both sides of that, and I am -- I don't
7 have the expertise to answer that as -- again,
8 as a general principle.

9 MR. HAVER: Again, I appreciate all
10 the time you've spent, so I'll move on. I
11 just will -- I don't know if you heard the
12 other testimony, but if you were someone other
13 than yourself, I would belabor the point until
14 the Hearing Examiner tells me I don't know
15 what I'm talking about, I don't understand,
16 and decided to rule me out of order.

17 But in deference to your experience,
18 I'm not going to do that. I want to move on
19 to the LIHWAP program. Are you familiar with
20 that program?

21 MR. COLTON: Yes. When you spelled
22 the acronym -- I will call it LIHWAP, which is
23 the federal water equivalent to LIHEAP, which
24 is the energy -- the federal energy program.

25 MR. HAVER: I will try and remember

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1 to call it LIHWAP.

2 Do you have an estimate of how many
3 families in Philadelphia were eligible for
4 LIHWAP?

5 MR. COLTON: Right off the top of my
6 head, no.

7 MR. HAVER: Could we go back to your
8 testimony on page 24, where you say there are
9 170,000 households -- I'm sorry, customers
10 with income at or below 150 level, poverty
11 level, under 50% of the poverty level? Could
12 we go back to that testimony and say that that
13 number would be a fair judgment of how many
14 people would be -- would be qualified under
15 LIHWAP?

16 MR. COLTON: No.

17 MR. HAVER: Okay. What was the
18 guidelines for LIHWAP?

19 MR. COLTON: LIHWAP -- my
20 understanding of LIHWAP is that it required
21 people to be in payment difficulty, and so it
22 would be a narrower population, and the
23 population at or below 150% of poverty.

24 MR. HAVER: So again, to be clear,
25 you don't have an estimate of how many

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1 Philadelphia households were eligible?

2 MR. COLTON: That's correct, I do
3 not -- to say that as a full sentence, I do
4 not have an estimate of the number of PDW --
5 PWD customers who would have been eligible for
6 LIHWAP.

7 MR. HAVER: Thank you.

8 Do you know how many Philadelphia
9 households qualified for and received the
10 LIHWAP grant?

11 MR. COLTON: No. The Public Advocate
12 asked a discovery question asking for that
13 number, but I don't remember off the top of my
14 head what the response was.

15 MR. BALLENGER: I believe that
16 information to be -- I'm aware of it as in
17 Ms. Crosby's prefiled testimony.

18 MR. COLTON: And my understanding is
19 that all of the discovery responses are in the
20 record. So whatever that number is, that
21 number is in the record.

22 MR. HAVER: Yes, sir.

23 On page 27, lines 1 through 5 of your
24 testimony, you go through the ZIP codes, the
25 ten ZIP codes with the highest percentage of

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1 customers that are income eligible for TAP.

2 MR. COLTON: I see that.

3 MR. HAVER: In your previous
4 testimony you've indicated that 9% of the
5 customers were eligible or receiving it. My
6 question, sir, is what would be the revenue
7 effect if PWD enrolled 65% of the eligible
8 households in TAP?

9 MR. COLTON: Well, there would be --
10 there would be at least four or five
11 revenue -- oh, the revenue impacts or the
12 revenue requirement impacts?

13 MR. HAVER: The revenue impacts.

14 MR. COLTON: There would be at least
15 the following revenue impacts.

16 Number one is there would be a
17 decrease in revenue that would be equal to the
18 amount of the TAP credit that is provided.
19 So -- or what I believe is called a contra
20 revenue.

21 Number two is there would be an
22 offsetting increase in revenue because people
23 who have a more affordable bill pay a higher
24 percentage of their bill.

25 Number three is there would be an

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1 offsetting increase in revenue because the
2 amount of the discount, what I would call the
3 TAP credit, is moved from being charged to TAP
4 customers, being charged to low-income
5 customers, and instead charged to everybody
6 else. And the collectability of those
7 billings to everybody else is higher than the
8 collectability to -- or collectability of
9 billings to people who would become TAP
10 participants.

11 And let me add a fourth. And as --
12 those three impacts are clear, and I
13 quantified the impact, those revenue impacts,
14 not of 65% but of the TAP, having the TAP
15 program.

16 Additional revenue impacts is
17 established that people who have more
18 affordable bills have less frequent service
19 disconnections for nonpayment. When you have
20 a service disconnection for nonpayment there
21 is a stream of lost revenue that the utility
22 experiences.

23 And finally, there are -- it's
24 established that people who have more
25 unaffordable bills are more frequently mobile,

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1 and so they would -- what I mean by that is
2 they would change residences. There would be
3 a final bill and there is a stream of lost
4 revenue associated with those final bills,
5 even if those final bills aren't associated
6 with a disconnection of service.

7 So to the extent that you can
8 increase the stability of housing by improving
9 affordability by having more people on TAP,
10 you have an increased stream of revenue due to
11 the decrease in lost revenue attributable to
12 final bills and shutoffs.

13 MR. HAVER: So I appreciate, again,
14 all of the nuances you've provided and the
15 education you've given, but I am not quite
16 sure I understand.

17 For every person that's enrolled,
18 every additional person that's enrolled in the
19 TAP program, is it revenue positive, revenue
20 neutral, or revenue negative to the Water
21 Department?

22 MR. COLTON: I don't think you can --
23 I don't think two things -- or I think two
24 things. Number one is you can't do it on a
25 customer-by-customer basis.

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1 Number two is that the five elements
2 that I just outlined -- these may be the same
3 things -- may be applicable to a population,
4 but certainly not on a customer-by-customer.
5 You can't say that if you add one customer to
6 TAP you're going to avoid a disconnection or
7 you're going to avoid a final bill and
8 therefore avoid the lost revenues. I think if
9 you say if you add 1,000 people to TAP, or if
10 you add 100 people to TAP there will be
11 revenue impacts, but you can't do it on a
12 customer-by-customer basis.

13 MR. HAVER: Well, let me correct my
14 question, then. If you added 1,000 customers
15 to the TAP program, would that be revenue
16 positive, revenue neutral, or revenue negative
17 to the Philadelphia Water Department?

18 MR. COLTON: What my testimony
19 establishes is that there would be a cost of
20 adding 1,000 people to TAP. I didn't use
21 1,000, but let's just work with your number.
22 There would be a cost to adding 1,000 people
23 to TAP, but the cost -- that cost would be
24 less than 1,000 times the amount of the
25 discount, because there are offsetting

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1 increases in revenue attributable to the
2 increased collectabilities that I've talked
3 about.

4 MR. HAVER: Thank you.

5 In my recollection, you are one of
6 the people who helped develop the TAP program.
7 Is that a correct recollection?

8 MR. COLTON: I was a consultant with
9 and for the Public Advocate in the process of
10 developing the TAP. So if that means that I
11 helped develop it, yes, but my role was I was
12 a consultant to the Public Advocate in that
13 process.

14 MR. HAVER: Yes. And so you're at
15 least familiar with the development of the
16 program?

17 MR. COLTON: I was at the time.

18 MR. HAVER: Yes. Thank you.

19 Under the program guidelines, is it
20 true that someone who is at 155% of poverty
21 pays a higher water bill to make sure that
22 people below 150% of poverty can use the TAP
23 program?

24 MR. COLTON: To the extent that those
25 customers pay the TAP Rider, yes. And to the

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1 extent that the TAP Rider is positive rather
2 than negative, the answer would be yes.

3 When I say the TAP Rider, the TAP-R
4 rider, which I think has been discussed.

5 MR. HAVER: Has -- to the best of
6 your knowledge, has the TAP Rider ever been
7 negative?

8 MS. PRICE: Objection.

9 MR. COLTON: To the best of my
10 knowledge --

11 MS. PRICE: -- (audio malfunction) --
12 to this proceeding.

13 HEARING OFFICER CHESTNUT: I
14 understand that the TAP proceeding is
15 separate, but if Mr. Colton can answer this,
16 that's fine.

17 MS. PRICE: Okay. To my knowledge,
18 the TAP Rider has never been negative, but I
19 say that with the acknowledgment that I
20 haven't looked at every TAP Rider in every TAP
21 Rider proceeding since they began, but to my
22 knowledge, the TAP Rider has never been
23 negative.

24 MR. HAVER: I want to make it clear
25 that my next line of questioning is not in

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1 opposition to having a low-income plan; it's
2 questioning who should pay for the low-income
3 plan.

4 So I'm -- I'm not sure I understand
5 the wisdom of burdening other ratepayers with
6 the cost of poverty. Is not poverty created
7 by governmental action and by the actions of
8 corporations?

9 MR. COLTON: Oh, I wouldn't agree
10 with that as a general proposition, no.

11 MR. HAVER: So who creates and is
12 responsible for the poverty levels in the city
13 of Philadelphia?

14 MR. COLTON: I -- that's an
15 unanswerable question. You have people --
16 well, I was going to say people like me, but
17 who have grown old and retired, but I haven't
18 quite retired yet -- who -- but people who
19 grow older and retire and live in poverty.
20 Who caused that poverty?

21 You have people who are disabled and
22 live with poverty incomes. Who caused that
23 poverty?

24 Yeah, I don't think your question is
25 answerable on a generic or general basis.

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1 MR. HAVER: Well, let me try and make
2 it more specific.

3 Did the ratepayers at 150 to 300% of
4 poverty cause the poverty levels in the city
5 of Philadelphia?

6 MR. COLTON: My question -- or my
7 response would be the same, that it's -- a
8 question like that isn't answerable on a
9 general or generic basis.

10 MR. HAVER: So if we don't know who
11 caused the poverty levels to be as extreme in
12 the city of Philadelphia, why do you recommend
13 forcing other ratepayers to bear the cost of
14 that poverty?

15 MS. PRICE: I don't believe that's
16 Mr. Colton's recommendation or that's within
17 the scope of Mr. Colton's testimony.

18 HEARING OFFICER CHESTNUT: Well, it
19 certainly isn't, but on the other hand, I
20 think Mr. Colton is capable of handling that
21 question. I think the premise of that
22 question is not correct, but Mr. Colton could
23 say that himself.

24 MR. COLTON: So the question, as I
25 understand it, is why should ratepayers bear

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1 the net costs -- and remember I'm talking
2 about the net costs -- of a program if they
3 are not the people who caused the need for
4 that cost.

5 And there again, that's a question
6 that I could provide a -- present a three-hour
7 seminar on, but let me summarize.

8 Number one is that by adopting a
9 low-income program, such as TAP or such as the
10 LICAP, the conservation programs that I
11 recommend in my testimony, Philadelphia Water
12 would be improving its effectiveness and
13 efficiency of operations.

14 And as I said early on, every utility
15 has an obligation to operate in an efficient
16 manner.

17 Number two is that everybody benefits
18 by stabilizing housing. And since everybody
19 benefits by stabilizing housing, then it is
20 appropriate for everybody to contribute.

21 Number three is that there is a --
22 this isn't a very elegant way to say this, but
23 a huge amount of research that talks about the
24 economic costs of -- the economic costs to
25 employers and to the economy as a whole, the

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1 financial stress placed on households who have
2 difficulties in paying their day-to-day
3 expenses.

4 And again, since everybody would
5 benefit from it -- from such a program, then
6 it is appropriate for everybody to help
7 contribute to the program.

8 So I note those off the top my head,
9 but it is difficult, if not impossible, to
10 summarize an answer to that in a way that
11 would be appropriate to a cross-examination
12 response. I mean, if people want me to talk,
13 I obviously can, but I won't.

14 MR. HAVER: I don't want to belabor
15 the point.

16 Would you oppose the City of
17 Philadelphia paying for a portion of the TAP
18 program?

19 MR. COLTON: Yes.

20 MR. HAVER: You would oppose that?

21 MR. COLTON: Yes.

22 MR. HAVER: Why is that, sir?

23 MR. COLTON: For the same reason that
24 I oppose energy affordability programs and
25 water affordability programs being funded

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1 through legislative appropriations, or oppose
2 energy and water affordability programs being
3 funded through federal appropriations.

4 The level -- or even the existence of
5 the appropriation then becomes dependent on
6 any number of political factors that have
7 nothing to do with need.

8 And so if, as an example, to take my
9 take on current headlines, it could very well
10 be possible that the amount of energy or water
11 assistance could be decreased because the
12 Federal Government is approaching its spending
13 limits, its debt ceiling limits.

14 The same thing might occur at the
15 local level. It certainly occurs at the state
16 level. Putting it into a legislative
17 appropriation simply makes -- it divorces the
18 amount of dollars that are provided from the
19 need that exists.

20 MR. HAVER: So you're saying --

21 MR. COLTON: And I oppose that.

22 MR. HAVER: You're saying it would be
23 a decision based on the legislative and
24 executive branches of government, and you
25 don't trust them to deliver those funds. Is

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1 that accurate?

2 MR. COLTON: I'm not sure that that's
3 what I said at all. What I said was that by
4 putting it into the legislative appropriation
5 process, the amount of dollars that are
6 provided is divorced from any determination of
7 the amount of need, and I think that is not a
8 wise way to go.

9 MR. HAVER: Okay. Does that mean you
10 oppose the LIHEAP program?

11 MR. COLTON: I would oppose the
12 LIHEAP program and the LIHWAP program being
13 viewed as a comprehensive response to
14 unaffordability, yes.

15 MR. HAVER: Okay. Thank you.

16 So I just have a few more questions.
17 Again, I appreciate your wisdom and your
18 explaining things.

19 Do you believe that your testimony is
20 helped by talking to rank-and-file consumers?

21 MR. COLTON: So you're -- I could go
22 two ways with that question. Would my
23 testimony be stronger if I had run the
24 specifics of my testimony in this proceeding
25 past a group of grassroots customers? I don't

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1 think that that's necessarily the case.

2 On the other hand, is my testimony
3 strengthened because I have 40 years of
4 experience of working with utilities, with
5 service providers, and with grassroots
6 community organizations? Yes, I think my
7 testimony is strengthened by the fact that I
8 have worked with and been educated by people
9 who have been there.

10 Whether it's -- I think it's one
11 thing to read that people cut back on their
12 medicines because they can't afford to pay
13 their water bill. I think it's one thing to
14 read about people who don't participate in a
15 program because they're confused about the
16 eligibility requirements.

17 But over the last 40 years, I have
18 sat in meeting after meeting after meeting
19 with individual customers who have told me
20 that, and I think my testimony is stronger
21 because of that.

22 MR. HAVER: And you referenced, I
23 believe, community groups. Do you find value
24 in meeting with -- in your past, meeting with
25 and hearing from community groups to help you

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1 understand the issues?

2 MR. COLTON: Yes.

3 MR. HAVER: Thank you.

4 MR. COLTON: I -- you asked that in
5 the abstract. I can only say for myself.

6 MR. HAVER: Yes.

7 MR. COLTON: I have benefited over
8 the last 40 years from the number of times I
9 have been able to talk face-to-face with
10 people who have been there and who live what I
11 testify about.

12 MR. HAVER: And would you recommend
13 that other advocates do what you have done in
14 sitting down with community groups and
15 individuals to hear their stories?

16 MR. COLTON: Oh, advocates? There
17 are circumstances where that would be
18 beneficial and there are circumstances where I
19 think it wouldn't matter at all.

20 MR. HAVER: Could it ever hurt?

21 MR. COLTON: It could hurt by
22 diverting resources away from what needs to be
23 done. But the bottom line is, I can't answer
24 that question on a general or -- as a general
25 principle about whether it's beneficial to

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1 meet with community groups.

2 MR. HAVER: Well, that is the last of
3 my questions. Again, Mr. Colton, I want to
4 thank you for all of your years of service,
5 your dedication, the help that you have given
6 me, my family, and my loved ones.

7 I am a little surprised based on your
8 history that you don't believe that every
9 advocate would benefit from meeting with poor
10 and working people to hear their stories, but
11 I do recognize who is paying for you, for your
12 testimony today.

13 So I don't want it to go unsaid -- I
14 don't want it to go unsaid how great you have
15 been for so many people.

16 HEARING OFFICER CHESTNUT: Okay.
17 Thank you, Mr. Colton.

18 Mr. Dasent, do you have any
19 cross-examination for Mr. Colton?

20 MR. DASENT: No, Your Honor, other
21 than to thank Mr. Colton for appearing today.

22 HEARING OFFICER CHESTNUT: Did you
23 want to do redirect or do you want a few
24 minutes to talk about it?

25 MS. PRICE: Yeah, I think if we could

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1 get like five minutes to gather our -- my
2 thoughts -- if I could get five minutes to
3 gather my thoughts on redirect.

4 HEARING OFFICER CHESTNUT: Sure. How
5 about -- it's 1:55. We'll resume at 2:00.

6 MR. BALLENGER: Could I ask that we
7 maybe just extend that a little bit for a
8 bathroom break as well? Can we make it 15 and
9 come back at 2:10, please?

10 HEARING OFFICER CHESTNUT: 2:10,
11 sure. I'm all for bathroom breaks.

12 (Recess taken, 1:56 p.m. to
13 2:10 p.m. EDT)

14 HEARING OFFICER CHESTNUT: Okay. Are
15 we ready to resume?

16 MS. PRICE: I'm ready.

17 HEARING OFFICER CHESTNUT: Okay,
18 Ms. Price.

19 MS. PRICE: So I just have a couple
20 of questions on redirect.

21 REDIRECT EXAMINATION BY MS. PRICE

22 MS. PRICE: Mr. Colton, in your
23 testimony you discuss the revenue impacts
24 associated with enrollment in TAP. Just to
25 clarify, are you saying there is a one-to-one

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1 impact on gross revenues?

2 MR. COLTON: No. And indeed, no, I
3 was not saying that there is a one-to-one
4 impact on gross revenues. What my testimony
5 was, or what I intended my testimony to be is
6 there are two different impacts. One are the
7 gross revenue impacts, and then aside from the
8 gross revenue impacts there are the net
9 impacts of the program.

10 And the net impacts of the program
11 are less than the gross impacts, that there
12 are both revenues and expense offsets to the
13 gross impacts.

14 MS. PRICE: Back when you were in
15 legal services, how were you -- actually, to
16 start off, in your career, did you work as a
17 legal services attorney?

18 MR. COLTON: I did. In my first job
19 out of law school, I was a staff attorney with
20 Legal Services Corporation of Iowa. And in
21 that capacity, my sole responsibility was to
22 represent people who were in danger of natural
23 gas and electric shutoffs before the Iowa
24 State Commerce Commission. Or with the
25 utilities. Not everything went to the

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1 commission.

2 But for a few years, my sole
3 responsibility was to represent people who
4 were in danger of having their service
5 disconnected for nonpayment.

6 MS. PRICE: And in that capacity, how
7 were you informed of community needs?

8 MR. COLTON: Well, by representing
9 individuals who are -- who were under the
10 threat of disconnection or whose service had
11 actually been disconnected, I engaged in the
12 activities that I talked about earlier in my
13 testimony, where I would look at people in the
14 eyes and have them explain to me, you know,
15 Mr. Colton, they're going to shut off my
16 utility bill, and I don't have the money to do
17 anything about it. What do I do?

18 And when you work with dozens or
19 hundreds of people like that, you learn what
20 community needs are. And even though that was
21 four-plus decades ago, that has certainly
22 informed the work I've done over the last
23 40 years.

24 MS. PRICE: To your knowledge, do the
25 CLS attorneys serving as Public Advocate

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1 represent hundreds of low-income
2 Philadelphians every year?

3 MR. COLTON: Yes. Yes, CLS is
4 Community Legal Services.

5 MS. PRICE: Yes, sorry, Community
6 Legal Services.

7 MR. COLTON: And my understanding is
8 that CLS is, like other legal services offices
9 around the country, and I know that because I
10 used to be a staff attorney with a group
11 called the National Consumer Law Center for
12 almost ten years I worked with NCLC.

13 So I worked with legal services
14 offices around the country, legal services
15 offices such as CLS, and I know that those
16 legal services offices represent individual
17 clients in utility situations in the same
18 situations that I worked with when I was a
19 legal services corporation lawyer.

20 MS. PRICE: And are you aware that
21 CLS has been representing low-income utility
22 consumers for more than 40 years?

23 MR. COLTON: I don't know one way or
24 the other.

25 MS. PRICE: That's okay.

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1 Are you aware that the attorneys
2 serving as Public Advocate from Community
3 Legal Services also represent community groups
4 in other proceedings?

5 MR. COLTON: I am. In addition to
6 working with the Public Advocate here in
7 Philadelphia -- here in Philadelphia, but in
8 the Philadelphia water case, in my
9 professional life I routinely work with the
10 State Office of Consumer Advocate in cases
11 involving regulated utilities before the
12 Pennsylvania PUC.

13 And on a routine, almost -- I would
14 even say a universal basis. I can't remember
15 a case I've done with the OCA before the
16 Pennsylvania PUC where CLS has not represented
17 a community organization as a -- as an
18 intervener in that proceeding.

19 MS. PRICE: That's all I have for
20 redirect, Your Honor.

21 HEARING OFFICER CHESTNUT: Thank you.
22 Mr. Haver, any recross based on the redirect?

23 RE CROSS-EXAMINATION BY MR. HAVER

24 MR. HAVER: Mr. Colton, very quickly.
25 Do you recall the names of any of the

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1 community groups that CLS was representing
2 before the PA PUC?

3 MR. COLTON: Oh, TURN would be one,
4 from Philadelphia.

5 MR. HAVER: I'm sorry, either my
6 interconnect connection is bad or yours is
7 bad. I did not hear --

8 MR. COLTON: No, I was looking -- I
9 was thinking the answer would be written up
10 here in the air somewhere, so I turned away
11 from my microphone. I apologize.

12 TURN would be one. And I don't
13 remember what TURN stands for.

14 MR. HAVER: Thank you.

15 MR. COLTON: There is a senior
16 organization, and I don't remember the
17 completely accurate name. The Alliance of
18 Senior Consumers, or something to that effect,
19 that would be another Philadelphia one.

20 MR. HAVER: Perhaps it would be
21 Action Alliance of Senior Citizens that you're
22 referencing?

23 MR. COLTON: That could be it. There
24 is an association of Philadelphia seniors that
25 CLS has represented before the Pennsylvania

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1 PUC.

2 MR. HAVER: And in your long history,
3 sir, have you worked with community and
4 advocacy groups?

5 MR. COLTON: Of course.

6 MR. HAVER: Thank you.

7 MR. COLTON: Yes. The answer to your
8 question is yes, not of course. The answer is
9 yes.

10 MR. HAVER: And they helped you shape
11 your testimony and your outlook and your work;
12 is that correct?

13 MR. COLTON: Well, I -- I talked
14 about that earlier.

15 MR. HAVER: Okay. Then I won't --

16 MR. COLTON: And I do not run
17 individual decisions or my testimony past
18 community groups, but my work with community
19 groups and my work with individuals has
20 certainly informed my approach to my
21 testimony.

22 MR. HAVER: And one last thing, if I
23 may.

24 Is there a difference between
25 representing low-income groups and

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1 representing an entire rate base?

2 MR. COLTON: Of -- yes. I would say
3 yes to that.

4 MR. HAVER: Again, my apologies for
5 having to ask you these questions. I had
6 wished that you would been a little more
7 forthcoming with your history. It is
8 certainly a history that should be celebrated.

9 I thank you for your time, for your
10 efforts, and again, I don't know that you hear
11 this often enough, but the people that I
12 personally know whose utilities you kept on,
13 whose lives you improved, are deeply thankful
14 for the programs that you have instituted, and
15 I mean that with PGW's CRP program, I mean
16 that with the TAP program. I even mean some
17 of that with the People program, although I
18 know that's not a program that you are
19 particularly fond of.

20 But without your efforts, our lives
21 would be less valuable and less enjoyable.
22 And while I certainly have tremendous
23 differences with Mr. Ballenger, and I feel
24 that he has let the community down
25 tremendously, I don't feel that way about you,

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1 sir. I am thankful for your existence and
2 your testimony and your time.

3 HEARING OFFICER CHESTNUT:

4 Mr. Dasent, do you have any questions?

5 MR. DASENT: No, I don't. Thank you,
6 Your Honor.

7 HEARING OFFICER CHESTNUT: Thank you
8 very much, Mr. Colton. It's nice to see you
9 again.

10 MR. COLTON: Thank you, Your Honor.

11 HEARING OFFICER CHESTNUT: We all
12 appreciate it.

13 Okay. That's the end of the lineup
14 for today.

15 MR. DASENT: Yes, it is. And we have
16 Susan Crosby tomorrow. We have a narrow
17 window of time because she's at a seminar out
18 of town, and I'm reaching out to her now,
19 trying to make sure she gets on her plane at
20 the end of all of this, but we need to manage
21 her time tomorrow very carefully. And so
22 that's my task for today.

23 But I just wanted you to be alerted
24 to her -- the window that we've talked to CLS
25 about was from 9:00 to 12:00, and because she

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1 has to get a plane, it may be slightly shorter
2 than that. But we'll take it from there.

3 HEARING OFFICER CHESTNUT: We'll take
4 her first thing at 9:00, then.

5 MR. BALLENGER: We'll talk to CLS
6 offline about how to manage that as best we
7 can.

8 HEARING OFFICER CHESTNUT: Okay. All
9 right, then we will adjourn, and we'll resume
10 at 9:00 o'clock tomorrow. Thank you all.

11 (Time noted: 2:21 p.m. EDT)

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

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