

RECEIVED

By Records Dept. at 3:54 pm, Jun 26, 2024

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

In the Matter of the Philadelphia Water : 2024 TAP-R Reconciliation
Department's Proposed Changes in Rates and : Proceeding – FY 2025
Related Charges :

RATE DETERMINATION

This report addresses the filing made by the Philadelphia Water Department (PWD or Department)¹ to implement the annual reconciliation adjustment to the Tiered Assistance Program Rate Rider (TAP-R) by revising related water, sewer and fire service connection quantity charges (2024 TAP-R adjustment) in accordance with the TAP-R tariff previously approved by the Philadelphia Water, Sewer and Storm Water Rate Board (Rate Board). On February 28, 2024, the Department filed an [Advance Notice](#)² with Philadelphia City Council (City Council) and the Rate Board of its request to implement the annual reconciliation adjustment and to revise related water, sewer, and fire service connection quantity charges accordingly. [Formal Notice](#)³ of the proposed reconciliation adjustments was filed with the Department of Records on April 1, 2024. Both Notices contained supporting schedules and exhibits as required by the [Regulations](#)⁴ (Sections II.A.2 and II.C.1) promulgated by the Rate Board. The [Formal Notice](#) consisted of schedules (Schs. BV 1-5, Schs. RFC 1-3) and exhibits (PWD Exhs. 1A and 1B) setting forth the

¹ The Water Department is a City department, with responsibility for provision of water, sewer and stormwater services in the City of Philadelphia. It also makes wholesale water sales to neighboring communities. To the extent required by the context here, PWD includes the Water Revenue Bureau (WRB), which as part of the City's Department of Revenue, provides all billing and collection functions for charges by the Department.

² <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2024-tap-r-reconciliation-proceeding/#advance-notice>. Advance notice is required under [Phila. Code](#), § 13-101(7), and Section II.A.2 of the Rate Board's [Regulations](#).

³ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2024-tap-r-reconciliation-proceeding/#formal-notice>. Formal notice is required under [Phila. Code](#), § 13-101((7)-(8) and Section II.A.2(b) of the Rate Board's [Regulations](#).

⁴ <https://www.phila.gov/media/20220204155914/WRBRegulationsAmended20210908reaffirmed20211013.pdf>

calculations of the reconciliation and proposed rates and charges. The proposed TAP-R rates and charges are designed to take effect on September 1, 2024. (FY 2025).⁵

TAP is an assistance program mandated by City Council⁶ that allows eligible low-income customers (and customers who are facing specialized hardships defined in PWDs [Regulations](#),⁷ Section 206) to pay reduced bills based upon a percentage of their household income. Monthly bills are not based on usage; they are capped as a percentage of income and are constant each month while the customer is enrolled in the program.⁸

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

Before us is the [Hearing Officer Report](#)⁹ of Hearing Officer Marlane R. Chestnut, dated May 29, 2024, along with the entire record in this proceeding. We will adopt and incorporate that [Report](#), which contains the history of the proceeding and, after a complete discussion and review of the record and the positions presented by the participants, recommends that we approve the proposed rates and charges for the TAP-R surcharge contained in the [Joint Petition for](#)

⁵ An updated Schedule RFC-3 was provided on April 29, 2024.

⁶ See [Phila. Code](#), § 19-1605 (calling the program "IWRAP").

⁷ <https://water.phila.gov/regulations/>

⁸ The TAP program was approved by the Rate Board as part of PWD's 2016 rate filing. See, [Rate Board 2016 Rate Determination](#). The TAP-R rate rider was approved as part of PWD's 2018 rate filing ([Rate Board 2018 Rate Determination](#)) and the specific surcharge rates were adjusted in the [2019](#), [2020](#), [2021](#), [2022](#) and [2023](#) annual TAP-R reconciliation proceedings.

⁹ <https://www.phila.gov/media/20240604103439/TAP-R-Report-2024-FINAL.pdf>

[Settlement of TAP-R Proceeding](#)¹⁰ (Joint Petition, Settlement Petition) submitted by the Department and the Public Advocate, dated May 20, 2024.¹¹

As explained in the [Hearing Officer Report](#) at 7-8, PWD’s filing contained a substantial increase in the proposed TAP-R water and sewer rates for FY 2025, intended to recover discounts associated with a surge in TAP enrollment due to the prequalification of a significant number of PWD customers by the City’s Office of Integrated Data for Evidence and Action (IDEA). Both the Department and Public Advocate recognized this increase in participants (along with their projected consumption and anticipated TAP discounts) to develop their respective positions. As noted in the [Settlement Petition](#) at ¶ 21: “The Department’s rebuttal testimony, and subsequent response to Public Advocate discovery request PA-3-5, filed on May 9, 2024, included an exhibit designated as Exhibit PA TAP-3-5.¹² This exhibit included customer specific usage, billing, and simulated discount amounts for the majority, approximately 75%, of the IDEA prequalified TAP participants, enabling the Department and Public Advocate to refine their respective estimates of average discounts for TAP participants, including those newly enrolled through the end of March 2024 via the IDEA Prequalification process.”

Based on that information, PWD and the Public Advocate agreed that for purposes of this proceeding, the projected average monthly number of TAP participants for the next rate period (September 2024 to August 2025) should be 55,974; that the average discount should be \$40.00 per TAP participant per month and that the average monthly consumption should be 700 CF per TAP participant.¹³ This results in the proposed settlement surcharge rates of \$3.08/Mcf (water) and \$4.40/Mcf (Wastewater).¹⁴ [Settlement Petition](#), ¶ 25. For a typical non-TAP residential customer, PWD has estimated that the increased surcharge rates would result in an

¹⁰ <https://www.phila.gov/media/20240523115847/TAP-R-Joint-Petition-for-Settlement-Combined.pdf>

¹¹ Although it did not join in the proposed settlement, The Philadelphia Large Users Group (PLUG) signed the Petition, stating that it did not oppose the Joint Petition.

¹² This document is referenced in the record as “Response Attachment to Public Advocate’s Interrogatories and Request for Production of Documents, Set III - Exhibit RFC 3-5,” found among the Discovery documents at <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2024-tap-r-reconciliation-proceeding/#discovery>

¹³ The settling participants expressly did not agree as to any methodology or calculation method to project TAP participation, average monthly consumption and discounts, or the calculation of TAP rates. [Settlement Petition](#), ¶ 26.

¹⁴ <https://www.phila.gov/media/20240523115848/PWD-MAIN-BRIEF-Combined.pdf>

overall bill increase of \$3.19, or 4.3% per month. [PWD Main Brief](#), Table C-4.

Another term of the Settlement Petition is the agreement that “new TAP participants will be the focus of customer conservation efforts through programs such as the Low-Income Conservation Assistance Program (LICAP) and that all TAP participants will be encouraged to participate in LICAP through greater outreach efforts and incentives to participate. The Department will develop strategies to reach high usage TAP participants in order to deploy available water conservation and leak repair assistance.” [Settlement Petition](#), ¶ 36.¹⁵

The Hearing Officer recognized that the proposed settlement rates will result in an increase in the TAP-R rates for the next rate period, due to the surge in enrollment of TAP-eligible customers. She found, however, that those are lower than those originally requested, and stated that the “proposed settlement rates appear to be fair and reasonable and are consistent with the relevant ordinance and regulations established by the Rate Board. They are amply supported by the record, which establishes that they will provide a reasonable basis for recovery of the TAP costs in this proceeding.” [Hearing Officer Report](#) at 9.

Hearing Officer Chestnut fully addressed and rejected the [Opposition to the Proposed Settlement](#)¹⁶ raised by Lance Haver, an individual participant, who did not challenge the actual proposed rates which are the subject of proceeding but rather alleged that that the proposed settlement should be rejected on the basis of (1) PWD’s allegedly illegal actions in automatically enrolling pre-qualified TAP participants; and (2) the public hearing was insufficient, since it was held remotely. [Hearing Officer Report](#) at 11-15.

Exceptions to the [Hearing Officer Report](#) were filed by two participants in the proceeding, Lance Haver and Michael Skiendzielewski. In addition, Mr. Skiendzielewski had previously filed a [Direct Appeal](#)¹⁷ of a ruling by the Hearing Officer, which was also addressed in the [Hearing Officer Report](#) at 15-16.

¹⁵ As correctly stated by the Hearing Officer with respect to this term of the Settlement: “It should be noted that this commitment is a significant voluntary agreement on the part of the Department, as the Rate Board lacks jurisdiction over non-rate matters and therefore could not have ordered these actions.” [Hearing Officer Report](#) at 15.

¹⁶ <https://www.phila.gov/media/20240523211108/Haver-settlement-objection-pdf.pdf>

¹⁷ <https://www.phila.gov/media/20240604103446/skiendzielewski-hearing-examiner-appeal.pdf>

In his [Exceptions](#),¹⁸ Mr. Haver set forth a number of reasons why the Board should reject the Settlement and the [Hearing Officer's Report](#). According to Mr. Haver, the public was not represented by the Public Advocate; by holding virtual hearings, rather than in-person public hearings, the public was denied the right to protest the TAP rate increase; the hearing officer established a two-tiered justice system and censored public comment by not allowing Mr. Skiendzielewski to enter into the public record an article he wanted to be part of his public testimony; the hearing officer did not allow any testimony examining where else funds could be found to cover the cost of the TAP program, the efficiency of the bureaucracy running TAP, the outreach of the rate board's advocate, and the failure of PWD to control costs; and the hearing officer allowed PWD to illegally enroll people in TAP through an enrollment process that was not permitted under the Department's regulations at the time that process was implemented.

Mr. Skiendzielewski filed an [Exception](#)¹⁹ which stated that by "censoring" his public input testimony, the Hearing Officer did not follow best practices and also failed to follow best practices by allowing PWD to collect charges for enrolling families in the TAP program when it did not have the regulatory right to do so. In addition, Mr. Skiendzielewski filed a [Direct Appeal](#) with the Rate Board in which he contended that the Hearing Officer improperly censored him by declining to include in the record an article which he sought to include in the record.

The Board finds that none of these contentions provides any basis for rejecting the [Settlement Petition](#) or the [Hearing Officer Report](#). They do not address the reasonableness of the proposed TAP-R rates, or the assumptions which underlay them.

First, with respect to Mr. Haver's [Exceptions](#), the interests of the public, that is, PWD's residential and small commercial customers, were in fact represented. The Rate Board properly, after a public procurement and selection process, selected Community Legal Services to act as Public Advocate in this case. As explained in more detail in the March 6, 2024 [Order Denying Haver Public Advocate Motion](#), the contract for a Public Advocate was duly advertised,

¹⁸ <https://www.phila.gov/media/20240604103443/haver-exceptions-to-HE-report.pdf>

¹⁹ <https://www.phila.gov/media/20240604162838/exception-report-Michael-Skiendzielewski.pdf>

authorized and entered into at a public meeting of the Rate Board which was properly noticed. Throughout this proceeding, the Public Advocate diligently performed this function. It engaged in substantial discovery, presented well-supported expert testimony (which called for substantially smaller increases in the TAP-R surcharges), negotiated a reasonable settlement and engaged in considerable outreach, as shown on [Public Advocate Post Hearing Exhibit](#).²⁰ Mr. Haver's [Exception](#) with respect to the Public Advocate, as with each of his prior objections to the work of the Public Advocate, is wholly without merit and is denied.

Similarly, it was reasonable and appropriate - all the more so in this limited reconciliation proceeding - to hold a virtual public hearing. As stated in the [Hearing Officer Report](#) at 15: "outreach efforts for the public input hearings (as undertaken by the Department and Public Advocate) were extensive in this case — exceeding the requirements in the applicable regulations. Public input hearing participation also exceeded prior TAP-R proceedings." As further noted by the Hearing Officer, "this is not a general rate proceeding brought pursuant to Sec II.B of the [Board's regulations](#) but a TAP reconciliation subject to Sec II.C.2, which explicitly recognizes that the annual TAP-R reconciliation process is designed to be flexible." We agree and find that the Hearing Officer's decision to hold a virtual public hearing was appropriate, particularly in light of the extremely limited nature of the TAP Reconciliation proceeding.

Regarding the scope of issues on which the Hearing Officer permitted testimony, Mr. Haver's [Exception](#) is also without merit. The record is clear that she made sustainable and reasonable rulings and, in fact, allowed Mr. Haver considerable latitude in his cross-examination of the witnesses presented by the Department and the Public Advocate. As correctly explained by Hearing Officer Chestnut in the [Hearing Officer Report](#) at 14, this proceeding does not include issues such as whether there should be a customer assistance program, the design and administration of such a program or the administrative costs associated with operating it. We agree that these issues are clearly not relevant in this reconciliation, although some of these issues may be relevant in a general rate proceeding (where rates are set on the basis of a revenue requirement that is designed to recover prospective expenses and capital costs, as required by [Phila. Code](#) § 13-101(4)).

²⁰ <https://www.phila.gov/media/20240514141340/PWD-2024-TAP-R-Hearing-Exhibit-1-Public-Outreach.pdf>

For the reasons set forth more fully in our discussion of Mr. Skiendzielewski's [Exception](#) below, the Board also rejects Mr. Haver's [Exception](#) regarding the Hearing Officer's decision to exclude a document that Mr. Skiendzielewski sought to include in the record. Far from establishing "a two-tiered justice system" as suggested by Mr. Haver (Haver [Exceptions](#) at unnumbered page 4), the Hearing Officer properly executed her authority as set out in the Rate Board's [Regulations](#) at Section II.B.1(b)(4) to "Make all procedural rulings necessary to conduct a fair, impartial and expeditious hearing process, including the exclusion of irrelevant or redundant testimony or evidence."

Mr. Haver's final [Exception](#)²¹ is that the proposed settlement should be rejected because "The Settlement allows PWD to recover costs incurred for actions that it was not allowed to take." This argument, that PWD "illegally" or improperly enrolled TAP participants who had been prequalified without requiring separate applications to do so, was thoroughly addressed in the [Hearing Officer Report](#) at 12-14, and we adopt this discussion and resolution of this issue.

In order to qualify for enrollment in the TAP program (originally called IWRAP in the City Ordinance establishing the program), PWD customers must demonstrate a level of monthly household income established for participation in the program. [Phila. Code](#) § 19-1605(3)(g).²² Here, while the customers may not have provided that information to the City as part of a formal application for the TAP benefit, these customers' data was available for this process because they had already applied for assistance through another program. Through the City's recently created Office of Integrated Data for Evidence and Action (IDEA), PWD was able to match that data with its own customer base to "pre-qualify" customers for the TAP program and enroll those customers in the TAP program without the necessity of filing a separate application. As stated by the Hearing Officer with respect to the Department's TAP regulation:

This Regulation, like the Code, appears to presume but not to require affirmative application. Indeed, as pointed out by the Department in its

²¹ This argument also was raised by Michael Skiendelewski in his [Exceptions](#) that PWD had "enroll[ed] families in the TAP program when it did not have the regulatory right to do so."

²² https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-266407

Reply Brief at 3, the repeated use of the word “may” (rather than shall or must) as well as the list of options available for customers to provide their information for TAP enrollment leads to a permissive interpretation. In addition, as PWD noted further in its Reply Brief at 3-4, based on its interpretation of the prior regulation, WRB enrolled eligible customers from the Low-Income Housing Water Assistance Program (LIHWAP) in 2023 without the necessity of separate applications.

Regulation 206 was amended²³ to explicitly include the use of “Verified Administrative Data”²⁴ for TAP enrollment or recertification: It added 206.2(b): “WRB may enroll or recertify a Low-Income Customer into TAP using Verified Administrative Data.” As noted by PWD in its Reply Brief at 4, this data had already been provided by customers for the purpose of determining available assistance.

While I question whether the Rate Board or I have the authority to determine whether the enrollment of these prequalified customers was proper, under the totality of the circumstances – City Council’s clearly expressed intention that “bills shall be affordable for low-income households,”²⁵ as well as the Rate Board’s findings last year that “It is essential that as many eligible people as possible who need assistance enroll in the program in order to maintain their service”²⁶ and that “increasing the enrollment of eligible TAP participants not only helps those customers maintain essential water and sewer services but also increases PWD’s overall collections”²⁷ -- I cannot find that the Rate Board should deny the cost of discounts actually granted by the Department.

I cannot determine that PWD’s actions in enrolling these customers were “illegal” as alleged by Mr. Haver, or even improper, even during the brief period before the regulation was amended to expressly permit the use of the City’s “verified administrative data” under Sections 206.1(p) and 206.2(b). In any event, as explained by counsel for PWD, every such person was sent a letter allowing them to opt out of the TAP program if they wished. “There were letters that went out indicating that they were to be signed up in the program, and there’s an opt out provision in the letter.” [May 10, 2024 Transcript](#) at 27. Therefore, there is no basis for Mr. Haver’s position that “PWD should not be allowed to collect from consumers for actions it was not legally entitled to make.”

²³ The proposed amendment was filed with the Department of Records in March 2024, with an effective date of April 29, 2024.

²⁴ Verified Administrative Data is defined in Section 206.1(p) as Information possessed by the City such as personal income, household income, or residency information required to confirm a Customer’s eligibility for TAP, the Senior Citizen Discount, or other forms of assistance.”

²⁵ [Phila. Code](#) § 19-1605(3)(a)

²⁶ [Rate Determination](#), 2023 General Rate Proceeding, at 43.

²⁷ *Id.* at 47.

We agree with the Hearing Officer’s interpretation that PWD’s procedure in not requiring pre-qualified TAP participants to provide a separate application for TAP was neither improper nor in violation of either its regulations or the [Philadelphia Code](#). As explained above, when the program was originally established and the regulations adopted, it is clear that the intent was to make it possible for eligible customers to enroll in the program. The prequalification process made possible by the IDEA data-sharing protocol was not then available, and therefore could not have been explicitly reflected in PWD’s regulations. The streamlined process now used to enroll these TAP-qualified customers, however, is not prohibited by any regulation, is consistent with, and in fact, advances the goal that eligible PWD customers receive assistance to maintain service.²⁸

In addition, as noted above, every such customer received a [letter](#)²⁹ which explained how and why they had been enrolled, as well as the benefits and obligations of the TAP program (including the agreement “to accept and reasonably maintain any free conservation measures” if offered by the Water Department) and which expressly provided opt-out options: “If you wish to opt out of this program, please call us at (215) 821-6138 or email watercap@phila.gov.”

In light of this analysis, the Exceptions of Mr. Haver and Mr. Skiendzielewski with respect to the pre-qualification and enrollment of TAP customers are denied.

An [Exception](#) was also filed by Mr. Skiendzielewski, who in addition to objecting to the enrollment of TAP customers discussed above, stated that: “The hearing examiner, by censoring a participant’s public input testimony, did not follow best practices. Her decision not to allow for review of best practices is a clear violation of the City Solicitor’s finding and order.”

Mr. Skiendzielewski’s reliance on the reference to “best practices” contained in the City Solicitor’s June 6, 2016 Memorandum he cites is misplaced. That Memorandum, which was issued in response to questions concerning the parameters of the newly established Rate Board’s

²⁸ We also note that these customers’ data was available for this process because they had already applied for assistance through another program.

²⁹ Provided by the Department on April 10, 2024, in response to Set II of the Public Advocate’s information requests, <https://www.phila.gov/media/20240410170057/Exhibit-PA-TAP-2-2D.pdf>

jurisdiction, referenced, [Phila. Code](#), § 13-101(4), Standards for Rates and Charges, and lists the financial factors and economic impact that the Rate Board shall consider when setting rates.³⁰ The City Solicitor’s June 6, 2016 Memo did not, and could not, address the relevance of testimony in the very limited context of a TAP-R reconciliation proceeding, which was not even created by the Board until 2018. As set out in the [Hearing Officer Report](#) at 15-16, Mr. Skiendzielewski has not been prevented from offering any information relevant to the issues of this limited reconciliation proceeding. Again, the Board sees no basis on which to overturn the Hearing Officer’s exercise of her authority under our [Regulations](#) at Section II.B.1(b)(4) to “Make all procedural rulings necessary to conduct a fair, impartial and expeditious hearing process, including the exclusion of irrelevant or redundant testimony or evidence.”

For the same reasons, the Board denies Mr. Skiendzielewski’s [Direct Appeal](#) to the Rate Board in which he contended that the Hearing Officer improperly censored him by declining to admit an article which he sought to include in the record. The Hearing Officer addressed the issues raised in that appeal at page 15-16 of her [Report](#). As stated by the Hearing Officer “other than his pre-filed comment with respect to his objection to virtual hearings which I allowed into the record as a customer comment, Mr. Skiendzielewski’s subsequent e-mails have nothing to do with the 2024 TAP-R reconciliation filing (or the [Settlement Petition](#)), and therefore lack relevance.”

After full consideration³¹ of the Exceptions and Direct Appeal submitted by Mr. Haver and Mr. Skiendzielewski, as well as our full review of the record, we agree with the Hearing Officer’s recommendation that, for service rendered on and after September 1, 2024, the Department should be permitted to put the settlement TAP-R rates into effect as set out in the [Joint Settlement Petition](#), Exh. 1 with charges for water and sewer service set at \$3.08/Mcf (water) and \$4.40/Mcf (wastewater) rather than the \$4.19/Mcf (water) and \$6.04/Mcf (wastewater) originally

³⁰ [Phila. Code](#), § 13-101(4)(b)(1). It was included as Appendix B with the Rate Board’s [2016? Rate Determination](#), <https://www.phila.gov/media/20200123162020/DeterminationDate-Stamped.060716.pdf>

³¹ All exceptions and arguments in the record were duly considered. Any exception or argument that is not specifically addressed shall be deemed to have been considered and denied without further discussion.

requested by the Department or the \$2.57/Mcf (water) and \$3.68/Mcf (wastewater) initially proposed by the Public Advocate's expert [witness](#).³²

These rates and charges are in compliance with applicable ordinances and regulations and our [2018 Rate Determination](#),³³ which set forth the basis for calculating and adjusting the TAP-R surcharge to fund this low-income customer assistance program. The record of this proceeding fully supports the conclusion that these rates provide a reasonable basis for recovery of TAP-R costs, and that they are just and reasonable. Moreover, because TAP-R reconciliation proceedings reconcile actual costs of the program against costs projected in the prior year's proceeding, any difference from the actual versus the projected costs agreed upon at this time will result in an adjustment in next year's proceeding.

We note that these rates, after a full opportunity for review and discovery, were agreed to by PWD and the Public Advocate, and not opposed by PLUG. Other than Mr. Haver and Mr. Skiendzielewski, no participants excepted to the May 29, 2024 [Hearing Officer Report](#), and no participant (including Mr. Haver and Mr. Skiendzielewski) challenged the inputs (number of customers, average consumption, average TAP discount) used to develop the proposed rates.

Therefore, we (1) deny the [Exceptions](#) submitted by Lance Haver and the [Exceptions](#) and [Direct Appeal](#) submitted by Michael Skiendzielewski, and (2) find the modified TAP-R rates contained in Exhibit 1 to the [Joint Petition](#) to be just and reasonable and authorize the Department to file revised rates and charges as proposed in the [Joint Petition](#), effective for service rendered on and after September 1, 2024.

Date: June 26, 2024

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

³² PA St. 1, Direct Testimony of Lafayette K. Morgan, Jr.

³³ <https://www.phila.gov/media/20180713144736/2018-RATE-DETERMINATION-TIMESTAMPED.pdf>