

Reply Brief  
Submitted by Lance Haver, Pro Se

1. If rising water rates and an unfair regressive tax on water were not such a burden to so many, Mr. Ballenger's claims would be laugh-out-loud funny.
  
2. As Mr. Ballenger knows, or at the very least should know, the Philadelphia Water Department is not regulated by the Pennsylvania Public Utility Commission. PA PUC rules and regulations do not control PWD. Stating that the PA PUC deems a surcharge acceptable has no bearing on the regulation of the PWD. This is so obvious that it is unclear why it has to be stated. ( At the PUC, the "public advocate" is not appointed by the regulatory body, but by the State Attorney General and confirmed by the Pennsylvania Senate. Mr. Ballenger does not claim that the Water Department should or must follow that part of the PUC's rules and regulations, precisely because those rules and regulations do not govern the PWD. If they did, Mr. Ballenger would not receive a no-bid extension of his contract, would not be appointed without public support, and would not be hired by the rate board. Mr. Ballenger would lose his ability to support the PWD's rate hikes, without answering to elected officials.)
  
3. The City of Philadelphia owns PWD. It is run for the public good. Legally elected Council Members, who, unlike Mr. Ballenger, answer to the Public, passed an ordinance creating the TAP Program. According to PWD's web page, "in 2015, City Council passed an ordinance requiring the establishment of an assistance program that would allow low-income customers to pay reduced rates based upon a percentage of their household income." The PWD web page makes no claim that the TAP program is intended to cut costs, increase revenues, or do anything other than help low-income families by offering a reduced rate.

4. The prime sponsor of the bill made it clear that the bill and the program developed were social services to help people stay in their homes. Explaining why the Council wanted to stop water shutoffs, Council Member Quinones-Sanchez said. "This becomes potentially the last straw for [a resident] to say, 'I got to walk out of this house, because I'm never going to get out from under water, 'pardon the pun,'" **Quinones-Sanchez explains. "You can really destabilize neighborhoods if [collections] is the only thing you're looking at." There is nothing in the bill's legislative history that denies it is a city-run social welfare program.**

5. Mr. Ballenger fears that if the TAP program were funded from the City's operating budget, it would be underfunded. If the TAP program isn't a social service program but a way to increase revenue for PWD, and if funding it lowers water bills, as Mr. Ballenger implies, why would he worry that the Philadelphia City Council would not fully fund it? Could it be that Mr. Ballenger has no faith in his or his team's abilities? Or is it that Mr. Ballenger knows that what he is saying is blatantly not true?

6. The TAP charge is a sales tax, as both common law and the legal definition stated in Black's Law Dictionary state. From Black:

#### Sales Tax

A state or local-level tax on the retail sale of specified property or services. **It is a percentage of the cost of such. Generally, the purchaser pays the tax, but the seller collects it as an agent for the government.** Various taxing jurisdictions allow exemptions for purchases of specified items, including certain foods, services, and manufacturing equipment. If the purchaser and seller are in different states, a use tax usually applies.

Common law is simple. The surcharge, no matter what it is called, is an extra charge based on what was purchased, where the proceeds of the extra charge were (are) used for a City

program. A sales tax. It cannot legally be a surcharge, as under Pennsylvania law, only credit cards are allowed to add a surcharge to a bill. Permissions granted by the PA PUC do not apply to the PWD, as it is not regulated by the PA PUC and is exempt from PA PUC rules and regulations.

7. It is a set percentage of the charges for water. The charge is based solely on the amount of water purchased. It is collected by the local taxing government, the City of Philadelphia, through the Water Department, a department of the City, and therefore an agent of the City.

8. State Law expressly prohibits the taxing of tap water from the Statutes of Pennsylvania:

1971 Act 2

PART III EXCLUSIONS FROM TAX

**(25) The sale at retail or use of water.**

9. Mr. Balleger's cite has no bearing on the issue. It is not a Pennsylvania Statue, it is not from this century or even the last. It shows that if this is the best argument that Mr. Ballenger can make, referencing a 19th-century cite which has no bearing, he has nothing, except meaningless rhetoric, the support of the PWD, the wealthy law firms PWD hires, and the well-paid consultants who recived rate payers dollars to help Mr. Ballenger and the PWD raise rates.

For the reasons listed above, in Haver's brief and in Cross Examination, it is unequivally true that TAP rates are an add-on percentage charge based on the billed amount. The very definition of a sales tax.

The legislative history of the ordinance that led to the creation of the sales tax references that it is to help families who are

struggling with economic burdens and cannot afford the current rates, a social welfare program.

The Water Department is a department of the City of Philadelphia and serves as an agent of the City.

The money collected is used to help people stay in their homes, maintain water service, and access social welfare programs. The transcript of the Ordinance speaks for itself.

In Pennsylvania, only credit cards are legally allowed to charge a surcharge.

Pennsylvania law expressly prohibits taxing water.

The Philadelphia Water Department is not regulated by the PA PUC. The PA PUC rules, regulations, and practices have no bearing on what the Philadelphia Water Department may or may not do.

For those reasons, the Hearing Examiner must rule against the TAP rate. The program is necessary, but that does not mean it should be paid for by an illegal, regressive tax on a basic necessity of life any more than the SNAP program should be paid for a "surcharge" on baby food.

Lance Haver, Pro Se  
735 S 12th St # 401  
Philadelphia, PA 19147  
Lance@LanceHaver.com