Brief of Participant Lance Haver, Pro Se
In opposition to any rate increase

Preface

On February 13th, 2024 in violation of PWD's regulations and outside the scope of the TAP program, PWD began enrolling consumers in TAP without their affirmative consent.

It was not until April 29th of 2024 that enrolling consumers in TAP without affirmative consent was permitted by PWD's rules and regulations.

PWD's refusal to follow the regulations established by the City of Philadelphia, to act outside of the scope of regulations that control all PWD and rate board proceedings, occurred with the silent agreement of the rate board's advocate. The rate board's advocate not only ignored the violations, but supported the actions outside of the scope of the TAP, by supporting raising rates to pay for PWD's impermissible actions.

If the rate board's advocate and the hearing examiner had not eliminated the in person public hearing, the actions of PWD would have been shared with the public in a public setting, not limited to briefs such as this.

The question is: Will the rate board demand that the rule of law prevail over the actions of PWD and the rate board's advocate; or will the rate board find a way to support the defiance of the rule of law.

Overview

The issue before the Rate Board is: Did the City of Philadelphia intend to allow the Philadelphia Water Department to charge Philadelphia rate payers for PWD's mis judgements, poor decisions, lack of cost containment and missed opportunities for cost savings. If the Rate Board believes that was the intention of the City to allow PWD to waste rate payers money, misappropriate money and reward consultants for their political support, then there is no point to these proceedings.

The proceedings would then only serve as welfare for the professional class, rewarding lawyers and consultants with excessive fees.

If the Rate Board believes the City of Philadelphia did not intend to allow rate increases to pay for waste, poor decisions and missed opportunities, then the point of the hearings is to evaluate the actions of PWD against the standards, using common law principals and the rules and regulations of the PA Public Utility Commission, which only allow rate payers to be charged of what is "used and useful" If that standard is adopted, no rate increase is warranted.

1. Failure of the Philadelphia Water Department to take appropriate actions to alleviate the need for the rate increase.

With the help of the Rate Board's appointed advocate, the argument has been made that these proceedings cannot look at the actions of the PWD. If the Board upholds this position, then the Board is working under the assumption the City of Philadelphia intended to allow PWD to waste money and opportunities.

The hearing examiner, in her attempt to limit public discourse, testimony and participants questioning continued to rule that legitimate questions could not be considered because they were not permitted under the PWD rules. As discussed below, her rulings could be summed up in the George Orwell quote, All Animals are equal, some animals are more equal than others".

The hearing examiner has allowed data into the hearing showing increases in the TAP enrollment, before it was legal for PWD to enroll consumers into the program without consent. The hearing examiner allowed PWD to enter data outside of the scope of the hearing and allowed PWD to function outside the scope of the regulations.

There is no question as to this fact. The Formal Notice of the rate increase is dated April 1st, 2024. The filing was prepared in advance of it being filed and contains an admittance that consumers were enrolled into the TAP program prior to April 1st. ***"As discussed below, this year's TAP-R filing is unique because a large group of new pre-qualified TAP enrollments (approximately 34,000) are currently being added to the program and are expected to increase average***

monthly TAP participation to almost 56,000 before the Next Rate Period (September 2024 to August 2025). This level of TAP participation is in comparison to roughly 17,000 TAP participants on an average monthly basis reflected in the current TAP-R surcharge rates."

Page 6 of "Formal Notice of Proposed Changes in Rates and Charges; Annual Adjustment of Tiered Assistance Program Rate Rider Surcharge Rates (TAP-R); states ***IDEA enrollments began on February 13, 2024 and the complete data set was pre-selected, reviewed and analyzed for accurate matches in the weeks before,***

Those being added, according to PWD transcript response were done so illegally, before the regulations were changed. From PWD:

"PWD Public Input Hearing Response" # 2.

2. TAP Applications
Customer indicated that current regulations do not address auto-enrollment and appear to authorize only the more traditional customer-initiated applications.
Response:
The Department's regulations were recently amended so as to explicitly allow WRB to enroll or recertify a Low-Income Customer into TAP using "Verified Administrative Data." The amended regulations were filed with the Department of Records on March 27, 2024 and ***became effective (by operation of law) on April 29, 2024.***

Information regarding the above amendments can be found on the webpage for the Philadelphia Department of Records. The Department of Records maintains a table showing the "Amendments to the Philadelphia Water Department Regulations: Chapter 2 – Section 206.1 & 206.2"
https://www.phila.gov/departments/department-of-records/regulations/water-revenue-bureau-updates.pdf. "

Despite the illegal actions, outside the scope of the regulations, outside the scope of the proceedings, the hearing examiner was not only silent, but supportive of the illegal activities. Contrast this to the hearing examiner's rulings and

admonitions that only things covered by the regulations will be allowed into the record.

Non public public hearings

2. The hearings did not comply with PWD regulations, purposely with forethought making it impossible for citizens to use their constitutional rights.

The Hearing Examiner colluded with the rate board's public advocate and PWD's counsel to make the hearing virtual, in the hearing examiner's own words , because the virtual "**hearings are also cost-effective, as travel time and expenses will not need to be incurred by me and the participants' representatives.**"

There is nothing in the rules and regulations of public participation that suggest a reason to limit the public's ability to legally demonstrate should be restricted or prohibited because of "cost effectiveness" Even a rudimentary understanding of poor people's movements and the struggle of poor and working people to win economic justice makes clear that holding signs, chanting and picketing in the view of decisions makers are protected rights and instrumental in winning justice.

If the President of the United States allows sign holding at his public addresses, and does not use the excuse that it would save money if secret service costs could be avoided, certainly the less important hearing examiner and rate board's public advocate could allow the overburdened water consumers the same constitutional protection to conduct protests.

The decision to make it impossible for people to protest the 4th water rate increase under the guise of "helping consumers" attend is specious at its best. No other public body in the Delaware Valley is limiting participation to virtual.

If the hearing examiner and rate board's advocate wanted to be inclusive, the duopoly could have simply done what SEPTA does at its public meetings, open the meeting to the public and allow for signs and protests; AND ALLOW VIRTUAL PARTICPATION. The ideas that it is either in person or virtual is a

false choice perpetrated by people who want to keep the public from collectedly protesting in person.

3. Even the “virtual hearing” wasn’t a meaningful hearing.

The hearing examiner called 20 people to testify at the virtual hearing. Because of technological failures, only 4 were able to do testify. The hearing examiner assured the participants and public if they were unable to overcome the technological problems, they could submit their testimony in writing.

“In terms of how I will conduct this
22· ·hearing, I will first call on people who have
23· ·registered. · If you have not registered or
24· ·want to comment, that's fine, we'll get to
· ·you.
·2· · · · · ·Everyone will have a chance to make
·3· ·a statement if they wish, or you can send a
·4· ·letter or comment by email to the Rate Board.
·5· ·The Rate Board email address is
·6· ·waterrateboard@phila.gov.
·7· · · · · ·We will post these email comments
·8· ·and letters at the 2024 TAP-R reconciliation
Pps 7,8 of the Transcript of the public hearing.

The hearing examiner then censored public comment because it criticizes her, the rate board’s advocate and the rate board itself. No participant objected to the submitted testimony. There was no claim the testimony was obscene, libelous or even inaccurate. In fact, the decision by the hearing examiner to censor a critic was unexplained.

Here is another example of the hearing examiner colluding with the rate board’s advocate and the PWD to eliminate the public from a public hearing. If there had been a real, meaningful public hearing, not only would be people be able to protest and chant but members of the public would be able to hear and read each other’s statements and it would have been literally impossible for the hearing examiner to censor public testimony critical of her and the rate board’s advocate as members of the public would have been able to pass out flyers to each other

explaining the history of the rate board's appointment of its advocate and the hearing examiner.

Rather than allowing the public to be heard in the traditional ways poor and working people are often heard, rather than allowing the public to share ideas, the process arrived at so that the hearing examiner and experts were not inconvenienced and did not "have to travel" the hearing examiner prohibited public participation which may have called into question her abilities and her rulings.

The hearing examiner by allowing the rate board's public advocate to submit a list of emails sent, after the public and "technical hearings" is another example of how the hearing examiner stopped the public from participating. Had the hearing examiner required the rate board's advocate to submit the list prior to the hearing, participant Haver who is a member of one of the RCOs listed as being sent an email, would have been able to submit a signed affidavit from the president of the RCO stating the email was never received and calling into question just how many of the emails listed were received.

Participant Haver would have also been able to investigate how many of the emails sent were "opened" as today's technology provides the information as to how many emails were sent, how many reached the email addresses and how many were opened. Such information is germane to how the public was informed. By colluding with PWD and rate board's advocate to introduce the filing after the close of the technical hearings, the hearing examiner once again served her role as the protector of the rate board's advocate. Such actions are not just impermissible in an adjudicatory forum to protect one party and attack another, it renders the entire proceeding false.

4. "All Animals are equal; some animals are more equal than others"— George Orwell in his criticism of the soviet's commissars.

As stated above, the hearing examiner and the rate board's public advocate allowed, without question, PWD to violate the PWD's regulations and act outside of the scope of the regulaitons, by enrolling people in the TAP program without their affirmative consent. There is no question that this happened before the rules and regulations were changed.

The hearing examiner did not rule that because PWD sought to introduce data outside the scope (rules and regulations) governing PWD and the procedures used to raise rates, the hearing the data would not be allowed. At the same time the hearing examiner's refused to allow other participants to enter data on the record that was outside the scope (rules and regulations) of the hearing Stating***: The scope of this limited, annual reconciliation proceeding is set out in the regulations adopted by the Philadelphia Water, Sewer and Storm Water Rate Board (Rate Board).*** The rules and regulations not alloing PWD to enroll consumers in the TAP program without affirmative consent are ignored. Unlike questions of waste and mismagnement, the cost of the TAP and the exhorbiant fees paid to consultants which the hearing examiner would not allow on the record stating they are not allowed by the regulations, the hearing examiner allowed PWD to enter all the data collected outside the scope of PWD regulations.

The actions of PWD outside the regulations went unchallenged by the hearing examiner. It is of course possible that she is ignorant of the rules and regulations, calling into question why she is continually hired to be the hearing examiner in PWD rate and "TAP reconciliation "cases. It is far more likely that the hearing examiner knew and knows PWD acted outside the scope of PWD regulations and chose to allow PWD to act outside of the regulations but refused to allow other parties to act outside of regulations.

5. **Unequal justice is not justice**:

In the bad old days, the justice system discriminated against parties based on race, gender and sexual orientation, giving some participants in the justice system greater rights than others. In those bad old days, the hearing examiner may not

have been accepted into law school, may not have been able to get a credit card without a "husband's" approval or been hired by a city or state agency to be a hearing examiner. The courts have ruled time and time again that such two-tiered justice systems are unjust and unconstitutional.

The hearing examiner in allowing PWD to violate regulations and requiring public participants to follow regulations has established a similar two-tiered justice system. With one set of rules for those in power and its hand maidens and another set of rules for those challenging the power structure.

The hearing examiner has replaced the prejudicial rulings on race, gender and sexual orientation with prejudicial rulings based on class, wealth and who serves those in power.

Specifically, participant Haver attempts to have included in the record, waste and mismanagement, overhead costs, other sources of funds so that low-income families were not forced to pay for the cost of the TAP program, public participation and public comments were ruled outside the scope (rules and regulations) of the hearings. Time and time again the hearing examiner disallowed such questioning and challenges, stating they were outside the scope of the regulations, while the hearing examiner continued and continues to allow PWD and the rate board's public advocate to put into the record information and data outside the scope of PWD's regulations.

The hearing examiner does not dispute that participant Haver's questions are legitimate. Page 181 of the transcript:

" ·HEARING OFFICER CHESTNUT:· You
·8· ·raise these questions that are legitimate.
·9· ·Again, legitimate questions, but just not
10· ·here."

And while she allows PWD to act outside of the scope of the proceedings, she denies others the same right.

Participant Haver's position to be clear is that there should be equal justice for all parties, even the uneducated, unprofessional public and pro se participants. That if PWD is allowed to present information outside of the scope of the regulations,

as it has done, as it is doing, as the hearing examiner is allowing, then other parties should have the same right to present information outside the scope of the regulations.

There is no question that the regulations did not allow PWD to enroll people in TAP without consent before April 29th. It acted and put on the record information "outside the scope of the regulations. It was allowed to do so by the hearing examiner, while the hearing examiner refused to allow other parties to place on the record information outside the scope of the regulations. In its attempt to cover up the two-tiered justice system, the rate board's public advocate remained silent, refusing to protect the public.

6. It's not just the Hearing Examiner believing all Animals are equal but some are equal than others, it is also the rate board's advocate.

Throughout the hearing process, the rate board's public advocate has worked with the hearing examiner and PWD to limit public participation and allow PWD to investigate and enter into the record matters "outside the scope of its regulations", while successfully denying the public the same right.

Not only has the rate board's public advocate refused to address issues of public participation, covered up the injustice and unfairness of shutting poor and working people out of a public forum, requiring working people to be available during work hours, so the professional class is not "inconvienced" and have some technological privilege to even know of the proceedings, by relying upon emails for communication, it has joined with the hearing examiner in protecting the waste and mismanagement of PWD.

In response to a member of the public, the rate board's advocate, instead of pointing out that PWD has been allowed to introduce data outside the scope of the rules and regulations and there for so should the public, it writes:

"When PWD files as base rate proceeding, we investigate the bases for PWD's requests – looking at the projections for future rates and the assumptions underlying them. Those assumptions are very broad and include things like labor costs, chemical costs, debt service, etc.

I view your question about "best practices" as going to the underlying assumptions in a base rate proceeding. If it is best practice to, for example, add fluoride to our drinking water, then the cost of fluoride is something that should be included in base rates and so the Board should not make an adjustment to the cost of service to remove that cost. "

Clearly there is no mention that the hearing examiner has allowed PWD to act outside the scope of the regulations and if so, in fairness there should be no objection to a rank-and-file member of the public having the same right.

The rate board's advocate objected to the question How much will bills go up if the rate board's advocate's witnesses recommendation is accepted. The rate board's advocate did not want the public to know how high it was attempting to raise rates.

The rate board's advocate's witness did not take into consideration PWD's violation of the rules and regulations nor the change in TAP recertification regulations. The rate board's advocate colluded with hearing examiner and PWD's counsel to stop the public from going outside the scope of the proceedings while allowing PWD to do so.

Like in the case of the hearing examiner, it is possible that the rate board's public advocate is unaware that PWD acted outside the scope of the rules and regulations that control PWD. If that is the case, why does the board continue to appoint it? More than likely, the rate board's advocate knows of the double standard of justice which allows PWD to operate outside the scope of the regulations while not allowing the public the same right, because it makes it easier for the rate board's advocate to support rate hikes as it has constantly done. From its perch, the rate board's advocate receives accolades from the rate board and significant compensation for which rate payers, who have no say over the rate board's advocate's position are forced to pay.

7. PWD as the moving party has the burden to prove beyond with the preponderance of evidence that there is no other option than to once again raise rates on the overburdened water consumers.

As already stated above, PWD has acted with impunity ignoring PWD's rules and regulations. It enrolled people in TAP, without the consumers consent, without being able to legally do so. It should be clear that it could have, had PWD wished taken other steps outside of the rules and regulations of the TAP proceedings. It flies in the face of logic to suggest that if PWD can act with impunity, ignore the rules, but can only do it for the reason of raising rates. If PWD does not believe it is bound by the regulations, then it does not believe it bound by the regulations. If it believes it is bound by the regulations, then it would not have illegally enrolled consumers, without their consent into TAP.

The fact that after PWD violated the rules and regulations, the rules and regulations were changed does not alter the fact that PWD violated them.

The fact that PWD, after proving they are not limited to the rules and regulations states it can do nothing else to avoid the rate increase is duplicitous.

The hearing examiner can either uphold the two tiered justice system that allows PWD to act outside of the scope of regulations when it wants and refused to act outside of the scope of the regulations when it helps consumers; or the hearing examiner can stand for equal justice and find that once PWD counsel allows it to act outside the scope of these proceedings, it has an obligation to find ways to cut the costs, overhead and waste in the TAP program, even if they are outside the scope of these hearings.

Specifically, the unilateral changes in TAP, outside the scope of the regulations change the parameters of the program, dramatically lowering the resources needed to run the program. And yet PWD, after making the unilateral, illegal decision to change the parameters, does not project dramatic savings in the operation of the program.

8. <u>No increase in TAP charges is warranted</u>

The failure of PWD to find cost savings, include projected cost savings, failure to seek other sources for funding TAP are controlling. PWD has an obligation to be efficient, operate inside the legal regulations, seek funding from sources other than its overburdened consumers and use its resources for the public good. It has failed to prove that it has done so in these proceedings.

Because PWD is the moving party, seeking the adjustment as stated in its letter of April 1st, 2024 "The purpose of this correspondence is to provide formal notice ("Formal Notice") of changes in rates and charges **proposed by the Philadelphia Water Department** ("Department" or "PWD") to implement the annual adjustment to the Tiered Assistance Program Rate Rider Surcharge Rates" PWD must prove that the adjustment is needed as other alternatives have been investigated, even those outside of the scope of the proceedings, as PWD has shown it does not limit its actions to the scope of regulations.

If the hearing examiner and rate board's advocate in an attempt to excuse PWD from its public responsibilities state that all that can be considered is what is inside the scope of the regulations then rate board's public advocate and hearing examiner must find that any costs to the rate based incurred before it was legal to enroll participants without their consent must be stripped from the proposed rate hike, or adjustment, as those attempting to obfuscate the effect of the decision on rate payers call it.

PWD cannot both ignore the scope of regulations with impunity and then refuse to be efficient because "the scope of the proceedings" do not allow efficiency to be considered.

Oh, but you who philosophize disgrace and criticize all fears
Bury the rag deep in your face
For now's the time for your tears

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