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IN THE MATTER OF  
THE PHILADELPHIA WATER DEPARTMENT'S  
PROPOSED INCREASE IN RATES  
FOR WATER AND WASTEWATER UTILITY SERVICES

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ORAL ARGUMENT

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September 24, 2008  
1:05 p.m.

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City Hall - Courtroom 696  
Philadelphia, PA

- - -

BEFORE: HARRIS T. BOCK, ESQ.  
Hearing Officer

- - -

VERITEXT NATIONAL COURT REPORTING COMPANY  
KNIPES COHEN  
1801 Market Street - Suite 1800  
Philadelphia, Pennsylvania 19103

APPEARANCES:

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THU TRAN, ESQ.  
Counsel to Public Advocate

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BY: SHELBY A. LINTON-KEDDIE, ESQ.  
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K&L GATES, LLP  
BY: DANIEL P. DELANEY, ESQ.  
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FOX ROTHSCHILD, LLP  
BY: JILL A. GULDIN, ESQ.  
Counsel to Philadelphia Housing Authority

CITY OF PHILADELPHIA LAW DEPARTMENT  
BY: GERALD D. LEATHERMAN, ESQ.  
Divisional Deputy City Solicitor  
BY: ERIN McDEVITT-FRANTZ, ESQ.  
Assistant City Solicitor

- - -

ALSO PRESENT:

MICHAEL L. GALBRAITH, ESQ.  
The Dispute Resolution Institute

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2 THE HEARING OFFICER: I would like  
3 to call to order the oral argument in the  
4 matter of the Philadelphia Water  
5 Department's Proposed Rate Increase in  
6 Rates for Water and Wastewater Utility  
7 Services for the fiscal years 2009 to  
8 2012.

9 Before we start to hear argument,  
10 just a couple comments that I would like  
11 to make part of the record.

12 First off, I want to tell everyone  
13 how pleased I was with the level of  
14 professionalism that tended to be  
15 exhibited throughout this case. The  
16 cooperation of counsel generally was just  
17 top notch and I appreciate as the Hearing  
18 Officer the accommodations that were  
19 given to each other, especially with the  
20 pressure on the Water Department to  
21 supply such a huge amount of information  
22 in a relatively short time.

23 I had plenty of experience with rate  
24 proceedings involving hundreds of  
25 millions of dollars in the '70s and early

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2 '80s, and I have to say that the  
3 presentations and the professionalism  
4 equaled that and certainly it was very  
5 favorably received by me.

6 Moving on to the briefs, I thought,  
7 as I was reading the briefs, that I was  
8 happy that I wasn't writing the briefs  
9 because it was obvious that a tremendous  
10 amount of effort and time went into the  
11 brief-writing process, both the initial  
12 briefs and the reply briefs.

13 They were done extremely well and  
14 they started to show, despite the  
15 friendliness and accommodation here, that  
16 here we are at the end of the case and we  
17 kind of see a little bit of the gloves  
18 come off standard with regard to that.

19 The passionate advocacy of all of  
20 the counsel involved showed through  
21 somewhat clearly in the briefs that they  
22 may not have come off as clearly in the  
23 hearings, but it's there very strongly,  
24 and it's clear to me that everyone feels  
25 very, very strongly about their position,

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2 their responsibility to their client, and  
3 in terms of the righteousness of their  
4 position.

5 The Hearing Officer as well feels  
6 very strongly about his responsibility to  
7 his constituency as they may be in this  
8 situation. I think that's an appropriate  
9 point of demarcation to say that each of  
10 us have unique responsibility to our  
11 respective client or constituency and we  
12 understand that.

13 All comments that are made today are  
14 made in the spirit of that and I will  
15 receive them in the spirit of that. It  
16 is certainly not personalized and  
17 certainly not in any way intended by  
18 anyone to be of a personal nature but  
19 certainly in furtherance of your  
20 responsibility to your client.

21 There was some question as to  
22 whether or not to have oral argument at  
23 the outset. Oral argument to me is a  
24 very important part of the matter. It  
25 gives the opportunity to get some

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2 thoughts out that aren't quite expressed  
3 in a great way in the briefs and has the  
4 opportunity to have some questions  
5 submitted.

6 That's important for you and  
7 everyone because the decisions are not  
8 in, the opinions are not written, and we  
9 are waiting anxiously to get this over  
10 before making the hard decisions that are  
11 before us in connection with that.

12 In connection with the argument  
13 itself, I suggest that we split the  
14 argument into two parts, one part being  
15 to address all the revenue issues first  
16 and we will go through each party to  
17 address the revenue issues, and then all  
18 other issues in the case.

19 I think that will have the  
20 opportunity to split up the argument a  
21 little bit, it won't keep anybody talking  
22 so much, and it will be helpful in  
23 following that to be able to address what  
24 you have to put in for your case.

25 I have set this for 1 o'clock with

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2 the whole afternoon available. Time is  
3 not a factor with regard to that. So to  
4 the extent you need time, you have it.  
5 To the extent you don't need time, you  
6 don't need it. If you don't need it, I  
7 have no fixed or artificial timelines  
8 with regard to that.

9 Given the administrative and  
10 relatively informal basis of the matter,  
11 to the extent that any counsel wants to  
12 communicate with his client or have them  
13 respond in some way, that's certainly  
14 acceptable to the Hearing Officer.

15 So recognizing that the Philadelphia  
16 Water Department does have the burden of  
17 proof -- you agree with that, Mr. Dasent?

18 MR. DASENT: Yes.

19 THE HEARING OFFICER: -- we will let  
20 the party with the burden of proof  
21 proceed.

22 MR. DASENT: Thank you, Your Honor.

23 In the first instance, I wanted to  
24 thank Your Honor and Michael Galbraith  
25 for presiding over these hearings and for

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2 taking the appropriate care to get us  
3 through this process as far as we've  
4 gotten.

5 I know we have a bit of a ways to go  
6 with mediation and stormwater and I hope  
7 to suggest, in fact, a schedule for  
8 stormwater very shortly to get that off  
9 and running because we need to bring that  
10 aspect of this case also to a conclusion.

11 I do hear the air conditioner rather  
12 loudly and I'm wondering if I could turn  
13 it down or have an adjustment made --  
14 someone from the Water Department might  
15 be able to help me with that -- and maybe  
16 we can all hear each other just a little  
17 bit better.

18 Thank you.

19 I also want to thank the parties,  
20 including the Public Advocate, first and  
21 foremost, Mr. Bertocci and Thu Tran, and  
22 Mr. Delaney and the representatives from  
23 PLUG, all of them, including  
24 Ms. Mincavage, Ms. Keddie, and  
25 Mr. Dougherty, and there are a number of

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2 other folks also, Mr. Glass and  
3 Mr. Hinerman. I don't know if  
4 Mr. Hinerman is here or not. But all of  
5 them were very able representatives of  
6 their parties and made it also a very  
7 enjoyable experience in terms of this  
8 interaction, this crucible, if you will,  
9 that we're going through.

10 I was trying to think of what to say  
11 today that hasn't been said to present it  
12 to Your Honor in a way that would help  
13 you see the urgency that we feel about  
14 this particular rate case.

15 I was gratified that you said  
16 earlier that Mr. McKinley, who is with  
17 me, and Mr. Clare might also be able to  
18 add their two cents because they come  
19 from a different perspective than I and  
20 in some instances, if there's a gap in  
21 knowledge or a question that you need  
22 answered with precision, with their  
23 particular disciplines in mind, finance  
24 and utility rate matters, I think it's  
25 helpful that they are here and wanted to

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2 offer that certainly to you as a  
3 resource.

4 But in explaining this at the  
5 threshold level, we're down to 295.7 --  
6 we're well below the eye-popping stage,  
7 as I believe Mr. Bertocci described it --  
8 but 295.7 million of necessary revenues  
9 when spread over a four-year rate plan,  
10 which we believe is critical to our plan  
11 for the future.

12 THE HEARING OFFICER: Well, let's  
13 talk about the four-year issue right off  
14 the bat because that's a big issue for  
15 everyone involved here, as to whether a  
16 four-year plan is an absolute requirement  
17 as a matter of law, as a matter of  
18 regulation, or if there is discretion  
19 with the Hearing Officer to determine a  
20 shorter period, because your reply brief  
21 seems to say that for the Hearing Officer  
22 to implement a two-year period, I would  
23 be usurping the managerial responsibility  
24 of the Water Department.

25 And while I want to exercise my

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2 jurisdiction in a plenary nature, I don't  
3 want to interfere with something that you  
4 are concerned is illegal in nature. So  
5 why don't you respond to that?

6 MR. DASENT: Well, sure. The  
7 Department maintains that it is our  
8 prerogative to set the four-year rate  
9 plan, the time horizon that was set by  
10 the Commissioner. In prior rate cases  
11 going back to 1993 --

12 THE HEARING OFFICER: In none of  
13 those cases had the Hearing Officer  
14 recommended a shorter period; is that  
15 right?

16 MR. DASENT: That's correct.

17 THE HEARING OFFICER: Even though  
18 the Public Advocate supported it, the  
19 Hearing Officer didn't.

20 MR. DASENT: That's correct.

21 THE HEARING OFFICER: Right.

22 MR. DASENT: So these issues have  
23 been litigated before, that is true. In  
24 addition do that, when you look at some  
25 of the case law, when it talks about

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2 second-guessing management, in the PUC  
3 context at the very least, the PUC or the  
4 regulator is not supposed to serve as a  
5 super board of directors.

6 It's not supposed to insert itself  
7 in such a way that would suggest, for  
8 example, that the financial plan that the  
9 Commissioner has laid out is somehow to  
10 be undone and the judgment of someone  
11 else is to be substituted for that of the  
12 Commissioner.

13 THE HEARING OFFICER: The  
14 Commissioner hasn't laid out the plan in  
15 this case; the Water Department has.

16 MR. DASENT: Well, the Water  
17 Department --

18 THE HEARING OFFICER: It's not like  
19 you are talking about the Chinese Wall  
20 that was existing. The Commissioner had  
21 no participation whatsoever in the rate  
22 filing in terms of what it would be.

23 MR. DASENT: Well, that's correct in  
24 terms of the mechanics of the bricks and  
25 mortar of this rate filing. But you'll

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2 remember that Commissioner Brunwasser has  
3 been in office for some time now and in  
4 the last rate decision back in 2005 he  
5 approved the same time horizon that had  
6 been previously approved by Commissioner  
7 Kishinchand, which was a four-year time  
8 horizon, and we are engaged in a process  
9 that is replicating that.

10 And, in fact, the City Code gives  
11 discretion to the Commissioner to  
12 establish that timeline. It indicates a  
13 reasonable number of years and within  
14 that framework it has deferred to the  
15 Commissioner in his discretion to set the  
16 time horizon for rates.

17 That's what's been done in this rate  
18 plan and what we're trying to continue.  
19 With the expectation of the markets,  
20 having used this particular rate plan in  
21 the past, we're trying to replicate that  
22 because as part of our financial  
23 planning, particularly when you're  
24 appealing to folks who are buying their  
25 bonds for a 30-year period, they like to

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2 see some certainty, particularly in a  
3 jittery market, an uncertain market, like  
4 we have today, that we are following  
5 through with a rate plan that will  
6 sustain debt service.

7 THE HEARING OFFICER: Well, half the  
8 bonds are sold already for the next bond  
9 issuance; is that correct?

10 MR. DASENT: We have sold bonds,  
11 yes, in the recent past. But we also  
12 have a bond issue coming.

13 THE HEARING OFFICER: And the  
14 upcoming bond issuance that's scheduled  
15 for --

16 MR. DASENT: 2009.

17 THE HEARING OFFICER: -- 2009, I  
18 thought the testimony was that one-half  
19 of them were sold, 180 million were sold,  
20 at a fixed rate of 4.81 as a result of  
21 the 2007 issuance.

22 MR. DASENT: That's correct, half of  
23 those have been sold. But there is also  
24 a transaction to be concluded and it's  
25 like, I don't know, I suppose changing

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2 courses midstream if we're going to  
3 change the rate plan because we're in a  
4 situation where we have set the rate plan  
5 in motion and we're continuing that and  
6 the expectation is that we will continue  
7 that.

8 And if you remember from the  
9 testimony of the City's financial  
10 advisor, Tony Griffith, he indicated that  
11 this is not a time for drastic change,  
12 changing the rate plan or the formula or  
13 the financial plan of the Department in  
14 an inordinate way, not just in saying,  
15 you know, certain revenue requirement is  
16 X or X minus 10, it's more or less  
17 turning the whole process around and  
18 substituting the judgment of the parties  
19 in this case or Your Honor for the  
20 Commissioner.

21 And we're hopeful that we can stay  
22 on course with our financial plan,  
23 particularly in an uncertain market,  
24 where people are looking for even a pin  
25 to drop as a way to walk away from the

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2 bonds.

3 I mean, interestingly, even this  
4 week our interest rates have increased on  
5 the 2003-2005 bond transaction. They  
6 have gone up from like 1.97% to 8%. And  
7 part of the reason is because of the  
8 uncertainty of the current markets. It's  
9 also because FSA is involved, and we  
10 alerted Your Honor and the parties to the  
11 uncertainty in the market and this is one  
12 element of it.

13 What we're hopeful for in this  
14 particular instance is not to stray from  
15 the financial path that we've charted but  
16 more or less to look at the  
17 reasonableness of the proposal, to make a  
18 judgment as to what's known and  
19 measurable in this context, and in the  
20 context of municipal ratemaking go  
21 forward with a plan, as has been done in  
22 San Antonio or Kansas City or any number  
23 of other jurisdictions that we listed and  
24 provided to you, in fact, in response to  
25 your question.

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2 THE HEARING OFFICER: One of the  
3 questions that I propounded in connection  
4 with the oral argument today was the  
5 appropriateness of that chart that you  
6 gave me that appears as to those other  
7 jurisdictions. Was there any real  
8 analysis done of that with regard to how  
9 that applies to this utility?

10 MR. DASENT: Well, yes, in a number  
11 of different ways.

12 THE HEARING OFFICER: Okay. How  
13 about Lee Summit, Missouri? That's one  
14 of the listings there. It does not  
15 produce water or treat water. It buys  
16 water. How is that relevant for me to  
17 consider?

18 MR. DASENT: Well, I think in that  
19 particular instance, the fact that it is  
20 a municipal jurisdiction and made the  
21 list, and the fact that one of the Black  
22 & Veatch partners indicated it was a  
23 multiple-year rate plan jurisdiction.

24 Each one of those jurisdictions has  
25 steps in their rates over a number of

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2 years. The first year is at one level.  
3 The next year is at another level with an  
4 increment.

5 THE HEARING OFFICER: Los Angeles  
6 Water, they have to go to City Council to  
7 get their water rates. They have a board  
8 and they have to go to City Council to  
9 get their water rates. Their water rates  
10 are an ordinance. And their last  
11 increase was for two years; more  
12 specifically, 3.1 one year and 6.2  
13 another year.

14 So I don't think they go very far in  
15 this absolute four-year situation.

16 MR. DASENT: Well, Mr. McKinley from  
17 Black & Veatch actually represents a  
18 number of the jurisdictions on the list  
19 and --

20 THE HEARING OFFICER: And I find  
21 that anecdotal testimony that he gave us  
22 with regard to that of really very little  
23 import because when you looked behind the  
24 chart, there was not really very much  
25 there.

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2 MR. DASENT: But as to those  
3 jurisdictions that he has participated or  
4 been engaged as a consultant, he has  
5 indicated to me very clearly that there  
6 are steps in the rate increase and that  
7 they are analogous to ours in the sense  
8 that they are a municipal jurisdiction  
9 and they sustain themselves with a  
10 financial plan like ours that goes over a  
11 time horizon that's longer than a  
12 PUC-regulated jurisdiction.

13 THE HEARING OFFICER: The problem  
14 with regard to the projections in terms  
15 of the four-year plan, the big smoking  
16 gun in this case that troubles the  
17 Hearing Examiner most is the absolute  
18 unbelievable variance in the rate  
19 stabilization fund balances as previously  
20 predicted and as presently existing.

21 As late as 2007 in the bond issuance  
22 I think that the projection of the rate  
23 stabilization fund was 8.2 in 2010. That  
24 was, I think, Mr. McKinley's projection  
25 according with the bonds, 8.2 million in

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2 2010. And we're sitting with at the  
3 present 165 million?

4 MR. DASENT: The last projection on  
5 Table 11 was 149.

6 THE HEARING OFFICER: That's a  
7 projection, but the present balance. We  
8 have a balance of record, don't we?

9 MR. DASENT: Well, when we close the  
10 books, we will know with certainty. But  
11 the 160 million that you referred to is  
12 in the ballpark.

13 THE HEARING OFFICER: Well, given  
14 such a situation with regard to the  
15 variance, how can the Hearing Examiner  
16 have faith in the projections that are  
17 being given to him?

18 MR. DASENT: Well, I think you're  
19 looking at one set of projections and I  
20 grant you that there's a large variance  
21 there. I grant you also, though, that  
22 the variance or the monies involved are  
23 being used in this particular rate case  
24 to reduce the revenue requirement. They  
25 mitigate the impact of rates on

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2 customers, as it was intended.

3 THE HEARING OFFICER: Speaking of  
4 that, the difference between the 145 and  
5 160 that's now the interest on that,  
6 which I guess would be 3 million or so or  
7 something like that, is that picked up  
8 anywhere in the tables?

9 MR. DASENT: I don't believe it's  
10 picked up in any of the tables, but  
11 Mr. Clare is in the room if you wanted  
12 clarity on that particular variance.

13 But I think with certainty, when the  
14 books close, that's when we will know the  
15 absolute value. But as I indicated, we  
16 were relying on Table 11 as calculated at  
17 the time of filing at 140 whatever it is,  
18 149, roughly, million dollars or  
19 145 million. So that's the level that we  
20 were looking at and relying upon for  
21 purposes of our filing.

22 The variance, however, you can  
23 obviously see is a large one. You can  
24 also see during the time frame that it  
25 was being accumulated that there were a

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2 number of things going on, one-time  
3 events with Bucks County, where monies  
4 were coming in and capital contributions  
5 in particular that were sizable that also  
6 impact the amount of money that was on  
7 reserve.

8 THE HEARING OFFICER: I'm not  
9 questioning the good faith of the  
10 estimate and I'm not saying it was not  
11 made in good faith in any way whatsoever.

12 I'm questioning when things go in  
13 and come out, so you said, the question  
14 is not knowing what's going to happen,  
15 that gives the Hearing Examiner pause as  
16 to dealing with a four-year period.

17 MR. DASENT: Well, I understand, and  
18 that is --

19 THE HEARING OFFICER: Tell me the  
20 harm to the Philadelphia Water Department  
21 with regard to the proposal that was  
22 suggested -- it wasn't agreed upon but  
23 was thrown out there by the Hearing  
24 Examiner -- with regard to the fact that  
25 the rate period would be a four-year

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2 period, that it would not disturb the  
3 rate period, that rates would be put into  
4 effect for a two-year period, and then  
5 sometime at the close of the next fiscal  
6 year, after some preliminary estimates,  
7 hopefully in February or March of 2010,  
8 that we would have some true-ups with  
9 regard to what really happened and that  
10 there could be a better look-see at what  
11 the situation is.

12 I understand what you've said about  
13 a perpetual rate case. But we are  
14 dealing with economic times that are  
15 unparalleled, not only with regard to the  
16 financial markets, but with regard to the  
17 citizenry of Philadelphia.

18 You heard the people come and  
19 testify in terms of what they're dealing  
20 with with regard to their water bills and  
21 how they can't handle them, how they get  
22 2% in Social Security or 3% in Social  
23 Security. And I have that balance.

24 See, the problem before me is to  
25 make sure to maintain the integrity of

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2 the utility; on the other hand, not to  
3 burden the people with rates that they  
4 shouldn't have to pay, as I think the  
5 record shows they've been burdened for  
6 the last three years.

7 MR. DASENT: Well, I understand the  
8 argument that you're making. At the same  
9 time, however, I understand the  
10 mechanisms in place to capture these  
11 funds to use them for the benefit of the  
12 ratepayers.

13 And during the course of the last  
14 number of years you'll note that not only  
15 did we use the monies for working capital  
16 needs to minimize cost to ratepayers, we  
17 managed to coverage and avoided the fate  
18 that other utilities face in targeting a  
19 high level of coverage to make sure they  
20 never fall into technical default.

21 And we're also in a situation where  
22 you have to manage and the City Code, in  
23 fact, provides for an allowance for some  
24 unforeseeable circumstances so that  
25 you're not in a situation where you

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2 either technically default or run afoul  
3 of your requirements to meet your  
4 operating standards.

5 THE HEARING OFFICER: And I'm in  
6 agreement with that and I really have no  
7 problem with the \$45 million in the grand  
8 scheme of things. But I do have some  
9 problems with regard to in terms of  
10 knowing that it's going to be 45 million  
11 and not 165. I have concern about your  
12 four-year period when I'm not dealing  
13 with known and measurable costs.

14 MR. DASENT: You also have to look,  
15 I think, at the projections that were  
16 made concerning operating expenses and  
17 how the variance was in the range of, it  
18 varied from 1.9%, somewhere in that  
19 range, to 4% over a period of four years  
20 also, running parallel to the rate  
21 stabilization fund.

22 So I think you have to look at a  
23 whole host of things that are going on,  
24 including the one-time events that caused  
25 us to accumulate money, and I think to

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2 the better or for the better of  
3 customers.

4 In this particular instance, in the  
5 current markets, where liquidity is such  
6 a concern, others, for example, PGW, are  
7 trying to go to the market right now to  
8 expand their letter of credit, there are  
9 no takers, the banks aren't interested,  
10 so we're in a situation where having this  
11 mechanism in place, it's really working  
12 to the benefit of customers.

13 And even though we're being  
14 criticized for it and I understand the  
15 variance and I don't try to minimize the  
16 variance, but I also indicate at the same  
17 time with interest income, with a number  
18 of other factors, I mentioned Bucks  
19 County, I mentioned also in the brief and  
20 I should mention now the residual fund  
21 could have been at a higher level based  
22 upon our projections, but instead landed  
23 in the rate stabilization fund where the  
24 Commissioner believed he would have the  
25 most flexibility to use it for the

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2 benefit of customers.

3 It's there now and being used to  
4 offset the rate hike now as opposed to  
5 being either in the residual fund or used  
6 in the construction fund, also to the  
7 benefit of customers, but in that  
8 instance obviously it wouldn't be  
9 available to mitigate rates.

10 THE HEARING OFFICER: One of the  
11 themes throughout your brief is that this  
12 is all in the interest of the citizens  
13 and I still want to be convinced how  
14 you're so sure that the people would  
15 rather have a 6% rate each year rather  
16 than 1 or 2 percent each year and then  
17 three years down the line, when somebody  
18 may be alive or not alive, worry about  
19 what's going on at that point in time.

20 MR. DASENT: Well, we have had  
21 conversations with commercial customers,  
22 for example, asking for five-year  
23 contracts. They're asking for a way to  
24 budget these things so that they know  
25 what's going to happen, they can predict,

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2 in the operation of their business,  
3 what --

4 THE HEARING OFFICER: Is that  
5 evidence? Is that evidence that I should  
6 consider? Is that on this record?

7 MR. DASENT: Well, I think to the  
8 degree your questions and the responses  
9 to your questions --

10 THE HEARING OFFICER: My question  
11 is --

12 MR. DASENT: -- earlier this week --

13 THE HEARING OFFICER: Right -- is  
14 there anything on the record, is there  
15 anything that the Water Department has  
16 done empirically to study what its  
17 customers want with regard to that so  
18 that can be part of the record? --  
19 because, as you say, time and time again,  
20 customers want this, customers like to  
21 plan. You know, customers like to be  
22 able to pay their bills and not have  
23 their water shut off.

24 MR. DASENT: I certainly understand  
25 that and am sympathetic to that.

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2 Customers also do not want to see -- and  
3 you've heard on this record in the public  
4 hearings -- percentage increases that are  
5 as high even as 6%.

6 And as a consequence we suggest  
7 looking at PWD Exhibit 32 where there  
8 might be a 14.3% increase in 2011 or  
9 higher increases because when you factor  
10 in realistic revenue requirements,  
11 increases are actually going to spike  
12 higher.

13 We're in a situation where you're  
14 asking for proof of an obvious truth.  
15 Just listening to the record in this  
16 proceeding, the public hearings where  
17 folks are telling us ability to pay is  
18 something to be weighed in the mix of  
19 things you must balance in making your  
20 decision, we'd like to think we've tried  
21 to recognize that in part by keeping the  
22 rate increase down and we've indicated  
23 the offsetting factors, the refinancing  
24 of bonds, other steps that we've taken  
25 before filing for rates.

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2 In addition to that, by levelizing  
3 rates and using the rate stabilization  
4 fund for its intended purpose, we are  
5 also in a situation where we're  
6 minimizing the impact on customers. I  
7 think that's an obvious truth.

8 We have in the room with us today  
9 Mr. Clare also if you wanted to hear more  
10 directly from the Department as to that  
11 issue, but I believe the record does  
12 indicate in a lot of different ways --  
13 and not from the mouth of the Department,  
14 but from others as well -- that there is,  
15 indeed, an interest in either having  
16 levelized rates or at least percentage  
17 increases that are not so exorbitant.

18 We've tried to accomplish that in a  
19 number of different ways by using the  
20 rate stabilization fund to manage this  
21 rate increase in such a way that our  
22 entire financial plan is in sync with the  
23 rate requests that we're making and it's  
24 in sync with the various statements and  
25 pronouncements that we've made to the

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2 rating agencies.

3 Other utilities don't have the  
4 luxury that we have in the sense of not  
5 being able to manage to coverage and it  
6 costs a significant amount of dollars.

7 If you have \$100 million in debt  
8 service -- for example, that's PGW -- and  
9 a 1.50 times coverage and you target 1.75  
10 times, it's easy to see, back of the  
11 envelope, that costs customers \$25  
12 million.

13 If we're in another situation, for  
14 example, when you have end-of-year cash  
15 balances, not with our rate stabilization  
16 fund but without it, and you had to  
17 borrow that -- again, PGW -- we are  
18 seeing a model where some folks have to  
19 borrow for a lot of their different  
20 needs. Liquidity, in fact, is purchased  
21 by PGW.

22 In this particular instance we did  
23 not have to purchase that liquidity and  
24 we're in better shape for it and looking  
25 at a BBB category utility compared to an

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2 A category utility, and you see part of  
3 the reason that we're here -- and Moody's  
4 attests to it and Standard & Poor's  
5 attests to it -- indicating that those  
6 reserves did help us get where we are and  
7 lower our debt service.

8 That's going to be critical,  
9 particularly at a time like now, with the  
10 alternate rate applying to our variable  
11 rate debt in the 2003-2005 bonds, with  
12 other bonds going forward, where we may  
13 not have insurance and we will be in a  
14 situation where as opposed to an A  
15 utility with insurance, we're maybe a  
16 AAA, we'll have to go with the bare  
17 rating that we have. And fortunately  
18 we're better off than others in the City,  
19 whether it be the Gas Works or the City  
20 of Philadelphia itself.

21 But our revenues are off now. The  
22 economy is showing us the uncertainty  
23 that we tried to identify in various  
24 charts in the briefs, that we're not at  
25 the robust position that we'd like to be.

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2 And we are potentially getting hit with  
3 the FSA downgrade, the shut-off  
4 restrictions.

5 THE HEARING OFFICER: Is that the  
6 Armageddon chart, the \$128 million  
7 Armageddon chart, the end of the world?

8 MR. DASENT: We call it the sky is  
9 falling chart, but you can call it  
10 Armageddon.

11 THE HEARING OFFICER: The sky is  
12 falling is fine. I'll take your words.

13 Do you think that's a realistic  
14 basis upon which rates should be set when  
15 none of those things are known and  
16 measurable?

17 We have no idea what City Council is  
18 going to do. You have no study to show  
19 that you are going to have \$5 million  
20 less. You have no study to say that  
21 there's going to be a \$68 million loss on  
22 FSA.

23 I find that as like kind of a little  
24 bit of a scare tactic for the Examiner:  
25 Watch out, this stuff might be right

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2 there and this utility might fail.

3 I mean, this utility is in great  
4 shape. I'm proud of this utility and  
5 what it's done with regard to its income.

6 MR. DASENT: I think we do have a  
7 track record and people take for granted  
8 the fact that we provide high-quality  
9 water and reliable service.

10 THE HEARING OFFICER: I don't think  
11 they do. As a matter of fact, I thought  
12 that the Public Advocate mentioned that  
13 specifically, that he wants to give  
14 credit where credit is due, about the  
15 high quality of the utility.

16 Isn't that in your brief somewhere,  
17 Mr. Bertocci?

18 MR. BERTOCCI: Yes.

19 MR. DASENT: I'm quoting from him,  
20 sir.

21 THE HEARING OFFICER: The high  
22 quality and the respect that he has and  
23 everybody has for the management of this  
24 very complex utility. I don't think  
25 anybody is questioning that and everybody

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2 appreciates that and I think that we're  
3 lucky that we have that. That doesn't  
4 affect the reasonableness of what rates  
5 should be charged.

6 MR. DASENT: Well, I think it shows  
7 that the monies are being used for good  
8 purpose and that we are not under consent  
9 decree.

10 There are a lot of different ways  
11 you can operate a utility. One is by the  
12 seat of your pants. One is where you're  
13 borrowing for liquidity. And another is  
14 when you have a financial plan and you  
15 follow that financial plan and you make  
16 pronouncements to the investment  
17 community and you follow through with  
18 your commitments. That's what we're  
19 trying to do here.

20 I heard you say earlier that the  
21 \$45 million wasn't really the rub, that  
22 there are other things, and I understand  
23 from reading Mr. Bertocci's brief also  
24 that he understands that we need cash  
25 working capital.

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2 Nonetheless, there's an argument  
3 that seems to suggest if we go for a  
4 four-year rate plan, that somehow working  
5 capital is superfluous or it can be  
6 reduced to a bare bones minimum leaving  
7 no margin for error.

8 THE HEARING OFFICER: When it comes  
9 to the idea of substantive values on the  
10 record, if you wanted to have cash  
11 working capital as part of the case, then  
12 the Department shouldn't have had a draft  
13 study anecdotally noted in the record.  
14 There should have been a study completed  
15 and it should have been before the  
16 parties to review to see if it was a fair  
17 study if there was a request to support  
18 the \$45 million. We have a draft study  
19 that is not the weightiest type of  
20 evidence to rely upon when you're dealing  
21 with millions of dollars in rate  
22 increases.

23 MR. DASENT: You also, though, have  
24 on the record a detailed discussion  
25 about --

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2 THE HEARING OFFICER: The number of  
3 days.

4 MR. DASENT: Right, the number of  
5 days, and it's also --

6 THE HEARING OFFICER: Mr. McKinley  
7 testified to that. I remember that.

8 MR. DASENT: And it's also parallel  
9 to PGW's experience if you wanted to take  
10 notice of what other utilities do.

11 THE HEARING OFFICER: I don't think  
12 we want to take notice of PGW. I don't  
13 think they set a very good standard in  
14 terms of stability in their financial  
15 record.

16 MR. DASENT: And their absence of  
17 liquidity and their various problems that  
18 they have, if you don't want to replicate  
19 them here, then the model that  
20 Mr. Bertocci has advanced should be  
21 rejected out of hand.

22 Whenever you're in a situation where  
23 you cut \$149 million out of a rate  
24 request, you've gone beyond trimming,  
25 you've gone beyond budgeting, you've gone

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2 beyond management, reasonable management,  
3 and you're striking the bone of the  
4 utility.

5 And then whenever you put in your  
6 rate request or your adjustments to a  
7 rate request adjustments that cut out  
8 personal services, we're in a situation  
9 where we know next year we're in a  
10 situation where the labor costs will be  
11 increasing and we have empirical evidence  
12 on all of that, and averages seem to work  
13 in some circumstances and I think in the  
14 municipal context we can use five-year  
15 averages, two- to three-year averages, to  
16 find our way through to what a reasonable  
17 projection should be.

18 I think you also have to, though,  
19 use informed judgment, as any utility  
20 regulator would do, as any utility  
21 operator would do, to make a judgment  
22 does this all make sense.

23 It's not just a number. It's not  
24 just a formula. But there's something  
25 that underpins it that's very realistic.

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2 And that's what we've tried to do in our  
3 presentation.

4 I think when you look holistically  
5 at the filing, the whole filing --

6 THE HEARING OFFICER: Holistically,  
7 does that mean the whole filing?

8 MR. DASENT: Yes.

9 THE HEARING OFFICER: Yes.

10 MR. DASENT: -- you will be in a  
11 situation where you see the greater  
12 context of what we're doing. And in the  
13 current markets, particularly when you're  
14 having a situation where companies are  
15 failing, like Lehman Brothers, you have  
16 Merrill Lynch combining with another  
17 entity, Bank of America, to save itself,  
18 and you see the federal intervention  
19 that's planned, all of this at the bottom  
20 of it is a crisis in liquidity.

21 THE HEARING OFFICER: How about a  
22 crisis of the citizenry? We have more  
23 foreclosures in Philadelphia than ever  
24 before. The foreclosure situation is so  
25 severe on the citizenry of Philadelphia

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2 that the courts have established a  
3 special program beyond any historical  
4 basis in the past to try to stem  
5 foreclosures because their financial  
6 seriousness is so much.

7 Unemployment in Philadelphia is  
8 6.7%, higher than it's ever been before.  
9 We have one-third of the people in  
10 Philadelphia living below the poverty  
11 level.

12 Those are all balancing tests with  
13 regard to the situation. So, yes, I'm  
14 mindful of the financial market  
15 situation. But I'm mindful of the  
16 citizenry as well.

17 MR. DASENT: As you should be. We  
18 certainly want to balance everyone's  
19 needs here. But I think you're also in a  
20 situation, when we're arguing collections  
21 can be increased and the economy is going  
22 south, we're arguing at a time --

23 THE HEARING OFFICER: Well, let's  
24 take the collections. You spent millions  
25 of dollars on a computer system. You say

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2 in your papers that you've got this new  
3 collection system and that's one of the  
4 things we've done to try and increase our  
5 collections, spent millions on the  
6 system, and give us brownie points for  
7 trying to keep the rates low because  
8 we've increased the system, and then we  
9 say collections are going to go down.

10 MR. DASENT: Well, if you can plot a  
11 recession in the timeline of your  
12 implementing a new billing system, I  
13 guess you would try to accomplish two  
14 things with a new billing system.

15 If you look at the PGW experience  
16 again, they've sort of crashed and  
17 burned. They couldn't quite figure out  
18 how to make it work. And then we're in a  
19 situation where also you have to time it  
20 I guess where the economy is robust so  
21 that your numbers can be inflated.

22 But we're in a situation,  
23 realistically speaking, where we're  
24 seeing our revenues as a city go down.  
25 We're seeing a big hole in the budget,

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2 steps being taken to manage around that.  
3 You're also seeing revenues off for the  
4 Water Department. Comparing this month  
5 to this month last year, you'll see like  
6 over a million dollars' difference in  
7 terms of revenues. So I think all of us  
8 have to take into account the real-world  
9 situation that's presented.

10 Also, if you remember your question,  
11 Your Honor, during the course of the  
12 hearing, when Mr. Bleiweis raised the  
13 whole situation of the billing system and  
14 its correlation to its implementation and  
15 improved collections, you indicated in  
16 asking your probing questions: Do you  
17 know anything about this billing system?  
18 Do you have any insight into how it's  
19 working or how it isn't?

20 He answered no, no.

21 And then Mr. Clare indicated very  
22 clearly that empirically we do not have  
23 evidence at this point that our  
24 collections are going up.

25 Now, is it the economy? That's a

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2 factor. Is it other considerations as  
3 well? The demographics that you  
4 mentioned in Philadelphia are just not  
5 particularly favorable.

6 But we're in a situation, I grant  
7 you, where you have to balance a lot of  
8 different things and ability to pay is  
9 one of those.

10 What we're trying to do in designing  
11 this rate increase, not only in keeping  
12 the revenue level down and levelizing it  
13 and trying to plan on customers' needs,  
14 is this obvious truth I've related to you  
15 in response to questions the other day,  
16 which I hope you will mark as an exhibit  
17 in this case because I think it is  
18 useful; and then in addition to that, you  
19 need to see ways that we need to work  
20 around not only the limited income of our  
21 customers and the restrictions in  
22 collections that cause us not to be able  
23 to be as effective as we like to be in  
24 some instances in getting revenues in the  
25 door and the economy itself.

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2 And taken together, that doesn't  
3 mean we assume, without more,  
4 particularly with a known and measurable  
5 standard, that there could be a targeted  
6 collection factor that does not in any  
7 way comport with the five-year average.  
8 The five-year average indicates 85.5%.  
9 Realistically we should use the average  
10 in that particular context.

11 If you wanted to say, well, informed  
12 judgment and the average together might  
13 help us, well, then if you even look  
14 longer than a five-year average, you  
15 don't see a situation where you're  
16 exceeding this 85.5 by much. In fact,  
17 some years it will be less.

18 So we're saying taken together, our  
19 experience indicates the collection level  
20 should be where they are, at 85.5.  
21 Particularly in a bad economy, we'll hold  
22 our own.

23 But we're in a situation also where  
24 we're looking beyond that. We're looking  
25 to find out how we can maintain our

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2 liquidity with all the problems we have.

3 Now, you mentioned FSA as being a  
4 future context, but it's affecting us  
5 now. I mentioned just a moment ago the  
6 fact that we're paying increased debt  
7 service on the 2003-2005 bonds. We just  
8 remarketed the 1997B bonds.

9 THE HEARING OFFICER: You always  
10 tell me about the bad things that are  
11 coming along. Aren't there, as Mr. Clare  
12 said, things that go both ways? Some  
13 things come in that aren't expected.  
14 Some things come in that are expected.  
15 Some help the customers. Some hurt the  
16 customers. You're the one with all the  
17 records. You know what's going on. I  
18 don't hear anything that's good that's  
19 happening at the utility from the  
20 increase.

21 MR. DASENT: A lot of good things  
22 are happening. Our capital projects I  
23 think are being completed. That's a good  
24 thing. The things that we're doing, the  
25 stormwater control, that's a good thing.

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2 THE HEARING OFFICER: I'm talking  
3 from a revenue viewpoint.

4 MR. DASENT: From a revenue  
5 viewpoint there are a lot of good stories  
6 to tell also. I thought we had shared  
7 with you the fact that we're trying to  
8 bring on more employees so we can be more  
9 effective and that will help us in terms  
10 of delivering services and accruing  
11 revenues to the benefit of customers.

12 THE HEARING OFFICER: Talking about  
13 the employees, what about the City's  
14 freeze? That was one of the questions I  
15 asked you. How does that affect the  
16 Water Department? It seems like from  
17 what you said, the Water Department has  
18 its own funds so we're not guided by the  
19 City and the Water Department is not  
20 affected by that in any way.

21 MR. DASENT: Tax revenues drive the  
22 general fund and therefore when they make  
23 their cuts, they should be realistically  
24 calibrated to the revenues that are  
25 coming in.

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2 On the water side we're doing the  
3 same thing. There may be a partial  
4 freeze that we will deal with with  
5 certain employees because we're in a  
6 situation where we, too, are worried  
7 about funds dropping off. I mentioned  
8 July and August, about a million dollars  
9 off from the year prior.

10 So we're in a situation where we,  
11 too, are looking at and trying to  
12 assiduously plan what we need to do also  
13 to address the needs in this particular  
14 economy.

15 But we don't want to be in a  
16 position -- and I have to stress this --  
17 where we either can't pay our employees  
18 or we have a revenue requirement that's  
19 so eviscerated that we will not be able  
20 to make the special needs or the regular  
21 needs, actually, the operating needs, of  
22 the utility.

23 So we implore you to look at the  
24 true situation that's presented on  
25 personal services and fringes and



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2 have to play catchup with that.

3 We have a lot of negative things  
4 that are happening to us. And that's not  
5 to say it's reflected in the revenue  
6 requirement. So when you talk about  
7 known and measurable, I think that's a  
8 slightly different situation. We're  
9 giving you the context, the backdrop.

10 THE HEARING OFFICER: Well, that's  
11 your argument with the nonrecurring  
12 adjustments. You say, well, we have  
13 about \$1.8 million in nonrecurring  
14 adjustments and we're just going to leave  
15 them in the rate plan because some  
16 stuff's going to come along so we need  
17 this slush fund because we always know  
18 stuff comes along.

19 MR. DASENT: Well, I don't know if I  
20 would put it that way.

21 THE HEARING OFFICER: Tell me how  
22 you would put it. That's how I  
23 understand it to be, that you admit that  
24 there's \$1.8 million per year in  
25 nonrecurring adjustments in '10, '11, and

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2 '12 and you say with regard to that \$1.8  
3 million it shouldn't be deducted because  
4 we're going to have things come up.

5 MR. DASENT: But every year there  
6 are nonrecurring expenses. If you look  
7 at PWD Exhibit 25, it shows you year  
8 after year -- it goes about eight or nine  
9 years back -- that we are averaging  
10 around \$2 million in nonrecurring  
11 expenses.

12 As a consequence, when you see the  
13 \$1.805 million that's subject to  
14 adjustment after we already weeded out  
15 the \$1.302 million in nonrecurring  
16 expenses, we're in a situation where if  
17 these next set of nonrecurring expenses  
18 are not reflected in the budget, not  
19 reflected in the revenue requirement, I  
20 should say, then there's nothing to  
21 adjust.

22 Now, in addition to that, I think  
23 you have to look at it in the context of  
24 new programs, and if you have \$22 million  
25 in new programs on average --

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2 THE HEARING OFFICER: Wasn't that  
3 27 million?

4 MR. DASENT: It was 27 million, but  
5 I think if you averaged it over a number  
6 of years, looking again to PWD-25, you'll  
7 see 22 million on average. And it sort  
8 of swallows any credibility because it's  
9 not in the budget, it's not in the  
10 revenue requirement at all.

11 You're in a situation where you're  
12 seeing this is a superfluous adjustment  
13 for two reasons, and then we name the two  
14 and we also indicate that we tried to  
15 weed out those nonrecurring expenses that  
16 were truly nonrecurring.

17 The balance of those, incidentally,  
18 dealing with the 1802 in this year's  
19 budget, deal with stormwater and  
20 stormwater-related programs. So if you  
21 look a little more closely, you'll see  
22 why the label "nonrecurring," although  
23 that may be the case after the rate  
24 period at sometime, because we're  
25 starting these new stormwater

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2 initiatives, it's mislabeled in our view.

3 When you look at the various budget  
4 actual adjustment factors, you look at  
5 the indemnities adjustment --

6 THE HEARING OFFICER: Let's talk  
7 about that for a second. In your brief  
8 you talk about the potential catastrophe  
9 that's going to wipe out the indemnity  
10 just in one fell swoop.

11 MR. DASENT: Well, we budgeted  
12 \$6.5 million, so that's not a  
13 catastrophe.

14 THE HEARING OFFICER: But aren't you  
15 subject to a limitation of liability?

16 MR. DASENT: Sure. But there are  
17 also multiple lawsuits.

18 THE HEARING OFFICER: But the most  
19 you can get hit in any one catastrophe is  
20 \$500,000; correct?

21 MR. DASENT: Correct. And \$6.5  
22 million for a very large entity --

23 THE HEARING OFFICER: The most you  
24 can get hit from any one catastrophe is  
25 \$500,000.

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2 MR. DASENT: I'm told by Mr. Clare,  
3 that doesn't apply to federal cases. But  
4 even if it did, if you look in 2008,  
5 we're up to \$5.9 million.

6 THE HEARING OFFICER: I think  
7 Mr. Clare is right on that one, if we  
8 have a 1983 case or something of that  
9 nature, certainly a civil rights type  
10 case, or whatever. But is that the kind  
11 of cases we have in our backlog?

12 MR. DASENT: Well, there are a  
13 number of cases and I think it varies  
14 from time to time. And we're in a  
15 situation when you look at the backlog of  
16 cases, as you described it, where we as a  
17 self-insured entity feel a real exposure  
18 here; and when you see in your experience  
19 in 2008 a \$5.9 million exposure, then  
20 you're finding your way to making an  
21 adjustment, the difference between 5.9  
22 and 6.5, roughly \$500,000, over the rate  
23 period \$2 million, and we were trying to  
24 find an accommodation to the parties on  
25 this, a compromise if you will, because

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2 we haven't always made it to the maximum,  
3 very obviously, and I understated that.

4 But, nonetheless, we're conscious of  
5 there are a number of potential hits to  
6 the rate stabilization fund. We've  
7 already mentioned compression during the  
8 course of the proceeding, \$15 million.  
9 And we've given you, I think, our  
10 explanation again as to how we calculated  
11 that.

12 In addition to that, we have  
13 indemnities --

14 THE HEARING OFFICER: That  
15 \$15 million, isn't there \$15 million more  
16 in the rate stabilization fund than you  
17 knew about when you made this filing? So  
18 doesn't that take care of that  
19 \$15 million?

20 MR. DASENT: Well, if you draw the  
21 conclusion that the numbers are final,  
22 which they're not, at 160, then obviously  
23 you can reach that conclusion. But if  
24 you take the attitude, as we do, that the  
25 filing reflects 149 and the numbers, when

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2           they are audited, will come in, we'll  
3           know what they are, whatever they are,  
4           but even if it is 160, we're down  
5           \$15 million, plus whatever other  
6           adjustments are made potentially or  
7           whatever hits or unexpected circumstances  
8           we may take. We have alluded to those.

9                   THE HEARING OFFICER: Beyond the  
10           \$15 million, you had 15 more in revenue  
11           that you didn't expect to have because  
12           the rate stabilization money is uncounted  
13           revenue, isn't it?

14                   MR. DASENT: Well, certainly I can  
15           treat it as an ending cash balance for  
16           purposes of this description or  
17           discussion and it's less by \$15 million.  
18           If there are indemnities or lawsuits that  
19           cause us to have greater incurrence of  
20           liability, then it will be off by even a  
21           greater amount.

22                   If you remember our discussion  
23           earlier about the 1997B bonds and the  
24           cost associated with that, it's about  
25           \$600,000, we remarketed those because it

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2 was variable rate debt and we needed to  
3 have those remarketed because I believe  
4 it was the bond insurer, AMBAC, was a  
5 problem for us and we had a problem for  
6 marketing those particular bonds, that  
7 cost us money. That's not in the revenue  
8 requirement.

9 Anything that we have to do now with  
10 respect to increased debt service on the  
11 2003-2005 bonds -- and Joe Clare and I  
12 were talking about this earlier today --  
13 it's a real problem for them, it can  
14 balloon into a very significant problem  
15 for them, and all that we have between  
16 ourselves and the absence of liquidity is  
17 the rate stabilization fund.

18 And its ending balance of 45 or if  
19 you wish to choose to use the unproven  
20 160, we're still in a situation where it  
21 is becoming less and less, and we're  
22 trying to manage it well for the benefit  
23 of our customers so that we remain a  
24 going concern.

25 THE HEARING OFFICER: See, this

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2 balloon thing, when you say ballooning,  
3 that's why I see the two-year period as  
4 not just helpful to consumers, it's  
5 helpful to the Water Department as well,  
6 because if something happens in the next  
7 year or year and a half or so that really  
8 is out of shape, that things go off the  
9 charts, we have a ready basis to get your  
10 money in in that way.

11 I think the Water Department views  
12 it as it's a one-way street, it's only  
13 good for consumers and it's bad for the  
14 Water Department. I don't view it that  
15 way. I view it as an opening window for  
16 both sides to see what's clear outside at  
17 that point in time and get a better view  
18 for both sides.

19 MR. DASENT: And I think we viewed  
20 it that way also. The problem, I think,  
21 though, is when you look at our regs and  
22 consult with the Law Department, which I  
23 did, they view this as a more constrained  
24 process, and as a consequence, since they  
25 are the final decider for us internally,

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2 they indicated that that wasn't a process  
3 that they felt was doable. They said if  
4 you need more rates, well, then you  
5 refile.

6 But the rate plan is what it is and  
7 their view of it also is if in Year 1 and  
8 2 you put numbers in those two columns,  
9 and in 3 and 4 they're either lesser  
10 numbers or no numbers, that is what the  
11 rate process is about.

12 And Mr. Bertocci has indicated in  
13 his brief and elsewhere that the  
14 financial plan and for financial planning  
15 purposes our presentation is reasonable.  
16 But what we're trying to do is take the  
17 financial plan and reconcile it with the  
18 rate process and come up with rates that  
19 we can afford and that the customers can  
20 afford and avoid the saw-tooth effect  
21 that you see in PWD-32 where you have one  
22 year with zero and another year at 14.3.

23 And if you look to Bonbright -- we  
24 did cite that in one of our responses --  
25 James Bonbright's treatise, Principles of

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2 Public Utility Rates, it does indicate  
3 that predictability in rates, stability  
4 in rates, and other principles and  
5 criteria are helpful and desirable; and  
6 our customers confirm by our  
7 conversations with them, whether  
8 commercial or residential, that it's an  
9 objective that they expect us to achieve.

10 Now, I'm not going to go through all  
11 the individual adjustments. I think you  
12 know where we have agreed with the  
13 parties and where we have disagreed.

14 But the appropriate use of the rate  
15 stabilization fund is sort of  
16 underpinning all the arguments that I'm  
17 making this afternoon and if we can  
18 manage that for coverage purposes, for  
19 working capital purposes, for exigencies  
20 or emergency purposes as well, that's a  
21 good thing.

22 We touched on the collection factor.  
23 Customer service improvements we haven't  
24 talked about. We're very --

25 THE HEARING OFFICER: We'll talk

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2 about that. That's not a revenue  
3 requirement, per se. Split that up.

4 MR. DASENT: Okay. But recognize it  
5 does overlap because that's not in the  
6 revenue requirement, but we obviously can  
7 speak to that.

8 THE HEARING OFFICER: Thank you.

9 MR. DASENT: That's it. Thank you.

10 THE HEARING OFFICER: Mr. Bertocci?

11 MR. BERTOCCI: Yes. Well, that's a  
12 tough act to follow. I'm going to try to  
13 be very low key here. Mr. Dasent being  
14 questioned very severely, many of the  
15 same ways that I would question him.

16 THE HEARING OFFICER: Don't you  
17 remember in law school they said rejoice  
18 when you get questions from the court?  
19 Don't you see a lot of rejoicing back  
20 there? It wasn't rejoicement? Okay.

21 MR. DASENT: But we're happy.

22 MR. BERTOCCI: I made a few notes as  
23 Mr. Dasent was talking and I want to  
24 touch on a few points there and then say  
25 a few other things.

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2 The first one I think I would say is  
3 that we're not the ones that proposed  
4 four years; they're the ones that  
5 proposed four years.

6 And when you look at the  
7 \$149 million that we've recommended be  
8 taken out, about 75% of our adjustments  
9 take place in 2011 and 2012. And the  
10 reason that they're there is not because  
11 we pretend to know what the costs are  
12 going to be for, say, personal services  
13 or fringe benefits in 2011 or 2012; it's  
14 that we don't know and we don't think  
15 that customers should have to pay for  
16 something that we don't know.

17 One of the themes of Mr. Dasent's  
18 brief is all of these things are, quote,  
19 known and measurable. And we would say,  
20 no, we beg to differ.

21 They may be known. We know there  
22 will be labor costs. We know there will  
23 be fringe benefit costs. We know there  
24 will be power costs. But we don't know  
25 what they're going to be. And until we

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2 have a better idea of what they're going  
3 to be, we don't think that customers  
4 should have to pay for them.

5 Now, in addition, when you look at  
6 what has happened in the past, the issue  
7 of a four-year or three-year or two-year  
8 rate period, we would point out that in  
9 the prior years, what we have had is a  
10 situation where we have had at least a  
11 labor contract in place and so we were  
12 able at least to predict, we knew that  
13 there was a labor contract which  
14 accounted for perhaps, I think, 40% of  
15 the Department's budget, which we would  
16 know what that is.

17 So a significant portion of the  
18 budget was known, even was not only known  
19 and measurable, at least in terms of it  
20 being something that was contractual.  
21 That's the difference between this rate  
22 case and the prior rate case.

23 In addition, again, with power, PECO  
24 was under a rate cap and so another  
25 smaller percentage of the budget was

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2 already not only known but measurable.

3 And although applying a strict PUC  
4 standard, some of those things might not  
5 be completely accepted in rates,  
6 nonetheless, trying to adapt some of the  
7 PUC standards to the Water Department  
8 situation and still preserve a level of  
9 substantial evidence, it didn't seem  
10 totally unreasonable to rely on some of  
11 that type of projection where you have a  
12 contractual basis.

13 Moving a little bit further to the  
14 theoretical, again, we have used the term  
15 "known and measurable" and we recognize  
16 that that's a term of art that's used by  
17 the PUC.

18 But as we pointed out in our reply  
19 brief, nonetheless, for any local agency,  
20 a rate order or any kind of order of a  
21 local agency has to be supported by  
22 substantial evidence, and the definition  
23 of "substantial evidence" is "relevant  
24 evidence that a reasonable mind might  
25 accept as adequate to support a

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2 conclusion, and this should not be a  
3 suspicion or a scintilla." I love the  
4 word "scintilla," from scintillating and  
5 other things like that.

6 Nonetheless, it does give us an idea  
7 that it's not just a glint in someone's  
8 eye as to what labor costs might be or  
9 fringe costs might be in a few years and  
10 we need more than that.

11 THE HEARING OFFICER: I think they  
12 have gone way beyond a glint in someone's  
13 eye. I think they've certainly made  
14 somewhat of a prima facie case with  
15 regard to all these.

16 These were not projections that were  
17 just willy-nilly done on the back of an  
18 envelope, as we've described during the  
19 course of these proceedings. These were  
20 projections that have been looked at over  
21 time, that have been somewhat tested over  
22 time, and that are something that are  
23 routinely relied upon to some extent in  
24 proceedings such as this.

25 MR. BERTOCCI: Well, can we say with

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2 any certainty at all that it should be a  
3 3% increase a year as opposed to a 2.5%  
4 increase a year? That's really the  
5 question. And why should customers pay  
6 for something when we can't make that  
7 kind of distinction about a really  
8 significant part of a budget?

9 There's also been a lot of  
10 discussion about and Mr. Dasent has  
11 brought up all these issues, sort of what  
12 I call the anecdotal issues: Oh, at this  
13 moment we know, gee, rates are going up  
14 very fast. Is this going to cost us a  
15 lot more? We just heard about pension  
16 costs. We've heard about PGW having a  
17 hard time getting money to borrow in  
18 certain circumstances.

19 I just have to say, you know, we  
20 have to ignore that. That's not part of  
21 the record in this case. We can't make  
22 rates on the basis of this kind of  
23 anecdotal information that is  
24 communicated, especially at this late  
25 date, with no real record support.

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2 And the same thing for things like  
3 conversations with customers that want  
4 reliability. I don't know about the  
5 commercial customers. I didn't hear any  
6 of those commercial customers that came  
7 in say anything in their testimony except  
8 they wanted more reliable service and  
9 bigger discounts.

10 THE HEARING OFFICER: I think  
11 Mr. Delaney will probably handle that.

12 MR. BERTOCCI: I just didn't want  
13 him to feel left out.

14 THE HEARING OFFICER: Talking about  
15 reasonableness of estimates, what was the  
16 estimate that the Public Advocate put  
17 forth for increasing chemical costs?

18 MR. BERTOCCI: Well, we didn't think  
19 we knew what the increase would be, so we  
20 said go to the default, which is 2.5,  
21 because we said we don't know what the  
22 increase is going to be. In fact, their  
23 increases that they're asking for, well,  
24 power, they're asking for an increase  
25 which is later, which is 2011.

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2 THE HEARING OFFICER: Power is 2011  
3 and 2012 and power is a problem because  
4 it's estimated at certain amounts based  
5 upon when the utility is going to file,  
6 based upon some conversations with it,  
7 based upon whether or not they'll get the  
8 full rate increase or not.

9 And I understand the difficulty with  
10 regard to that and that's part of the  
11 problem with the four-year plan, that  
12 that's what's going to be at the utility  
13 and we really don't have a good basis for  
14 it.

15 On the other hand, I think some of  
16 the estimates that you've made or your  
17 witnesses made are somewhat unrealistic.  
18 We know commodities and chemical costs  
19 have gone up. You haven't demonstrated  
20 what it costs recently. So is that  
21 something you expect me to rely upon,  
22 2.5% on chemicals or something?

23 MR. BERTOCCI: Well, your point is  
24 well-taken. But you have to understand  
25 that these kinds of inflation factors are

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2 not our preference. That is not how we  
3 think that rates should be made.

4 Our position is, well, if you're  
5 going to do it, then you should be very  
6 conservative on the side of customers;  
7 not on the side of protecting the people  
8 who want to have a longer rate period.

9 Coming back to one more issue having  
10 to do with the rate period, the idea that  
11 the Commissioner or the owner or the City  
12 has the discretion to determine the  
13 length of the rate period, that that's  
14 something that is not subject to this  
15 proceeding really, that somehow or other  
16 we have to make rates within the  
17 framework which has been handed to us by  
18 the Department, that would mean that the  
19 Department could come in with a ten-year  
20 rate period and we wouldn't have anything  
21 to say about it. It would be said that  
22 it's not the prerogative of us.

23 Now, it seems to me that when a rate  
24 filing is made, they have made a rate  
25 filing which they have continually

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2 presented in terms of a total  
3 \$316 million, \$317 million over four  
4 years. That's what we're being asked to  
5 judge.

6 And we can say, no, that the rate  
7 period, the period of time, is an  
8 integral part of the rate request that  
9 they are making, and that's obviously  
10 within the purview of certainly the  
11 Hearing Officer, the Water Commissioner,  
12 and any reviewing court that would look  
13 at this would not say, well, you know,  
14 it's totally outside the purview of  
15 anybody but the Department to determine  
16 the rate period.

17 Before the PUC people don't get even  
18 the possibility. At least they have in  
19 their statute something which says that  
20 they can make rates which should be  
21 designed or can be designed, may be  
22 designed, for more than one year.

23 But I believe that the law really  
24 hedges that significantly because for  
25 making rates with an eye to rates that

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2 will last for more than one year,  
3 nonetheless, they have to be known and  
4 reasonable and they have to be based upon  
5 substantial evidence, and obviously I  
6 think there are limits to the ability of  
7 people to foresee into the future.

8 I think those were my most immediate  
9 responses to Mr. Dasent and I think my  
10 first point really of my notes that were  
11 prepared had to do with the substantial  
12 evidence and I think I've made that  
13 point.

14 And I've heard from the Hearing  
15 Officer about the track record in this  
16 case and one of the things that makes  
17 this case, it seems to me, different from  
18 in the past is that we have been able to  
19 get a clearer look at what, in fact, has  
20 been the performance in the last four  
21 years based on essentially this same  
22 method, and we have seen some of the  
23 drawbacks of this method.

24 And I don't buy for a minute the  
25 idea that, well, things happened and we

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2 had some good breaks and we were very  
3 good managers. Nobody is disputing that  
4 they're very good managers.

5 But I think that the methodology,  
6 nonetheless, is such that you have to  
7 ask, well, was some of this being very  
8 good managing or was some of this just  
9 the fact that the projections were set in  
10 such a way that you're going to look very  
11 good, some of your costs are going to be  
12 less than you anticipated they were going  
13 to be, some of your revenues are going to  
14 be greater than you estimated them to be,  
15 and it makes you look very good if you  
16 have such conservative estimates.

17 If you read the briefs, if you put  
18 in find in your computer and look at the  
19 number of times that you find the words  
20 "conservatively estimate," I imagine you  
21 would probably run out of fingers trying  
22 to count them.

23 So there's a methodology here which  
24 is designed to produce rates which are  
25 greater than may be just and reasonable

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2 and we have to exercise some other kinds  
3 of judgment besides simply what is the  
4 safest possible conclusion from the  
5 company's perspective when we've tried to  
6 make rates, because that's a matter of  
7 balancing.

8 THE HEARING OFFICER: But I do have  
9 the responsibility to make sure the  
10 integrity of the utility is maintained;  
11 isn't that correct?

12 MR. BERTOCCI: Oh, absolutely.

13 THE HEARING OFFICER: And whether  
14 people can afford to pay or not, the  
15 Water Company still has to operate in  
16 connection with their coverage  
17 requirements and the ordinance?

18 MR. BERTOCCI: Well, when you say  
19 whether people can afford to pay or not,  
20 yes. On the other hand, when I look at  
21 the way in which the matter is presented  
22 by the Water Department, there really  
23 isn't very much there about the impact on  
24 customers.

25 THE HEARING OFFICER: Well, maybe

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2 that was your burden. Maybe that was  
3 your burden to present on the record.

4 MR. BERTOCCI: Well, hopefully from  
5 the public input hearings and calling  
6 attention to the public input hearings,  
7 we've helped to show that that's  
8 something that needs to be considered.  
9 But it's something that needs to be  
10 considered and not given just lip service  
11 to.

12 We have a situation now where we're  
13 looking at a request for \$200 annually to  
14 be in effect within three years on the  
15 basis of --

16 THE HEARING OFFICER: 179.

17 MR. BERTOCCI: -- Table 11.

18 THE HEARING OFFICER: Isn't it 179?

19 MR. BERTOCCI: 179, yes, 180, you're  
20 right.

21 THE HEARING OFFICER: Is that  
22 rounding up for government work or what?

23 MR. BERTOCCI: Yes, I'm rounding up.  
24 I'm following the Department in that  
25 practice.

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2 Remember that the statute says no  
3 more than necessary is what rates are  
4 supposed to be, and I think that that's  
5 what we need to be looking at.

6 A final point having to do with  
7 these estimates, as it turned out,  
8 although it was not stated initially in  
9 the filing when asked, well, what are the  
10 basic assumptions, one of the basic  
11 assumptions and an assumption that we did  
12 not see before was that there had to be  
13 \$45 million at the end of the rate period  
14 in the rate stabilization fund, the  
15 year-ending balance, and that's a new  
16 assumption.

17 I agree that it has not been shown  
18 and I would love to have seen that  
19 report, which is only in draft form, and  
20 I would also like to see what the other  
21 sources of cash working capital are,  
22 because it's quite clear from the general  
23 bond ordinance that the residual fund and  
24 the construction fund can be used also to  
25 supply cash working capital.

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2 The money may have to be returned to  
3 the construction fund by the end of the  
4 year, but nevertheless that's a potential  
5 source of cash working capital for the  
6 utility.

7 So you don't look just to the rate  
8 stabilization fund for cash working  
9 capital. There are other regulatory  
10 principles that are there which generally  
11 say that customers have to pay the cost  
12 of cash working capital, not supply it.  
13 Right now the customers provide the money  
14 and on their credit card debt they  
15 probably pay 18% interest.

16 It just makes sense to me that the  
17 Water Department should be at least  
18 exploring or seriously considering the  
19 possibility of borrowing the money at the  
20 rates that are available to them rather  
21 than essentially borrowing that money  
22 from their customers.

23 THE HEARING OFFICER: Yes, I saw  
24 that in your brief. But that's the kind  
25 of thing that I think is an invasion of

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2 their prerogative in managing the  
3 utility.

4 I think if they're looking at it  
5 overall and they're being looked at by  
6 the rating agencies, if they have to  
7 borrow \$45 million or if they have the  
8 \$45 million that they're using, that's  
9 something that can be looked very  
10 favorably upon, and to save some money  
11 with regard to that might adversely  
12 affect their standing.

13 I think that is the kind of thing  
14 that is their prerogative in terms of  
15 deciding if they need cash working  
16 capital. To decide whether to borrow  
17 money or to use the money internally, I  
18 see that as management prerogative.

19 MR. BERTOCCI: Well, that certainly  
20 may be a consideration, but when I look  
21 at the ramifications of using the rate  
22 stabilization fund as a planning tool for  
23 cash working capital, I end up seeing  
24 these very large balances being carried  
25 into the very last year of the rate

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2 period, way more than what they say they  
3 need in cash working capital.

4 That, to my mind, would at least  
5 send a signal that maybe we should be  
6 looking for some better way of doing  
7 this, some more serious consideration of  
8 that.

9 I wouldn't think that the Hearing  
10 Officer can say, well, I'm going to deny  
11 this on the basis of the fact that you  
12 really don't have a tax-exempt commercial  
13 paper program. It would take them a  
14 while to put that in place.

15 But, again, that's another reason  
16 why we may need to look at this in two  
17 years rather than in four years and see  
18 if there isn't some better way to handle  
19 some of these problems.

20 If we've really decided that now we  
21 need \$45 million whereas before all our  
22 projections were based on the rate  
23 stabilization fund could go down to, you  
24 know, \$10 million, then obviously  
25 something has changed and maybe the Water

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2 Department should be thinking about,  
3 well, maybe we have to change some of the  
4 ways in which we finance cash working  
5 capital.

6 THE HEARING OFFICER: Certainly  
7 there's a big difference since those last  
8 projections for the bond in 2007, when  
9 the rate stabilization fund was projected  
10 to go down to \$10 million, in terms of  
11 the financial markets have changed  
12 dramatically with regard to that. I can  
13 see that something like that has changed  
14 really significantly as a result of that  
15 in terms of planning.

16 It's clear that the security given  
17 by the rate stabilization fund is  
18 something that's important to the rating  
19 companies as shown by the testimony  
20 submitted by the witness on behalf of the  
21 City as well as contained in the  
22 statements themselves and the rating  
23 agencies' comments.

24 MR. BERTOCCI: One final note,  
25 perhaps somewhat anticlimactic.

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2 THE HEARING OFFICER: This is the  
3 second final or which final is this?

4 MR. BERTOCCI: Yes, the second  
5 final, I know.

6 Just so there's no misunderstanding,  
7 in the reply brief the Water Department  
8 refers to Exhibit PWD-32, Schedule 4, and  
9 I want it to be clear that that's the  
10 Water Department's extension of Table 11  
11 based on the Public Advocate's two years  
12 of adjustments.

13 But the extension was based upon  
14 assumptions which are not the Public  
15 Advocate's. It was based on the notion  
16 or assumed that the rate stabilization  
17 fund in every year would be spent to the  
18 max.

19 But what the Department added for  
20 the outyears was that if spending it to  
21 the max brought it down to below  
22 \$45 million, then it wouldn't be spent at  
23 all and, instead, rates would be  
24 increased to provide coverage at 1.50 as  
25 if no rate stabilization was there. So

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2 you end up getting what they call the saw  
3 tooth.

4 However, I don't quite know how you  
5 manage what would be done after the first  
6 two years, but certainly that's not  
7 something that we would propose. We  
8 certainly weren't proposing that in every  
9 year the rate stabilization fund be spent  
10 to the max.

11 But we thought given the fact that  
12 it had reached the level that it had  
13 reached, that it was appropriate at this  
14 time, especially given everything else  
15 that's going on, to spend down the rate  
16 stabilization fund to some degree and it  
17 seemed a reasonable thing to do.

18 But we recognize that if you are  
19 going to insist upon making rates for  
20 four years, well, then, there has to be  
21 some more reasonable way of dealing with  
22 what comes after than making a rule or  
23 setting a rule in the model which  
24 produces this kind of saw-tooth effect,  
25 which is something we don't want either,

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2 and we recognize that you don't want to  
3 have no rate increase one year and then  
4 an 8% rate increase or 12 or whatever the  
5 next.

6 THE HEARING OFFICER: 14.

7 MR. DASENT: Yes.

8 MR. BERTOCCI: Yes. But that was  
9 not our proposal and I don't think we  
10 should be identified with it.

11 So I thank you for your time.

12 THE HEARING OFFICER: Thank you.

13 MS. LINTON-KEDDIE: We don't have  
14 any comments on revenue, just our  
15 settlement, which is a different matter.

16 THE HEARING OFFICER: Okay.

17 Mr. Delaney?

18 MR. DELANEY: We did brief a couple  
19 revenue items, but let me talk initially  
20 about the legal standard in the case, and  
21 I had this, I think, addressed in the  
22 initial brief.

23 Although the financial advisor that  
24 testified for the City wasn't real  
25 impressed by it, I think the Charter and

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2 the ordinances do provide a lot of  
3 financial protection to the Department  
4 and are designed to maintain its  
5 financial integrity.

6 The specific provisions that address  
7 the rates, though, are in the ordinance  
8 and Section 13.102 of the Philadelphia  
9 Code requires the rates to be just and  
10 reasonable and nondiscriminatory as to  
11 the same class of customers, and there's  
12 a similar provision for the water rates  
13 in Section 13-201 is my recollection.

14 Now, the requirements that are in  
15 these sections parallel very closely  
16 language that's in Chapter 13 of the  
17 Public Utility Code about being just and  
18 reasonable rates and not discriminatory.

19 I don't think that that's an  
20 accident. I think that the incorporation  
21 of that language at least suggests that  
22 the established law of the Commonwealth  
23 in terms of public utility rate-setting  
24 set by the Public Utility Commission and  
25 affirmed by the courts should at least be

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2 instructive in how you decide the case.

3 So the issues on that basis that we  
4 argued in our initial brief were known  
5 and measurable expenses and single test  
6 year. In our view those two things work  
7 together to make sure that your financial  
8 projections are accurate and that the  
9 basis on which you set the rates are  
10 actually expenses reasonably to be  
11 incurred by the utility which are  
12 established fully on the record.

13 I know that you've read in our  
14 briefs that we challenge whether some of  
15 the amounts that are claimed by the  
16 Department actually meet those standards.

17 Now, the other issue that came up,  
18 we have largely supported the Public  
19 Advocate on their revenue adjustments and  
20 also on the two-year proposal that the  
21 Hearing Officer has introduced and the  
22 Advocate also discusses, Mr. Bleiweis'  
23 testimony.

24 We are of the view that the legal  
25 precedent that guides these cases doesn't

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2 specifically prohibit a two-year period  
3 and, in fact, I think it probably does  
4 give the discretion to the Department's  
5 management what period of rates they  
6 should project.

7 So the issue, it seems to me, is  
8 what's the better idea, is it two years  
9 or four years. And I would submit that  
10 looking at the record in this case, that  
11 four years does not seem to be a very  
12 good idea just because of the difficulty  
13 that humans have in projecting four years  
14 into the future.

15 And the example that occurs to me  
16 immediately is the one that you cited a  
17 moment ago where we talked about the rate  
18 stabilization fund balances. My  
19 recollection is that when the witness  
20 from the Department testified about that,  
21 you requested him to use a calculator to  
22 get the percentage variance between the  
23 projected amount and what the actual  
24 balance was, and I think it was 1,000%  
25 variance in terms of what the projection

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2 was and what it actually was.

3 THE HEARING OFFICER: I think it was  
4 4,000, but the record will...

5 MR. DELANEY: Okay. I use that as  
6 an example. I don't mean to necessarily  
7 criticize the Department about that, but  
8 it's just a problem that anyone has in  
9 projecting four years into the future.  
10 It is just very difficult to do.

11 The other thing that I did put on  
12 the record earlier was a response to the  
13 argument that, "Well, our projections  
14 weren't completely accurate. We  
15 collected additional money. But it was  
16 to the customers' benefit because we were  
17 able to use that to stabilize funds  
18 longer."

19 Well, you know, that's really, to me  
20 at least, not a very convincing argument  
21 because you collected those monies, they  
22 were collected by the Department on the  
23 idea that their projected operations  
24 required that level of revenue  
25 requirement, and they lawfully collected

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2 it, but they don't need it and they have  
3 it.

4 And maybe there is a benefit in  
5 terms of these rating agencies with the  
6 anonymous people who review the finances  
7 of the Department who look at those  
8 balances and are pleased by them, but I  
9 think at the public input hearings, if  
10 you had asked any person who testified  
11 whether they would like to have their  
12 money that had been collected in prior  
13 years in the rate stabilization fund or  
14 in their pocket in that period, all of  
15 them would say in their pocket.

16 That money really, in my view,  
17 belongs to the customers. It's not  
18 particularly helpful that the Department  
19 has it and can use it to impress people  
20 on Wall Street.

21 I think what's important is that the  
22 rates be set at the lowest reasonable  
23 level that allows the legal requirements  
24 in the City Charter and the City  
25 ordinance to be met and at the same time

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2 provides for the fiscal integrity of the  
3 Department. That's what it's all about.  
4 And the record that exists in this case  
5 with the prior four-year rate projection  
6 indicates they overcollected.

7 THE HEARING OFFICER: I think the  
8 Public Advocate pointed out that nearly  
9 75% of the rate increase that was allowed  
10 from the last rate case ended up in the  
11 rate stabilization fund.

12 MR. DELANEY: Right. And I think  
13 it's important to say I'm not criticizing  
14 the Department, but that's a problem with  
15 doing a four-year case.

16 Just very quickly, the only revenue  
17 issue that our expert testified to,  
18 Mr. Kalbarczyk, was the compression rates  
19 in the fiscal year '09 period, and I  
20 think the Department did make a  
21 concession in their brief about that.  
22 I'm not certain, though, it was as  
23 detailed that I could judge it accurately  
24 to see whether it followed what  
25 Mr. Kalbarczyk's recommendation was.

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2 His recommendation is no compressed  
3 rates in the 2009 period to collect any  
4 2009 revenue requirement and to use money  
5 instead from the rate stabilization fund.  
6 If the rate stabilization fund revenues  
7 are not adequate to do that, then what is  
8 not collected for fiscal year 2009 should  
9 be collected later in the case, later for  
10 purposes of gradualism in maybe the third  
11 and fourth year of a four-year increase  
12 if you decide that, and do it in that  
13 fashion.

14 That's all I have to say on the  
15 revenue side.

16 THE HEARING OFFICER: Do you want to  
17 respond to anything quickly?

18 MR. DASENT: Yes. With respect to  
19 Mr. Kalbarczyk's recommendation, we  
20 thought that overlapped with our own. We  
21 saw it as a \$15 million adjustment. He  
22 uses 10. But he says take it out of rate  
23 stabilization. We agree.

24 THE HEARING OFFICER: One other  
25 thing about revenue. How much is the

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2 fire protection revenue issue?

3 MR. DASENT: That's not a large  
4 issue. I thought it was like a million  
5 dollars. But Mr. McKinley is here. He  
6 can speak to that. I would like to get  
7 that exactly right.

8 THE HEARING OFFICER: I don't think  
9 the number appears anywhere in the record  
10 per se.

11 MR. DASENT: I can provide that for  
12 you.

13 THE HEARING OFFICER: We'll take a  
14 break. We'll take a break.

15 Does counsel for the Housing  
16 Authority want to speak to the revenue  
17 issue?

18 MS. GULDIN: I can speak at the end.  
19 I just have one very brief comment  
20 regarding our position taken in our  
21 initial brief just about the Hearing  
22 Examiner's authority to change our rates.

23 THE HEARING OFFICER: Okay. Well,  
24 why don't you, while they're looking at  
25 that, put that on the record now?

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2 Introduce yourself on the record and  
3 speak to that issue.

4 MS. GULDIN: Okay. My name is Jill  
5 Guldin and I am here on behalf of the  
6 Philadelphia Housing Authority.

7 Just very briefly, with regard to  
8 our position taken in our initial brief  
9 and our direct testimony of Kirk Dorn,  
10 PHA recognizes that the Hearing Examiner  
11 is not and cannot change the ordinance  
12 regarding our rate reduction received  
13 from the Water Department.

14 However, PHA merely seeks  
15 recognition from the Hearing Examiner  
16 that there is pending legislation in  
17 front of City Council regarding that rate  
18 reduction and simply that it's PHA's  
19 position that they're entitled to the 25%  
20 rate reduction as compared to the 5% rate  
21 reduction.

22 THE HEARING OFFICER: Thank you very  
23 much.

24 MS. GULDIN: Thank you.

25 THE HEARING OFFICER: All right. Do

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2 you have that number right now?

3 MR. DASENT: Yes. It's  
4 approximately \$1.6 million from Table 23  
5 of JRM-1.

6 THE HEARING OFFICER: For fiscal  
7 '09?

8 MR. McKINLEY: One year, yes.

9 MR. DASENT: Yes, fiscal '09.

10 THE HEARING OFFICER: And then it  
11 goes back to what in '10?

12 MR. McKINLEY: It would be the same  
13 type of magnitude going forward for the  
14 next three years as well.

15 THE HEARING OFFICER: I thought it  
16 comes off and goes back on again.

17 MR. McKINLEY: Okay. It does,  
18 you're right. It does compress to zero  
19 by about 2010. So that's about --

20 THE HEARING OFFICER: Well, just  
21 make a little chart of what that revenue  
22 effect is on those couple years for me so  
23 we will see that, and we'll take a break  
24 with regard to that.

25 Let's make a part of the record -- I

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2 think everybody was party to this -- the  
3 response that the Water Department gave  
4 to the questions that I raised.

5 MR. BERTOCCI: Yes.

6 MR. DASENT: Yes. Electronically I  
7 shared it with everyone.

8 THE HEARING OFFICER: Yes. The  
9 Hearing Examiner raised certain questions  
10 to assist in understanding the case and I  
11 thought it would be helpful to provide  
12 them in advance so that counsel would  
13 have a chance to check with the  
14 Department to review them. We'll mark  
15 them as Hearing Officer Exhibit 3.

16 - - -

17 (Whereupon the document was marked,  
18 for identification purposes, as Hearing  
19 Officer Exhibit 3 and admitted in  
20 evidence.)

21 - - -

22 THE HEARING OFFICER: We stand in  
23 recess for 10 or 15 minutes or so.

24 - - -

25 (Whereupon there was a recess in the

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2 proceedings.)

3 - - -

4 THE HEARING OFFICER: Okay. We're  
5 going to reconvene with regard to rate  
6 structure and other issues.

7 I think we agreed the way to proceed  
8 with that is Mr. Delaney has more of the  
9 burden of proof in terms of changing the  
10 structure as exists, so we're going to  
11 let him proceed first.

12 MR. DELANEY: Thank you, Your Honor.

13 I would like to first just talk a  
14 little bit about the testimony that we  
15 put in the case and not so much initially  
16 Mr. Kalbarczyk's testimony, but the  
17 members of the Coalition that sponsored  
18 six pieces of testimony in the case, and  
19 I believe they were the only customer  
20 witnesses in the technical hearings to  
21 actually testify. Just very briefly,  
22 that testimony had several common threads  
23 to it.

24 For the hospitals, the Delaware  
25 Valley Health Care Council testimony said

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2 the hospitals had not budgeted for these  
3 increases. The requirement to actually  
4 pay more for water and sewer services  
5 required them to divert money that they  
6 had budgeted for other purposes to meet  
7 that in a period where they were really  
8 constrained on income and their expenses  
9 are increasing.

10 The colleges that we represent,  
11 Mr. Rossi testified, again, the sewer and  
12 water increases are not budgeted by the  
13 colleges and they'll simply go into the  
14 college tuitions. Again, not anticipated  
15 expenses for the colleges, money they  
16 allocated for other purposes would have  
17 to be spent to meet these increased  
18 rates.

19 Trigen, one of the largest customers  
20 for the Department, testified that the  
21 increased costs that it would experience  
22 would directly go onto its customers and  
23 the increase would lead Trigen to  
24 reconsider leaving the Department as a  
25 customer, drawing its water from the

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2 Schuylkill River, which would have its  
3 own impact on the Department and other  
4 customers.

5 THE HEARING OFFICER: And they were  
6 made aware of a special tariff provision  
7 that they weren't aware of before that?

8 MR. DELANEY: Yes, the possibility.  
9 But then the Department, I can indicate,  
10 did follow up with them on that. I don't  
11 know the status on that.

12 The Interfaith Coalition talked  
13 about the impact on churches and their  
14 congregations which would require them to  
15 spend more money to maintain their  
16 churches and provide less service to  
17 their congregations.

18 And, finally, the BOMA testimony,  
19 and what the BOMA testimony talked about  
20 was the landlords will have to pass this  
21 on to their tenants, the tenants' rates  
22 increase, and the apartments and leased  
23 space in the City become less competitive  
24 because of the increased rates.

25 The City competes with the suburban

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2 housing markets and commercial markets  
3 and it makes them less competitive, and  
4 he predicts that that has businesses  
5 leaving the City to seek less expensive  
6 leased space. So he sees those  
7 consequences resulting from that.

8 Now, in truth to the Department, I  
9 think you can hear the same arguments on  
10 any utility increase these groups would  
11 have. But it's a good example of the  
12 consequences of raising these rates and  
13 how it affects all these customers who  
14 have secondary effects in the economy of  
15 the area.

16 And I think, as I said a moment ago,  
17 this requires the Department to be  
18 careful to set rates at the lowest level  
19 it can and meet its legal requirements  
20 and requires the Hearing Officer and the  
21 Commissioner to be very careful about the  
22 rates they set and to think about the  
23 testimony of these secondary impacts on  
24 the other customers and what it means for  
25 the City and the economy.

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2 In many ways the Department and  
3 their customers are a partnership,  
4 they're working together, and I think  
5 that should be reflected in the result  
6 here, how all this is important, and not  
7 just to the customers but to the City.

8 Turning now to the arguments in our  
9 brief, we have a number of them and I can  
10 answer any questions you might have. I  
11 am not going to repeat all of them. I  
12 would just bring to Your Honor's  
13 attention the customer recommendations  
14 that are contained in their testimony.

15 THE HEARING OFFICER: Your brief was  
16 so exceptional I have very few questions.  
17 It is clearly set forth.

18 MR. DELANEY: The Department has  
19 concurred with most of those and I would  
20 just note that you address those in your  
21 decision.

22 The status of the directions from  
23 the prior Commissioner decisions, I will  
24 talk about some of those in a moment.  
25 But, again, I request that you look at

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2 that and see which ones are complied with  
3 and ask the Department in the next case  
4 to address that in their testimony, which  
5 would make it easier on the intervenors  
6 to figure out where they were on that,  
7 rather than trying to require us to  
8 discover it and figure it out and put  
9 more testimony on.

10 As you had suggested at the  
11 hearings, you suggested that we in the  
12 briefs have a compliance period suggested  
13 for at least a status report to the  
14 intervenors on how they're doing on some  
15 of these, and I did put that in our  
16 findings of fact and conclusions of law  
17 and I would ask that you consider  
18 adopting some of those.

19 THE HEARING OFFICER: Because it is  
20 apparent that what happened last time is  
21 there were certain recommendations and  
22 suggestions by the Commissioner and they  
23 got lost for four years.

24 MR. DELANEY: Yes. That can happen.  
25 It's an extended period with a complex

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2 organization that the Department is  
3 running. I think it would help everybody  
4 if they could address what the status was  
5 the next time they file a rate case and  
6 testimony.

7 Very briefly, I have, I think, eight  
8 or nine adjustments that Mr. Kalbarczyk  
9 had suggested. I can address any  
10 questions you have on them. Let me talk  
11 about a couple of them initially and then  
12 ask you for questions at the end.

13 The first one I would like to start  
14 with is the customer billing costs. The  
15 Department uses an unusual method which I  
16 think Mr. Kalbarczyk said he had never  
17 seen before, which is an equivalent bill  
18 ratio method to allocate customer billing  
19 costs to the water and sewer customers.

20 Now, under this method, in our view,  
21 the allocation of costs to the smaller  
22 meter sizes is understated, the  
23 allocation of costs to the larger meters  
24 is overstated.

25 Now, the methodology is demonstrated

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2 in Exhibit JRM Table 19. The equivalent  
3 billing ratios is in Column 3 of the  
4 exhibit. And the Department bases its  
5 methodology on this idea that as the  
6 meters get larger, the cost to collect  
7 from the customers increases and  
8 therefore these customer billing rates  
9 increase as the meters get larger.

10 It starts with the 3" meter, the  
11 Department puts two times the cost of the  
12 5/8" meter, and up to I believe 10 and 12  
13 times with the largest meters.

14 The problem with this adjustment,  
15 though, in our view, is that the  
16 Department keeps no records of what the  
17 costs are, the billing collection costs,  
18 for the individual customer classes. So  
19 although they have an overall number that  
20 they've calculated, they cannot tie it to  
21 the particular customer classes. So  
22 although the table allocates costs, they  
23 have no records to support them.

24 When I asked the sponsored witness  
25 about this, he admitted that they had no

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2 records on this, and I think he further  
3 admitted that the proposed adjustment at  
4 least to the commercial and industrial  
5 customers, who were allocated the larger  
6 portion of these costs, it wasn't known  
7 and measurable because they have no  
8 records to support it, it's not  
9 established by any causal connection  
10 because there's no number that they can  
11 tie to these costs that these customers  
12 are allegedly causing the Department to  
13 incur which justifies allocating it to  
14 them.

15 So in our view the customer billing  
16 costs should be reviewed by you and we  
17 would suggest that you use  
18 Mr. Kalbarczyk's proposal on this to do  
19 what all the utilities that he is  
20 familiar with does, which is to use a  
21 one-to-one allocation, that all the  
22 customers basically have the same measure  
23 of billing costs as is typically done,  
24 and I believe his adjustment is actually  
25 on Table 5, Page 1, of his testimony, the

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2 same ratio for all the customers.

3 A couple more I'd like to talk about  
4 briefly. What I would like to address  
5 now is the development of collection  
6 factors by customer class.

7 Exhibit 1, Table 23, demonstrates in  
8 my view the importance of this and this  
9 collection factor in my view has a very  
10 strong influence on the indicated  
11 additional revenue that must be collected  
12 from each class to meet the adjusted cost  
13 of service.

14 If you look at Table 23, it has  
15 several columns across it. The first  
16 column is the revenue under existing  
17 rates for the projected fiscal year 2009  
18 period.

19 Now, all customer classes are  
20 collected in that list and the Department  
21 has admitted that they use the same 97%  
22 collection factor to figure out how much  
23 they would collect under existing rates.

24 They then develop the adjusted cost  
25 of service in one of the middle columns

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2 and they compare the two. And at the far  
3 right of that exhibit is a percentage,  
4 which is the percentage of revenues that  
5 has to be allocated to the customer class  
6 to bring them up from revenue under  
7 existing rates to the adjusted cost of  
8 service.

9 Now, in our view, the Department  
10 does not accurately credit the amount of  
11 revenue that they actually collect from  
12 the commercial and industrial customers.  
13 They actually are better at paying their  
14 bills than these other customer classes  
15 are.

16 THE HEARING OFFICER: How do we know  
17 that?

18 MR. DELANEY: Well, I do have a  
19 little bit of testimony on that. I think  
20 first, the logical aspect of it is that  
21 the many benefits that the residential  
22 customers receive, like moratoriums on  
23 customer terminations, don't apply to  
24 them. So if they get behind on their  
25 bills, there's nothing that prevents the

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2 Department from aggressively terminating  
3 their service.

4 The second part of it is, of course,  
5 that many of them rely on water and sewer  
6 service to maintain their businesses.  
7 Just logic to me would say they have  
8 strong incentives to always timely pay  
9 their bills.

10 THE HEARING OFFICER: But, again,  
11 isn't this then anecdotal in nature? We  
12 don't have any empirical data to back  
13 that up.

14 MR. DELANEY: Well, I did ask Deputy  
15 Commissioner Clare about this and he said  
16 he agreed that it put them in a different  
17 situation than the other customers  
18 because their service could be terminated  
19 pretty much without any kind of  
20 moratorium applied.

21 So I don't necessarily have a  
22 schedule to produce on this. But I think  
23 the record would support that they are  
24 better payers of their bills and that  
25 that should be reflected in terms of the

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2 class collection factor.

3 Mr. Kalbarczyk addresses this in his  
4 testimony. He suggests for a couple  
5 reasons that are in his testimony that  
6 the allocation of the adjusted cost of  
7 service, the indicated increase on Table  
8 23, for those two customer classes should  
9 be less because he thinks they pay more.

10 And he proposes the percentage  
11 increases to meet the adjusted cost of  
12 service be lower for both the commercial  
13 and industrial classes than is indicated  
14 on Table 23, and we cite that in our  
15 brief.

16 Now, this whole issue of collection  
17 factors by customer class has been an  
18 issue in the cases at least since 2001,  
19 and one of the cross-examinations that we  
20 did of the panels on the last day of  
21 hearing was, well, what have you actually  
22 done to do these customer collection  
23 factors by customer class.

24 THE HEARING OFFICER: This is the  
25 one where they had the old customer class

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2 by the guy going by and saying whether it  
3 was a residence or a bar?

4 MR. DELANEY: Yes, it was part of  
5 that testimony. And as I said a moment  
6 ago, the importance of this is figuring  
7 out how much the customer class revenue  
8 should be increased to meet the new  
9 expense levels.

10 Well, what Deputy Commissioner Clare  
11 said was, well, it was the user codes.  
12 The user codes and the billing system  
13 identified the individual billed customer  
14 and its class, but that they hadn't been  
15 updated since 1997 and that the  
16 Department felt they were no longer  
17 reliable.

18 Well, as you recollect, Deputy  
19 Commissioner Clare testified with  
20 Mr. McKinley at the same time as a panel,  
21 and I thought about this for a minute and  
22 I said: Well, you know, your exhibits  
23 are full of schedules that break your  
24 general service customers down into  
25 commercial, industrial, residential. How

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2 are you able to do that in terms of  
3 preparing your rate study?

4 And Mr. McKinley forthrightly said:

5 Well, we use these user codes because  
6 that's what we have. We use them as a  
7 surrogate to be able to divide the  
8 general service class into these customer  
9 classes which we're familiar with, this  
10 residential, commercial, and industrial.

11 Well, I immediately said: Well,  
12 doesn't that present -- and this is all  
13 on the record -- a problem with the  
14 accuracy of your rate study, if you think  
15 it's not reliable enough to use for these  
16 customer class collection factors but you  
17 are using it for your entire rate study?

18 Well, you know, my view of this --  
19 and it's in our brief -- is that it's a  
20 little bit unreasonable and not fair to  
21 the customers that the Department would  
22 use these user codes that are in both  
23 billing systems, the old and the new, not  
24 to develop its customer collection factor  
25 by class, which would specifically

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2 identify accurately the revenues under  
3 existing rates for purposes of this  
4 allocation, but that they would use those  
5 user codes to develop the entire case,  
6 the cost of service study, the allocation  
7 of cost. All those things are based on  
8 that.

9 And I think if they're going to use  
10 it for the entire study, then they ought  
11 to use it to develop these customer class  
12 factors. And this has been, as you know,  
13 a factor or an issue in the case since  
14 2001.

15 Now, we had a long discussion of  
16 this issue on the record, but I believe  
17 that the record indicates that there are  
18 methods that this can be done, and we  
19 would ask that either you direct the  
20 Department to do it and use it for the  
21 allocation of the adjusted cost of  
22 revenue in the cost of service in the  
23 present case or you direct them to do it  
24 for the next case.

25 And I think there are at least three

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2 things that came out. The Department  
3 answered an interrogatory which we cited  
4 in our brief where Deputy Commissioner  
5 Clare admitted that it would be possible  
6 with the new billing system to develop  
7 the collection factors by customer class.

8 The second thing is the query to the  
9 data system that's identified -- I cite  
10 the pages on it -- where Deputy  
11 Commissioner Clare admitted on the stand  
12 that it was theoretically possible by  
13 using what they call a service code which  
14 is defined in the record and the customer  
15 code to be able to develop a customer  
16 class collection study.

17 And the third thing was the  
18 workpaper that Mr. McKinley used, which  
19 is I believe called Units 4, which breaks  
20 down the general service class into the  
21 individual customer classes.

22 I believe all that data together or  
23 one of them provides a basis to develop  
24 these collection factors by customer  
25 class, and we would ask you to review

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2 that and consider it. I think it's  
3 well-developed on the record and you can  
4 certainly judge the value of our position  
5 that it can be done and should be done.

6 THE HEARING OFFICER: You did not  
7 submit a schedule on behalf of your  
8 clients showing their billing payment  
9 record or history or anything of that  
10 nature.

11 MR. DELANEY: Well, we had ten  
12 customers in our class, in our group. I  
13 just didn't think it would be all that  
14 useful.

15 We did discuss that on the record, I  
16 think, and we talked about that in terms  
17 of the traditional list of the ten  
18 largest customers that are in all of  
19 their disclosure items for the  
20 borrowings, for the bond offerings.

21 And my suggestion was can't you  
22 develop a customer collection factor from  
23 those ten largest customers that we could  
24 then use for these commercial-industrial  
25 customers. I think the answer was that

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2 they had, he said, several thousand  
3 customers that would fall within that  
4 group and therefore ten really wouldn't  
5 be all that helpful.

6 But you have to remember, who has  
7 the burden of proof in the case? I mean,  
8 it's a little bit unusual to have the  
9 customers provide data about class  
10 behavior in the case.

11 I think if they're going to allocate  
12 these customer costs, they have the  
13 burden to establish them, and I think  
14 that they have the tools to do it but  
15 haven't done it and they should be  
16 directed to do that.

17 If you don't have any more  
18 questions, then I can move to a couple  
19 more briefly here.

20 THE HEARING OFFICER: Move on.

21 MR. DELANEY: Okay. The next thing  
22 I would like to bring to your attention,  
23 which of course it developed in both our  
24 initial and reply briefs, or it was  
25 revealed in the last day of hearing,

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2 concerning the rate design for the  
3 municipal service and Housing Authority  
4 customers.

5 Now, if you recollect, we had asked  
6 a transcript request for Mr. McKinley to  
7 look at his adjusted cost of service from  
8 Table 23 and indicate to us whether the  
9 rates that were designed for the Housing  
10 Authority and also for the municipal  
11 service customers actually collected the  
12 adjusted cost of service.

13 And Mr. McKinley did later in the  
14 record indicate the results of their  
15 calculation of the issue using the  
16 workpapers and what came out of that was  
17 that the rate design had the municipal  
18 service customers then undercollecting by  
19 \$1.3 million less than their adjusted  
20 cost of service, and the equivalent  
21 number for the Housing Authority was  
22 \$500,000.

23 And that's together \$1.8 million, as  
24 I understand it, and we would ask that  
25 you direct the Department to correct

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2 that.

3 Now, going a little bit further on  
4 that, based on an interrogatory response  
5 and some of the testimony on the last  
6 day, we believe that that \$1.8 million is  
7 actually in the case but is allocated to  
8 commercial and industrial customers, and  
9 I believe there is a discussion on how  
10 the prices were set for the declining  
11 rate blocks.

12 And there's an interrogatory  
13 response that we cite in the brief which  
14 is Public Advocate Mr. Bleiweis No. 3  
15 where Black & Veatch was asked to explain  
16 how the declining block rates were priced  
17 because they were all higher than the  
18 9.6%, which we understood was the general  
19 factor among all of the increases.

20 And the answer was, as I understand  
21 it, that they had looked at their cost of  
22 service study, but that they had also  
23 looked at the recovery for the adjusted  
24 cost of service for all the customers.

25 And in the testimony, which I cite

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2 the transcript pages in my brief, I did  
3 ask Mr. McKinley to explain that, and my  
4 understanding of it was that they did  
5 look at the total collection of the  
6 adjusted cost of service and made  
7 adjustments in those rate blocks.

8 Now, let me very quickly say, I  
9 accept that the Department was unaware of  
10 the undercollections until the transcript  
11 response on the Housing Authority and  
12 also the municipal service customers.  
13 But I believe, looking at that testimony,  
14 that there is a basis to believe that the  
15 last two rate blocks were adjusted so  
16 that the rate design collected the entire  
17 adjusted cost of service.

18 So I think it's higher than it  
19 should be. I think Mr. Kalbarczyk has  
20 suggested on a couple of bases that the  
21 declining rate blocks be reduced. We'd  
22 ask that you accept his recommendations  
23 on that, which was the differences  
24 between the declining block rates have  
25 the same percentage difference that's in

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2 the existing rates. And I think all the  
3 citations for what I'm repeating to you  
4 are contained in the briefs and you can  
5 look at that --

6 THE HEARING OFFICER: I agree.

7 MR. BERTOCCI: -- and follow it.

8 The last thing I'll address is the  
9 request for conjunctive billing for the  
10 commercial and industrial customers.

11 We had requested the Department to  
12 permit the commercial and industrial  
13 customers who are served through multiple  
14 meters in close proximity to each other  
15 to allow them to choose to be billed  
16 conjunctively. Of course, the benefit of  
17 that is that they can add together the  
18 meter readings to qualify for the  
19 declining block rates.

20 We thought that there are benefits  
21 of scale that the Department enjoys  
22 having that service situation and that  
23 therefore that would on a cost of service  
24 basis support giving the customers that  
25 would qualify, which is multiple meter

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2 service all close together, to have that  
3 rate benefit.

4 The Department in its brief has  
5 opposed that and the first opposition to  
6 it is that if you approve that and the  
7 Commissioner approves it, that the water  
8 will actually just be given away.

9 Well, I don't think there's any  
10 support for that. The impact of doing  
11 that is that these larger customers won't  
12 be able to have more of their water usage  
13 billed at the third and fourth block  
14 rate. But there's no evidence in the  
15 record -- and I went looking for it when  
16 I got the brief and did not find it --  
17 that says that either of those rate  
18 blocks are priced less than the base cost  
19 of water for the City. It's just not  
20 there. The City's reply brief argues  
21 that, but it's not just not in the  
22 record.

23 They ought to be asking Mr. McKinley  
24 why that happened if it's correct because  
25 you don't bill your utility services less

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2 than at least your production costs when  
3 you're selling them.

4 So I didn't find any evidence in the  
5 record that would support this idea that  
6 if the conjunctive billing is approved  
7 for the larger customers, that the  
8 Department will be giving water away. It  
9 will just be selling more volumes of it  
10 to the customers that qualify, which is  
11 not everyone, again, at the rates that  
12 they chose to price the third and fourth  
13 blocks at.

14 Now, let me just say one other thing  
15 about the Department --

16 THE HEARING OFFICER: It chose to  
17 price them on the fact that there's not  
18 conjunctive billing. They might re-price  
19 them if there is conjunctive billing.

20 MR. DELANEY: Re-price the last two  
21 blocks.

22 THE HEARING OFFICER: Right, because  
23 it is designed to produce a certain  
24 revenue the way it currently is.

25 MR. DELANEY: That's correct. I

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2 mean, that's a possibility. But I think  
3 that they did do production cost  
4 modeling, I would assume, to price these  
5 two last blocks and I think that that  
6 ought to be adequate to cover their  
7 costs.

8 And as I understand it, there's not  
9 going to be a huge number of customers  
10 that are going to qualify for this. So,  
11 I mean, I'm not sure what the revenue  
12 impact was. I didn't see any of that in  
13 the Department's brief. But I can't  
14 think it would be all that oppressive.

15 THE HEARING OFFICER: We don't know  
16 what the revenue impact would be.

17 MR. DELANEY: Correct. We're not  
18 sure. There's no numbers in the record.  
19 But there's no numbers to support this  
20 idea that they would be required to give  
21 the water away if that was implemented.

22 Now, the other thing, though, I have  
23 to mention -- and Shelby Linton will  
24 probably respond to this -- there is a  
25 PLUG settlement that is before you to be

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2 approved and it's just very generally  
3 described in an exhibit called PLUG  
4 No. 1.

5 Now, in that general description of  
6 the settlement it says that the  
7 Department commits to considering  
8 conjunctive billing for the PLUG members.

9 We don't necessarily have a problem  
10 with that except that I believe that  
11 Section 13.101 requires customers in the  
12 same class not to be discriminated  
13 against and you cannot by virtue of a  
14 settlement treat the Coalition commercial  
15 and industrial customers any different  
16 than the PLUG members.

17 So we don't oppose their request,  
18 but if you give it to them, in our view  
19 the law requires that it be uniformly  
20 applied to all the large customers.

21 Now, let me just finish with one  
22 thing. Then you can ask me any questions  
23 you want.

24 THE HEARING OFFICER: You keep  
25 inviting me to ask you questions.

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2 Mr. Dasent didn't do that.

3 MR. DELANEY: Actually, I am going  
4 to reserve the right to answer  
5 Mr. Dasent's questions in a moment.

6 But this will be said finally. In  
7 the Department's brief -- and the Public  
8 Advocate had a little bit of this, but  
9 not much -- this idea that the commercial  
10 and industrial customer groups are in  
11 here to put costs on the residentials,  
12 that there is a problem with that and  
13 that all the adjustments and testimony  
14 that we've put on is somehow suspect  
15 because our motives are to load those  
16 costs onto somebody else, well, I don't  
17 really fully accept that because in this  
18 case the Department has undertaken the  
19 burden, the burden of proof, to put on a  
20 cost of service case, which says that  
21 each of these expenses that we're  
22 allocating to these large customer  
23 classes is supported by a study that we  
24 produced. Here's the study. Here's the  
25 witness. You can ask him questions.

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2 Well, I'm not going to argue all the  
3 issues that are in our brief, but I think  
4 that there were significant questions  
5 raised with some of the data relied upon,  
6 some of the judgment exercised on these.  
7 I'm sure the Department was okay with it,  
8 but I think there are issues about this  
9 that require all those things to be  
10 examined.

11 If the Department chooses to provide  
12 or to attempt to provide a cost of  
13 service basis for the expenses that it  
14 allocates to these large customers, then  
15 they've got to stand with that or fall  
16 with it, and it doesn't help anybody to  
17 allege some improper motive that the  
18 large customers are trying to load costs  
19 onto someone else.

20 We're just trying to make sure the  
21 cost of service study is legitimate, is  
22 fair, and that everybody pays the cost  
23 that they require the Department to  
24 incur. And that's what it's all about  
25 and I reject those suggestions in those

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2 two briefs.

3 That's as much as I have to say. If  
4 you have any questions you want to ask  
5 me --

6 THE HEARING OFFICER: Thank you very  
7 much.

8 Do you have any comment upon that  
9 settlement comment that he made?

10 MR. DASENT: Yes. The settlement  
11 more or less says as to conjunctive  
12 billing -- it covers a waterfront of  
13 issues -- that we would have discussions  
14 with them and consider it in those  
15 discussions.

16 They wanted to raise it. We're  
17 happy to listen to it. We do not have  
18 conjunctive billing. If they have some  
19 policy presentation to make to us as to  
20 why you should have it, we will hear  
21 them. We will have, with that  
22 conversation or with commercial customers  
23 of any description, whether in CCC or any  
24 other group, that same discussion. We  
25 interact with our customers. We answer

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2 their questions.

3 Usually conjunctive billing is  
4 raised at least in the electric context  
5 when you have like a SEPTA and you have  
6 different sites that are linked together  
7 because they're in close proximity to one  
8 another and they get the high tension  
9 rate, the benefit of those economies of  
10 scale at a higher rate. We don't have  
11 that situation here. But I'm ready to  
12 listen and the Commissioner or Deputy  
13 Commissioner will hear them out.

14 So what we're trying to do here is  
15 have a dialogue, have a conversation, and  
16 that's not discriminatory unfairly,  
17 unduly, or any other way. That's just a  
18 question of a dialogue we chose to open  
19 up in lieu of fighting it out in the  
20 hearing room.

21 THE HEARING OFFICER: Would you  
22 agree that if those rates were put into  
23 effect, that they would have to be put  
24 into effect across the board?

25 MR. DASENT: Oh, it would be

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2 available to everyone.

3 THE HEARING OFFICER: Okay.

4 MS. LINTON-KEDDIE: Well, this might  
5 be a little redundant based on the  
6 discussion you just had. I have a brief  
7 statement but we'll just get to the heart  
8 of it.

9 At this point we're not aware of any  
10 opposition to the settlement. We believe  
11 that the Joint Statement that we  
12 submitted on August 11 does a good job  
13 summarizing what the settlement incurs.

14 With regard to the Customer  
15 Coalition statements and in the reply  
16 brief, with requesting that the Hearing  
17 Officer and the Water Commissioner direct  
18 the Department to treat the members of  
19 CCC and PLUG in a uniform and  
20 nondiscriminatory fashion, again, like  
21 Andre just said, because the settlement  
22 merely agrees that PLUG and the  
23 Department will explore and negotiate and  
24 does not necessarily promise conjunctive  
25 billing, PLUG doesn't believe that this

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2 request should in any way affect your  
3 decision to approve the settlement.

4 THE HEARING OFFICER: And that was  
5 one of the questions that I had, in terms  
6 of what role do you expect with regard to  
7 the Hearing Officer in regard to the  
8 settlement, and the answer of the  
9 Department was you expect me to approve  
10 it. And the basis that I should approve  
11 it is that there's no opposition?

12 MR. DASENT: There's no opposition.  
13 And from the description, the summary, it  
14 does not appear to be against the public  
15 interest and it's more or less like a  
16 judge more or less approving pro forma a  
17 settlement between parties.

18 It's not that we litigated the  
19 questions. We didn't. More or less what  
20 we've said in the settlement agreement is  
21 we're agreeing to talk, we're agreeing to  
22 interact with someone.

23 THE HEARING OFFICER: Well, why do  
24 you need my imprimatur for that?

25 MR. DASENT: Well, I think just

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2 because it happened during the course of  
3 the proceeding and they withdrew from the  
4 proceeding and they, I think, were  
5 looking to make sure this dialogue  
6 actually follows.

7 It's almost like any other thing  
8 that we would say in the context of a  
9 proceeding that the Department should do  
10 by the next rate case or by some period  
11 of time. You can indicate that in your  
12 recommendation or report to the  
13 Commissioner, that this has taken place,  
14 and to make sure nothing falls through  
15 the cracks.

16 THE HEARING OFFICER: So this is  
17 basically an uncontested motion you're  
18 saying?

19 MR. DASENT: That's correct.

20 THE HEARING OFFICER: I've lost some  
21 of those along the way.

22 Okay.

23 MR. DASENT: Let me defer to Your  
24 Honor. I don't know the order in which  
25 you want to proceed.

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2 THE HEARING OFFICER: Do you want to  
3 respond to counsel?

4 MR. DASENT: Yes. We would rely on  
5 our briefs for an explanation, full  
6 explanation --

7 THE HEARING OFFICER: I will approve  
8 that settlement from the bench. So you  
9 go home with the approval in hand. Okay?  
10 I want you not to be worried on the train  
11 back.

12 MS. LINTON-KEDDIE: Okay.

13 THE HEARING OFFICER: So that will  
14 be one of our recommendations.

15 MR. DASENT: Thank you, Your Honor.

16 We will rely on our brief for a full  
17 explanation of our position on rate  
18 design and cost allocation issues.

19 We do see or we did hear today about  
20 collection factors by class and some of  
21 the pronouncements, which we have  
22 addressed already, but we would want to  
23 make sure Your Honor is aware that we  
24 won't be able to develop collection  
25 factors for customer classes in the

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2 context of this proceeding because you'd  
3 have to verify some of these user codes  
4 that are stale. We don't have  
5 anything --

6 THE HEARING OFFICER: Is that  
7 something that you are willing to do,  
8 though, in the future? Is that something  
9 that makes sense?

10 MR. DASENT: Well, I think the  
11 problem is the cost of it. We tried to  
12 figure out, well, how much would this  
13 cost? And if you have 400,000 customers  
14 and it takes approximately 10 or 15  
15 minutes to verify each one, now, granted,  
16 with residential it will take less time  
17 than the commercial customers and the  
18 small commercial customers, but you do  
19 have to verify for purposes of user codes  
20 what this is, and if you can just sort of  
21 do the math, you can see, well, this  
22 could be several million dollars.

23 In addition to that, you have to  
24 refresh or revisit those from year to  
25 year to make sure that they remain

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2 viable, that they're reliable and can be  
3 used in the context of rates.

4 THE HEARING OFFICER: Well, we know  
5 admittedly right now they are unreliable.

6 MR. DASENT: We know now that they  
7 are unreliable and the question is the  
8 cost. And if you are talking about 3 or  
9 4 million in cost and it has to be  
10 revisited every year, then is it  
11 something that is cost-prohibitive?

12 That's sort of the question that was  
13 presented in the context of these  
14 hearings and we felt that it was a  
15 problem to develop and a cost that we'd  
16 have to examine along with so many other  
17 costs, that perhaps it wasn't one that  
18 was cost-effective. In other words, to  
19 what end were we doing all of this? And  
20 we did not believe in this particular  
21 situation that it was going to be  
22 cost-effective. But I think that's the  
23 rub on that one.

24 User codes are also used, though, in  
25 other parts of the filing, but, for

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2 example, if you have a uniform rate, if  
3 you do, for water, declining blocks, the  
4 persons complaining about the use of the  
5 user codes are benefiting, in fact, from  
6 the breaks or steps in the declining  
7 block rate.

8 In other words, when you set or use  
9 these user codes for a certain purpose,  
10 the larger customers are actually  
11 benefiting because we're using them to  
12 have the break points. You can have flat  
13 rates. There's no reason to have  
14 necessarily declining block rates. In  
15 fact, one might argue for conservation  
16 purposes you should have flat rates.

17 THE HEARING OFFICER: Well, the  
18 Water Department is not  
19 conservation-oriented, per se.

20 MR. DASENT: Well, we are very  
21 conservation-oriented, but I think in  
22 this particular situation --

23 THE HEARING OFFICER: Declining  
24 block rates are a conservation-oriented  
25 tool?

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2 MR. DASENT: Well, you see it  
3 flattening out. If you notice in this  
4 case, they are flattening out. That last  
5 step is getting closer and closer because  
6 we're becoming more of a base cost  
7 utility. And I think the trend of the  
8 industry is moving in that direction and  
9 gradualism, I think, would dictate also  
10 that you wouldn't move in one fell swoop  
11 to get there.

12 But giving credence to the argument  
13 that there's a cost basis for the steps  
14 in declining, the beneficiaries of that  
15 would want us to use user codes for  
16 certain because otherwise we'd have flat  
17 rates and we wouldn't have to worry about  
18 whether there's any problem with the tail  
19 block being allocated another  
20 1.8 million, as was alleged here.

21 In point of fact, that last  
22 argument, the rate design argument, was  
23 known to us beforehand in terms of an  
24 underrecovery for PHA and some of the  
25 municipal entities. It's spread

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2 throughout the rate classes, though, and  
3 because our system is dominated by  
4 residential customers, we're finding, if  
5 anything, there's about a 1.1 million hit  
6 for residential customers who aren't  
7 complaining and those that are  
8 complaining and feel like the tail block  
9 took the brunt of all of this would have  
10 only sort of a pittance by comparison to  
11 that 1.1 million.

12 Our problem here is when you have  
13 certain rates and sort of one size fits  
14 all and it doesn't quite fit all because  
15 we have one single rate design, then  
16 we're in a situation where there will be  
17 an underrecovery in certain  
18 circumstances; and Mr. McKinley can  
19 correct me if I'm wrong, but we believe  
20 in this particular situation, because we  
21 have spread it out for all classes, we've  
22 recovered the revenue requirement as best  
23 we can in this situation.

24 It's not any sort of validation for  
25 playing around with the tail block. The

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2 tail block is a cost. If you played too  
3 much with the tail block, if we were in  
4 situations, whether with conjunctive  
5 billing or some of the other issues that  
6 intersect here, we are getting to a point  
7 where we are not cost of service-oriented  
8 at all; and for whatever reason, you  
9 don't have to have any particular motive  
10 for getting there.

11 Maybe finding the lowest cost for  
12 your customer group is a noble effort,  
13 but in this particular instance we don't  
14 believe it's cost of service-based and,  
15 as a consequence, whether we're talking  
16 about the overreaching argument of  
17 Mr. Kalbarczyk that we should change the  
18 tail block or the relationship between  
19 the various Blocks 2, 3, and 4 to make  
20 them more in line with the last case,  
21 even though the cost of service study  
22 says otherwise, we disagree.

23 We'll rely on the brief for the rest  
24 of our arguments and unless Mr. McKinley  
25 has anything to amplify, I will close.

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2 THE HEARING OFFICER: I have  
3 additional rate questions that I will  
4 come back to. But let's see if there is  
5 anything else on these other issues.

6 MR. DELANEY: Can I just offer a  
7 brief response?

8 THE HEARING OFFICER: Yes,  
9 absolutely.

10 MR. DELANEY: The thing about the  
11 cost of updating the user codes, you  
12 know, I think that that's a major issue  
13 for the Company. I mean, the Department  
14 admits that the user codes are  
15 unreliable, yet they're assembling the  
16 whole case on them. So it's a little bit  
17 inconsistent to not address this and  
18 continue to file cases that use 1997  
19 customer identification data.

20 You know, this is not a huge problem  
21 for other utilities, to know who their  
22 customers are and what classification  
23 they're in.

24 If it's as expensive as Mr. Dasent  
25 suggested, I believe they can recover it

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2 in the next case. They're recovering  
3 their rate case expense in the present  
4 case. That would be a legitimate  
5 expense, in my view, for them to support  
6 their customer cost of service case  
7 simply by doing that and recovering it in  
8 the expenses in the next case.

9 THE HEARING OFFICER: It relates to  
10 the overall issue of cost causation.

11 MR. DELANEY: Yes. It's a critical  
12 indication. And I think it can be easily  
13 updated. Once they do it, every time  
14 there's a change of account, they can  
15 make the inquiry of the new customer and  
16 they can declare who they are.

17 THE HEARING OFFICER: There you go,  
18 managing the utility again.

19 MR. DELANEY: They can do it.

20 Now, the other thing on the tail  
21 block discussion, I would invite you to  
22 go back and read what the Department has  
23 in its reply brief because what they  
24 indicate is not what Mr. Dasent said,  
25 which is that the tail blocks were set on

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2 a cost of service basis, and my  
3 understanding was what he just explained  
4 to us was that they knew about this \$1.8  
5 million undercollection and everybody got  
6 distributed a piece of it.

7 There's no testimony on that  
8 currently. I thought they were surprised  
9 at it at the hearing because it took a  
10 while for them to confirm it off the  
11 record and then come back on the record  
12 and do it.

13 But to me that suggests that all the  
14 rates are not supported by cost of  
15 service considerations because the rate  
16 design required them to go back and  
17 reallocate the costs, and that's exactly  
18 what we argue in our reply brief and main  
19 brief on these declining block rates and  
20 I think they should be recalculated.

21 That's as much as I have to say.

22 MR. DASENT: I can say one other  
23 thing. 1.1 million was recovered through  
24 the initial blocks, which is the  
25 residential block. 160,000 was recovered

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2 from commercial-industrial customers.  
3 This is a \$1.8 million issue out of --  
4 what? -- a \$400 million utility. So I  
5 don't think it's of the moment.

6 THE HEARING OFFICER: Close to 500.

7 MR. DELANEY: Well, can I ask you,  
8 is that in the record? What you just  
9 cited, is that in the record somewhere or  
10 in your exhibits?

11 MR. DASENT: They are in the  
12 calculations certainly. I mean, there  
13 are so many things that are in the record  
14 you have to research.

15 But at the same time I'm just trying  
16 to explain, since this was brought up at  
17 sort of the 11th hour, how actually these  
18 costs were allocated and also indicate, I  
19 mean, as much as we hear argument that  
20 there's precision with cost of service  
21 studies and development of rate filings,  
22 there's also sort of an art to this as  
23 opposed to a science and there's a lot of  
24 informed judgment that does go into  
25 ratemaking generally.

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2 I mean, I was looking at cases in  
3 the last week or so where, let's say,  
4 rate of return, where we have CAPM and we  
5 have various other DCF risk premium  
6 analyses, and informed judgment was  
7 necessary to balance out the various  
8 things that were necessary in the  
9 determination of rates.

10 THE HEARING OFFICER: A lot of  
11 informed judgment in this case. All the  
12 projections are informed judgment in the  
13 future. So certainly a big part of this  
14 case is informed judgment. That's one of  
15 the issues, as to whether or not informed  
16 judgment is the standard for ratemaking.

17 I have one question that I would ask  
18 you to answer after consultation with  
19 Mr. McKinley. This relates to Question  
20 No. 2, and let me just give you a  
21 hypothetical question with regard to  
22 that.

23 You don't have that in front of you?

24 MR. DASENT: No.

25 THE HEARING OFFICER: Well, it's a

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2 pretty easy hypothetical. If there is a  
3 reduction in an expense item by \$1  
4 million, wouldn't that reduce the revenue  
5 requirement more than \$1 million and how  
6 much would it reduce it to?

7 MR. DASENT: The safest answer would  
8 be to let Mr. McKinley address that  
9 because in certain circumstances it's  
10 one-to-one and in other circumstances you  
11 take into account coverage.

12 MR. MCKINLEY: I guess, first of  
13 all, we need to get some semantics  
14 clarified. If you are talking about a  
15 \$1 million reduction in revenue  
16 requirements --

17 THE HEARING OFFICER: No. I said  
18 just assume there's a \$1 million expense  
19 disallowance, how much does that reduce  
20 the revenue requirement by? -- because  
21 all during the case you started talking  
22 about different things and you said,  
23 well, when you reduce it, it's not \$1.00,  
24 it's \$1.20 because of the collection  
25 factors, and all that type of thing was

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2 on the record.

3 So taking it the other way, if  
4 there's a reduction in expense by \$1.00,  
5 how much does that reduce the revenue  
6 requirement by? \$1.20? \$1.18 from your  
7 testimony, as I understood it.

8 MR. DASENT: But rates and revenue  
9 requirement are different and I think  
10 that's the problem in this discussion.  
11 We're sort of talking past each other.

12 On the rate side you have a lag  
13 factor and a collection factor adjustment  
14 that are applied. On the revenue  
15 requirement side, Table 11, you are going  
16 to have this one-to-one ratio that you  
17 see on most expenses. And as we tried to  
18 explain I think in Question No. 2, the  
19 response to it --

20 THE HEARING OFFICER: I didn't  
21 understand that. That's why I'm asking  
22 again.

23 MR. DASENT: Well, that's because  
24 Black & Veatch and other financial types  
25 had a hand in it. But the lawyers were

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2 very clear.

3 MR. CLARE: Rowe, explain the  
4 difference between revenue requirement  
5 and rate requirement and how they  
6 correlate.

7 MR. MCKINLEY: All right. You asked  
8 what the impact on the revenue --

9 THE HEARING OFFICER: My  
10 hypothetical that I want a response to  
11 is: If I decide there's \$1 million in  
12 disallowance of expense, how much does  
13 that result in in disallowance of the  
14 rate relief?

15 MR. MCKINLEY: Okay. For a  
16 \$1 million reduction in expense, if it's  
17 an O&M expense, operation and  
18 maintenance, there would be a \$1 million  
19 reduction in the revenue requirement.  
20 Looking at Table 11, we'd have \$1 million  
21 less.

22 However, when you design rates to  
23 recover that revenue requirement, you  
24 have to consider the collection factor  
25 because revenues on the legally enacted

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2 basis have to be on a receipts basis.

3 So, effectively, if it's an O&M  
4 expense, that has a \$1 million reduction  
5 in the revenue requirement, but  
6 approximately a \$1.05 million reduction  
7 in rates because of the lag factor  
8 adjustment that you have to apply  
9 recognizing collections. So there's more  
10 than a one-to-one relationship because of  
11 the rate.

12 THE HEARING OFFICER: And that was  
13 the import of my question and I thought  
14 that on the record you had stated and I  
15 looked and I tried to find it in the  
16 transcript, but I couldn't find it, but I  
17 know we had a discussion about it during  
18 the course of the hearing and I thought  
19 it was closer to 1.14 or 1.15.

20 MR. McKINLEY: Well, that depends on  
21 if it's an O&M expense adjustment or debt  
22 service, because debt service has to be  
23 covered by 1.20. So you have a  
24 combination of O&M expenses and --

25 THE HEARING OFFICER: Well, it

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2 wouldn't be debt service because debt  
3 service is known and measurable.

4 MR. MCKINLEY: Debt service has to  
5 be covered by 1.20 times.

6 THE HEARING OFFICER: All right. I  
7 think that that answered it.

8 MR. BERTOCCI: I have a question.  
9 When you say a difference in rates, is  
10 that the same as a difference in  
11 billings?

12 MR. MCKINLEY: Rates generate  
13 billings, but rates have to be higher  
14 because of the collection factor by the  
15 1.05% that we mentioned in the response.

16 THE HEARING OFFICER: Right. Fine.

17 Okay. That concludes the oral  
18 argument. Thank you for all of your  
19 assistance with regard to that.

20 Did you have something else?

21 MR. BERTOCCI: I thought we were  
22 going to get back to the issue of  
23 customer service for the Water Revenue  
24 Bureau.

25 THE HEARING OFFICER: Certainly.

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2 MR. BERTOCCI: The only thing I  
3 wanted to say on that was that we thought  
4 that there was some evidence of progress  
5 as far as the hearings were concerned  
6 from the point of view of the residential  
7 customers in terms of the service being  
8 provided by the Water Revenue Bureau in  
9 terms of access to service, maintaining  
10 service, all of the interactions that  
11 people have with especially the  
12 low-income population trying to maintain  
13 something which is a basic necessity of  
14 life.

15 We welcomed the Revenue Commissioner  
16 and the Deputy Revenue Commissioner  
17 coming in really for the first time in my  
18 memory and showing interest in these  
19 proceedings and making commitments to  
20 meet with us and to work in certain  
21 specified areas.

22 However, there was one thing that  
23 was disquieting and disturbing to us and  
24 that was we were asking for a commitment  
25 as a basis of meeting with us that

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2 basically they agree to comply with their  
3 regulations in terms of addressing a  
4 whole range of things, but the one that  
5 was distressing to us was the fact that  
6 they weren't willing to commit to abandon  
7 their policy of refusing service to a  
8 certain category of tenants.

9 These were tenants who have a lease  
10 which says they're responsible for water  
11 service, and when the tenant goes in to  
12 apply for water service or to try to  
13 prevent a shutoff, they are told by the  
14 Water Revenue Bureau that "Your landlord  
15 has an outstanding bill at this account  
16 and therefore we will not do anything  
17 until the landlord has resolved the  
18 problem or until you, as the tenant, pay  
19 the landlord's bill that was existent at  
20 the time that you became the tenant in  
21 that property."

22 We have raised that issue in the  
23 brief. Our expert witness, who is a  
24 lawyer, reviewed it. We have reviewed  
25 it. We have gotten no response from the

1 ORAL ARGUMENT

2 Water Department on their position and we  
3 don't think that this is something that  
4 needs to be studied for six months.

5 Our view is that mediation should  
6 take place based on the assumption that  
7 the regulations that are in effect are  
8 not negotiable. It's assumed that we  
9 will begin with the assumption that the  
10 regulations will be applied.

11 Then the only issue will be or I  
12 would think then the separate issue would  
13 be what would be the process by which we  
14 would make sure that these regulations  
15 are applied.

16 There we're looking for some  
17 indication from the Hearing Officer in  
18 his recommendation regarding the  
19 framework within which the mediation  
20 would take place.

21 I don't think it's quite appropriate  
22 for someone that's being the mediator to  
23 be making conclusions of law regarding  
24 the substance of what we're asking for  
25 here, although I think we probably have

1 ORAL ARGUMENT

2 asked it, but I think it may put you in  
3 kind of a difficult situation.

4 But it does seem at a minimum that  
5 there could be the declaration that you  
6 believe that the mediation that would be  
7 recommended should be based upon the  
8 assumption that the regulations will be  
9 applied specifically with regard to  
10 tenant customers.

11 THE HEARING OFFICER: Mr. Dasent?

12 MR. DASENT: We're open in this  
13 mediation to all issues. I think I tried  
14 to say this as plainly as possible. The  
15 Commissioner and Deputy Commissioner also  
16 indicated we were ready to entertain all  
17 issues and we will put this as number  
18 one.

19 I grant you that when I first read  
20 the customer compact, I thought that this  
21 was a more complicated issue because it's  
22 not just the plain vanilla situation but  
23 there are other situations also where  
24 people are in properties and have no  
25 necessarily legal right to be there, and

1 ORAL ARGUMENT

2 I want to make sure that we have a clear  
3 understanding of the issue to proceed.

4 But as I told Mr. Bertocci off the  
5 record, we will work with him and try to  
6 work through this issue and make sure  
7 that we calmly, deliberately come to a  
8 resolution that I think he is going to be  
9 satisfied with.

10 But I don't know that as a  
11 precondition that's necessary. I think  
12 it's more my interaction with the Law  
13 Department now that we've gotten to this  
14 threshold and we will be meeting  
15 October 30, I'm hopeful, and proceeding  
16 down a road where we are going to solve  
17 many of these problems, deal with a lot  
18 of the issues, and hopefully not have any  
19 limitations on that discussion.

20 THE HEARING OFFICER: And let me say  
21 that that's why I was willing to give you  
22 time here, although I thought we were  
23 finished, because I thought that issue  
24 was cleaned up nicely by the testimony we  
25 had.

1 ORAL ARGUMENT

2 You were the one that was embracing  
3 the testimony very much, if I remember,  
4 Mr. Bertocci. Were you embracing it or  
5 caressing it? What were you doing with  
6 it? What was your comment?

7 MR. BERTOCCHI: Ultimately our  
8 position I think was in our brief, that,  
9 yes, we welcome the testimony, but we  
10 felt that there was a withholding of  
11 certain things that were kind of  
12 essential.

13 We were trying to test to what  
14 degree these were sort of promises that  
15 would kind of evaporate over time. We  
16 were looking for more specific  
17 commitments, at least as to fundamentals.

18 THE HEARING OFFICER: I think the  
19 commitment you got is the Water  
20 Department has to be bound by the  
21 regulations and that will be the  
22 framework under which the mediation  
23 works. I think you will end up with a  
24 much more expansive situation for  
25 consumers than the regulations require

1 ORAL ARGUMENT

2 right now.

3 So I'm very optimistic about the  
4 mediation process. As I said to the  
5 Commissioner himself, do you consider  
6 this a plenary mediation over every  
7 issue, and he said yes. And although in  
8 a mediation you can't require somebody to  
9 do something, I think that the attitude  
10 was there and I think it's a great way to  
11 try to resolve the issues that are more  
12 appropriately resolved through that  
13 framework rather than briefs from the  
14 parties.

15 Again, thank you all and that  
16 concludes everything.

17 I am hopeful that I will be able to  
18 keep my time requirement of October 7.  
19 When we set the requirement, I did not  
20 realize there are two Jewish holidays,  
21 holy days, when work is forbidden, so to  
22 speak, and that may affect the timetable.  
23 I hope not. But I will alert you if  
24 there's going to be a problem.

25 MR. DASENT: There was one

1 ORAL ARGUMENT

2 outstanding question that was presented  
3 to Mr. McKinley, a rate design issue,  
4 Table 23 and the impact of public and  
5 private fire. Perhaps he can just  
6 explain to you what those numbers are so  
7 we can close the record on this.

8 THE HEARING OFFICER: Yes.

9 MR. MCKINLEY: I think the question  
10 was what was the cumulative impact over  
11 the four years if public and private fire  
12 protection costs or charges were not  
13 decreased as shown in the cost of service  
14 study but maintained at existing levels.

15 THE HEARING OFFICER: Right.

16 MR. MCKINLEY: And the impact would  
17 be about \$1.5 million in additional  
18 revenue in 2009, right at \$1 million in  
19 additional revenue in 2010, \$400,000 in  
20 2011, and then a small increase that next  
21 year. So about \$2.9 million in  
22 additional revenue cumulatively.

23 THE HEARING OFFICER: Thank you very  
24 much.

25 For the third and final time, that

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concludes the hearing. Thank you.

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(Whereupon the hearing concluded at  
3:35 p.m.)

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HEARING OFFICER EXHIBITS

NUMBER	DESCRIPTION	MKD.	EVD.
3	Document entitled "PWD Responses to Hearing Officer Questions"	845	845

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CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence and objections are contained fully and accurately in the stenographic notes taken by me on September 24, 2008, and that this is a true and correct transcript of same.

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SUSAN MARIE MIGATZ  
Registered Professional Reporter  
Certified Realtime Reporter  
Notary Public

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