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BEFORE THE
PHILADELPHIA WATER COMMISSIONER

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

PHASE II

- - -

PRE-HEARING CONFERENCE

- - -

January 12, 2009
2:10 p.m.

- - -

The Dispute Resolution Institute
Two Logan Square, Suite 660
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:

ANDRE C. DASENT, ESQ.
MARK B. SEGAL, ESQ.
Counsel to Philadelphia Water Department

COMMUNITY LEGAL SERVICES, INC.
BY: PHILIP A. BERTOCCI, ESQ.
THU TRAN, ESQ.
Counsel to Public Advocate

McNEES, WALLACE & NURICK, LLC
BY: SHELBY A. LINTON-KEDDIE, ESQ.
Counsel to Philadelphia Large Users Group

K&L GATES, LLP
BY: DANIEL P. DELANEY, ESQ.
Counsel to Sunoco, Inc.

FOX ROTHSCHILD, LLP
BY: PHILIP L. HINERMAN, ESQ.
Counsel to Philadelphia Housing Authority

PennFUTURE
BY: BRIAN G. GLASS, ESQ.
Counsel to Next Great City

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ALSO PRESENT:

KEVIN R. DUNLEAVY, ESQ.
Senior Attorney
Sunoco, Inc.

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1 THE HEARING OFFICER: This is a
2 pre-hearing conference ordered by the
3 Hearing Officer in connection with the
4 upcoming hearing on the stormwater
5 regulations proposed by the Philadelphia
6 Water Department.

7 In connection with the upcoming
8 hearing, I have asked the parties to
9 attempt to agree upon a schedule with
10 respect to witnesses and exhibits, and I
11 would ask Mr. Dasent to take the lead and
12 advise us as to where we are with that
13 request of the Hearing Officer.

14 MR. DASENT: Well, if you'll
15 remember, we were going to do a
16 presentation concerning stormwater rates
17 to open the hearings. You requested it
18 today, but if we could do it tomorrow,
19 that worked out better, and I think that
20 will, in fact, give us sort of a good
21 backdrop as to what we're talking about.
22 So we wanted to start with that. That's
23 probably a presentation of about an hour.

24 THE HEARING OFFICER: Is there a
25 handout with regard to that? I think

1 Phil had asked for any.

2 MR. DASENT: Yes. It's a slide
3 presentation. You've seen it before,
4 truthfully, but I can give you the
5 slides.

6 MR. BERTOCCI: That would be good.
7 It is always handy to sort of know what's
8 coming, if you can give that to us.

9 MR. DASENT: Yes. I will see if we
10 can electronically send out the slides.

11 THE HEARING OFFICER: If not,
12 certainly have available for distribution
13 tomorrow some copies for us so we have
14 that.

15 MR. DELANEY: Yes, that would be
16 helpful.

17 MR. DASENT: Then we were going to
18 start off with a presentation with Joe
19 Clare and David Katz and Joanne Dahme
20 concerning the Water Department's case
21 basically. We're sort of collapsing a
22 lot of things because there is Rebuttal
23 Testimony and Supplemental Testimony and
24 all of these things need to be
25 authenticated and moved into evidence.

1 But I think rather than trotting them in
2 and out as if there's more formality to
3 this process than there is, we'll present
4 them as a panel and from there subject
5 them to whatever cross-examination is
6 appropriate from the parties.

7 We wanted to move from there to the
8 Next Great City Stormwater Subcommittee
9 presentation by Wesley Horner and
10 Christine Knapp.

11 We didn't have a need for all of the
12 witnesses because you will remember there
13 were about five or six and we would like
14 to excuse those other witnesses, if Your
15 Honor please, and we would stipulate
16 basically to the authentication of their
17 testimony as a way to just sort of
18 streamline the process, because some of
19 their testimony overlaps with what
20 Mr. Horner and Ms. Knapp are saying.

21 So the critical mass of what we need
22 to discuss on the record, residential
23 credits being the core of it, we can
24 address with these two witnesses.

25 Jerome Mierzwa --

1 THE HEARING OFFICER: Any objection
2 to that?

3 MR. BERTOCCI: No.

4 MR. DELANEY: No.

5 THE HEARING OFFICER: So we'll allow
6 that.

7 MR. DASENT: Jerome Mierzwa, also
8 for the Public Advocate, would be next.
9 We have some small issues of dispute, but
10 some agreement also, with the Public
11 Advocate. But we would like to survey
12 those areas. And some of it may come up
13 and be addressed, quite frankly, with
14 respect to the panel discussion we have
15 in the beginning with Mr. Clare and
16 Mr. Katz and Ms. Dahme.

17 THE HEARING OFFICER: Mr. Clare
18 hasn't produced new testimony with regard
19 to this, has he?

20 MR. DASENT: Well, he produced the
21 Rebuttal Testimony with Dave Katz and
22 Joanne Dahme, the Rebuttal Testimony has
23 all three names on it, because basically
24 I was trying to collapse it into one
25 document so we didn't have three separate

1 very, very small documents; and that
2 addresses the variety of testimony,
3 including the Next Great City Stormwater
4 Subcommittee and a bunch of others by the
5 Public Advocate.

6 Mr. Ferman would be the beginning of
7 the afternoon session, if Your Honor
8 please. We're trying to come up with a
9 schedule that works with his limited
10 availability on Tuesday. 1:30 is
11 basically the timeline where he could be
12 available and I'm estimating, based upon
13 our last hearings, that perhaps we will
14 break and be back somewhere near that
15 time. Obviously he'll work with Your
16 Honor's schedule, but we're trying to
17 work with his as well. So Mr. Ferman
18 will be the PLUG witness who will be put
19 on right after the lunch session.

20 THE HEARING OFFICER: Why don't we
21 just have him at 2 o'clock and then we
22 won't be tightening things up.

23 MR. DASENT: Okay. And then James
24 Disario and Richard Goracy from Sunoco
25 will be in the afternoon session.

1 A lot of the issues that we will
2 address in the morning will overlap
3 obviously and help us streamline the
4 afternoon session, but we'll see how that
5 plays out.

6 We have the order of witnesses to
7 encompass, I think, the critical areas
8 where we have disagreement and some areas
9 also where we have a substantial amount
10 of agreement in the morning, but we need
11 to flesh out residential credits, we need
12 to flesh out some of the other issues
13 that the Public Advocate has raised as
14 well.

15 That's pretty much it. I think we
16 have a day-long session, but I don't
17 think it's a crowded session. I think it
18 will be one that will have spirited
19 discussion but one also that will be very
20 interesting because Ms. Dahme, I think,
21 will captivate you, sir.

22 MR. DELANEY: Harris, I have a
23 statement that Disario and Goracy will be
24 presented as a panel also. They have
25 jointly authored the testimony so they

1 are available to testify together and
2 answer questions.

3 THE HEARING OFFICER: That's fine.

4 MR. DASENT: Now, we have agreed
5 upon an Exhibits List --

6 THE HEARING OFFICER: First, any
7 other comments with regard to the hearing
8 schedule for the witnesses?

9 - - -

10 (No response.)

11 - - -

12 THE HEARING OFFICER: Is the Housing
13 Authority going to present any?

14 MR. HINERMAN: No.

15 MR. BERTOCCI: Can we expect that if
16 we get to 4 o'clock, we can continue to
17 get the hearings done tomorrow?

18 THE HEARING OFFICER: Yes.

19 MR. DASENT: Yes. I would expect we
20 could conclude these very easily
21 tomorrow.

22 Now, with respect to the Exhibits
23 List, we've agreed upon an Exhibits List.
24 I boldened basically the new exhibits,
25 the ones that we will be adding in the

1 Stormwater/Phase II section of these
2 proceedings.

3 So PWD-39 through the end basically,
4 44, are the new exhibits. And you will
5 see also the boldened statements that
6 haven't been moved in yet or are the
7 subject of stormwater testimony:
8 Ms. Dahme's Direct Testimony,
9 Mr. McKinley's Supplemental Testimony,
10 and the Sunoco Statement, the PLUG
11 Statement, and the Next Great City
12 Stormwater Subcommittee Statements.

13 We would like to also add to the
14 Hearing Officer exhibits some requests
15 that Your Honor made toward the end of
16 the technical hearings that we responded
17 to in writing but were never marked as an
18 exhibit. Mr. Bertocci pointed that out
19 to me.

20 What I'll do is I'll bring a copy of
21 the documents or the document where we
22 answered a number of questions that Your
23 Honor posed to the Water Department at
24 the end of the technical session, just so
25 the record is full on this, and if Your

1 Honor please, we'll mark that as HO-3.

2 It's relevant in the sense that the
3 questions were relevant to the technical
4 hearings and to complete the record and
5 to respect Mr. Bertocci's request, we
6 would like them included.

7 THE HEARING OFFICER: A complete
8 record is an admirable call.

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10 (Whereupon the document was marked,
11 for identification purposes, as HO
12 Exhibit 3.)

13 - - -

14 MR. DASENT: And nothing else on the
15 schedule, as I remember, changed except
16 for this hearing date, so we're hopeful
17 that we can proceed on the same briefing
18 schedule and the timing of the proceeding
19 will not otherwise change.

20 MR. DELANEY: I do have a question
21 and this might simplify things a little
22 bit.

23 THE HEARING OFFICER: You don't have
24 to apologize for a question.

25 MR. DELANEY: Wait until you hear

1 the question.

2 THE HEARING OFFICER: I know there's
3 comradery here, but don't feel
4 apologetic.

5 MR. DELANEY: From my understanding
6 of what you just went through, the second
7 part of it at least are going to be
8 Department exhibits, which consist of all
9 of the discovery responses --

10 MR. DASENT: Yes.

11 MR. DELANEY: -- that you have
12 produced.

13 MR. DASENT: Yes.

14 MR. DELANEY: Now, in the first set
15 of hearings I know I did this and maybe
16 this is unnecessary, so I'll get the
17 Hearing Officer's view of this and anyone
18 else that wants to volunteer.

19 I will likely ask some of your
20 witnesses questions about discovery
21 responses that you have provided to us.
22 Now, in the prior hearing I followed the
23 PUC model, which is to mark these as
24 cross-examination exhibits of a
25 particular party and then harass the

1 witness with them, ask them questions
2 about them.

3 So I'm wondering at this point,
4 since you're going to actually make these
5 your exhibits, maybe we could forego my
6 presentation of cross-examination
7 exhibits and key your witness to PWD-39
8 and he may not have to look at it to
9 answer the question, but rather than
10 producing cross-examination exhibits,
11 assuming it's just the discovery
12 response, we could just rely on the
13 exhibits that the Department has coming
14 in.

15 Now, the question I have, I guess,
16 for the Hearing Officer, when you come to
17 write your decision, I assume you will
18 have access to all of these.

19 THE HEARING OFFICER: I certainly
20 have to have access to them and it would
21 be helpful if I had access to them
22 tomorrow.

23 MR. DASENT: Yes. We will have a
24 binder that you can refer to also that
25 will be tabbed so you can refer to

1 whatever discovery responses you wish.

2 THE HEARING OFFICER: So to answer
3 your direct question, no, there is no
4 need for additional exhibits. You can
5 rely on their exhibits when you are
6 cross-examining any witness.

7 MR. DELANEY: And I assume you will
8 have the complete responses in the
9 exhibits because I know you gave us
10 permits as one of them.

11 MR. DASENT: Yes, I do have the
12 permits.

13 MR. DELANEY: That would all still
14 be part of the marked exhibit number
15 here?

16 MR. DASENT: Sure, sure.

17 MR. DELANEY: All right. That's
18 great. Thank you for the clarification.
19 That's helpful to me.

20 THE HEARING OFFICER: Any comments?

21 MS. LINTON-KEDDIE: No.

22 MR. BERTOCCI: Yes. I had just one
23 other issue. In response to the last
24 Rebuttal Testimony, there were issues
25 raised there that we had some discovery

1 for, so we gave the Water Department on
2 Friday, the day after they filed their
3 testimony, Interrogatories PA-JM 59
4 through 65 and asked that they be
5 provided to us as soon as possible,
6 hopefully before the hearings.

7 I wasn't sure they would be able to
8 do it in that time, although I thought
9 the questions were not ones that required
10 a lot of research necessarily.

11 THE HEARING OFFICER: Do you know
12 the status of that, Andre?

13 MR. DASENT: I will ask when I go
14 back to the Department where we are in
15 terms of the written responses. I wanted
16 everyone ready at least to be able to
17 respond to some of them if they weren't
18 about City Council's -- I forget what it
19 was --

20 MR. BERTOCCI: Intent.

21 MR. DASENT: -- intent. Those, I
22 think, might require a lawyer's response.
23 But the others I thought might be more
24 factual in nature and that folks would be
25 ready to answer them, if possible,

1 tomorrow.

2 THE HEARING OFFICER: Okay. To the
3 extent that we have answers tomorrow,
4 either oral or in writing, but mainly
5 primarily oral is what you're saying --

6 MR. DASENT: Yes.

7 THE HEARING OFFICER: -- we will
8 have them. To the extent they are
9 written answers, we will have the written
10 answers within a few days. To the extent
11 you think it's necessary to reconvene the
12 hearing with regard to those, we will
13 look at that request if it's made.

14 MR. BERTOCCI: I think that's fine.
15 I thought initially it might be possible
16 to make a transcript request just asking
17 for, if there's some document that is
18 known to exist that they haven't produced
19 that they could produce, that then they
20 could just produce it a few days after
21 the hearing and that would be just fine.

22 MR. DASENT: Okay.

23 THE HEARING OFFICER: So why don't
24 we direct them to review that in terms of
25 what they are able to respond to and if

1 they'll need a couple days to respond to
2 it, then we'll delineate that as a matter
3 of record.

4 MR. DASENT: Okay.

5 THE HEARING OFFICER: So you will be
6 prepared to answer that with specificity.

7 MR. DASENT: Will do.

8 MR. DELANEY: I have one additional
9 question. I would assume, just to
10 confirm this, that we will follow the
11 same procedure used in the first case,
12 which would be that you would write a
13 Hearing Officer decision, with exceptions
14 to the Water Commissioner, who then
15 issues the final decision in the case.

16 MR. DASENT: Yes.

17 MR. DELANEY: The same procedure
18 then for the resolution of this part of
19 the case?

20 MR. DASENT: Yes. We hadn't gotten
21 to the exceptions yet, but yes.

22 MR. DELANEY: I mean, that's what
23 we're thinking of, is that it would go
24 that way. Exceptions may not be
25 necessary, but in case they are.

1 THE HEARING OFFICER: We did set
2 forth a schedule already, didn't we?

3 MR. DASENT: Yes, we did.
4 Simultaneous briefs were due the 10th of
5 February and the 24th for reply briefs.
6 Oral argument, if necessary, was after
7 that, March 4, and the Recommended
8 Decision was March 31.

9 MR. DELANEY: Okay.

10 THE HEARING OFFICER: The exceptions
11 are outside the jurisdiction of the
12 Hearing Officer.

13 MR. DASENT: Correct. But they
14 would be sometime following the 31st and
15 I guess all of us need to have that in
16 mind in case we need them.

17 THE HEARING OFFICER: Because we all
18 know how carefully considered they are.

19 MR. DELANEY: All right. Thank you
20 for confirming that. It may be
21 unnecessary, I'm thinking.

22 THE HEARING OFFICER: Suspenders and
23 belts are always a good thing in public
24 utility matters when ratepayers are
25 involved and public entities.

1 Okay. Anything else we need to
2 discuss?

3 MR. DASENT: No.

4 THE HEARING OFFICER: Then I look
5 forward to seeing everybody tomorrow
6 morning at 10 o'clock. Thanks for coming
7 over today.

8 - - -

9 (Whereupon the pre-hearing
10 conference adjourned at 2:20 p.m.)

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12 Reported By: Susan Marie Migatz, RMR, CRR

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