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BEFORE THE  
PHILADELPHIA WATER COMMISSIONER

- - -

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

PHASE II

- - -

POST-HEARING CONFERENCE

- - -

January 22, 2009  
10:00 a.m.

- - -

The Dispute Resolution Institute  
Two Logan Square, Suite 660

- - -

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.  
Counsel to Philadelphia Water Department

COMMUNITY LEGAL SERVICES, INC.  
BY: PHILIP A. BERTOCCHI, ESQ.  
Counsel to Public Advocate

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:

MICHAEL L. GALBRAITH, ESQ.  
The Dispute Resolution Institute

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

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1           THE HEARING OFFICER: This is the  
2 post-hearing conference in connection  
3 with the stormwater technical proceedings  
4 with regard to the Philadelphia Water  
5 Department rate proceeding FY 2009 to  
6 2012.

7           Mr. Dasent, did you prepare a  
8 Statements and Exhibits List?

9           MR. DASENT: Yes, and got the input  
10 of all parties and, in fact, from the  
11 original document circulated, we added,  
12 for Next Great City Stormwater  
13 Subcommittee, Exhibit 2, the Poll Summary  
14 and technical support for that Summary,  
15 which was submitted to Your Honor --

16          THE HEARING OFFICER: Right.

17          MR. DASENT: -- and we neglected to  
18 put in. Other than that, it's the same  
19 document.

20          So with that, all these documents  
21 have been sponsored by different parties  
22 and we're hopeful, because some of them  
23 were not formally moved into evidence,  
24 that at this point in time Your Honor  
25 will accept all parties' exhibits and

1 statements and discovery responses in  
2 evidence.

3 THE HEARING OFFICER: Any comments  
4 from counsel?

5 MR. BERTOCCI: Well, I just had one  
6 thing on PWD-39. We still have an  
7 ongoing discussion about PA-JM 62 and  
8 PA-JM 63 and it's a pretty easy issue.

9 The City index notes the existence  
10 of a couple documents and we have asked  
11 the Water Department to produce them and  
12 they have been looking for them and they  
13 are not 100% certain that these documents  
14 still exist. They are on the website  
15 index and it may be that they don't  
16 exist.

17 But we are asking that they do due  
18 diligence so they get to the point where  
19 they can say, well, we've looked, we've  
20 taken these steps, and we don't think  
21 that they exist anymore, or something to  
22 that effect.

23 And we would like to have the  
24 supplement to PA-JM 62 and PA-JM 63  
25 entered into the record and we thought

1 maybe we could do it without having to  
2 reconvene another hearing by saying that  
3 what we will do is we will file a  
4 stipulation, which could be marked even  
5 as another exhibit, resolving those  
6 issues, which would be signed by me and  
7 by counsel for the Water Department.

8 THE HEARING OFFICER: Okay. Let the  
9 record reflect there is a certain  
10 specified issue with regard to Exhibit  
11 39. Counsel is entitled to know whether  
12 these documents exist or don't exist. If  
13 they exist, they should be made part of  
14 the record. If they don't exist, that  
15 should be specified as well.

16 So we'll receive now an exhibit  
17 which we will call PWD-39A and PWD-39A  
18 will be comprised of a stipulation of  
19 counsel which will set forth the  
20 existence or nonexistence of the  
21 documents and specify that accordingly  
22 without further convening of this matter.

23 MR. BERTOCCI: And the documents  
24 themselves if they do exist.

25 THE HEARING OFFICER: If they do,

1 they would be part of 39.

2 MR. BERTOCCI: Well, that's true.

3 MR. DASENT: Yes.

4 MR. BERTOCCI: That's true. That's  
5 right.

6 - - -

7 (Whereupon the document was  
8 designated to be marked, for  
9 identification purposes, as PWD Exhibit  
10 39A and admitted in evidence.)

11 - - -

12 MR. DASENT: With that, if Your  
13 Honor will receive all exhibits and  
14 statements in evidence, we would  
15 appreciate that.

16 THE HEARING OFFICER: All right.  
17 Let's note that we have marked this for  
18 purposes of the conference PWD Exhibit  
19 52, being the Statements and Exhibits  
20 List, which details with specificity all  
21 the documents and statements received in  
22 this entire proceeding.

23 - - -

24 (Whereupon the document was marked,  
25 for identification purposes, as PWD

1 Exhibit 52 and admitted in evidence.)

2 - - -

3 THE HEARING OFFICER: To the extent  
4 that any documents were not formally  
5 introduced into evidence, they shall so  
6 be admitted at this point in time. All  
7 documents specified therein shall form  
8 part of the entire record that's before  
9 the Hearing Officer and the Commissioner  
10 in connection with this proceeding.

11 MR. DASENT: Thank you, Your Honor.

12 - - -

13 (Whereupon, as referenced above, all  
14 previously marked Statements and Exhibits  
15 admitted in evidence.)

16 - - -

17 MR. DUNLEAVY: Your Honor, a couple  
18 comments. PWD-50, the Largest 500  
19 Stormwater Decreases, we have not  
20 received a copy of that. I just asked  
21 for Andre to produce a copy.

22 And as to PWD-47, the Largest 500  
23 Stormwater Increases, I think it was  
24 confirmed at the hearing that the numbers  
25 on this document are not up to date and

1 accurate. The purpose, I guess, of using  
2 this document was just to show the  
3 entities on there rather than the numbers  
4 themselves.

5 THE HEARING OFFICER: The numbers  
6 were not up to date and with regard to  
7 some of them, they were by different  
8 accounts.

9 MR. DASENT: That's correct.

10 THE HEARING OFFICER: With regard to  
11 Sunoco, reflected different accounts  
12 rather than the sum of them.

13 MR. DUNLEAVY: And with regard to  
14 PWD-48, the NPDES Credit Survey that was  
15 handed out at the hearing, it's my  
16 understanding that was a document that  
17 was summarized by Black & Veatch within  
18 the past few weeks or month. The  
19 Department has confirmed that they have  
20 been unable to locate the original  
21 document from Ogden, which was prepared I  
22 guess in the '95-'96 time frame.

23 So I would ask that this document,  
24 the Credit Survey Summary, not be used by  
25 the Department for purposes of showing

1 what they relied on for the 7% credit.

2 MR. DASENT: I don't know that we  
3 agreed to that in our prior conversation,  
4 but we would agree certainly that as it  
5 was characterized in the record, that it  
6 represents a cross-section of the  
7 country, what other jurisdictions do and  
8 that other jurisdictions handle this  
9 credit issue differently; but that,  
10 nonetheless, you can look at it, not as  
11 evidence of what we did, but evidence of  
12 what other jurisdictions have done, which  
13 is sometimes very much in line with our  
14 proposal and other times in line with  
15 yours.

16 MR. DUNLEAVY: But you would agree  
17 with me that this document postdated the  
18 actual decision to use the 7% NPDES  
19 credit in the regulation.

20 MR. DASENT: Yes.

21 MR. DUNLEAVY: Therefore, as to that  
22 purpose, I would ask that this document  
23 not be used for purposes of showing that.  
24 We're somewhat at a disadvantage here  
25 because we don't have the original

1 document and we don't know what Ogden had  
2 relied on for that conclusion of the 7%.

3 THE HEARING OFFICER: Well, the  
4 point, though, with regard to the 7%, is  
5 that that was something that was looked  
6 at. It wasn't relied upon in toto. It  
7 was ultimately a managerial decision made  
8 by the Department after considering the  
9 issue. Some people thought there  
10 shouldn't be any credit because there's  
11 no benefit of it, if I remember the  
12 testimony correctly with regard to that.

13 MR. DASENT: Yes.

14 THE HEARING OFFICER: So it was a  
15 back-and-forth type of thing and it's not  
16 determinative of the issue before us but  
17 it's probative, so we'll allow it into  
18 evidence. Objection overruled.

19 Anything further?

20 MR. DASENT: Nothing more.

21 THE HEARING OFFICER: Okay. Let's  
22 go off the record for a second.

23 - - -

24 (Discussion held off the record.)

25 - - -

1           THE HEARING OFFICER: The dates with  
2 regard to completion of this phase of the  
3 matter is all briefs are due February 10;  
4 replies are due February 24; oral  
5 argument, if desired by the Hearing  
6 Officer, will take place on March 4.

7           The Hearing Officer will advise  
8 everyone after he reviews the briefs and  
9 the replies as to whether or not he is  
10 desirous of oral argument.

11           And with godspeed the Hearing  
12 Officer hopes to complete his decision by  
13 March 31.

14           Anything further, gentlemen?

15           MR. DASENT: No, except to thank  
16 Your Honor and the parties for their  
17 participation. It's been an interesting  
18 experience and a very nice experience.

19           THE HEARING OFFICER: And hopefully  
20 we have done justice.

21           MR. DASENT: Yes.

22           THE HEARING OFFICER: Have a great  
23 day, everyone. Good to see you all.

24   - - -

25           (Whereupon the hearing adjourned at

1 10:20 a.m.)

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3 Reported By: Susan Marie Migatz, RMR, CRR

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## INDEX OF EVIDENCE

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## WATER DEPARTMENT STATEMENTS

NUMBER	DESCRIPTION	MKD.	EVD.
4	Direct Testimony of Joanne Dahme	971	1201
7	Supplemental Testimony of J. Rowe McKinley and Exhibit JRM-3	971	1201
8	Rebuttal Testimony of Joseph Clare, Joanne Dahme and David Katz	977	977

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WATER DEPARTMENT DIRECT, SUPPLEMENTAL  
AND REBUTTAL TESTIMONY

WITNESS	DR.	CR.	RDR.	RCR.
Joseph S. Clare, III	975	978	1078	1157
David Katz				
Joanne Dahme				
J. Rowe McKinley				
Prabha Kumar	1083			

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## PUBLIC ADVOCATE STATEMENTS

NUMBER	DESCRIPTION	MKD.	EVD.
4	Supplemental Direct Testimony of Jerome D. Mierzwa	1140	1144

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## PUBLIC ADVOCATE SUPPLEMENTAL TESTIMONY

WITNESS	DR.	CR.	RDR.	RCR.
Jerome D. Mierzwa	1140			

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## PHILADELPHIA LARGE USERS GROUP STATEMENTS

NUMBER	DESCRIPTION	MKD.	EVD.
1	Direct Testimony of Michael Ferman	1089	1089

- - -

## PHILADELPHIA LARGE USERS GROUP TESTIMONY

WITNESS	DR.	CR.	RDR.	RCR.
Michael Ferman	1088	1090		

- - -

NEXT GREAT CITY STORMWATER SUBCOMMITTEE  
STATEMENTS

NUMBER	DESCRIPTION	MKD.	EVD.
1	Direct Testimony of Wesley R. Horner	1095	1096
2	Direct Testimony of Christine Knapp	1095	1096
3	Direct Testimony of David W. Feldman	pre	1201
4	Direct Testimony of Marilyn Wood	pre	1201
5	Direct Testimony of Patrick Starr	pre	1201
6	Direct Testimony of Brady Russell	pre	1201

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NEXT GREAT CITY STORMWATER SUBCOMMITTEE  
TESTIMONY

WITNESS	DR.	CR.	RDR.	RCR.
Wesley R. Horner	1095	1096		
Christine Knapp				

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SUNOCO STATEMENTS

NUMBER	DESCRIPTION	MKD.	EVD.
1	Direct Testimony of Stephen J. Koczirka, Richard J. Goracy and James Disario	1111	1115

- - -

## SUNOCO TESTIMONY

WITNESS	DR.	CR.	RDR.	RCR.
Richard J. Goracy	1111	1115	1127	1129
James Disario				

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## HEARING OFFICER EXHIBITS

NUMBER	DESCRIPTION	MKD.	EVD.
3	Responses to Transcript Requests posed by the Hearing Officer	918	1201

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## WATER DEPARTMENT EXHIBITS

NUMBER	DESCRIPTION	MKD.	EVD.
39	Responses to PA-JM series data requests (21-65)	pre	1201
39A	Stipulation re Exhibit 39	1201	1201
40	Responses to CCC series data requests (Sets 3&4)	pre	1201
41	Responses to Sunoco series data requests (Sets 1&2)	pre	1201
42	Responses to PLUG series data requests (1-5)	pre	1201
43	PWD's Standard Interrogatory Responses (60 and 61)	pre	1201
44	Responses to NGCSS data requests (1-5)	pre	1201
45	Printout of slide presentation entitled "Parcel Based Stormwater Charge"	968	968

## WATER DEPARTMENT EXHIBITS

NUMBER	DESCRIPTION	MKD.	EVD.
46	Errata Sheet for Changes to the Supplemental Direct Testimony of J. Rowe McKinley and Exhibit JRM-3	975	975
47	Document entitled "Top 500 Largest Increase in Monthly SW Charge"	1050	1201
48	Document entitled "Stormwater Utility NPDES Credits Survey Summary"	1087	1201
49	Document entitled "Questions and Answers about your new water and sewer charges"	1150	1150
50	Largest 500 Stormwater Decreases	post	1201
51	Summary of Minor Revisions to proposed Stormwater Regulations	post	1201
52	Statements and Exhibits List (as of end of Phase II of Technical Hearings)	1200	1200

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## PUBLIC ADVOCATE EXHIBITS

NUMBER	DESCRIPTION	MKD.	EVD.
5	Revised Page 2 of the Supplemental Direct Testimony of Jerome D. Mierzwa	1142	1144

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NEXT GREAT CITY STORMWATER SUBCOMMITTEE  
EXHIBITS

NUMBER	DESCRIPTION	MKD.	EVD.
1	Next Great City Philadelphia brochure	1105	1201
2	Poll Summary and Technical Report	post	1201

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