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

- - -

TECHNICAL HEARINGS
VOLUME II

- - -

August 13, 2008
10:05 a.m.

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Philadelphia, PA
18th Floor - 1515 Arch Street

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BEFORE: HARRIS T. BOCK, ESQ.
Hearing Officer

- - -

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

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Assistant City Solicitor

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2 THE HEARING OFFICER: Day 2 of the
3 technical hearings shall come to order.
4 I know Mr. Dasent has a witness. But
5 just before the witness goes, a few
6 comments from the Hearing Officer.

7 Yesterday the witnesses were sworn
8 and I said I thought I saw something in
9 the Water Department regulations with
10 regard to that. Section 300.8(11) says
11 as follows: "Presentations at the
12 technical review hearings shall not be
13 under oath or affirmation."

14 I tend to like to follow regulations
15 so we'll follow regulations and the
16 witnesses will be presented in accordance
17 with the Water Department regulations and
18 not be sworn.

19 Secondly, there was some issue
20 yesterday with regard to the Water
21 Revenue Bureau and where it stands in
22 connection with the Water Department in
23 these hearings and a characterization was
24 given as to that, and I would like to
25 read the regulations into the record that

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2 relate to that.

3 The specific regulation is 300.2,
4 "Definitions," Subsection (m), which
5 provides as follows: "Water Department:
6 The operating department of the City of
7 Philadelphia with the duties, powers and
8 obligations set forth in the Home Rule
9 Charter and the Philadelphia Code. For
10 all purposes related to the Rate Change
11 Proceeding, the Water Department shall be
12 considered to include the Water Revenue
13 Bureau of the Revenue Department.
14 Nothing in these regulations shall be
15 construed to change, alter, or modify the
16 functions, powers, responsibilities or
17 authority of the Water Revenue Bureau or
18 the Water Department under the Home Rule
19 Charter or the ordinances of the City of
20 Philadelphia."

21 One final word with regard to the
22 regulations. In terms of the overall
23 regulations, in reviewing them, they seem
24 to be in need of some updating.

25 As part of my recommendation in this

1 TECHNICAL HEARINGS - VOLUME II
2 matter I will recommend that a committee
3 be appointed to update the regulations to
4 make them consistent with the realities
5 of the rate process so that one can
6 follow the regulations and not look at
7 them just as advisory but more directory
8 in nature so that we have a process to be
9 followed.

10 Having said that, we are ready to
11 proceed with the first witness.

12 MR. DASENT: Thank you, Your Honor.
13 We would like to present as our first
14 witness today Anthony Griffith, who is
15 the City's financial advisor, and he will
16 be a rebuttal witness to Michael
17 Bleiweis.

18 - - -

19 ...ANTHONY M. GRIFFITH, called on
20 rebuttal...

21 - - -

22 THE HEARING OFFICER: Good morning,
23 Mr. Griffith.

24 MR. GRIFFITH: Good morning.

25 THE HEARING OFFICER: You need not

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2 be sworn.

3 You may proceed.

4 MR. DASENT: The parties have
5 stipulated to the qualifications of
6 Mr. Griffith as an expert witness. I
7 would like to just survey his background.

8 - - -

9 DIRECT EXAMINATION

10 - - -

11 BY MR. DASENT:

12 Q. Mr. Griffith, if you would, state
13 your full name for the record.

14 A. Anthony M. Griffith.

15 Q. And your business affiliations?

16 A. I work for Phoenix Capital Partners.
17 I'm a partner there.

18 Q. What is your background and
19 experience that qualify you to testify
20 concerning investment banking matters?

21 A. I originally was an investment
22 banker for ten years with Commerce Capital and
23 also A. H. Williams & Company. I have
24 provided investment banking and financial
25 advisory services to the City of Philadelphia,

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2 the City of Baltimore, D.C., for the last 20
3 years. I actually did the financing for this
4 building when we renovated it over ten years
5 ago. And I graduated from Williams College
6 and have my M.B.A. from the Wharton School of
7 Business.

8 Q. In the aggregate, how would you
9 value the municipal bond transaction deals
10 that you've been involved in over your tenure
11 at Phoenix Capital Partners?

12 A. Wow, we've been very active.
13 Probably over \$50 billion in financings all
14 over the country. We've done water financings
15 for Baltimore, D.C., Detroit. We probably
16 have been on almost all the financings in the
17 last ten years with the City for the Water
18 Department. Hopefully we'll continue.

19 We are right now involved with
20 restructuring a short financing that had
21 problems with a letter of credit with Bank of
22 America and there is an expectation that we
23 also may be involved with the new money
24 financing in February.

25 Q. Now, Mr. Griffith, Mr. Bleiweis has

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2 recommended significant changes in the
3 Department's rate plan as a part of this
4 proceeding and changing the timeline for the
5 rate plan or time horizon for it and
6 significantly reducing the revenue requirement
7 associated with the rate increase.

8 With such changes as proposed by
9 Mr. Bleiweis, which we have tried to
10 tentatively quantify, it's basically
11 two-thirds of the rate increase, which was
12 originally \$316 million, what response do you
13 have to Mr. Bleiweis' testimony in the context
14 of the investment community's perception of
15 the Water Department?

16 A. When I first heard about the
17 proposed changes, I was kind of concerned from
18 the perspective of dealing with investors and
19 rating agencies. Because of my activities I'm
20 always talking to the rating agencies. I
21 recently was involved in the rating agency
22 process for the City of Philadelphia, and one
23 of the things that came up was they asked
24 questions about the Water Department, which is
25 highly rated.

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2 It's higher rated than what the City
3 is rated. The City is rated BBB+. The Water
4 Department is rated A- by Fitch, A by S&P, and
5 what they call A3 by Moody's, which is
6 comparable to an A- rating.

7 It should be noted, the A was just
8 recently received as of Monday. I was in
9 discussions with them about that. That
10 represents an upgrade to the Water Department
11 and it represents what they've been doing. It
12 represents the fact that they're very
13 comfortable with management and they're very
14 comfortable with how they've been projecting
15 out their revenues and making their debt
16 service coverage, which is extremely
17 important.

18 I think at this point in time, in
19 this tight credit environment, for the Water
20 Department to do something significantly
21 different than what they've been doing in the
22 past could cause major concerns -- actually,
23 it would cause major concerns -- to the rating
24 agencies.

25 I have spoken to them about this,

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2 you know, people like Carl Jenkins at S&P or
3 Jenny Maloney at Moody's. They have come to
4 expect the Water Department to do certain
5 things based on the Black & Veatch report,
6 which they will ask us questions about. So
7 consequently it's very important for us to
8 continue to do what we've said we're going to
9 do.

10 With the expectation of the Water
11 Department looking to go into the marketplace
12 in February, this is the wrong time to do
13 something significantly different than what
14 you've been doing in the past from my
15 perspective.

16 THE HEARING OFFICER: What does
17 "significantly" mean?

18 MR. GRIFFITH: Well, "significantly"
19 would be from the standpoint of stating
20 to the rating agencies that you have a
21 four-year plan for what you're going to
22 be doing with the rate stabilization fund
23 and that you are going to do something
24 different than what Black & Veatch has
25 stated.

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2 THE HEARING OFFICER: Black & Veatch
3 doesn't set the rates, so you understand
4 that. Black & Veatch has a rate plan and
5 they suggest a rate plan, but they're not
6 the rate-setters. The Commissioner is
7 the rate-setter.

8 MR. GRIFFITH: Definitely so, and I
9 agree with that. But the rating agencies
10 and the investors, they look at the
11 report that they prepare and the
12 recommendations that they prepare and
13 there is an expectation that the
14 independent consultant's report is what
15 the City of Philadelphia's Water
16 Department is going to live by or do.

17 THE HEARING OFFICER: Well, the
18 Water Department has adopted the Black &
19 Veatch report and the Black & Veatch
20 report was the basis for the rate plan
21 that's presented.

22 But I think it's unrealistic for the
23 rating agencies to expect that a rate
24 plan adopted by a private consultant
25 would be taken ipso facto by the Water

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2 Commissioner and just adopted summarily.

3 MR. GRIFFITH: I respect what you
4 have said, but the reality is this: The
5 rating agencies have their criteria. I
6 can't change their criteria.
7 Unfortunately, you can't change their
8 criteria. They can't change what you
9 will do either.

10 But the reality is that the impact
11 would be that they could see that as a
12 significant change and consequently apply
13 pressure to reduce our rate or put us in
14 a negative situation.

15 We're right now seen as A stable.
16 When we go to the marketplace, we would
17 like to keep that A stable; not A
18 negative or A on watch. Those things are
19 triggers to investors, who don't know the
20 City, are not following us.

21 We, unfortunately, don't have the
22 ability to utilize insurance, as we have
23 in the past. This time last year we had
24 seven insurers that we could utilize to
25 provide bond insurance for the

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2 financings. Consequently, investors
3 would rely on that insurance as a comfort
4 factor. Now we only have one major
5 insurance company available based on the
6 pressures in the credit markets, the
7 concerns about the mortgage crisis.

8 THE HEARING OFFICER: Which insurer
9 is that?

10 MR. GRIFFITH: Berkshire Hathaway.
11 FSA, which was seen two months ago as
12 golden, has been put on negative.
13 They're still AAA, AAA across with the
14 rating agencies; but because one of the
15 rating agencies has put them on negative
16 watch, it's created a little bit of
17 concern from the investors.

18 Investors don't like to take risks.
19 If you're putting your money into buying
20 these funds and you see an FSA-insured
21 credit, you're now concerned that it may
22 be an issue. So consequently you will
23 start backing away from the credit.

24 We want to be able to attack the
25 market in February. \$360 million is a

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2 lot of money. We have to make sure that
3 we get the best rate possible, and you're
4 talking about millions of --

5 THE HEARING OFFICER: 325 was in the
6 plan.

7 MR. DASENT: Yes.

8 MR. GRIFFITH: Give or take.

9 THE HEARING OFFICER: 35 million
10 here or there, when you're talking about
11 billions like you're doing, really.

12 MR. GRIFFITH: But the reality is
13 that the expectation is that the Water
14 Department is going to be in the
15 marketplace for a significant transaction
16 in February and has to make sure that
17 they get the best rate possible.

18 We won't have the ability to use
19 insurance so what we'll have to use is
20 use our rating, and that's why I'm so
21 concerned about the ratings that we're
22 receiving.

23 THE HEARING OFFICER: Why can't we
24 use Berkshire Hathaway?

25 MR. GRIFFITH: Berkshire Hathaway,

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2 let me explain, and the reason why I
3 laugh --

4 THE HEARING OFFICER: That's Warren
5 Buffett's company; right?

6 MR. GRIFFITH: Yes. I called them
7 up about the City of Philadelphia on the
8 transaction I was doing in March and they
9 said, "Sorry, we're only looking for true
10 A-rated credits." So consequently
11 they're cherry-picking, no risk.

12 He gets on MSNBC and talks about
13 he's going to help out. He's really just
14 making money because he's picking credits
15 that don't really need insurance.

16 We would be a tough sell right now.
17 I think we definitely will go through the
18 process of seeking to obtain that
19 insurance, but it's going to be
20 expensive. Where insurance last year
21 this time was 70 basis points, it's 150
22 and up. It's almost doubled, the cost of
23 that insurance. And when he realizes,
24 when they realize, Berkshire Hathaway
25 realizes, that they're the only game in

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2 town, they will have the ability to
3 increase the cost.

4 THE HEARING OFFICER: Markets may
5 change by next February.

6 MR. GRIFFITH: It could change to
7 the positive. It could change to the
8 negative. The reality is that we just
9 don't know.

10 THE HEARING OFFICER: If you only
11 have one insurer, you can't get much
12 worse than that; right?

13 MR. GRIFFITH: Well, the key thing
14 is this: We're very fortunate with the
15 Water Department, we have a rating that's
16 in the A category. We've had a positive
17 upswing from S&P. There's a good story.

18 But that good story is based on the
19 strong management, the historical
20 results, and the rate stabilization fund.
21 If you look at the rating report, those
22 are the items that they talk about.

23 When I spoke to them on Monday, they
24 said, "Listen, we're going to be giving
25 you an upgrade."

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2 I said, "Thank you very much."

3 Their rationale was management, the
4 results, and the rate stabilization fund.
5 Now, there's an expectation based on
6 that. If we change that expectation, our
7 credibility is lost because they see that
8 as: Well, what are you doing
9 differently? Why do you need to do this
10 at this point in time?

11 BY MR. DASENT:

12 Q. Now, you mentioned Black & Veatch
13 before. Do they serve as the independent
14 engineer offering a consulting report
15 supporting the bonds and that's what investors
16 are looking at?

17 A. Yes.

18 Q. Not the rate study here?

19 A. Yes.

20 Q. Okay. Now, is this a time of credit
21 market uncertainty?

22 A. Very much so. It's the worst time
23 of credit market uncertainty certainly in the
24 last 20 years, and everyone knows that,
25 everyone is hearing about that.

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2 Q. The reoffering of the 1997B bonds by
3 the Water Department, was that because of this
4 market uncertainty?

5 A. Yes. AMBAC was one of the insurers.
6 At one point we were getting rates 1.5%. Our
7 rates popped up to 6.5% because AMBAC got
8 downgraded by the rating agencies. To go from
9 1.5% to 6.5%, that's unheard of. But the
10 reality is, that's the type of volatility
11 that's in this type of environment. That's
12 how come we have to make sure we don't do
13 anything to add to the concerns.

14 Adding to the concerns is doing
15 things differently than what you've done in
16 the past. This Department, the Water
17 Department, works. It's seen as one of the
18 stronger credits in the City. It is one of
19 the stronger credits in the City. That's
20 because it's done the right things over the
21 years.

22 Q. Is it advisable to make the major
23 changes that are contemplated in Mr. Bleiweis'
24 testimony with respect to significant revenue
25 cuts that might imperil coverage under certain

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2 scenarios?

3 A. It's important to understand that
4 timing is everything. I'm not going to
5 question Mr. Bleiweis' study. I'm just
6 questioning the timing of it right now. This
7 is the wrong time to be doing this.

8 It's one of these things where we
9 have expectations, we have our independent
10 study that's been done. The rating agencies
11 have gotten comfort from this. The investment
12 community that purchases your bonds and trades
13 with your bonds every day are used to this.
14 They ask for it, they ask for the report, and
15 to do something different right now is just
16 not the right time.

17 Q. Just one final note on the
18 uncertainty of markets. Is the FSA potential
19 downgrade that has been talked about on this
20 record another sort of indication of the
21 uncertainty in the markets?

22 A. Yes. In the end of November last
23 year, when we obtained a surety bond from FSA
24 to replace portions of the reserve fund, FSA
25 was seen as a AAA strong credit. That reserve

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2 fund has to seem liquid, to investors it has
3 to be liquid, which means cash has to be
4 readily available.

5 Once there is a concern about FSA,
6 it creates doubt about the liquidity of that
7 surety bond, and that could be a major
8 concern. I mean, the 65-plus million or so
9 that's in that surety bond, we have to make
10 sure that investors see that as liquid; and if
11 they don't see it as liquid, then it will
12 impact our ability to go to the market because
13 that surety bond is seen as a parity to the
14 rest of the reserve fund that's there.

15 Q. What about the fact that the
16 Department has defaulted in the past,
17 technically defaulted, on its obligations; is
18 that any forewarning to us as to what might
19 happen in a worst-case scenario if rates don't
20 allow us to meet our covenants?

21 A. Well, first of all, we have to meet
22 our covenants. You won't get a situation
23 where we have a technical default and then, by
24 the way, we'll clean things up and everything
25 will be okay. Investors don't want to take a

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2 chance -- if I was an investor, I wouldn't
3 want to take any chance -- with us in February
4 if in November or December we had a technical
5 default.

6 THE HEARING OFFICER: Please define
7 "technical default" for the record.

8 MR. GRIFFITH: A technical default
9 would be a situation where we haven't met
10 a rate covenant, and it's that simple.

11 BY MR. DASENT:

12 Q. Is that like coverage requirements
13 of 1.20 if we miss it by a hair or a mile?

14 A. We can't miss it by anything. We
15 cannot miss our rate covenant, the 1.20
16 coverage. The investors, the rating agencies,
17 they're comfortable enough knowing that we are
18 able to do that. We've shown that we've been
19 able to meet those rate covenants. We have
20 the rate stabilization fund to help in
21 situations where we need to concerning that
22 coverage test. We cannot miss that coverage.
23 Otherwise, we will not be able to issue bonds
24 at any cost in February. If we were to do
25 something between now and February, I

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2 guarantee we would not be able to go to the
3 marketplace. In this environment, no way.

4 Q. Okay. Now, the two-year time
5 horizon that's been discussed in this hearing
6 room, because investors are looking at a
7 30-year timeline for their investment, does
8 that give them any pause, if it's two years or
9 four years, or does it make any difference?

10 A. Well, if I'm an investor, I'm going
11 to want to be able to see something or I would
12 feel more comfortable with something stable
13 over a four-year horizon versus a two-year.

14 The question is twofold: one,
15 whether or not you're going to meet your
16 coverage; and, two, whether or not you're
17 going away from what you've done in the past.
18 Those are the things that they're going to be
19 looking at. And when you start talking about
20 extremely high rate increases versus a
21 smoothing out over four years, I think that
22 there is just major concerns about that.

23 MR. DASENT: Thank you,

24 Mr. Griffith.

25 THE HEARING OFFICER: Mr. Bertocci?

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2 - - -

3 CROSS-EXAMINATION

4 - - -

5 BY MR. BERTOCCI:

6 Q. Good morning, Mr. Griffith.

7 A. Good morning.

8 Q. As a graduate of Wesleyan, I applaud

9 your --

10 A. Little 3.

11 Q. -- diploma from a Little 3

12 university or college. I just have a couple

13 questions.

14 A. Sure.

15 Q. At the beginning of the questioning

16 Mr. Dasent said that it had been represented

17 to you that Mr. Bleiweis' recommendations

18 represented a two-thirds reduction in

19 revenues.

20 Were you aware that his

21 recommendation was a recommendation which

22 represented a two-thirds reduction in

23 revenues, in fact, it was really only 60%,

24 over the first two years, that it really

25 didn't make any judgment about revenues that

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2 would be available in the two years beyond
3 that; in other words, that his proposal was a
4 proposal that at the maximum suggested that
5 the rate period should be a two-year rate
6 period rather than a four-year rate period?

7 A. Yes, I'm familiar with that.

8 Q. You were aware of that in your
9 comments?

10 A. Yes.

11 Q. Were you also aware that his
12 proposal at the end of the second year --
13 that's 2010 -- still left \$40 million in the
14 rate stabilization fund while scrupulously
15 observing, obviously, all of the coverage
16 requirements and the other 90% requirement
17 connected with FSA?

18 A. Yes.

19 Q. Would you regard \$40 million in the
20 rate stabilization fund at the end of 2010 as
21 constituting in itself a threat to the
22 credibility and the ratings of the Water
23 Department?

24 A. My answer was specifically about the
25 expectations and what we had explained to the

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2 rating agencies, what they expected, what they
3 have seen in the past. The future is very
4 difficult to quantify. You are dealing with a
5 situation where that \$40 million can disappear
6 very quickly if there are major rate
7 increases, interest rate increases, or if
8 there is a catastrophic situation with the
9 water system.

10 You have a very elderly water system
11 here, old water system, so there's a lot of
12 issues that go beyond just looking at this
13 thing from, well, you have \$40 million left
14 two years from now based on a projection. I
15 think the reality is that you have a
16 projection that has been done over the years
17 that has proven to provide a cushion to be
18 able to provide a comfort factor. If there
19 were significant rate increases, we had the
20 rate stabilization fund there. And to do
21 something different is what I'm concerned
22 about in this environment right now.

23 We're not in a stable credit market
24 environment, so consequently investors are
25 going to be looking for stability in the

1 TECHNICAL HEARINGS - VOLUME II
2 entity that they're going to be purchasing
3 their bonds from. The rating agencies are
4 going to be looking for stability. And the
5 stability factors change with what I consider
6 significant, two-thirds. Whether it be the
7 first two years or over the four-year period,
8 it's significant.

9 Q. You recognize that financing is
10 provided to many utilities under PUC
11 jurisdiction where there is no guarantee of
12 how many years the rate is going to be in
13 effect.

14 A. That's correct.

15 Q. It's a rate that's provided, people
16 still are able to get investment-grade bond
17 ratings, isn't that true, based on a method
18 that is the PUC method involving their
19 definition of known and reasonable? Isn't
20 that right?

21 A. Uh-huh.

22 THE COURT REPORTER: Is that a yes?

23 THE WITNESS: Yes.

24 BY MR. BERTOCCI:

25 Q. Now, you also made some comments

1 TECHNICAL HEARINGS - VOLUME II

2 about the 1990 technical default or early
3 1990s -- I'm not sure whether it was 1990 or
4 1992 --

5 A. But can I add something about that?

6 You said something about investment grade.

7 You know, we're trying to get rates below 5%

8 here. We don't want rates at 5.50 or 5.60.

9 We don't want to be paying a million dollars
10 more or \$2 million more in interest costs when
11 we don't have to.

12 Right now we're in a good situation.

13 We got an upgrade from S&P. We're going to be

14 demanding and hoping we can get an upgrade

15 from Moody's and from Fitch when we go to the

16 markets in February. Deviating from what

17 we've done in the past will jeopardize that.

18 THE HEARING OFFICER: I don't

19 understand what you mean as deviating

20 from what you've done in the past. What

21 do you mean by that?

22 MR. GRIFFITH: Well, let me explain.

23 THE HEARING OFFICER: You've said

24 that several times. I don't know what

25 that means.

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2 MR. GRIFFITH: We have created a
3 situation where we have four-year rate
4 increases. The last time we did this, we
5 did it for four years. Before that we
6 did it for four years.

7 THE HEARING OFFICER: I think it was
8 three.

9 MR. GRIFFITH: I think it was three,
10 four, four. So it's three, four, four.
11 We have certainly utilized the Black &
12 Veatch report as the example of what we
13 would do going forward.

14 So what you're saying right now is
15 that we have a situation where you have a
16 Black & Veatch report from an independent
17 consultant where the rating agencies and
18 the investors have had comfort in the
19 past and we're going to make a decision
20 that we disagree.

21 And we can do that, but then the
22 rating agencies have every right then to
23 look at that and say, "Well, we're
24 uncomfortable with that situation."

25 THE HEARING OFFICER: I don't

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2 understand why you think that a two-year
3 period would automatically take away
4 stability because in a two-year period,
5 if you use a shorter period under one
6 plan suggested, you would be able to get
7 up-to-date information that may be
8 pertinent in making the situation better
9 for the utility.

10 If they're stuck with a four-year
11 plan, something may happen within the two
12 years that makes things worse for them.
13 I mean, a two-year plan can work both
14 sides of the street. It can help the
15 utility by having an automatic look-see
16 to make sure they're doing well with
17 regard to meeting their rate covenants
18 and doing well with regard to that.

19 So it's not a case where you're
20 taking away stability. Can't you see it
21 as potentially adding stability because
22 it gets information that otherwise
23 wouldn't be able to be gotten if they're
24 stuck with a four-year plan?

25 I mean, the four-year plan could be

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2 something that could turn out not so
3 great under the circumstances.

4 MR. GRIFFITH: Based on what they've
5 been doing in the past, I don't see how
6 that would occur.

7 THE HEARING OFFICER: Okay. I think
8 I understand your testimony.

9 MR. GRIFFITH: The reason why I say
10 that --

11 THE HEARING OFFICER: I understand
12 your testimony.

13 MR. GRIFFITH: No, no. One of the
14 things I think is important is this:
15 We're in a situation where the rating
16 agencies are comfortable with the Water
17 Department. Anything you do that
18 deviates from that puts you more at risk
19 than where you're at.

20 THE HEARING OFFICER: Well, what's
21 best for the rating companies is the
22 company that makes the most money and the
23 better the coverage is and everything and
24 we understand that. But there are other
25 issues in the rate case other than the

1 TECHNICAL HEARINGS - VOLUME II

2 rating agencies.

3 MR. GRIFFITH: Well, they are very
4 much on the hook, especially in this
5 environment. They are being looked at by
6 everyone right now.

7 THE HEARING OFFICER: I understand
8 that.

9 MR. GRIFFITH: So if you're a
10 BBB-rated credit, they're going to rate
11 you a BBB. And if they see value and
12 give you a good rating, then they're
13 going to do it based on the criteria
14 they've created. And if you go away from
15 those criteria, they'll change.

16 I can't change what the rating
17 agencies will do. I understand what
18 you're trying to say, but I'm just saying
19 that I know what they'll do.

20 THE HEARING OFFICER: I appreciate
21 your comments.

22 MR. BERTOCCI: I still have a couple
23 more questions.

24 THE HEARING OFFICER: Certainly.

25

1 TECHNICAL HEARINGS - VOLUME II

2 BY MR. BERTOCCI:

3 Q. I imagine that you're familiar with
4 the full gamut of rating agency reports
5 involving the Water Department for the last
6 five or six years at least.

7 A. Not five or six. I mean, I've
8 followed it through, yes.

9 Q. You follow it --

10 A. Yes.

11 Q. -- as a matter of professional
12 interest; right?

13 In any of those rating reports is
14 there any discussion of the technical default
15 in 1990 or 1992?

16 A. No, not that I know of.

17 Q. You also said that it's important
18 for the Water Department to keep doing what
19 it's doing. However, are you aware that in
20 the last rate case, the one in 2005, the plan
21 was based on spending down the rate
22 stabilization fund to \$13 million at the end
23 of the four-year rate period, based upon the
24 order? It was actually spending it down even
25 less based upon the plan as originally filed.

1 TECHNICAL HEARINGS - VOLUME II

2 A. Right.

3 Q. However, in contrast, in this case,
4 the plan is to spend down the rate
5 stabilization fund only to \$45 million at the
6 end of the four years. Would you call that
7 doing the same thing as what they've done in
8 the past?

9 A. Well, no. I mean, I'm talking about
10 from the standpoint of what they do concerning
11 the report. You have a situation over the
12 last four or five years where rates have
13 significantly declined, we're at historical
14 lows, and that created a lot of savings.

15 MR. DASENT: Just for the record,
16 bond interest rates?

17 MR. GRIFFITH: Bond interest rates.

18 However, we are on the upswing. So
19 where we had the luxury and the comfort
20 to do certain things, those things will
21 change as we go forward if rates continue
22 to increase, and we're feeling the impact
23 right now.

24 MR. BERTOCCI: Thank you.

25

1 TECHNICAL HEARINGS - VOLUME II

2 BY MR. DELANEY:

3 Q. I just have a couple questions,
4 Mr. Griffith. Good morning.

5 A. Good morning.

6 Q. I'm a little bit confused listening
7 to you. The concern that you're reporting to
8 us in the financial community or the financial
9 rating agencies, is that concern revolving
10 around the possibility of what the Water
11 Commissioner might ultimately adopt or is it
12 driven by Mr. Bleiweis' filing testimony that
13 has a recommendation of changes to the Black &
14 Veatch financial plan?

15 A. I would say my concerns are more
16 concerning the feelings of the rating agencies
17 to changing the recommendations or making
18 changes to the recommendations in the Black &
19 Veatch report.

20 Q. But who would make those changes?
21 Are you talking about the Water Commissioner
22 at the end of the case, what he adopts, or
23 what?

24 A. Ultimately whatever result changes
25 that, whether it be the Water Commissioner or

1 TECHNICAL HEARINGS - VOLUME II

2 whoever makes the changes.

3 Q. Okay. So are you suggesting that
4 the fact that Mr. Bleiweis filed testimony
5 suggesting recommendations is enough to
6 trigger that?

7 A. No.

8 Q. Okay.

9 A. No.

10 Q. Now, in making those kinds of
11 decisions by the financial rating agencies
12 apparently having a downgrade for what appears
13 to be a very financially solid agency --

14 A. Uh-huh.

15 Q. -- that would seem to require some
16 amount of evidence to these agencies that this
17 is appropriate. Would you agree with that?

18 A. I agree.

19 Q. And their consideration of that I
20 guess would have to be supported by some
21 diligence, information collection, of some
22 kind?

23 A. In January we will probably be back
24 talking to the rating agencies. You would get
25 downgraded if they saw something that they

1 TECHNICAL HEARINGS - VOLUME II
2 thought was a concern to them. You could
3 certainly be put on negative watch at any
4 time, and those are triggers to the investors,
5 those terminologies, you know, what's the
6 problem. You're still A-rated, but you're now
7 negative versus stable.

8 That represents a concern and that's
9 what I'm concerned about, because that's basis
10 points. That's cost to the Water Department
11 in interest costs because as soon as you start
12 to have a negative, less investors are
13 interested in purchasing your bonds, there's
14 more haggling about the rate, you don't look
15 as good as an A-rated credit that's in
16 Washington State or in Atlanta.

17 You could have two A-rated credits
18 where the 30, 40 basis points change in their
19 interest costs just because of terminology
20 like a negative concern from a rating agency.
21 So, yes, there would be a review and that
22 review would look at all the factors.

23 Q. Now, are you familiar with the rules
24 that this agency is subject to and the Water
25 Commissioner in terms of actually changing the

1 TECHNICAL HEARINGS - VOLUME II

2 rates? And you may not be, I understand that.

3 They're in the First Class City Charter and

4 also the Philadelphia Code. Have you reviewed

5 those?

6 A. No.

7 Q. Would it be likely, in making this

8 consideration of changing the ratings, that

9 the people that would make the change would

10 review the legal requirements in terms of what

11 the Water Commissioner can actually decide,

12 the limitations on the actions that he could

13 take that could affect existing borrowings,

14 debt service?

15 A. Yes, they would take a look at that.

16 Q. Okay. Let me just ask you a little

17 bit about it, and you're not a lawyer so I

18 don't expect you to know all this stuff.

19 THE HEARING OFFICER: You may know

20 more if you're not a lawyer.

21 MR. GRIFFITH: No.

22 BY MR. DELANEY:

23 Q. Mr. Clare very helpfully laid a lot

24 of this out in his testimony at Pages 4 and 5,

25 the Philadelphia Home Rule Charter

1 TECHNICAL HEARINGS - VOLUME II
2 requirements and the Philadelphia Code
3 requirements, that actually control how the
4 Water Commissioner has to make his decision,
5 and it provides fairly specific standards
6 about the actions that the Commissioner can
7 take in terms of setting rates.

8 He's required to set rates in at
9 least an amount equal to operating expenses,
10 including interest and sinking fund charges on
11 any debt incurred or about to be incurred for
12 water supply, sewage, and sewage disposal
13 purposes. The Philadelphia Code provision,
14 Section 5-801 --

15 MR. DASENT: The Charter.

16 MR. DELANEY: The Charter, thank
17 you.

18 BY MR. DELANEY:

19 Q. The Charter provision is pretty
20 specific about actually authorizing rates that
21 would appear to cover all the indebtedness and
22 the operating ratios and the coverage
23 requirements of the Water Department. So this
24 is very specific and in my view is a little
25 bit unusual in how these public utility

1 TECHNICAL HEARINGS - VOLUME II

2 statutory provisions are written.

3 So wouldn't you think that when the
4 law of Pennsylvania as interpreted in
5 Philadelphia is pretty specific as to what the
6 Water Commissioner can do in terms of
7 safeguarding the financial integrity of the
8 Department, that that would be some comfort to
9 these financing agencies in terms of deciding
10 whether to make a change?

11 A. Yes. But the issue here is what are
12 their major criteria for maintaining your
13 rating and what are the major criteria that
14 the investors have utilized to make a decision
15 about investing. I mean, you're talking about
16 a specific item that may provide comfort in
17 this area here, but it's not the major
18 criteria and the criteria --

19 Q. Tell me again what the criteria are.

20 A. Like I said before, it is the
21 strength of management over the years, the
22 ability to meet its financial projections, and
23 the rate stabilization fund. In the reports,
24 in the discussions and in the reports, those
25 are things that they highlight as very

1 TECHNICAL HEARINGS - VOLUME II
2 important to them and why they provide us with
3 the rating we get.

4 Could we still get an
5 investment-grade rating if we didn't have
6 those three criteria from their perspective as
7 being well done or highly regarded? Yes. But
8 what I think is important here is realizing
9 that those are things that they consider
10 important. There's nothing I can do about
11 that. I can't change that.

12 Q. Okay. But wouldn't it also be
13 correct, though, that there's probably not
14 much that anyone can do when these
15 commentators on market credit conditions apply
16 their own consideration as to how they should
17 independently rate organizations like the
18 Water Department?

19 A. Yes, that's true.

20 Q. I mean, they have their own
21 independent discretion, it would appear to me,
22 over which very little control is exercised by
23 anybody in this room.

24 A. Except the most important thing is
25 your credibility, because they base their

1 TECHNICAL HEARINGS - VOLUME II
2 decisions on what you say you're going to do
3 and what you actually do. So if you start
4 saying things and you don't do it, then your
5 credibility is lost and that will result in a
6 downgrade, in a reduction in your rate,
7 because that's all they can base it on.

8 Q. Isn't it also possible that the
9 credibility would be enhanced by the fact that
10 the Water Commissioner would enter a decision
11 and the Hearing Officer would recommend a
12 decision consistent with the legal protections
13 in the Home Rule Charter and the Philadelphia
14 Code that's given to these lenders to the
15 Water Department?

16 A. I don't see it that way. The Home
17 Rule Charter is protecting the citizens of
18 Philadelphia.

19 Q. But I'm also suggesting it also
20 contains specific protections for the lenders
21 to the Department.

22 A. I disagree with that.

23 Q. We can move away from that.

24 A. The only thing the investors care
25 about is the indenture, the bond documents.

1 TECHNICAL HEARINGS - VOLUME II

2 The Home Rule Charter, there is no comfort to
3 them from that.

4 Q. But how is this different from any
5 kind of public utility regulatory agency
6 setting rates? You know, they come in, they
7 ask for rates, and they usually get less than
8 they ask for. Isn't that a fairly common kind
9 of situation? Isn't that happening in the
10 FERC, the PUC, you know, agencies all over
11 with corporations larger than the Water
12 Department with more indebtedness?

13 A. Right.

14 Q. You know, this is a fairly common
15 circumstance or situation, I would say.

16 A. It's common to have rate changes.
17 That's everyday, whether you are in Detroit or
18 D.C., you know, trying to reduce the rates or
19 increase the rates. But I'm talking about
20 where you are right now and where you want to
21 be in February and where you want to be going
22 forward.

23 My point here is to not argue about
24 whether or not we should have a rate increase
25 or not or what period of time we should have

1 TECHNICAL HEARINGS - VOLUME II
2 the rate increase. I'm just telling you what
3 the rating agencies will perceive this change
4 to be at this point in time. The only person
5 I can trust concerning what the rate increases
6 should be is the independent consultant. I'm
7 not the independent consultant.

8 Q. Okay. Let me ask your opinion on
9 something then. Do you think public policy
10 issues like the rates that are set for water
11 and sewer service in the City of Philadelphia
12 should primarily be driven by estimations of
13 the possibility of financial ratings on
14 securities held by the Department? How does
15 that factor into this long list of things that
16 the Hearing Officer and the Water Commissioner
17 have to decide?

18 A. Well, I'm a water customer. I'm
19 concerned about my rates not going up, period,
20 as a water customer. However, because I'm in
21 the business that I'm in, I realize that if
22 our cost of borrowing goes up -- and we have
23 to borrow, it's an old system, there's
24 maintenance costs, and we are going to have to
25 borrow -- I want to see that we borrow at the

1 TECHNICAL HEARINGS - VOLUME II

2 lowest cost possible.

3 So I'm very concerned about our
4 ratings because it will impact my cost in the
5 future; and saving me money this year so four
6 or five years from now I have to pay something
7 astronomical because we didn't do the right
8 thing now, as a customer I'm concerned.

9 Q. Okay. Fair enough. I just have a
10 couple more questions.

11 Did you track, by any circumstance
12 or reason, the prior case that the Water
13 Commissioner had decided in 2005?

14 A. I didn't look back at that, no.

15 Q. Are you aware that the borrowing
16 that is scheduled to be made in February of
17 2009 was actually proposed to occur I believe
18 in the early part of this year --

19 A. Yes.

20 Q. -- in that original case?

21 A. Yes.

22 Q. Okay. When that did not occur, was
23 there a concern that the financial community
24 would do anything to the rating of the
25 securities held by the Department?

1 TECHNICAL HEARINGS - VOLUME II

2 A. Well, actually, the Water Department
3 did something very prudent. It locked in the
4 rates. They entered into a forward swap,
5 which they did a good thing, they did a smart
6 thing. And the rating agencies thought of it
7 as a smart thing because we didn't do the
8 financing, but what we did is we locked in the
9 rates, and rates were lower in February of a
10 year or so ago.

11 THE HEARING OFFICER: Detail that
12 for us, will you, please?

13 MR. GRIFFITH: Well, basically --

14 THE HEARING OFFICER: What happened?

15 MR. GRIFFITH: -- the Water
16 Department at the time was not ready to
17 go to the market --

18 THE HEARING OFFICER: This was, we
19 are talking about, in 2007?

20 MR. GRIFFITH: Right -- and made a
21 decision to lock in rates, what they call
22 a forward swap, and was able to obtain a
23 rate, 4.1%, or lock in the rate at a very
24 attractive rate going forward half of the
25 transaction, approximately about

1 TECHNICAL HEARINGS - VOLUME II

2 \$180 million.

3 THE HEARING OFFICER: So for the
4 transaction that is intended for February
5 of '09, the rate is already set --

6 MR. GRIFFITH: That rate is already
7 set --

8 THE HEARING OFFICER: -- for
9 \$175 million?

10 MR. GRIFFITH: -- for half of it,
11 yes, approximately.

12 THE HEARING OFFICER: All right.

13 BY MR. DELANEY:

14 Q. How about the fact that in the 2008
15 rates that were set in the last case, the fact
16 that the Department had embedded in the rates
17 I believe \$22 million that it was to pay in
18 that period last year, probably currently,
19 too, for that bond issuance that did not
20 occur; I mean, was that a factor that was
21 considered by the financial community at the
22 time that they were evaluating the situation?

23 A. Well, when you say "the financial
24 community," the investors are not looking at
25 that. The rating agencies --

1 TECHNICAL HEARINGS - VOLUME II

2 Q. The rating agencies I guess is what
3 I'm talking about.

4 A. -- they certainly were told. A
5 couple questions that they typically ask is
6 what's the borrowing plan, what's our
7 expectation, you know, and so those are things
8 they certainly take a look at. But I don't
9 understand your question or where you're
10 going.

11 THE HEARING OFFICER: His question
12 relates, if I can try --

13 MR. DELANEY: Sure.

14 THE HEARING OFFICER: -- to the fact
15 that in the rates that were previously
16 set, there was \$22 million said to be
17 spent on a borrowing that wasn't spent.
18 Obviously the Water Department didn't
19 have to spend the money so they're
20 stronger by \$22 million they hadn't
21 spent. Is that something that the rating
22 agencies noticed, picked up, or realized?

23 Would that be a fair question?

24 MR. DELANEY: Yes.

25 THE WITNESS: Well, the reality is

1 TECHNICAL HEARINGS - VOLUME II
2 if they didn't spend it, they will spend
3 it. And one of the problems here is we
4 don't know where rates will be in three
5 months from now, four months from now,
6 and what you didn't spend now, maybe you
7 should have spent it. Maybe you should
8 have issued these bonds. I would have
9 liked to have seen us issue these bonds
10 this year versus having to wait until
11 February.

12 THE HEARING OFFICER: What I don't
13 understand now with regard to your
14 testimony is that you're saying that the
15 rating companies may depend upon what we
16 do in this rate case when we come to
17 February, but half of the stuff that
18 we're coming with in February, it's
19 already locked in. So no matter what
20 we're going to do, nothing is going to
21 affect that 4.81; is that correct?

22 MR. GRIFFITH: We don't know where
23 we will be with the other half that we're
24 doing.

25 THE HEARING OFFICER: I know. But

1 TECHNICAL HEARINGS - VOLUME II
2 with regard to half, nothing in this case
3 can affect that because that's locked in
4 already; is that correct?

5 MR. GRIFFITH: Yes, the rate's
6 locked in.

7 BY MR. DELANEY:

8 Q. I think I just have one more
9 question for you.

10 In the prior case, the group that I
11 represent had a proposal, and I wanted to see
12 what you thought of this proposal, which was
13 not adopted, whether it would provide some
14 comfort to the rating agencies.

15 What we had proposed, because the
16 proposed 2008 financing that we just discussed
17 was at the end of the four-year rate period,
18 what we had suggested was rather than loading
19 some amount that was projected three years
20 before the cost, not to do that and, rather,
21 to establish some form of automatic adjustment
22 clause recovery for the Department which would
23 allow them to, without a big proceeding,
24 recover the costs of the borrowing and at the
25 same time actually know what the costs were

1 TECHNICAL HEARINGS - VOLUME II
2 rather than projecting them years before they
3 occurred and allow them to have recovery, but
4 at the same time the customers know that there
5 wasn't some kind of long-range projection
6 which was years before the transaction
7 actually occurred.

8 Now, the question I have for you is:
9 If that actually had been adopted, this idea
10 that they could automatically receive some
11 kind of revenue to support that without having
12 to project a rate way in the past, do you
13 think that kind of an innovation mechanism
14 would provide support to the financial rating
15 agencies?

16 A. I'm not sure. I mean, you're giving
17 me different ways to look at doing projections
18 going forward. Your projections, as you well
19 know, are based on assumptions and those
20 assumptions can turn out to be wrong or right
21 for many reasons.

22 The statement I've made here really
23 relies on the ability of expectations and what
24 you've done in the past versus what you expect
25 to do in the future.

1 TECHNICAL HEARINGS - VOLUME II

2 So when the question was asked to me
3 concerning the rates being locked in, the
4 reason why we got the ratings we have is
5 because we have done the right things.

6 So what I am trying to say here is
7 this: When you go back and look at what
8 you've done in the past, what has worked, and
9 you start making changes to that, then you
10 have to give a better story going forward.
11 You have to make sure that you can do those
12 things.

13 Q. My understanding is that the
14 proposal that we made reduced the risk to zero
15 because it guaranteed recovery through an
16 automatic adjustment clause of the cost of the
17 borrowing. I mean, the risk to the borrowers
18 went close to zero.

19 THE HEARING OFFICER: Well, it has
20 other risks because the rates have to be
21 changed, they're not stable, there's not
22 a stream of income that comes in. So I
23 think we've gone far enough with that
24 question on the record.

25 MR. DELANEY: Okay. I understand.

1 TECHNICAL HEARINGS - VOLUME II

2 Great.

3 Thank you, Mr. Griffith.

4 MR. GRIFFITH: Sure. No problem.

5 Thank you.

6 THE HEARING OFFICER: Just a couple
7 more. We had some updates with regard to
8 what has transpired since the rate
9 filing. One of the things we weren't
10 made aware of was this enhanced rating
11 that we got from the rating agencies.
12 Could you tell us about that in a little
13 more detail, please?

14 MR. GRIFFITH: Just so you're clear
15 on that, Moody's, we're still an A3,
16 which is equivalent to an A- rating. We
17 did not seek a Fitch rating for the
18 transaction we're doing right now. We
19 didn't need to do that. So we're still
20 technically an A- there.

21 With S&P, who came in about a week
22 and a half, two weeks ago, three weeks
23 ago, and reviewed the Water Department,
24 and the Water Department did an excellent
25 presentation, we got an upgrade on Monday

1 TECHNICAL HEARINGS - VOLUME II

2 to an A from an A-.

3 Their report is basically based on
4 the fact of looking at historical
5 numbers, looking at where we are right
6 now, and also on the expectation of the
7 rate stabilization fund that's there and
8 how it's planned to be used going
9 forward.

10 THE HEARING OFFICER: The change
11 from A- to A, how many basis points would
12 that generally save?

13 MR. GRIFFITH: It depends. You
14 know, I think it's more the timing of it
15 that will help because you like to be
16 able to tell investors there's been an
17 upgrade. We'd like to go back to Fitch
18 and Moody's and say, listen, and argue
19 the fact that we expect an upgrade, we'd
20 like you to consider an upgrade.

21 But the reality is that we're now in
22 the category that gives us leverage to
23 even potentially talk to an insurer. But
24 that still doesn't mean we still don't
25 know where rates will be because you can

1 TECHNICAL HEARINGS - VOLUME II
2 be an A credit and if rates go up
3 significantly, you're paying the same
4 thing you would be paying right now if
5 you were a BBB credit. So we really
6 don't know where the rates will be going
7 forward.

8 THE HEARING OFFICER: One other
9 issue that you passed on was credibility.
10 Have you or anybody from the Water
11 Department told the rating agencies that
12 the \$317 million request is a slam dunk?

13 MR. GRIFFITH: No, no. They're very
14 aware of the rate process and that's one
15 of the things Bernie and Joe talk about
16 in the rating presentations, that we're
17 going through a rate process.

18 THE HEARING OFFICER: And what did
19 they say with regard to their
20 expectations?

21 MR. GRIFFITH: Well, they base their
22 expectations on what's happened in the
23 past, I mean. Nothing can be said until
24 it's done. We don't know. I don't know
25 what will occur out of this hearing.

1 TECHNICAL HEARINGS - VOLUME II

2 THE HEARING OFFICER: Neither do I.

3 MR. GRIFFITH: I don't know.

4 THE HEARING OFFICER: All right.

5 Thank you very much.

6 Did you have something else?

7 MR. DASENT: Yes, just two

8 additional questions basically.

9 THE HEARING OFFICER: Sure.

10 - - -

11 REDIRECT EXAMINATION

12 - - -

13 BY MR. DASENT:

14 Q. Based upon the various questions

15 from the Hearing Officer, are you concerned

16 just about the 2009 transaction or about

17 future transactions as well when the Water

18 Department enters the credit markets?

19 A. Well, let's put it this way: If we

20 got any type of negative news now, it would

21 affect us for at least a year, year and a

22 half. But the key thing here is we look at

23 things on a time horizon and the investors

24 have gotten comfort from the fact that over

25 the years we've been able to do what we said

1 TECHNICAL HEARINGS - VOLUME II

2 we're going to do. Deviating from that will
3 create changes that will affect our ability.

4 If we borrow this money in 2009, the
5 next time we will be in the market is -- I
6 don't know -- probably 2012. But \$300 million
7 is very important to the Water Department and
8 that's going to occur in February. So I'm
9 concerned over the overall period of time, but
10 initially right now looking at 2009.

11 Q. Now, do you have the report yet from
12 Standard & Poor's?

13 A. No, we do not. I got the verbal
14 call about it on Monday. The young lady who
15 is preparing the report said it wouldn't be
16 ready until Thursday. We have the Moody's
17 report.

18 THE HEARING OFFICER: Well, when we
19 get the report, we want to make that part
20 of the record, please.

21 MR. DASENT: Yes.

22 THE HEARING OFFICER: Thank you.

23 MR. DASENT: Thank you.

24 MR. BERTOCCI: Would this be called
25 a transcript request? Should we do it in

1 TECHNICAL HEARINGS - VOLUME II

2 that form?

3 THE HEARING OFFICER: Excuse me?

4 MR. BERTOCCI: A transcript request,
5 something that will be entered into the
6 record.

7 MR. DASENT: Or we will just supply
8 it because you directed us to.

9 MR. GRIFFITH: The City is going to
10 put it on the website. It will be public
11 as soon as we get it in the next couple
12 days or so.

13 MR. DASENT: And we will supply it
14 for the record.

15 THE HEARING OFFICER: Off the
16 record.

17 - - -

18 (Discussion held off the record.)

19 - - -

20 THE HEARING OFFICER: We will call
21 that Transcript Request 1.

22 MR. BERTOCCI: Thank you.

23 - - -

24 (Witness excused.)

25 - - -

1 TECHNICAL HEARINGS - VOLUME II

2 THE HEARING OFFICER: All right. We
3 are going to take a break now. This is a
4 good time.

5 - - -

6 (Whereupon there was a recess in the
7 hearing.)

8 - - -

9 THE HEARING OFFICER: We will
10 reconvene.

11 Can you give us a preview of what's
12 in store for the testimony?

13 MR. DASENT: The batting order?

14 THE HEARING OFFICER: Yes.

15 MR. DASENT: The batting order seems
16 to be next our cost allocation/rate
17 design panel, which will be Mr. McKinley
18 and Mr. Palladino.

19 Mr. Palladino will return in a
20 second. We need to swear him in -- well,
21 we need to authenticate his testimony.
22 We have obviated the need for swearing
23 in.

24 He may have a couple corrections
25 also and we will take care of that

1 TECHNICAL HEARINGS - VOLUME II
2 housekeeping, and then we are sort of off
3 to the races on another subject area.

4 Mr. Kalbarczyk has been waiting
5 patiently, but if we can handle him next,
6 then we will see CCC's case presented in
7 close proximity. We will find maybe not
8 as much opposition if we do it that way.

9 THE HEARING OFFICER: Ready to
10 proceed?

11 MR. DASENT: Yes. If Your Honor
12 please, we would like to call James
13 Palladino, our rates manager of the
14 Department, and Mr. McKinley.

15 - - -
16 ...JAMES PALLADINO and J. ROWE
17 McKINLEY, called...

18 - - -
19 MR. DASENT: We need to authenticate
20 Mr. Palladino's testimony, so I would ask
21 him some preliminary questions with your
22 permission.

23 THE HEARING OFFICER: Proceed,
24 please.

25 - - -

1 TECHNICAL HEARINGS - VOLUME II

2 DIRECT EXAMINATION

3 - - -

4 BY MR. DASENT:

5 Q. Mr. Palladino, I have before me a
6 document marked "Direct Testimony of James
7 Palladino." Is this your testimony and was it
8 prepared under your direction and supervision?

9 A. (Palladino) It is my testimony.

10 Q. It was prepared in
11 question-and-answer format. Are the answers
12 as they appear in the testimony true and
13 correct or do you have any revisions to make?

14 A. (Palladino) I have some revisions.

15 With respect to changes in the
16 contracts, wholesale contracts, it is
17 indicated on Page 2 that "The Bucks County
18 Water & Sewer Authority holds the contract for
19 wastewater service to Bensalem Township. A
20 new amendment is in the final stages of
21 negotiation..." That amendment was finalized
22 on April 2 of this year.

23 Q. So we need to update that particular
24 fact.

25 A. (Palladino) Yes.

1 TECHNICAL HEARINGS - VOLUME II

2 Q. Are there any other revisions?

3 A. (Palladino) There are. First I
4 have this to hand out.

5 Q. You are referring to an errata
6 sheet?

7 A. (Palladino) I am.

8 Q. It is my understanding this relates
9 to various regulations, water connection
10 charges, and other sections of the regs that
11 we proposed in this case?

12 A. (Palladino) One specific section,
13 the section of the water regulations under
14 "Miscellaneous Charges," Section 306.7, that
15 deals with water connection charges. You will
16 see that a number of charges -- not all of
17 this, but most charges -- have been revised or
18 corrected downward because there was
19 erroneously an overstatement of labor costs
20 developing the charges initially. So a number
21 of charges have been revised downward, as
22 indicated.

23 THE HEARING OFFICER: So it's not a
24 sale? You're not having a sale?

25 MR. PALLADINO: No, no sale, sir.

1 TECHNICAL HEARINGS - VOLUME II

2 We were contemplating it, but apparently
3 it has been called off.

4 MR. DASENT: For purposes of the
5 record, we would like to mark the errata
6 sheet that was just identified by
7 Mr. Palladino as PWD-26 and mark that for
8 identification. It shows the corrections
9 in the black line draft and it's better
10 than I think trying to walk through each
11 one of them.

12 - - -

13 (Whereupon the document was marked,
14 for identification purposes, as PWD
15 Exhibit 26.)

16 - - -

17 BY MR. DASENT:

18 Q. Now, is there another document that
19 shows revisions to the record?

20 A. (Palladino) Yes.

21 Q. Now, Mr. Palladino, this describes
22 various changes to the text of your testimony?

23 A. (Palladino) That's correct. I
24 might note that a number of these are a number
25 of changes to the regulations that have been

1 TECHNICAL HEARINGS - VOLUME II

2 proposed. Most of these have come about as a
3 result of conversation with Mr. Bertocci, the
4 Public Advocate.

5 Shall I go through each of them in
6 turn?

7 Q. Sure.

8 A. (Palladino) Firstly, in Section
9 300.0(d), the first sentence should read:
10 "The Philadelphia Water Department is the
11 operating department..." The word "Water" was
12 inadvertently omitted in the initially filed
13 regulations.

14 In Section 300.0(q), the regulations
15 are being proposed to change slightly and to
16 make another correction. Where it originally
17 read "Board of Revision of Taxes," it's now
18 defining "Property Owner" as "The owner of the
19 particular parcel of real estate identified in
20 the records of the Department of Records
21 database used by the Board of Revision of
22 Taxes, or the grantee in a land transfer of
23 record."

24 Next, we're proposing changes in
25 301.1. The regulations in the second

1 TECHNICAL HEARINGS - VOLUME II
2 paragraph should read: "Pursuant to these
3 standards and the Philadelphia Home Rule
4 Charter, the Department promulgates the
5 following regulations to obtain relevant
6 comments and information from any affected
7 person, corporation or entity, regarding
8 proposed changes in rates and charges as
9 established in regulations in Sections 302.0,
10 303.0, 304.0, 305.0," and we're adding
11 Sections 306.0, 307.0, 308.0, and 309.0. "All
12 other changes to rates and charges may be
13 established consistent with the Home Rule
14 Charter and the Philadelphia Code."

15 The effect of this is that Sections
16 306.0, 307.0, and 308.0, which are being added
17 here, which cover changes in miscellaneous
18 water, sewer, and stormwater charges, this
19 provides for, the inclusion here, this
20 revision, is that if charges are proposed to
21 those miscellaneous charges for stormwater,
22 they will be subject to full hearings rather
23 than a shortened regulation change.

24 The next is a typo correction. In
25 Section 303.3(a)(2) the service charge for a

1 TECHNICAL HEARINGS - VOLUME II
2 12" meter should be \$1,703.78 rather than
3 \$11,703.78. That comes close to having a sale
4 on that specific size meter.

5 In Section 301.5(b) in the first
6 paragraph the regulations should read:
7 "Public Notice. After submitting notification
8 of the proposed change in rates and charges to
9 City Council, notice of the proposed change in
10 rates and charges shall be advertised one day
11 per week, for three consecutive weeks, in
12 prominent location in at least two newspapers
13 with the largest circulation published in
14 Philadelphia with daily editions."

15 The following is being added:
16 "Additional advertisements shall also be
17 published in newspapers with significant
18 circulation among ethnic populations, as the
19 Water Department deems feasible."

20 It goes on to continue: "The
21 advertisements shall state that the
22 Department's proposed change in rates and
23 charges may be examined at designated
24 locations and shall state an estimate of the
25 average percentage residential bill increase.

1 TECHNICAL HEARINGS - VOLUME II
2 Financial, engineering and other relevant data
3 upon which the Department's proposed change in
4 rates and charges are based shall be available
5 for public inspection at locations and at
6 times set forth in the public notice."

7 The next change in Section 305.1(a)
8 is also a change developed in consultation
9 with the Public Advocate and provides that
10 existing customers shall get credit toward
11 their advanced service charge for already paid
12 service charges, and the last sentence of this
13 paragraph is added to make that clear. I will
14 read it in full.

15 THE HEARING OFFICER: You don't need
16 to read it in full.

17 MR. DASENT: Thank you.

18 MR. PALLADINO: Thank you.

19 The next change in Section 305.1(h),
20 the words "or Scheduled" should be
21 deleted. It currently reads: "Unmetered
22 or Scheduled customers" and "Scheduled"
23 is sort of an archaic term that had been
24 used by the Water Revenue Bureau to
25 define unmetered accounts, but in

1 TECHNICAL HEARINGS - VOLUME II

2 consultation it was deemed unnecessary
3 and to be repetitive.

4 In Section 305.2(b)(iii) there is a
5 change here being proposed that
6 essentially raises what the Department is
7 proposing as the new income threshold for
8 the senior citizen discount.

9 Initially it had been proposed to be
10 increased to \$28,600 with the initiation
11 of the new rates. It's now being
12 proposed to be \$29,800.

13 "The Department has revised the
14 Senior Citizen Discount Income threshold
15 upward from the previously proposed
16 figure of \$28,600 in order to give senior
17 citizens the full benefit of the most
18 recently published CPI figures of the
19 Bureau of Labor Statistics (June 2008).
20 This change reflects the significant
21 inflation that has occurred from February
22 through June of 2008."

23 BY MR. DASENT:

24 Q. Does that conclude the revisions to
25 your testimony?

1 TECHNICAL HEARINGS - VOLUME II

2 A. (Palladino) It does.

3 Q. With those revisions is your
4 testimony true and correct to the best of your
5 knowledge, information, and belief?

6 A. (Palladino) It is.

7 MR. DASENT: I would like to mark
8 for identification, Your Honor, according
9 to our exhibits list, as PWD Statement 3,
10 the "Direct Testimony of James Palladino"
11 and request its admission, along with all
12 our other statements previously
13 mentioned, in the record.

14 THE HEARING OFFICER: So marked and
15 accepted into the record.

16 - - -

17 (Whereupon the document was marked,
18 for identification purposes, as PWD
19 Statement 3 and admitted in evidence.)

20 - - -

21 MR. DASENT: We also want to mark
22 for identification, Your Honor, as
23 PWD-27, the summary of the various
24 changes that were read into the record to
25 aid others in tracking what changes for

1 TECHNICAL HEARINGS - VOLUME II

2 drafting purposes were made.

3 - - -

4 (Whereupon the document was marked,

5 for identification purposes, as PWD

6 Exhibit 27.)

7 - - -

8 THE HEARING OFFICER: Before we go

9 on, let me just comment on the public

10 notice aspect of the regulations.

11 We have regulations and obviously

12 from what's been submitted to me, the

13 costs are substantial in terms of

14 advertising the hearings, the public

15 hearings, in accordance with those

16 regulations.

17 Maybe they have to be looked at and

18 something should be conceived in the way

19 of outreach to the public in a better way

20 than is currently being accomplished.

21 It's apparent that the intent to obtain

22 participation at public hearings is not

23 doing what it's meant to do.

24 How much did we spend actually on

25 advertising altogether for the hearings,

1 TECHNICAL HEARINGS - VOLUME II

2 Commissioner Clare?

3 MR. CLARE: About \$118,500 so far.

4 THE HEARING OFFICER: It probably
5 cost about \$10,000 per person or
6 something like that. It doesn't seem to
7 be a very efficient way of getting the
8 public out there. So these are Water
9 Department regulations?

10 MR. DASENT: Yes.

11 THE HEARING OFFICER: So I think
12 certainly I will recommend something with
13 regard to that, that that be looked at, a
14 better utilization of money in connection
15 with getting this out to the public in
16 some way and some task force to work on
17 that in some way. It doesn't seem that
18 the Water Department got \$118,000 worth
19 in terms of what was out there at the
20 public hearings.

21 MR. CLARE: Your Honor, we did --

22 THE HEARING OFFICER: Yes.

23 MR. CLARE: I'm sorry; I didn't mean
24 to speak out of line.

25 THE HEARING OFFICER: No. Please.

1 TECHNICAL HEARINGS - VOLUME II

2 MR. CLARE: We did try some
3 additional outreach this time. We have a
4 continuous loop running on Channel 64,
5 our public notification television
6 station. We posted the entire filing on
7 the website. We send out a news release
8 to anybody that's listening. So we've
9 tried a number of things.

10 THE HEARING OFFICER: Did you put
11 stuffers in the bills as to the hearings?

12 MR. CLARE: We did, yes, we did put
13 a notice on the water bill referring them
14 to our website. Unfortunately, it
15 doesn't give you a lot of room on the
16 bill.

17 THE HEARING OFFICER: My comments
18 weren't intended to be critical.

19 MR. CLARE: Okay.

20 THE HEARING OFFICER: They were
21 intended to be suggestive that the
22 hearing process does other things besides
23 raise rates; it makes procedures to be
24 followed. And I would ask that the
25 Public Advocate cooperate in connection

1 TECHNICAL HEARINGS - VOLUME II

2 with that as well.

3 MR. BERTOCCI: Certainly.

4 THE HEARING OFFICER: Certainly they
5 have, all of us have, an interest in
6 getting the citizenry to be aware, and we
7 all want to work collaboratively in that
8 process. That was the intent of my
9 comments.

10 MR. CLARE: Understood. Thanks.

11 MR. DASENT: If Your Honor please,
12 one final indulgence. Mr. Griffith
13 produced his resume and I didn't mark it
14 for identification. The parties have
15 copies. I think to spread it on the
16 record or include it in the record would
17 be important, so that would be marked,
18 with your permission, as PWD Exhibit 28.

19 THE HEARING OFFICER: Thank you.

20 - - -

21 (Whereupon the document was marked,
22 for identification purposes, as PWD
23 Exhibit 28.)

24 - - -

25 MR. DASENT: With all of that

1 TECHNICAL HEARINGS - VOLUME II

2 housekeeping behind us, the panel is
3 available for cross on cost allocation
4 and rate design.

5 THE HEARING OFFICER: Okay.

6 MR. DELANEY: Mr. Palladino is being
7 offered for questions right now; is that
8 where we are?

9 THE HEARING OFFICER: And
10 Mr. McKinley as a panel.

11 MR. MCKINLEY: On cost allocation
12 and rate design issues.

13 MR. DELANEY: Okay. I didn't hear
14 the testimony being authenticated. I
15 have very short questions for
16 Mr. Palladino. Let me do those first.

17 - - -

18 CROSS-EXAMINATION

19 - - -

20 BY MR. DELANEY:

21 Q. Mr. Palladino, did you have an
22 opportunity to review the Interfaith Coalition
23 on Energy testimony that we circulated at the
24 end of July?

25 A. (Palladino) Yes.

1 TECHNICAL HEARINGS - VOLUME II

2 Q. I believe Mr. Spielvogel will be

3 here today after lunch, I think, to actually

4 testify on this. But I just wanted to get

5 your reaction to two proposals that he makes

6 concerning the proposed regulations changes

7 that are being proposed by the Department. I

8 don't think they're impacted by the changes

9 that you described on the record this morning.

10 Maybe you can tell me what your reaction is

11 and what the Department's position, as you

12 understand it, might be on these requests.

13 The first one concerns a definition

14 change in Section 300.0(r), and I believe the

15 definition of "residential" has a minor change

16 in it; and my understanding of

17 Mr. Spielvogel's proposal on this is to add

18 some language out of the PECO tariff that I

19 believe is a sentence which clarifies that the

20 "residential" definition as proposed would

21 incorporate housing for religious involved

22 with congregations such as rectories and

23 convents and dwelling places of priests,

24 rabbis, pastors, rectors, nuns, or other

25 functioning church divine and the resident

1 TECHNICAL HEARINGS - VOLUME II

2 associates.

3 I'm sure you're familiar with the
4 practice of providing housing by congregations
5 for people of that type. I believe his
6 motivation is to make sure that that would be
7 considered a residential location with that
8 many people living in it.

9 A. (Palladino) Well, there are two
10 potential implications of this, as I see it.
11 One is that it may have a potential increase
12 in making available for discounted rates
13 certain properties that are not currently
14 receiving a discount.

15 Now, I am relatively certain that
16 convents receive a discount now as a charity,
17 if you will, and I am not certain whether
18 rectories or such are receiving the discount.
19 I believe they are not. It's my understanding
20 they are not.

21 That isn't to say that the
22 Department may not be averse to considering a
23 change like that. I am not in a position to
24 make policy or change the policy at this
25 point. But I think if you are talking about

1 TECHNICAL HEARINGS - VOLUME II

2 expanding the discount, it would be something
3 that could be taken under consideration.

4 Q. Okay. The ordinance that identifies
5 the availability of the charity discount for
6 religious institutions, you haven't proposed a
7 change to that, have you?

8 A. (Palladino) No.

9 Q. And if my recollection is correct,
10 that ordinance really relies upon the activity
11 at the site of the requested discount, and
12 that's defined in the section. One is
13 universities and schools, the other is
14 religious, charitable institutions. Currently
15 they don't use terms like "residential" in
16 them in terms of providing qualifications for
17 charity discounts.

18 A. (Palladino) That's right, they
19 don't.

20 Q. Okay.

21 A. (Palladino) And it's a regulation
22 rather than an ordinance. The Department sets
23 regulations. Ordinances are enforced by City
24 Council.

25 Q. So what I'm speaking of is a

1 TECHNICAL HEARINGS - VOLUME II

2 regulation?

3 A. (Palladino) A regulation.

4 Q. So the current regulation doesn't

5 talk about "residential" --

6 A. (Palladino) It doesn't.

7 Q. -- as a qualification.

8 A. (Palladino) It doesn't use the

9 term, that's right.

10 Q. So I'm just offering that in

11 response to what you said.

12 Okay. I think what you just

13 indicated to me is that the Department would

14 consider Mr. Spielvogel's request on that.

15 A. (Palladino) I believe we would take

16 it under consideration. There is no reason

17 the Department wouldn't consider it.

18 Q. Okay. The other recommendation he

19 has at the end of his testimony is a proposed

20 deletion in Section 305.2(j), which he has

21 described as I think replacement of a meter

22 when there's a sizing issue. Give me a second

23 to find it here.

24 MR. DASENT: Are we discussing the

25 overmetered provision?

1 TECHNICAL HEARINGS - VOLUME II

2 MR. DELANEY: Well, I think you have
3 to go to the version of the changes on
4 the website to find them. I don't think
5 they're in your additional folder in the
6 rate case materials.

7 BY MR. DELANEY:

8 Q. It's a provision called "Temporary
9 Transitional Provisions" -- I have a copy that
10 I can show to you -- and it's being removed.

11 Okay. My understanding of this
12 provision, it adds a procedure, the existing
13 provision, for a person who believes his meter
14 is oversized or their home is overmetered to
15 apply for a downward revision in the size of
16 their meter, and after the change is made, the
17 lower charge by meter size shall thereafter
18 apply is what it says currently.

19 It just seems to communicate a
20 procedure for people who may not be all that
21 familiar with the requirements of the Water
22 Department. His proposal is that it provides
23 clarification and should remain in the
24 regulations.

25 My question to you, I guess, is:

1 TECHNICAL HEARINGS - VOLUME II

2 Why is it being removed?

3 MR. DASENT: Just for some
4 clarification, the Department's policy is
5 to allow downsizing of meters when the
6 request is made, if appropriate. So
7 there is nothing at odds with that policy
8 that we're proposing here. The question
9 might become where in the regs would this
10 provision most appropriately be placed,
11 and that I can let Mr. Palladino speak
12 to.

13 MR. DELANEY: Okay.

14 MR. DASENT: As opposed to the
15 policy change. I just didn't want any
16 misunderstanding.

17 MR. DELANEY: Thank you for that
18 clarification.

19 BY MR. DELANEY:

20 Q. Is there a similar section being
21 added somewhere in the regulations as part of
22 this, Mr. Palladino?

23 A. (Palladino) I am not aware of
24 anything being added; just this is being
25 stricken. I do recognize this as being in the

1 TECHNICAL HEARINGS - VOLUME II
2 regulations for many, many years. I am not
3 sure that there is anything that the
4 Department does in terms of policy that the
5 elimination of this negates.

6 If a customer believes they are
7 overmetered, they can call the Department and
8 we will respond. I understand sometimes it's
9 necessary to put a meter on to see what the
10 usage is over a day's period to make a
11 suggestion or recommendation as to what lower
12 size meter may be satisfactory for a customer.
13 Then a meter change takes place and billing at
14 the lower service charge for the lower size
15 meter takes place. There is nothing that
16 we're proposing that changes the policy.

17 On the other hand, to be candid, if
18 you are, as you apparently are, seeking that
19 the provision be reconsidered and continue in
20 the regulations -- is that the case, sir?

21 Q. Yes.

22 A. (Palladino) -- then my response at
23 this time would be the Department would be
24 open to considering that as well.

25 Q. I don't think he's concerned about a

1 TECHNICAL HEARINGS - VOLUME II
2 policy change but, rather, facilitating
3 customers being aware of the procedure by
4 having it in the regulations. That wasn't any
5 suggestion that you were changing the policy.

6 A. (Palladino) I see.

7 Q. And you would reexamine the removal
8 of that provision from the regulations?

9 A. (Palladino) I see no reason why
10 this can't be considered on its face as a
11 request.

12 MR. DASENT: The only open
13 consideration will be where it should
14 appropriately appear in the regulations,
15 if there is a better place for it, as
16 opposed to where the stricken language
17 is.

18 MR. DELANEY: All right. Fine.

19 Thank you, Mr. Palladino. That's
20 all the questions I have for you.

21 MR. BERTOCCI: I have no questions.

22 MR. DELANEY: Okay. I have
23 questions for Mr. McKinley, though.

24 BY MR. DELANEY:

25 Q. Good morning, Mr. McKinley.

1 TECHNICAL HEARINGS - VOLUME II

2 Mr. McKinley, I was going to ask you
3 I guess primarily about some of your exhibits
4 and also some of the Interrogatory responses
5 that you provided to make sure I understand
6 what you're proposing in some of these things,
7 and Ms. Linton-Keddie has volunteered to
8 distribute them.

9 MR. DELANEY: Now, I have to say,
10 Mr. Dasent, I thought I had enough
11 copies. I have two copies of these
12 responses. I was going to give a copy to
13 Mr. McKinley so he can just have them.
14 Would you mind, when I ask him, going up
15 and looking at his set? There's only
16 three of them. There's not that many.

17 MR. DASENT: That's fine.

18 MR. DELANEY: These are already, as
19 I understand it, proposed to be in the
20 record as Water Department Exhibit 12 and
21 there's three responses and I just would
22 like to have the witness comment on them
23 when I get to them in the examination.

24 THE HEARING OFFICER: Okay.

25 MR. DELANEY: Great. Thank you.

1 TECHNICAL HEARINGS - VOLUME II

2 BY MR. DELANEY:

3 Q. Mr. McKinley, yesterday I know you
4 testified as part of another panel and I guess
5 we had a little bit of a discussion about some
6 of the Pennsylvania requirements in terms of
7 setting rates for municipalities, and I just
8 wanted to ask you a little bit about that,
9 your experience in the area. I know your
10 testimony initially has a description of your
11 own career, which is distinguished and
12 extensive, and I just wanted to ask you a few
13 questions about that.

14 I guess the summary that I am
15 interested in asking about is actually on Page
16 3 of your testimony. Now, in your list of
17 clients on Page 3 of your testimony, the only
18 Pennsylvania client that is listed at least
19 that I recognized was the City of
20 Philadelphia.

21 My initial question is: Have you
22 performed any other engagements for
23 Pennsylvania municipalities or Pennsylvania
24 public utilities?

25 A. (McKinley) Not that I recall. I

1 TECHNICAL HEARINGS - VOLUME II

2 think Philadelphia is my only client in the
3 State of Pennsylvania.

4 Q. Okay. Have you ever appeared as a
5 witness before the Pennsylvania Public Utility
6 Commission?

7 A. (McKinley) No, I have not.

8 Q. Have you ever appeared as a witness
9 in a Pennsylvania Court of Common Pleas action
10 concerning water or sewer rates charged by a
11 Pennsylvania municipality?

12 A. (McKinley) No, I have not.

13 Q. Have you read or researched Public
14 Utility Commission decisions concerning the
15 requirements in determining water or sewer
16 rates?

17 A. (McKinley) I have not done so.
18 Most of my utility experience certainly is in
19 the municipal utility arena, which doesn't
20 include PUC proceedings.

21 Q. Fair enough.

22 Have you reviewed water or sewer
23 rate filings made by large Pennsylvania water
24 or sewer public utilities such as Aqua
25 Pennsylvania or Pennsylvania American?

1 TECHNICAL HEARINGS - VOLUME II

2 A. (McKinley) No, I have not
3 specifically.

4 Q. Have you reviewed any customer class
5 demand studies prepared by a Pennsylvania
6 municipal water provider or public utility
7 water company in Pennsylvania?

8 A. (McKinley) No, I have not reviewed
9 such studies.

10 Q. Have you had an opportunity or have
11 you ever reviewed the Pennsylvania Municipal
12 Authorities Act concerning water and sewer
13 service provided by municipalities in
14 Pennsylvania?

15 A. (McKinley) I may have seen excerpts
16 from it from time to time through the work I
17 have done with the Philadelphia Water
18 Department.

19 Q. What particular provisions have you
20 reviewed, do you know?

21 A. (McKinley) I don't remember any
22 specific provisions. I just work with the
23 Water Department, their attorneys, and their
24 operators that know the municipal system in
25 the State of Pennsylvania.

1 TECHNICAL HEARINGS - VOLUME II

2 Q. Have you reviewed decisions of the
3 Pennsylvania Court of Common Pleas reviewing
4 sewer or water rates charged by Pennsylvania
5 municipalities?

6 A. (McKinley) I have not had an
7 occasion to review that type of information,
8 no.

9 Q. Have you ever had an occasion to
10 review the rate provisions of the Pennsylvania
11 Public Utility Code?

12 A. (McKinley) No, not that I recall.

13 Q. Now, would you accept, subject to
14 check, that Section 13-101(2) of the
15 Pennsylvania Code states the same requirements
16 for the determination of water rates as the
17 Public Utility Code: that the rates and
18 charges be just, reasonable, and
19 nondiscriminatory as to the same class of
20 consumers?

21 THE HEARING OFFICER: The
22 Philadelphia Code; not the Pennsylvania
23 Code. You said the Pennsylvania Code.
24 You mean the Philadelphia Code.

25 MR. DELANEY: I asked if he was

1 TECHNICAL HEARINGS - VOLUME II

2 aware that it had the same language.

3 THE HEARING OFFICER: But you said

4 Pennsylvania Code. You mean to say

5 Philadelphia Code.

6 MR. DELANEY: Okay. I meant

7 Philadelphia Code.

8 BY MR. DELANEY:

9 Q. I can reask the question if you
10 would like.

11 A. (McKinley) Restate the question.

12 Q. I knew you were going to say that.

13 Would you accept, subject to check,
14 that Section 13-101(2) of the Philadelphia
15 Code states the same requirements for the
16 determination of water rates as the
17 Pennsylvania Public Utility Code, which is
18 that the rates and charges be just,
19 reasonable, and nondiscriminatory as to the
20 same class of customers?

21 A. (McKinley) Subject to check, I
22 would agree with that, although I think the
23 rates developed for the City of Philadelphia
24 Water Department comply with those
25 requirements.

1 TECHNICAL HEARINGS - VOLUME II

2 Q. All right. Thank you.

3 I have some questions on your cost
4 of service study. Could you turn to Table 18
5 of your exhibits?

6 A. (Witness complies.)

7 Q. Now, Table 18 is your "Estimated
8 Units of Service for Retail Water Customers"
9 for the test year 2009. Now, on your
10 allocation of the extra capacity cost to
11 customers, as I understand your exhibit, Table
12 18 allocates units of cost to water customers
13 and that the demand factors for the maximum
14 day extra capacity are in Column (3) and the
15 demand factors for the maximum hour extra
16 capacity are in Column (6).

17 Now, is it correct that the higher
18 the value of the factor, the greater amount of
19 costs are assigned to the customer class?

20 A. (McKinley) Yes. The purpose of
21 these demand factors that you are talking
22 about is to recognize that there are in the
23 water utility system, in most water utility
24 systems, differences in peak demands by class
25 and that a customer class with a higher peak

1 TECHNICAL HEARINGS - VOLUME II

2 demand in the cost allocation process would
3 share a larger proportionate share of costs
4 allocated to the peaking cost categories,
5 whether it be max day or max hour.

6 Q. And those are actually the figures
7 that you have in the columns I just
8 identified, correct, in your table?

9 A. (McKinley) Columns (3) and (6) are
10 the assumed maximum day to average day ratio
11 and Column (6) is the maximum hour to average
12 day ratio by class, yes.

13 Q. Okay. Now, would I be correct that
14 the maximum day and maximum hour capacity
15 factors that you just identified for me are
16 the same as those used in the 2004 cost of
17 service study?

18 A. (McKinley) Yes, they are.

19 Q. Now, would they also be the same
20 factors as used in the 2001 case?

21 A. (McKinley) They are.

22 Q. Okay. Let me ask you: When was the
23 last time a customer class demand study was
24 performed to support the demand factors
25 assigned to each customer class in a

1 TECHNICAL HEARINGS - VOLUME II

2 Philadelphia Water Department rate case?

3 A. (McKinley) To my knowledge, there
4 has never been a customer class demand study
5 performed certainly by Black & Veatch. I'm
6 not saying the Water Department might not have
7 done such a study. But when you deal with
8 municipal utilities, I would say the rule of
9 thumb is such studies generally do not exist.
10 Studies typically are not made of customer
11 class demand factors in most utilities.

12 Q. Okay.

13 A. (McKinley) But what you do is you
14 look at the system that you're dealing with,
15 such as the Philadelphia Water Department, you
16 look at the classification of customers and
17 the type of demands placed on the system as a
18 whole in guiding what you use for class demand
19 factors.

20 Q. Yes.

21 A. (McKinley) And in Philadelphia, we
22 have a situation here where we have 400,000
23 residential accounts, the vast majority of
24 which are row homes, very little green space,
25 very little lawn irrigation that goes on; and

1 TECHNICAL HEARINGS - VOLUME II
2 what you find in the City of Philadelphia is
3 the system as a maximum day demand on a
4 coincidental basis has a 1.33/1.34:1 peak day
5 to average day ratio. It's a very low peak
6 day to average day ratio. It's indicative of
7 the urban environment we have here and the
8 types of customers.

9 If you look more at a suburban type
10 of community where you have more residential
11 customers, for example, single-family
12 detached, larger lawns, you tend to have a
13 much, much higher peak demand for the system
14 and that drives the demand factors by class to
15 a greater level.

16 Here we have a very small peak
17 demand and so very small demands from each of
18 the customer classes served by the City, and
19 you have to recognize all that when you
20 establish the demand factor used in your cost
21 of service study.

22 Q. Maybe I'm a little confused here.
23 You seem to be describing a system demand
24 study. Is that what you're talking about? My
25 questions really are to individual customer

1 TECHNICAL HEARINGS - VOLUME II

2 class demands, which you have listed on your
3 table here.

4 A. (McKinley) I understand that.

5 Q. I'm a little confused as to you're
6 speaking about a system demand study.

7 A. (McKinley) But when you do a cost
8 of service study for a water utility, you have
9 to look at two things. You have to look at
10 the overall system coincidental demand, what
11 the system is sized to handle in terms of peak
12 loadings, which we've looked at here in
13 Philadelphia, and then you have to look at the
14 demands for each of the classes that
15 constitute or contribute to that peak demand.

16 What you have in this table are what
17 we've referred to as the noncoincidental
18 demands by class, residential, commercial,
19 industrial, municipal, the noncoincidental
20 demands.

21 Q. Yes.

22 A. (McKinley) Not everybody peaks at
23 the same time. There's a diversity of demands
24 in a water utility.

25 Q. Yes.

1 TECHNICAL HEARINGS - VOLUME II

2 A. (McKinley) That's why the overall
3 coincidental demand of a water utility drives
4 the size of the capacity of the water
5 treatment plant, the pumping stations, and the
6 distribution system.

7 When we do a cost of service study,
8 we have to make determinations of what we
9 think the noncoincidental demands are from
10 each class. But when you look at the
11 noncoincidental demands by class, when you
12 aggregate them up like we have in Table 18,
13 you have to compare the sum of those
14 noncoincidental demands with the system
15 coincidental peak demand.

16 Q. Yes.

17 A. (McKinley) And the relationship of
18 the noncoincidental demands to the system
19 coincidental demand is called the diversity of
20 the system, the diversity factor, and you have
21 to have a range of reasonableness in that
22 diversity factor. It has to be between 1.05
23 and 1.4 percent, 105 to 140 percent.

24 When we look at the demand factors
25 that we have used in this study and the

1 TECHNICAL HEARINGS - VOLUME II
2 previous studies relative to the system
3 coincidental demand, we find that we are
4 within that range of reasonableness of
5 noncoincidental demands by class.

6 So while we haven't done a class
7 demand study, these demand factors fall within
8 a range of reasonableness of the diversity
9 factor that we look at when we look at a cost
10 of service study.

11 Q. Okay.

12 A. (McKinley) So I guess what I'm
13 saying is we can corroborate the
14 reasonableness of these assumptions by this
15 diversity factor that I have calculated.

16 Q. Just so that I understand -- thank
17 you for that response -- my initial question
18 to you was when had you last done a study of
19 the factors, and you indicated that you hadn't
20 done one in the time that you had been working
21 for the City, or at least you were unfamiliar
22 with one having been performed in the time
23 that you were working for the City, and would
24 that go back to 1972?

25 A. (McKinley) It could. I am not

1 TECHNICAL HEARINGS - VOLUME II
2 aware of any demand study by class that has
3 been performed by the Water Department that
4 would be useful in our determination for cost
5 of service.

6 Q. And did I hear you say that that was
7 very unusual, for public utilities to actually
8 do such studies?

9 MR. DASENT: He said municipal
10 utilities, but you were close.

11 BY MR. DELANEY:

12 Q. Why don't you clarify what you said?

13 A. (McKinley) I did say it is unusual
14 for municipal utilities to do demand studies
15 by class. It's a very costly process and I
16 would think the rule of thumb -- and I work
17 with utilities across the country -- is less
18 than 5 or 10 percent do such studies.

19 Q. I just asked you a moment ago
20 whether you had reviewed any rate filings by
21 Pennsylvania water utilities or by
22 municipalities and you said no.

23 A. (McKinley) I did say that.

24 Q. So how do you know they're not
25 filing them in Pennsylvania if you've never

1 TECHNICAL HEARINGS - VOLUME II

2 looked at any of the filings, if you've never
3 looked at the decisions, if you've never
4 testified in a case? I mean, I don't
5 understand where you're pulling this stuff
6 from.

7 A. (McKinley) I am coming from 40
8 years of experience in the industry dealing
9 with municipal utilities across the country
10 and my point is in very few of those utilities
11 with which I'm familiar over the history of my
12 career do they actually do demand studies by
13 class.

14 Q. Didn't you just testify that you
15 worked for one utility, one municipality, in
16 Pennsylvania and that you never did a study
17 since 1971, you have never looked at the
18 records of other cases, you haven't looked at
19 the decisions, you haven't looked at the
20 filings, and you are representing now that you
21 know what the situation is in Pennsylvania?
22 Am I correct on that?

23 A. (McKinley) I am representing I know
24 what the situation is in Philadelphia.

25 Q. Right.

1 TECHNICAL HEARINGS - VOLUME II

2 A. (McKinley) And the other utilities
3 in Pennsylvania have no relevance to
4 Philadelphia when you are looking at the
5 demand characteristics of an individual
6 utility.

7 Q. Okay. I'm actually speaking about
8 when you last performed a study, and you
9 haven't performed a study in the entire time
10 of your engagement by the Water Department;
11 isn't that correct?

12 A. (McKinley) I have not done a demand
13 study by class for the City of Philadelphia
14 Water Department, that's correct.

15 Q. All right. Thank you.

16 A. (McKinley) That doesn't mean that
17 the results that I have in my allocation and
18 my determination of the noncoincidental
19 demands by customer class are not relevant
20 because this is the type of study that is done
21 throughout the country.

22 I have been the chairman of the
23 American Water Works Association Rates
24 Committee. I have been on that committee for
25 18 years. I'm familiar with what goes on in

1 TECHNICAL HEARINGS - VOLUME II
2 the municipal water ratemaking utility
3 industry, and it's very uncommon for demand
4 studies to be made.

5 But what is common is you look at
6 the demand characteristics of the system as a
7 whole with which you're working, look at the
8 different classes of customers served, and
9 determine noncoincidental peaking factors that
10 when aggregated together give you a reasonable
11 diversity of demands when compared to the
12 system demand, and that's what we have in this
13 system.

14 Q. Okay. You haven't done a study and
15 you haven't done a study for 36 years. Where
16 did the factors come from that are on the
17 table which are the ones that you used in 2004
18 and 2001?

19 A. (McKinley) The factors recognize
20 the industry standards. Residential has
21 typically the highest peak demand of any
22 class, commercial has a less demand,
23 industrial customers have even less demand in
24 terms of peak to average ratios, max day, max
25 hour. But you have to characterize the

1 TECHNICAL HEARINGS - VOLUME II
2 individual class demands on a noncoincidental
3 basis such that they make sense --

4 Q. Yes. I understand.

5 A. (McKinley) -- when you aggregate
6 them and look at the relationship of the
7 noncoincidental demands versus the system
8 coincidental demand --

9 Q. You have told us --

10 A. (McKinley) -- and we have done
11 that.

12 THE HEARING OFFICER: Please let him
13 finish his answer.

14 BY MR. DELANEY:

15 Q. I'm sorry; continue.

16 A. (McKinley) I am telling you the
17 relevance of these demand factors relative to
18 the City of Philadelphia and how they comply
19 with what's done in the industry and they
20 comply with the demands that are experienced
21 within the City of Philadelphia Water
22 Department's system in terms of max day and
23 max hour on a coincidental systemwide basis.

24 Q. And would I be correct that since
25 you didn't do a study, you determined the

1 TECHNICAL HEARINGS - VOLUME II

2 factors some other way?

3 A. (McKinley) They're based on
4 judgment, experience in the industry as a
5 whole, and the relevance of the demand factors
6 as they relate to the system coincidental
7 demands that we see occurring in the City of
8 Philadelphia.

9 Q. Okay. So we've finally gotten to
10 the fact that you didn't do a test or you
11 didn't actually examine a study; you actually
12 developed them with your judgment.

13 Now, have you taken any actions just
14 sort of to review the demand factors that are
15 being used by other municipalities or
16 Pennsylvania utilities? I mean, have you done
17 any survey on that and looked at it?

18 THE HEARING OFFICER: That's a
19 compound question.

20 MR. DELANEY: Okay.

21 THE HEARING OFFICER: If you want to
22 limit it to Pennsylvania, fine. If you
23 want to limit it to municipalities
24 generally, that's another question.

25 MR. DELANEY: My question is as to

1 TECHNICAL HEARINGS - VOLUME II

2 Pennsylvania.

3 MR. MCKINLEY: Again, I have not
4 done that because what we're dealing with
5 here is the situation within the City of
6 Philadelphia Water Department.

7 In Mr. Kalbarczyk's testimony, he
8 opines that these residential demand
9 factors we have used here are too low.
10 His experience is that 2.5 instead of 2.0
11 is a good maximum day factor. He opines
12 that 5.0 instead of 3.6 is good for a
13 maximum hour demand factor.

14 I would say that probably is
15 reasonable for a suburban type community,
16 but not an urban community, such as the
17 Philadelphia Water Department, which has
18 row homes for residential accounts who do
19 not have the same usage characteristics
20 as a suburban single-family detached home
21 sitting on a quarter acre of lawn with a
22 lot of lawn to irrigate.

23 Lawn irrigation basically is a
24 driving factor for residential demands,
25 and we just don't have that kind of

1 TECHNICAL HEARINGS - VOLUME II
2 demand characteristics as reflected in
3 the demands that are output from the City
4 of Philadelphia Water Department
5 treatment plants.

6 BY MR. DELANEY:

7 Q. Well, let me show you a document. I
8 wasn't going to make this an exhibit, but I'll
9 show it to you. Now, we did some research
10 looking at demand factors --

11 THE HEARING OFFICER: Let Mr. Dasent
12 see first what you're referring to,
13 please.

14 MR. DELANEY: Okay.

15 BY MR. DELANEY:

16 Q. Now, this is from an Interrogatory
17 response.

18 Now, what I have shown the witness,
19 which I don't propose to make an exhibit, but
20 it's in response to what I just heard him say
21 were general statements about --

22 THE HEARING OFFICER: Well, even
23 though we don't have to have it as an
24 exhibit, please identify it for the
25 record since we do have a record.

1 TECHNICAL HEARINGS - VOLUME II

2 MR. DELANEY: I have an
3 Interrogatory response that was offered
4 as an exhibit in a Pennsylvania American
5 water case before the Pennsylvania Public
6 Utility Commission at Docket R-00994638,
7 which I believe was a 2000 Public Utility
8 Commission rate case.

9 BY MR. DELANEY:

10 Q. The question that's asked in the
11 Interrogatory is: "Please provide the studies
12 of other water utilities referred therein.
13 Please provide the studies/pages/references
14 for the empirical demands."

15 And what I am going to show to the
16 witness now are the last two pages of that
17 exhibit, which I understand is a portion of a
18 Johns Hopkins University study of max hour and
19 max day demands for municipalities throughout
20 the country.

21 And I was just going to show to the
22 witness that there was a study done for the
23 City of Philadelphia on residential areas,
24 Normandy Street and Benton Street area. Now,
25 this was performed in 1963 to '65. But it

1 TECHNICAL HEARINGS - VOLUME II
2 indicates for both of those locations what I
3 believe to be max day and peak hour demand
4 factors higher than that are currently in your
5 testimony.

6 Now, my understanding of your
7 testimony a moment ago was that the character
8 of these locations made it unlikely or
9 impossible that those figures could be higher
10 than what you had in your study, and at least
11 on this one, in that one, the peak hour demand
12 factors are 4.95 and 4.13. Would you agree
13 that they're higher than what is in your
14 study?

15 A. (McKinley) I see the numbers here.
16 I have no idea what these are based on,
17 whether they're relevant. I see 2.13 as a max
18 day to average ratio and 1.93 as a max day to
19 average ratio for these two areas.

20 Q. Yes.

21 A. (McKinley) We used 2.00.

22 Q. Yes.

23 A. (McKinley) I would say we're right
24 in the ballpark with that if this is a
25 relevant document.

1 TECHNICAL HEARINGS - VOLUME II

2 Q. Okay. But Mr. Kalbarczyk's
3 testimony talks about the higher end, the peak
4 hour.

5 A. (McKinley) I see numbers 4.95 and
6 4.13 and we used a factor of 3.16 relative to
7 these two numbers. But I would suspect that
8 this is only 40 years old, I'm looking at the
9 demands in the last four years of the
10 Philadelphia Water Department and the max hour
11 system demand is 1.75 times; and when you have
12 80 or 90 percent of your customers that are
13 residential customers, I would submit that 4.0
14 to 4.6 for the residential class as a demand
15 versus a 1.75 overall system demand is pretty
16 irrelevant and hard to understand.

17 Q. I am showing you this in response to
18 your prior statement that the housing in
19 Philadelphia was not like suburban areas and
20 therefore it was unlikely that the figures in
21 the studies would be as high as what was being
22 cited in the testimony of Mr. Kalbarczyk.

23 Now, my recollection is, subject to
24 check, that Normandy Street and Benton Street
25 areas both have row housing similar to what

1 TECHNICAL HEARINGS - VOLUME II

2 you described in your prior response.

3 A. (McKinley) I don't know that.

4 MR. DASENT: What section of
5 Philadelphia is that? I don't even know.

6 MR. DELANEY: I believe they are in
7 the Northeast section of Philadelphia.

8 MR. CLARE: Normandy is single
9 homes. They're single detached homes.
10 And what was the other street?

11 MR. DELANEY: The other was Benton
12 Street, which I understood was in Oxford
13 Circle.

14 MR. CLARE: Those I think are twins.

15 MR. DELANEY: Okay.

16 BY MR. DELANEY:

17 Q. So even with the housing stock as
18 described by the Deputy Commissioner, the max
19 hour figures on this older study were higher
20 than you suggested were possible; is that
21 correct?

22 A. (McKinley) They're higher than what
23 I've used. But what I've used, Mr. Delaney,
24 is a recognition that 80% of our homes are row
25 homes, maybe 15% twins, 5% single-family

1 TECHNICAL HEARINGS - VOLUME II

2 detached.

3 So if these examples you're showing
4 me here are from either single-family detached
5 or twins, I would suspect those would be
6 higher than the aggregate weighted population
7 of housing stock within the City of
8 Philadelphia, which is predominantly,
9 predominantly, 80% row homes.

10 Q. I am still confused when you say
11 that when you haven't done a study in the 36
12 years that you have worked for the Water
13 Department as their rate consultant.

14 A. (McKinley) I do know the
15 distribution of housing stock, however, from
16 the stormwater work that we have been doing
17 for the past two or three or four years. So I
18 therefore can conclude that very few of the
19 homes in Philadelphia, which would constitute
20 those types of demands, are single-family
21 detached homes, which have large properties
22 and a lot of green grass to irrigate, which is
23 exactly what causes the max day to the max
24 hour demands. You just don't see that in a
25 row home with a backyard the size of this

1 TECHNICAL HEARINGS - VOLUME II

2 table.

3 Q. Okay. But I think we just heard
4 that at least one of those streets actually
5 had doubles on it.

6 Let me show you another study that
7 we found. This is for the City of Pittsburgh.

8 MR. DELANEY: Again, I'm showing the
9 witness, just to speak with him, not to
10 offer it as an exhibit, a Pennsylvania
11 American Water Company Cost of Service
12 Allocation Study as of December 31, 2001,
13 and "Proposed Customer Rates" is the
14 title on the front. I don't see a docket
15 number.

16 BY MR. DELANEY:

17 Q. But this has a study for the City of
18 Pittsburgh of maximum day demand ratios and it
19 has, I believe, 60 neighborhoods -- maybe not
20 that many. I haven't counted them.

21 But you do agree, looking at some of
22 these ratios, they have fairly high numbers.
23 Some of them are 15, 16 -- well, let me show
24 it to you.

25 THE HEARING OFFICER: I don't think

1 TECHNICAL HEARINGS - VOLUME II
2 we know what the character of the
3 neighborhoods is or what they are.

4 MR. DELANEY: These were taken from
5 an urban environment in the City of
6 Pittsburgh with the factors that are
7 listed here to be a low of 1.81 on the
8 first page up to it looks like 4.56. On
9 the second page the ratio goes from a low
10 of 4.88 up to 15.86, 16.05.

11 THE HEARING OFFICER: I don't think
12 the examination with regard to
13 neighborhoods I'm not familiar with or
14 not familiar generally with is going to
15 basically be of assistance in connection
16 with this record. So I am going to sua
17 sponte strike the question.

18 Next question.

19 MR. DELANEY: All right. So I can
20 stop asking him questions about this
21 exhibit?

22 MR. DASENT: I was going to object.

23 THE HEARING OFFICER: That was the
24 general message.

25 MR. DELANEY: All right.

1 TECHNICAL HEARINGS - VOLUME II

2 BY MR. DELANEY:

3 Q. Can I ask you some questions about
4 Table 19 in your testimony, Mr. McKinley?

5 Now, you explain this table in your
6 testimony, I think it's at Page 39, and you
7 indicate that the billing-related customer
8 costs are distributed on the basis of the
9 number of equivalent bills for each class of
10 customers; and I think looking at Table 19, I
11 believe it contains the equivalent factors
12 that you are referring to there.

13 Now, I believe, looking at the
14 table, that the equivalent bill factors are
15 identified in the right-hand column of Table
16 19. Would it be correct that the higher the
17 equivalent bill factor, the larger the amount
18 of billing-related costs are allocated to the
19 meter size, which is on the left side of the
20 chart?

21 A. (McKinley) That's correct.

22 Q. And would I also be correct in
23 looking at the chart, the largest amount of
24 billing-related costs are allocated to the
25 larger meters which are serving commercial and

1 TECHNICAL HEARINGS - VOLUME II

2 industrial customers?

3 A. (McKinley) The larger billing
4 factors are on larger meters which, yes, tend
5 to be applicable to commercial and industrial
6 customers, yes.

7 Q. Thank you.

8 Now, to your knowledge, is there any
9 other Pennsylvania utility that uses this
10 methodology to allocate customer-related
11 costs?

12 A. (McKinley) I think I already
13 mentioned that I am really not familiar with
14 other jurisdictions in Pennsylvania. So, no,
15 I can't say yes or no.

16 Q. Okay. I think you answered one of
17 the Interrogatories and I would like to just
18 talk to you about that a little bit, which is
19 Public Advocate Interrogatory PA-JM-11, and I
20 think the question to you was referencing
21 Table 19, which we're talking about now:
22 "Please explain the basis for the meter
23 reading equivalents."

24 And I can paraphrase the answer,
25 which I think you focused in your response

1 TECHNICAL HEARINGS - VOLUME II

2 on --

3 THE HEARING OFFICER: Do you have it
4 in front of you?

5 MR. MCKINLEY: I have it, yes.
6 Thank you.

7 THE HEARING OFFICER: Okay.

8 BY MR. DELANEY:

9 Q. -- on I believe the billing
10 equivalents, and you indicate that "The
11 factors recognize that larger meters are often
12 more difficult to locate, often require more
13 costly meter reading expense, can require
14 proportionately more customer service time due
15 to the size of meter, bill, and complexity of
16 service to larger customers, and other
17 factors."

18 Now, did I read that correctly?

19 A. (McKinley) Yes.

20 Q. So if I correctly understand your
21 explanation of that, you're indicating that
22 these kinds of costs are more expensive for
23 the commercial and industrial customers that
24 have the larger meters?

25 A. (McKinley) That's the implication,

1 TECHNICAL HEARINGS - VOLUME II

2 yes.

3 Q. Okay. Now, we asked an
4 Interrogatory or proposed an Interrogatory, I
5 should say, to the Department concerning
6 records on these customer costs and how they
7 recorded them, and can I direct your attention
8 now to one of the other Interrogatory
9 responses I gave you, which is the response to
10 the CCC Set II, No. 6? And if you want to
11 look at that, I just want to summarize it for
12 the record.

13 The question that we asked was:

14 "Does the Department maintain records that
15 record costs by customer class or meter size
16 associated with meter reading, billing,
17 collection, customer service, maintenance and
18 capital costs associated with customer
19 meters?"

20 And the answer was: "The Department
21 does not maintain records that record costs by
22 customer class or meter size associated with
23 meter reading, billing, collection, customer
24 service, maintenance and capital costs
25 associated with customer meters."

1 TECHNICAL HEARINGS - VOLUME II

2 Now, having read that, would you
3 agree that the Department has no records to
4 support the allocation of billing-related
5 customer costs on an equivalent bill basis to
6 the large meter customers?

7 MR. DASENT: If I might interject,
8 Mr. Clare answered that question and
9 would be in the best position to say what
10 the Department has and does. Mr.
11 McKinley can, I guess, speak in terms of
12 the scope of his knowledge. But
13 Mr. Clare is in the room and he is the
14 horse's mouth, so to speak.

15 MR. DELANEY: Well, is there any
16 ambiguity in the response here? They say
17 they have no records. What else can be
18 said?

19 MR. DASENT: Well, since you asked
20 the question, I thought we would direct
21 it to the author.

22 MR. DELANEY: Okay. Let me ask
23 Mr. McKinley a question.

24 BY MR. DELANEY:

25 Q. Did you receive any records from the

1 TECHNICAL HEARINGS - VOLUME II
2 Department that supported the Interrogatory
3 response from the Public Advocate
4 Interrogatory we just reviewed a second ago?

5 A. (McKinley) We didn't receive any
6 information that gave us information regarding
7 the cost per bill for larger meter sizes.
8 What I would suggest is that what we've
9 recognized here in these equivalent billing
10 factors is just what my testimony says: It's
11 harder to locate the meters, the meters are
12 more complex, there are more customer costs
13 involved typically in dealing with large
14 customers because there's a lot more money
15 involved. These are judgmental equivalent
16 bill factors.

17 When the Water Department recently
18 went through AMR, automated meter reading, for
19 all of their accounts, I questioned whether
20 these equivalent bill factors still were
21 relevant because most of the meters are read
22 by a van or a vehicle going down the street.

23 Q. Right.

24 A. (McKinley) However, in talking with
25 Mr. Clare subsequently, they still have

1 TECHNICAL HEARINGS - VOLUME II
2 additional costs involved, additional
3 discussions with, additional problems with the
4 larger meter sizes; maybe not quantifiable in
5 their accounting records, but they are still
6 problems relative to the smaller meters. They
7 still cause additional costs to deal with.
8 The ERTs, the meter reading devices, go out
9 more frequently and they're very costly to
10 replace.

11 So whereas AMR may indicate that
12 these billing cost equivalents should go down
13 or go away, I think the experience of the
14 Water Department, without quantifying exactly
15 what the numbers are, is that, yes, the larger
16 meters do create additional costs for them in
17 terms of billing, customer service, and
18 dealing with the larger customers.

19 Q. Okay. You were a moment ago
20 discussing problems with meters.

21 A. (McKinley) Problems with the ERT,
22 the electronic reading devices.

23 Q. Isn't that a meter cost that's
24 recovered under the other equivalent factor?

25 A. (McKinley) Those are meter-related

1 TECHNICAL HEARINGS - VOLUME II

2 costs.

3 Q. Yes.

4 A. (McKinley) But dealing with the
5 customers and dealing with the customer
6 service issues are customer billing and meter
7 reading-related cost issues.

8 Q. Okay. But the meter problem that
9 you just identified and said was a cost is
10 actually a cost collected in the meters
11 capacity basis, the other equivalency factor
12 identified on Table 19?

13 A. (McKinley) Yes, the cost of the
14 meter and the --

15 Q. We are talking actually about the
16 equivalent billing factor, which doesn't cover
17 that expense.

18 A. (McKinley) The billing factor
19 includes customer service, which is a
20 billing-related cost, customer service,
21 reading the meters, and those types of things,
22 which fall into the billing cost category.

23 Q. Okay. Now, if I understand it,
24 again, this is another matter that you
25 determined in your judgment should be an

1 TECHNICAL HEARINGS - VOLUME II

2 adjustment on the table in the case of
3 allocation of cost?

4 A. (McKinley) This does affect the
5 cost of allocation of billing costs to
6 different classes, yes.

7 Q. I know you may dispute this idea of
8 costs having to be known and measurable, but
9 if I correctly understand your prior response,
10 you did this in your judgment, but you have
11 absolutely no records to support the costs
12 that you're allocating were ever actually
13 incurred as a result of the things that are
14 identified in Mr. Clare's Interrogatory
15 response. They have no records to support any
16 of this.

17 A. (McKinley) The total cost that's
18 allocated, the total cost, is based on our
19 projection of the costs of the Water Revenue
20 Bureau and the associated costs.

21 Q. But as we discussed a moment ago, in
22 reviewing the actual table, you're allocating
23 these costs to specific meter sizes, which you
24 agreed, some of these meter sizes are
25 commercial and industrial customers, and you

1 TECHNICAL HEARINGS - VOLUME II

2 have no records to indicate whether the
3 commercial and industrial customers are
4 actually causing the Department to incur the
5 costs that you're allocating to them.

6 A. (McKinley) As Mr. Clare's
7 Interrogatory response says, the Water
8 Department does not maintain billing-related
9 costs and problems dealing with such customers
10 as a recorded cost. This is a judgmental
11 allocation factor based on experience with the
12 Water Department and the fact that they do
13 have more costs involved with larger
14 customers.

15 Q. Okay. Didn't you review
16 Mr. Mierzwa's testimony that he submitted and
17 testified on yesterday?

18 A. (McKinley) I read that, yes.

19 Q. Now, he identified as a very
20 important principle of cost allocation/cost of
21 service studies causality relationships
22 between allocated costs and the service that
23 the customer was receiving. Do you remember
24 that portion of his testimony?

25 A. (McKinley) I do.

1 TECHNICAL HEARINGS - VOLUME II

2 Q. Okay. So if you have no records to
3 support that the Department incurred these
4 costs concerning the larger meters, where is
5 the causation factor to be able to allocate
6 the costs to them?

7 A. (McKinley) I have mentioned again,
8 it was a judgmental factor based on
9 discussions with the Water Department that in
10 general they do have more costs involved, more
11 time involved in dealing with larger
12 customers, and that's what's reflected in the
13 allocation factors.

14 Q. But that's a conversation you had
15 with somebody in a hallway or in a conference
16 room. But you don't have any records.

17 A. (McKinley) We've admitted that.

18 Q. You didn't review any records. Did
19 you request records?

20 A. (McKinley) There are none to
21 request. They don't have records.

22 Q. Right, there are none to request.
23 Now, with no records --

24 A. (McKinley) But they have experience
25 with how their system operates and what

1 TECHNICAL HEARINGS - VOLUME II
2 customer base they have and who creates more
3 time involved. They don't keep billing
4 records or time records of where they go or
5 the service staff goes when they're dealing
6 with customers.

7 Q. Okay. Now, I know you may dispute
8 the application of this principle, but I'm
9 going to ask your opinion. When you have no
10 records for these costs, and in my view
11 there's no causality relationship between
12 their allocation and the meters that you're
13 assigning them to, allocating them to, do you
14 think these costs, unsupported by records or
15 supported by conversations you had without
16 records, are known and measurable as that term
17 is understood in the industry?

18 A. (McKinley) They're not measurable
19 or known, but they do involve additional time
20 and effort to deal with larger customers.
21 That's my statement.

22 Q. And you understand that based on
23 conversations you have had with Department
24 personnel?

25 A. (McKinley) With the people that

1 TECHNICAL HEARINGS - VOLUME II

2 deal with the customers, yes.

3 Q. All right. Great. Thank you.

4 I have some other questions for you
5 in a second.

6 A. (McKinley) Okay.

7 THE HEARING OFFICER: Off the
8 record.

9 - - -

10 (Discussion held off the record.)

11 - - -

12 THE HEARING OFFICER: Okay. We're
13 going to reconvene at 1:30.

14 - - -

15 (Whereupon there was a luncheon
16 recess in the hearing.)

17 - - -

18 THE HEARING OFFICER: All right.

19 The hearings will stand reconvened.

20 Mr. Delaney, is there a request to
21 take certain witnesses out of order?

22 MR. DELANEY: Yes, Your Honor. We
23 are requesting and Mr. Dasent has agreed
24 to take several of the Commercial
25 Customer Coalition witnesses out of order

1 TECHNICAL HEARINGS - VOLUME II
2 and we are presenting the witnesses
3 Mr. Dasent and the Department requested
4 be presented, which are Robert Rossi of
5 St. Joseph's University; Floyd Ruppel of
6 Trigen Philadelphia; and Mr. Larry
7 Spielvogel, who is a volunteer board
8 member and representing the Interfaith
9 Coalition on Energy.

10 THE HEARING OFFICER: We'll
11 certainly be pleased to take them out of
12 order.

13 MR. DELANEY: Let me initially call
14 Bob Rossi to the witness stand.

15 - - -
16 ...ROBERT ROSSI, called...

17 - - -
18 MR. DELANEY: Now, Your Honor,
19 pursuant to your pre-hearing order, the
20 Commercial Customer Coalition filed and
21 served on all of the parties on July 31
22 six pieces of testimony, which represents
23 the testimony of our customer clients
24 that are participating in this
25 proceeding, and I have provided copies of

1 TECHNICAL HEARINGS - VOLUME II

2 A. I am employed by St. Joseph's
3 University and I'm the associate director of
4 facilities.

5 Q. Do you have before you what has been
6 marked for the record as CCC Statement No. 3,
7 which is the "Direct Testimony of Robert Rossi
8 Prepared on Behalf of St. Joseph's
9 University"?

10 A. Yes, I do.

11 Q. And was this testimony prepared by
12 you or under your supervision?

13 A. Yes, it was.

14 Q. Do you have any changes that you
15 would like to make to the testimony or
16 corrections to it at this time?

17 A. No, I do not.

18 Q. Is the information within this
19 testimony true and correct to the best of your
20 knowledge, information, and belief?

21 A. Yes, it is.

22 Q. If I were to ask you the same
23 questions that are contained in the testimony,
24 would your answers now be the same as are
25 contained therein?

1 TECHNICAL HEARINGS - VOLUME II

2 A. Yes, sir.

3 MR. DELANEY: At this point, Your
4 Honor, I would move for the admission of
5 the testimony of Mr. Rossi into the
6 record.

7 THE HEARING OFFICER: So admitted.

8 - - -

9 (CCC Statement 3 admitted in
10 evidence.)

11 - - -

12 MR. DELANEY: Mr. Rossi is now
13 available for cross-examination.

14 THE HEARING OFFICER: Mr. Dasent.

15 - - -

16 CROSS-EXAMINATION

17 - - -

18 BY MR. DASENT:

19 Q. Good afternoon, Mr. Rossi.

20 A. Good afternoon.

21 Q. Now, you represent St. Joseph's
22 University and in your testimony you indicated
23 that the University consists of some 20
24 buildings served by 20 meters of 6" or less;
25 did I state that correctly?

1 TECHNICAL HEARINGS - VOLUME II

2 A. Yes, you did.

3 Q. And if I remember, St. Joe's is sort
4 of on either side of City Line Avenue?

5 A. Yes, it is.

6 Q. Going right down the City boundary,
7 on one side of City Line Avenue, I guess the
8 eastern side, you'll have the Philadelphia
9 side of the campus served by the Philadelphia
10 Water Department?

11 A. Yes.

12 Q. And on the opposite side of the
13 street you'll have the campus buildings,
14 dormitories and what-have-you, served by Aqua
15 Pennsylvania; is that correct?

16 A. Right, that's correct.

17 Q. And I assume you have 4" meters, 2"
18 meters, 6" meters, the whole lot?

19 A. We have meters of all sizes all the
20 way up to 6".

21 Q. And you are doing what you can now
22 to try to manage your budget out at St. Joe's
23 and you're concerned about the rate increase?

24 A. Absolutely, we are.

25 Q. Now, if you looked at your rates on

1 TECHNICAL HEARINGS - VOLUME II
2 one side of City Line Avenue, the eastern
3 side, served by Aqua PA, would you accept,
4 subject to check, they're significantly higher
5 than on the other side of City Line Avenue,
6 where you have a lot of campus buildings also?

7 A. This is true.

8 Q. So if I asked you, subject to check,
9 if for an Aqua PA, for example, 4" meter, the
10 monthly charge for usage of 374,000 would be
11 \$2,526, something of that magnitude, would you
12 accept that, subject to check, on a monthly
13 basis?

14 A. You being the expert, I will accept
15 that.

16 Q. Now, if I look on the other side of
17 City Line Avenue, the Philadelphia side, and I
18 see water rates at \$927.09 as compared to the
19 \$2,500 we just spoke of, that's the Water
20 Department's side, would you accept that,
21 subject to check?

22 A. Without checking it, I would, again,
23 have to take your word for it.

24 Q. Okay. Now, on the Philadelphia side
25 you have some discounts that apply to some of

1 TECHNICAL HEARINGS - VOLUME II

2 your buildings and facilities; isn't that
3 true?

4 A. This is true.

5 Q. And it's a 25% charitable discount,
6 if I remember.

7 A. On our academic buildings; yes.

8 Q. And on the other side of City Line
9 Avenue, any discounts from Aqua PA?

10 A. Not to my knowledge. I've never
11 seen one.

12 Q. And I think we've established that
13 their rates are significantly higher.

14 THE HEARING OFFICER: Is that a
15 question, sir?

16 MR. DASENT: I'm going to move on to
17 the next question. That was more of an
18 editorial comment.

19 THE HEARING OFFICER: Strike that
20 from the record.

21 BY MR. DASENT:

22 Q. Mr. Rossi, I think you've agreed in
23 our little informal discovery outside in the
24 hallway, however, though, that Aqua PA's rates
25 are significantly higher than Philadelphia;

1 TECHNICAL HEARINGS - VOLUME II

2 isn't that true?

3 A. Aqua's rates are higher, yes.

4 Q. Okay. Now, are you aware that the
5 University is served by a declining block
6 rate?

7 A. Yes, I am.

8 Q. And is price one incentive for
9 conservation? -- because I know you are
10 interested in conservation.

11 A. I understand that, yes, I do.

12 Q. Let me ask you: Do you support
13 Mr. Kalbarczyk's recommendation concerning
14 rate design changes?

15 A. Yes.

16 Q. In supporting those recommendations,
17 if they include declining block rates, do you
18 recognize that your position concerning
19 advancing conservation might be on a collision
20 course with the discounted rates that you
21 receive for more service?

22 A. Well, I believe the declining block
23 rates would change as far as the percentage of
24 the difference and that's one of our problems
25 with what we're hearing that the Water

1 TECHNICAL HEARINGS - VOLUME II

2 Department is proposing as far as the next
3 four years is concerned.

4 Q. But you're suggesting, I take it,
5 that some of these changes need to take place
6 to avoid any cross-subsidies between the class
7 that the University would be in, the larger
8 users, and the residentials; isn't that true?

9 A. I believe that's true, yes.

10 Q. And recognizing that you receive a
11 charitable discount and that you have
12 declining block rates for serving the
13 University, do you see also that others might
14 argue that you're receiving the subsidy?

15 A. The amount of buildings that we have
16 that actually get the discount versus the
17 amount of buildings that we have on the
18 Philadelphia side that do not get the discount
19 and the water usage in the buildings that do
20 get the discount versus the water usage in the
21 buildings that do not get the discount really
22 is out of balance. We use much more water in
23 the dormitory buildings, which do not get the
24 25% discount, which we do have quite a few,
25 and our largest ones are on the Philadelphia

1 TECHNICAL HEARINGS - VOLUME II

2 side. So that's where our concern is.

3 Q. But you do recognize some of your
4 buildings do get this 25% discount?

5 A. Some of our buildings do.

6 Q. Which does mitigate against at least
7 some contention that you're paying full cost
8 of service.

9 A. I realize that we get the discount.
10 I don't know if I can totally agree that it
11 mitigates it.

12 Q. Okay. Now, with respect to your
13 recommendation that there be a bulk user rate,
14 are you suggesting that that is also
15 consistent with a conservation objective?

16 A. I believe it is. Basically I think
17 places like St. Joseph's University that have
18 buildings of all ages -- and some of our
19 buildings go back before the 1900s -- a lot of
20 the services that were brought in were brought
21 in in a very large size, whether they needed
22 it or not, and we are paying at that size rate
23 for the meter and that type of stuff.

24 I just find that to be a bit unfair
25 as far as that type of thing goes, because

1 TECHNICAL HEARINGS - VOLUME II
2 that puts the onus on the University to have
3 to make a major change to the water service to
4 bring it into a lower cost revenue area for
5 that type of thing.

6 Engineers in the past, if you needed
7 a 4" main, there was no problem with them
8 bringing in a 6" main. But in today's world
9 that's just a very costly situation.

10 Q. Okay. With respect to your
11 recommendation that we have a bulk service
12 rate, you recognize there's no adjustment in
13 this particular rate case or any particular
14 design in a rate case that's put in place that
15 suggests that theoretical recommendation that
16 you're advancing? It's not in
17 Mr. Kalbarczyk's testimony?

18 A. No. I understand it's not there.
19 It's a recommendation. But I support the
20 recommendation as far as the bulk rate is
21 concerned.

22 Q. Now, waterless urinals, you also
23 recommend that the Department on the
24 Philadelphia side foster or support the whole
25 notion of having waterless urinals, and please

1 TECHNICAL HEARINGS - VOLUME II
2 note we have no objection to them. We do have
3 some legal hurdles to get over, as Comcast
4 did. But, nonetheless, we as a department do
5 not oppose the conservation objectives tied to
6 waterless urinals and some of the other things
7 that you're proposing.

8 A. Yes. You have made me aware of
9 that. Our problem is that we find that we
10 have tried a couple of the waterless urinals
11 on the Aqua side and they've been of very
12 substantial help to us in reducing our water
13 usage, and we would like to do the same thing
14 on the Philadelphia side.

15 I guess what I'm asking would be to
16 have the Water Department support users like
17 ourselves, either with the City or whoever is
18 an opponent to using the waterless urinals,
19 and try and get around that situation, as you
20 said, as they have with Comcast. And I
21 understand that state and federal buildings
22 also are exempt from that problem.

23 Q. Well, I think that's a conversation,
24 a friendly conversation, an agreeable
25 conversation, we can have.

1 TECHNICAL HEARINGS - VOLUME II

2 A. Uh-huh.

3 Q. Now, a large user council is another
4 recommendation of yours or an advisory group.

5 We also have no objection to that.

6 A. I appreciate that. I just think
7 from the situation that St. Joe's University
8 is in, that having a council would be
9 beneficial for us.

10 MR. DASENT: Thank you, Mr. Rossi.

11 That's all I have.

12 THE HEARING OFFICER: Did we
13 ascertain what the size of the discount
14 is that St. Joe's receives?

15 MR. DASENT: We can try to calculate
16 it. You mean on the various buildings
17 that it has applicable to the discount?

18 THE HEARING OFFICER: In the last
19 fiscal year, how much that discount was.

20 MR. DASENT: We can calculate that.
21 I'm not sure that I have that information
22 in the room.

23 We can provide an estimate for the
24 record.

25 THE HEARING OFFICER: I would

1 TECHNICAL HEARINGS - VOLUME II

2 appreciate that.

3 MR. DELANEY: I just have a single
4 redirect question for Mr. Rossi.

5 THE HEARING OFFICER: Sure.

6 - - -

7 REDIRECT EXAMINATION

8 - - -

9 BY MR. DELANEY:

10 Q. Mr. Rossi, Mr. Dasent asked you to
11 compare the rates you're paying for the water
12 service from the City of Philadelphia and also
13 from Aqua PA, and would it be correct that
14 what is unusual about the City's water rates
15 is that in the last few years they have been
16 increasing every year where Aqua's have not?

17 A. I know Aqua is asking for a water
18 rate; but, yes, the City's has been going up
19 every year.

20 Q. Great.

21 A. I believe since 2001, if I'm correct
22 on that.

23 MR. DELANEY: Thank you. That's all
24 I have, Your Honor.

25 MR. DASENT: Just to finish up that

1 TECHNICAL HEARINGS - VOLUME II

2 line, if you'll permit me, Your Honor.

3 - - -

4 RE CROSS-EXAMINATION

5 - - -

6 BY MR. DASENT:

7 Q. When Aqua PA asks for a rate
8 increase, for example, like the one that's
9 underway now, are we talking about something
10 like 10% or something that's much larger than
11 that?

12 A. I believe it's much larger than 10%
13 at this time. I don't have the exact amount,
14 but I truly believe that it is much higher
15 than 10%.

16 Q. Sort of in character for Aqua,
17 wouldn't you say?

18 A. I don't know a lot about Aqua so I
19 don't want to make any statements about them
20 other than they do supply our water.

21 Q. Okay. And the various steps of the
22 last water rate increase, were they much
23 smaller, for example, than the percentage
24 increase that Aqua is asking for at one time?

25 A. I'd have to look at that to give you

1 TECHNICAL HEARINGS - VOLUME II
2 a truly firm answer. I don't have that
3 information right now, but I could get it for
4 you.

5 THE HEARING OFFICER: Anything
6 further?

7 MR. DASENT: I'm trying to give him
8 something, subject to check, so that we
9 can close this issue out.

10 BY MR. DASENT:

11 Q. Subject to check, for a 4" meter it
12 was 3.7% last year, the final step of the rate
13 increase that came in annual increments or
14 steps --

15 A. Okay.

16 Q. -- for the Philadelphia Water
17 Department. Will you accept that subject to
18 check?

19 A. Yes, I will.

20 MR. DASENT: Thank you very much.

21 MR. DELANEY: I have no further
22 questions.

23 THE HEARING OFFICER: Any other
24 questions?

25 - - -

1 TECHNICAL HEARINGS - VOLUME II

2 (No response.)

3 - - -

4 THE HEARING OFFICER: Thank you,

5 sir.

6 - - -

7 (Witness excused.)

8 - - -

9 MR. DELANEY: Your Honor, we would

10 like to call as our next witness Floyd

11 Ruppel, Jr.

12 - - -

13 ...FLOYD RUPPLE, JR., called...

14 - - -

15 MR. DELANEY: Your Honor, I request

16 that a document be identified for the

17 record as it is presently marked, which

18 is CCC Statement No. 4, the "Direct

19 Testimony of Floyd Ruppel, Jr., Prepared

20 on Behalf of Trigen-Philadelphia Energy

21 Corporation."

22 This piece of testimony was served

23 on the parties July 31 and a copy has

24 been provided to the court reporter. I

25 request that it be identified in the

1 TECHNICAL HEARINGS - VOLUME II
2 record as it's presently marked CCC
3 Statement No. 4.

4 THE HEARING OFFICER: So identified.

5 - - -

6 (Whereupon the document was marked,
7 for identification purposes, as CCC
8 Statement 4.)

9 - - -

10 DIRECT EXAMINATION

11 - - -

12 BY MR. DELANEY:

13 Q. Mr. Ruppel, could you state your
14 name and spell your last name for the record?

15 A. Floyd Ruppel, R-U-P-P-L-E.

16 Q. Mr. Ruppel, by whom are you employed
17 and in what capacity?

18 A. By Trigen-Philadelphia Energy and my
19 current position is called the director of
20 plant operations and maintenance.

21 Q. Do you have before you what has been
22 marked for the record as CCC Statement No. 4,
23 which is the "Direct Testimony of Floyd
24 Ruppel, Jr., Prepared on Behalf of
25 Trigen-Philadelphia Energy Corporation"?

1 TECHNICAL HEARINGS - VOLUME II

2 A. Yes.

3 Q. Was this testimony prepared by you
4 or under your supervision?

5 A. Yes.

6 Q. Are there any changes or
7 modifications you would like to make to the
8 testimony at this time?

9 A. No, there is not.

10 Q. Is all of the information contained
11 within the testimony true and correct to the
12 best of your knowledge, information, and
13 belief?

14 A. Yes.

15 Q. If I were to ask you the same
16 questions that are contained in that document,
17 would your answers be the same now?

18 A. They would be.

19 MR. DELANEY: Your Honor, at this
20 point I would like to move for the
21 admission into the record of Mr. Ruppel's
22 direct testimony.

23 THE HEARING OFFICER: So admitted.

24 - - -

25 (CCC Statement 4 admitted in

1 TECHNICAL HEARINGS - VOLUME II

2 evidence.)

3 - - -

4 MR. DELANEY: Mr. Ruppel is

5 available for cross-examination.

6 THE HEARING OFFICER: Thank you.

7 Mr. Dasent?

8 MR. DASENT: Thank you, Your Honor.

9 - - -

10 CROSS-EXAMINATION

11 - - -

12 BY MR. DASENT:

13 Q. Good afternoon, Mr. Ruppel.

14 A. Yes, sir.

15 Q. As I understand it, water is a
16 primary component of the steam process that
17 Trigen essentially uses to provide service for
18 the steam loop; isn't that correct?

19 A. That's correct.

20 Q. And your second most costly
21 commodity is water, as I understand it?

22 A. That's correct.

23 Q. Now, your major complaint or
24 observation or concern that you are bringing
25 to the table here is that 82% of incoming

1 TECHNICAL HEARINGS - VOLUME II

2 water that you are buying from the
3 Philadelphia Water Department does not return
4 to the wastewater system so that you are in a
5 unique circumstance; is that correct?

6 A. A slight modification: I am not
7 arguing that some of it doesn't return to the
8 wastewater system; it doesn't return directly
9 at our facility. The remaining 82% that we
10 are talking about goes out to buildings like
11 this and some component of that is returned to
12 the wastewater system; yes.

13 Q. Is this building on the steam loop?

14 A. I do not believe it is.

15 MR. SPIELVOGEL: Yes.

16 MR. RUPPLE: It is?

17 MR. SPIELVOGEL: Yes.

18 MR. RUPPLE: I'm sorry; I run the
19 plant.

20 BY MR. DASENT:

21 Q. Now, with respect to your concern,
22 though, for whatever percentage of water
23 consumed that you don't return to the
24 stormwater system, would you accept, subject
25 to check, that we have in our regulations a

1 TECHNICAL HEARINGS - VOLUME II
2 sewer rental factor that allows the
3 recognition of your unique characteristics and
4 gives you, more or less after providing an
5 engineering analysis and a basis for the
6 recognition that you need to make sure that
7 your rates are based upon cost causation, a
8 rate that is lower than you're paying right
9 now?

10 A. I'm currently not aware of that
11 regulation. If that exists, we would be
12 anxious to look at it and see how we could
13 apply it in our situation.

14 Q. And with the provision of the
15 engineering analysis, as I understand it, they
16 can derive the rate that's appropriate for
17 you; and to the degree you are not already
18 taking advantage of it, they can look at
19 whatever appropriate rate that is lower than a
20 rate that would be paid for a customer that
21 returns 95% or a high percentage of water back
22 to the wastewater system that can be
23 recognized.

24 All right. With that, I don't
25 believe we have a whole lot to disagree with;

1 TECHNICAL HEARINGS - VOLUME II

2 isn't that correct?

3 A. Not if we can find that rate, no.

4 Q. Now, the water users advisory group,

5 as I mentioned to Mr. Rossi --

6 THE HEARING OFFICER: Who should he
7 contact at the Water Department to
8 discuss that?

9 MR. DASENT: Mr. Palladino will be
10 the contact at the Water Department.

11 THE HEARING OFFICER: He will give
12 you his card.

13 MR. DASENT: That's all we have for
14 this witness. Thank you.

15 MR. DELANEY: I have no redirect,
16 Your Honor.

17 THE HEARING OFFICER: Thank you,
18 sir.

19 - - -

20 (Witness excused.)

21 - - -

22 MR. DELANEY: Your Honor, I would
23 like to have identified for the record as
24 presently marked CCC Statement No. 5,
25 which is the "Direct Testimony of Larry

1 TECHNICAL HEARINGS - VOLUME II
2 G. Spielvogel, PE, Prepared on Behalf of
3 The Interfaith Coalition on Energy," and
4 I ask that it be identified for the
5 record as CCC Statement No. 5. We have
6 provided copies of this statement to the
7 parties and to the court reporter.

8 THE HEARING OFFICER: So identified.

9

- - -

10 (Whereupon the document was marked,
11 for identification purposes, as CCC
12 Statement 5.)

13

- - -

14 MR. DELANEY: At this point we'll
15 call as our next witness Larry G.
16 Spielvogel.

17

- - -

18 ...LARRY G. SPIELVOGEL, PE,

19 called...

20

- - -

21 DIRECT EXAMINATION

22

- - -

23 BY MR. DELANEY:

24 Q. Mr. Spielvogel, could you state your
25 name and spell your last name for the court

1 TECHNICAL HEARINGS - VOLUME II

2 reporter?

3 A. Larry Spielvogel,

4 S-P-I-E-L-V-O-G-E-L.

5 Q. Now, Mr. Spielvogel, by whom are you
6 employed and in what capacity?

7 A. I am a self-employed consulting
8 engineer, but I am here on behalf of the
9 Interfaith Coalition on Energy as a volunteer
10 member of their board.

11 Q. Mr. Spielvogel, you have before you
12 what has been marked for the record as CCC
13 Statement No. 5 with attached CCC Exhibit 4
14 and CCC Exhibit 5, which is the "Direct
15 Testimony of Larry G. Spielvogel, PE, Prepared
16 on Behalf of The Interfaith Coalition on
17 Energy." Was this testimony prepared by you
18 or under your supervision?

19 A. Yes.

20 Q. Do you have any changes or
21 corrections that you would like to make to the
22 testimony at this time?

23 A. None.

24 Q. Is all of the information contained
25 in the testimony true and correct to the best

1 TECHNICAL HEARINGS - VOLUME II

2 A. Good. Good afternoon.

3 Q. Now, I miss Mr. Andy Rudin. He is
4 usually here for ICE or the Interfaith
5 Coalition on Energy. I take it he's sick
6 or --

7 A. No. Andy is on a well-deserved
8 vacation.

9 Q. Okay. Now, do you have contact with
10 the Water Department concerning ICE members
11 and what's going on with respect to downsizing
12 or outreach on the charitable discount?

13 A. Limited contact.

14 Q. Do you know who contacts the Water
15 Department generally with respect to
16 downsizing or any other concerns of ICE
17 members?

18 A. Either Andy Rudin or individual
19 water customers.

20 Q. Now, it's my understanding that in
21 2001 we had a rate order that indicated
22 basically that downsizing of meter sizes for
23 churches and other institutions across our
24 system was to take place. Is that your
25 recollection?

1 TECHNICAL HEARINGS - VOLUME II

2 A. Correct.

3 Q. And you mention in your testimony
4 that you don't think that we've been following
5 through on a timely basis with that commitment
6 or direction from our Commissioner; isn't that
7 true?

8 A. That's correct. Every month we find
9 cases where individual churches and synagogues
10 and mosques have water meter sizes that are
11 two, three, and four sizes bigger than they
12 need to be.

13 Q. Now, do you tell your members or
14 those that are in the ICE coalition that they
15 should be in touch with the Water Department
16 to get their meters downsized?

17 A. Repeatedly. Every year we send out
18 postcards, notices, and newsletters describing
19 that people within the City should make
20 arrangements to have their meter sizes
21 reduced. Unfortunately, like with a lot of
22 Water Department bills, our information goes
23 to people who really are not directly
24 responsible and so they don't get implemented.

25 Q. Now, are you aware that if you

1 TECHNICAL HEARINGS - VOLUME II
2 contacted Veronica Tyson or Mike Hogan
3 concerning your downsizing needs, that you
4 would have an answer to your question and that
5 you would be in the queue of the Water
6 Department employees that deal with these
7 issues, that you would be in line to have your
8 members downsized to whatever appropriate
9 meter there is? There's not even a backlog at
10 this point. Are you aware of that?

11 A. No. I am aware that in some
12 instances the Water Department resists
13 downsizing because it reduces their revenue.
14 I am also aware that communication with the
15 Water Department is sadly lacking, both on
16 behalf of the staff of the Interfaith
17 Coalition on Energy and on behalf of
18 individual congregations.

19 Q. Now, if I told you in 2005 that we
20 downsized 838 accounts, 24 of which were
21 charities, would you accept that subject to
22 check? I have witnesses in the room to attest
23 to this.

24 A. Yes.

25 Q. If I told you in 2006 we downsized

1 TECHNICAL HEARINGS - VOLUME II

2 another 827 accounts, 28 of which were
3 charities, would you accept that subject to
4 check?

5 A. Yes. But you have to recognize that
6 the religious institutions just within the
7 City have thousands of accounts with the Water
8 Department.

9 Q. And are they calling us is the
10 question. ICE members need to be in touch
11 with us because it's not like you're looking
12 for this meter in the basement of the church.
13 We're trying to find a solution for you.

14 THE HEARING OFFICER: I think a more
15 specific question is: Do you have
16 evidence at any time that any member of
17 the Interfaith Coalition called or
18 communicated with the Water Department to
19 request a downsize and it was refused,
20 specific information that you can put on
21 this record for me to consider?

22 THE WITNESS: Not at this moment,
23 but Andy does.

24 BY MR. DASENT:

25 Q. All right. Fine. Now, with fewer

1 TECHNICAL HEARINGS - VOLUME II
2 than 14,000 accounts that are larger than 5/8"
3 meters, the fact that we've downsized 2,600 of
4 those accounts, according to our data,
5 indicates we're making significant inroads
6 into that population.

7 You're saying there are more members
8 out there, but we're telling you, help us with
9 your outreach because you are the ICE
10 organization, you will know who your members
11 are that have a problem.

12 Because this has come up before, I'm
13 hopeful that we can resolve it this time and
14 put you in touch with whomever you need; and
15 we have people in the room, in fact, to
16 identify themselves to be your contacts and to
17 make sure that going forward your meters that
18 need downsizing, which are permitted by our
19 regulations and we want to facilitate, are
20 getting downsized.

21 A. Sir, we believe this is a two-way
22 street. Yes, on the one hand, our
23 constituents have not been as forthcoming as
24 they should be; but, by the same token,
25 neither has the Water Department.

1 TECHNICAL HEARINGS - VOLUME II

2 You have to realize that just within
3 the past week the Pennsylvania Public Utility
4 Commission approved public utility customer
5 education programs just for PECO of tens of
6 millions of dollars to educate their customers
7 on conservation.

8 We don't see the first thing coming
9 out of the Philadelphia Water Department and,
10 in fact, one of the issues in this case is you
11 want to remove the provisions in your tariff
12 that suggest that people are overmetered, to
13 which we object.

14 Q. I understand you've raised that
15 objection and as was the discussion on the
16 record earlier today, we have no objection to
17 and our policy has not changed with respect to
18 downsizing meters. The question is where best
19 in our regulations this particular provision
20 can be stated because the policy is ongoing
21 with respect to downsizing. Just please be
22 aware of that.

23 A. Thank you.

24 MR. DASENT: I think that's all we
25 have for Mr. Spielvogel.

1 TECHNICAL HEARINGS - VOLUME II

2 THE HEARING OFFICER: Any other
3 questions on redirect?

4 MR. DELANEY: I don't have any
5 redirect.

6 THE HEARING OFFICER: Any questions,
7 Public Advocate?

8 MR. BERTOCCI: No.

9 MR. DASENT: In the absence of other
10 questions, the charitable discount did
11 come to mind.

12 BY MR. DASENT:

13 Q. You do receive the charitable
14 discount as the members of ICE, as I
15 understand it?

16 A. Many members of ICE do, in fact,
17 receive the charitable discount, which today
18 is only a fraction of what it was previously;
19 and, again, we need a cooperative effort to
20 educate the consumers that such a discount
21 does exist for those people who are eligible
22 for it.

23 Q. It's my understanding that this
24 discount has existed for over a hundred years
25 and that the discount for churches and schools

1 TECHNICAL HEARINGS - VOLUME II
2 and others, which is unique to the Water
3 Department, is well-known in the community.
4 Are you saying we need to do additional
5 outreach?

6 A. Yes; and the fact that it has
7 existed is true, but the fact that it was
8 reduced from a 95% discount to a 25% discount
9 15 or 20 years ago makes a huge difference,
10 especially when you consider that the majority
11 of religious congregations in the City are
12 overmetered.

13 Q. As a part of your testimony you also
14 indicate that we should adopt Mr. Kalbarczyk's
15 recommendations concerning equitable
16 distributions of the rate hike because of the
17 subsidization that you believe exists with
18 respect to your group versus residential
19 users. Did I misstate your testimony?

20 A. No. That's correct.

21 Q. Okay. Now, because you receive a
22 25% discount and apparently would like a
23 larger one, would you recognize that
24 residential users might feel that you're
25 receiving the discount or subsidy as opposed

1 TECHNICAL HEARINGS - VOLUME II

2 to they?

3 A. No, because of the block rates and
4 because of the cost to serve. The cost to
5 serve nonresidential customers per unit of
6 consumption is lower than the cost to serve
7 residential customers and generally, to the
8 best of my knowledge, the payment record of
9 nonresidential customers is substantially
10 better than the payment record of residential
11 customers and the cost to the Water Department
12 to collect that revenue is a lot lower.

13 You're charging thousands of dollars a month
14 for a large meter to send out a 50-cent bill
15 and for a 5/8" meter your cost is the same.

16 Q. You're ignoring, in your particular
17 conversation, the fact that a 25% discount is
18 a very significant discount from cost of
19 service and the fact that you receive that
20 discount and, in fact, are advocating more
21 outreach to get that discount to all of your
22 ICE members suggests that you have a subsidy
23 at the present time.

24 A. As a charity we admit that, yes.

25 MR. DASENT: Thank you very much.

1 TECHNICAL HEARINGS - VOLUME II

2 THE WITNESS: You're welcome.

3 THE HEARING OFFICER: Any other
4 questions?

5 MR. DELANEY: No, I have none.

6 THE HEARING OFFICER: Thank you very
7 much. The witness is excused.

8 THE WITNESS: I might also add, for
9 the record, that as an independent
10 consulting engineer, the reason that I
11 know this building uses steam is because
12 when it was owned by the telephone
13 company, it was my client.

14 THE HEARING OFFICER: Thank you.

15 - - -

16 (Witness excused.)

17 - - -

18 MR. DELANEY: Your Honor, Mr. Dasent
19 has informed me that he has no questions
20 for the other CCC witnesses that have
21 filed testimony so I would like to move
22 into the record the following statements.

23 THE HEARING OFFICER: Yes, in
24 accordance with the understanding we
25 reached at the pre-hearing conference.

1 TECHNICAL HEARINGS - VOLUME II

2 MR. DELANEY: Which would be CCC
3 Statement No. 1, the "Direct Testimony of
4 Kenneth J. Baithwaite"; CCC Statement
5 No. 2, the "Direct Testimony of John J.
6 McCaffrey" -- and I think Mr. McCaffrey
7 was on behalf of the University of the
8 Sciences, Mr. Baithwaite was on behalf of
9 the Delaware Valley Health Council -- and
10 the last piece of testimony we would like
11 to move in is that of Ron Pluto, which is
12 CCC Statement No. 6, which was prepared
13 on behalf of the Building Owners' and
14 Managers' Association of Philadelphia.

15 THE HEARING OFFICER: So admitted.

16 - - -

17 (Whereupon the documents were
18 marked, for identification purposes, as
19 CCC Statements 1, 2, and 6 and were
20 admitted into evidence.)

21 - - -

22 MR. DELANEY: Thank you, Your Honor.

23 THE HEARING OFFICER: Off the
24 record.

25 - - -

1 TECHNICAL HEARINGS - VOLUME II

2 (Discussion held off the record.)

3

- - -

4 THE HEARING OFFICER: Sir, why don't
5 you identify yourself for the record?

6 MR. HINERMAN: Yes. I'm Philip
7 Hinerman with Fox Rothschild. I
8 represent the Philadelphia Housing
9 Authority.

10 Pursuant to the comments that we
11 made on the record yesterday, we are
12 providing counsel today with a copy of
13 testimony. We will give people a chance
14 to review that and then advise us if they
15 would like to cross-examine either
16 Mr. Dorn, who is the person who made the
17 statements, or the other person who
18 helped Mr. Dorn with the statements,
19 tomorrow.

20 I would like it marked as PHA
21 Statement No. 1.

22 THE HEARING OFFICER: Okay. We will
23 mark it as you requested.

24

- - -

25 (Whereupon the document was marked,

1 TECHNICAL HEARINGS - VOLUME II
2 for identification purposes, as PHA
3 Statement 1.)

4 - - -

5 THE HEARING OFFICER: We will hold
6 its admittance into evidence pending
7 communication from all of the other
8 counsel as to whether or not they want to
9 cross-examine an individual or not.

10 So it's your representation that
11 they can let you know tomorrow morning
12 and you will produce somebody if needed?

13 MR. HINERMAN: As soon as possible
14 and preferably no later than tomorrow
15 morning; yes.

16 THE HEARING OFFICER: Mr. Dasent,
17 did you hear that, sir?

18 MR. DASENT: Yes. I wanted to hand
19 up --

20 THE HEARING OFFICER: Well, first,
21 you heard that we marked the testimony
22 and we expect you to let him know as soon
23 as possible if you desire to have
24 somebody but certainly no later than
25 tomorrow morning?

1 TECHNICAL HEARINGS - VOLUME II

2 MR. DASENT: Yes.

3 MR. HINERMAN: Thank you.

4 MR. DASENT: We would like to mark
5 for identification the update that you
6 requested concerning PHA delinquencies,
7 and we'll mark it as PWD-29.

8 MR. DELANEY: I'm sorry; what is the
9 document you are marking?

10 MR. DASENT: It is the update
11 requested by the Hearing Officer
12 concerning the Philadelphia Housing
13 Authority delinquencies.

14 THE HEARING OFFICER: Could you
15 state on the record what it reveals?

16 MR. CLARE: I can do that, if I may,
17 Your Honor.

18 THE HEARING OFFICER: Please.

19 MR. CLARE: We testified yesterday
20 that PHA's delinquency was some
21 \$2.8 million. I was in error on that.
22 In fact, it's \$1,193,421 as of when the
23 Controller did his study, which was
24 November-ish or something, I think, Phil?

25 MR. BERTOCCI: I think so, but I'm

1 TECHNICAL HEARINGS - VOLUME II

2 not sure on the date.

3 MR. CLARE: The majority of that
4 delinquency centers around five
5 delinquent accounts, the largest of
6 which, \$1,108,608, which is the
7 overwhelming majority of that
8 delinquency, relates to a dispute that
9 PHA and the Water Department have related
10 to the Abbotsford housing project.

11 THE HEARING OFFICER: That's where
12 the contractor was spraying the site?

13 MR. CLARE: Correct. And what
14 happened, that was part of a master
15 meter, so everything that was used at
16 that site ran through the meter and PHA
17 never discontinued that meter permit, so
18 it's all on the clock, if you will. So
19 that certainly is one very, very large
20 area of dispute.

21 The only other account that's of any
22 consequence that's over 90 days in length
23 is 46th Street, and I'm not familiar with
24 the circumstances of that dispute, but it
25 is some \$10,000 and change.

1 TECHNICAL HEARINGS - VOLUME II

2 THE HEARING OFFICER: With the
3 dispute involving the Abbotsford
4 property that you mentioned, what's the
5 status of that? Where is it
6 process-wise?

7 MR. CLARE: Well, we met with their
8 attorney and our engineering staff and
9 basically we told them it went through
10 the meter and it's our position if it
11 goes through the meter, you pay for it.
12 They disputed that fact, and that's
13 pretty much where it's been for at least
14 six months that I recall.

15 MR. HINERMAN: And also Mr. Dorn's
16 statement addresses the fact that there
17 was a dispute at Abbotsford, but he is
18 much more optimistic that it's not yet
19 resolved and it's still being discussed.

20 THE HEARING OFFICER: He is?

21 MR. HINERMAN: He is optimistic that
22 it is not yet resolved and that it is
23 still being discussed. I am not working
24 on that nor is anyone in my firm, so I
25 really don't know the facts about that.

1 TECHNICAL HEARINGS - VOLUME II

2 It is an honest dispute that the Housing
3 Authority has informed me that they
4 believe it has not yet been resolved and
5 they are willing to work with the Water
6 Department to get it resolved.

7 MR. CLARE: Your Honor, also, the
8 other question that came up with respect
9 to testimony on PHA is whether they were,
10 in fact, one of our large customers. I
11 went back through our top-ten customer
12 lists for the last five years and, in
13 fact, they are the second largest
14 customer, in excess of \$10 million in
15 billings. So I do have the last five
16 years' worth of our top-ten lists.

17 THE HEARING OFFICER: Okay. Let's
18 mark both of those documents. Thank you.

19 MR. DASENT: With Your Honor's
20 permission, we would like to mark as PWD
21 Exhibit 29 the PHA update concerning
22 their current delinquency as we've
23 corrected it on the record and as PWD
24 Exhibit 30 the top-ten retail customers
25 going back the last five years.

1 TECHNICAL HEARINGS - VOLUME II

2 Thank you very much, sir.

3 - - -

4 (Whereupon the documents were
5 marked, for identification purposes, as
6 PWD Exhibits 29 and 30.)

7 - - -

8 THE HEARING OFFICER: I guess we're
9 back to Mr. Delaney.

10 MR. DELANEY: Yes, Your Honor.

11 THE HEARING OFFICER: You may
12 proceed.

13 - - -

14 ...J. ROWE MCKINLEY, re-called...

15 - - -

16 BY MR. DELANEY:

17 Q. Mr. McKinley, I have just a few more
18 questions for you. Can you turn to Table 23
19 in your exhibits?

20 A. (Witness complies.)

21 Q. I have some questions to make sure I
22 understand what the table indicates. Let me
23 talk about the entries on it and you can
24 confirm my understanding correctly.

25 Column (1) lists the "Revenue Under

1 TECHNICAL HEARINGS - VOLUME II
2 Existing Rates." Now, am I correct that the
3 revenue listed for each customer was
4 calculated using the same collection factor of
5 97%?

6 A. Each class of customer would be
7 reflective of the current year collection
8 factor of 85.5, the second prior year of 9%,
9 and the third prior year of 2.5%. It's a
10 cumulative 97% factor.

11 Q. And I think it's actually footnoted
12 in your workpaper that supports this, that
13 indication.

14 A. Yes.

15 Q. Now, I understand that Column (2) is
16 the "Allocated Cost of Service" that your
17 study has identified for each customer class;
18 is that correct?

19 A. Yes.

20 Q. And Column (3) is the "Adjusted Cost
21 of Service" for each class, which adds the
22 discounts for the members of the class to the
23 cost of service to make an adjusted cost of
24 service which includes the discounts?

25 A. Yes. Effectively it recognizes the

1 TECHNICAL HEARINGS - VOLUME II
2 charitable discounts, the Housing Authority
3 discounts, that they don't pay the full cost
4 of service, and redistributes that credit back
5 against all customers, yes.

6 Q. Thank you for that correction.

7 Would I be correct that Column (4)
8 shows the percentage amount of increased rates
9 that must be added to the revenue under
10 existing rates to recover the adjusted cost of
11 service?

12 A. Yes. Column (4) is the relationship
13 of the revenue under existing rates versus the
14 adjusted cost of service. It's the revenue
15 increase required, yes.

16 Q. And would I be correct, you
17 calculated those percentages by subtracting
18 Column (1) from Column (3) and dividing the
19 difference by Column (1)? Is that how that
20 was calculated?

21 A. Yes.

22 Q. Now, would I be correct that the use
23 of a different collection factor for a
24 particular customer class listed on the left
25 side would change the figure in Column (4),

1 TECHNICAL HEARINGS - VOLUME II

2 the amount of revenue required to meet the
3 adjusted cost of service that's identified in
4 Column (3)?

5 A. If there were a different collection
6 factor by class that could be identified, it
7 would change the relationship of Column (1) to
8 Column (4) because the revenue under existing
9 rates would change if you had different
10 collection factors by class.

11 Q. Thank you.

12 I think specifically if the revenue
13 collected under the existing rates was higher,
14 then the percentage increase in Column (4)
15 would be lower; and, conversely, if the
16 revenue collected under existing rates was
17 lower, then the percentage increase in Column
18 (4) would be higher. Did I capture that
19 correctly?

20 A. All things being equal, the units of
21 service, the volume, the number of customers,
22 all that, all that being equal, yes, if you
23 could identify different collection factors by
24 class, if you had a higher collection factor,
25 Column (1) would be a higher number and the

1 TECHNICAL HEARINGS - VOLUME II

2 increase would be a lower number, and vice
3 versa.

4 Q. Thank you.

5 I have some questions about how you
6 used the results of this table to actually
7 develop rates that were billed to customer
8 classes, and my understanding is that you did
9 that calculation in your workpaper Lag Rate 6?

10 A. In the lag rate calculations, yes.

11 Q. Yes. Now, do you have a copy of
12 that available to you?

13 MR. CLARE: I will get it.

14 MR. MCKINLEY: Go ahead.

15 BY MR. DELANEY:

16 Q. Okay. I understand that you used
17 the results demonstrated in Table 23 to
18 develop the proposed billing for customer
19 classes under the proposed rates using the Lag
20 Rate 6 worksheet, and I'm wondering if you can
21 just give us a brief explanation of how you
22 did that.

23 A. Just a minute.

24 Mr. Delaney --

25 Q. Maybe I can speed this up a little

1 TECHNICAL HEARINGS - VOLUME II

2 bit here.

3 A. -- I would like to reference you to
4 another reference in the calculations is
5 really how we developed the unit cost by
6 block.

7 Q. Well, let me ask my question. You
8 can certainly explain.

9 A. Okay.

10 Q. Maybe I'll offer a simplifying
11 suggestion.

12 A. Okay.

13 Q. Now, would I be correct that on the
14 very bottom of Lag Rate 6 you have a listing
15 for residential, commercial, and industrial
16 and I think the second column for residential
17 has the \$86,508,558 figure. Do you see that?

18 A. Repeat your question. I see what
19 you're looking at.

20 Q. That's the number I'm looking at,
21 and I'm looking at the heading at the very top
22 of the document, which says "Projected Billing
23 Under Proposed Rates." And this \$86 million
24 figure at the bottom next to "Residential," is
25 that what you project billing to the

1 TECHNICAL HEARINGS - VOLUME II

2 residential customers under the rates?

3 A. That comes from Rates 4, the
4 calculation page Rates 4, yes.

5 Q. Okay.

6 A. That's under the proposed rates
7 before the lag factor adjustment.

8 Q. That's with the lag factor then?

9 A. Before the lag factor.

10 Q. Before.

11 I'll tell you the question I have,
12 Mr. McKinley, is the second row on Lag Rate 6,
13 2009, in the center of the row, for municipal
14 service, on the last line it says "Total
15 Billings." Are you following me? It's
16 \$8,422,000. Do you see that number?

17 A. Yes.

18 Q. Now, returning to your Table 23, I'm
19 looking at what I understand to be the
20 "Adjusted Cost of Service" for the "Municipal
21 Service" and it appears to be \$9,536,000, and
22 if I correctly understand this Lag Rate 6
23 exhibit, you're actually billing them \$1.1
24 million less.

25 A. There is a difference of \$1.3

1 TECHNICAL HEARINGS - VOLUME II
2 million. That could be attributable to the
3 aviation fund and other sources from municipal
4 revenue other than the municipal accounts
5 reflected in Lag Rate 6, such as the aviation
6 fund.

7 Q. Okay.

8 A. Another source of revenue.

9 Q. Well, how much are you actually
10 billing them then? I mean, what is your
11 actual bill to the municipal service?

12 I mean, I guess the concern I have
13 is you have calculated a much higher adjusted
14 cost of service to the group.

15 A. But, again, these are billings
16 before the lag factor adjustment.

17 Q. Okay.

18 A. So this does not reflect billings at
19 the proposed rates. This is the billings at
20 rates prior to the lag factor adjustment,
21 which is about a 4 or 5 percent adjustment.

22 Q. Which way, though, is the
23 adjustment?

24 A. That would make the billings
25 actually higher than what are shown in Lag

1 TECHNICAL HEARINGS - VOLUME II

2 Rate 6.

3 Q. But you have the opposite effect
4 here because your billings are actually \$1.3
5 million less.

6 A. But I'm saying that these are
7 billings prior to reflecting the lag factor
8 adjustment to the rates themselves. The lag
9 factor adjustment moves the rates higher.
10 These are billings prior to the lag factor
11 adjustment.

12 Q. Okay. But I guess what's confusing
13 me is that your worksheet actually is proposed
14 billing is what I understand that to mean. I
15 guess the issue I'm asking about is why is
16 there this \$1.3 million difference when you
17 did the adjusted cost of service and you
18 calculated the proposed billing and there
19 still seems to be a big delta between them.

20 A. I think the difference is the fact
21 that these are billings under the rates prior
22 to the lag factor adjustment. Subject to
23 check, I think that's the difference.

24 Q. Okay. But, now, you put the lag
25 factor effect as a couple of percent, though;

1 TECHNICAL HEARINGS - VOLUME II

2 right?

3 A. 4%.

4 Q. 4%. But even if you increase the
5 identified proposed billing of \$8.4 million by
6 4%, you would still have a pretty big distance
7 to go to fill in the entire difference between
8 the adjusted cost of service and the proposed
9 billing for that group of customers as I see
10 it.

11 A. The math seems right. I'd have to
12 have time to go back and check the difference,
13 the reason for the difference.

14 Q. Okay. Would you have an opportunity
15 to do that and tell us what the change might
16 be? You don't have to do it now, but I mean
17 before the record closes.

18 A. We will do that.

19 Q. All right. Great. Thank you.

20 MR. BERTOCCI: Is that going to be a
21 transcript request?

22 MR. DELANEY: Yes, I can make that a
23 transcript request.

24 BY MR. DELANEY:

25 Q. Mr. Kalbarczyk tells me the same

1 TECHNICAL HEARINGS - VOLUME II
2 issue may exist with respect to the Housing
3 Authority calculation here, so could you check
4 that out for us also? Again, it would be the
5 numbers indicated on Table 23 and the proposed
6 billing calculated. That, I'm told, would be
7 about a half million dollar difference in the
8 adjusted cost of service and the proposed
9 billing.

10 All right. Thank you. I have a few
11 more questions.

12 I would like to ask you about the
13 increases in the water commodity rates for the
14 test period. I believe I gave you an
15 Interrogatory response where you were asked
16 about that and I have some questions on how
17 you developed the proposed increases in the
18 water commodity rates for the study period.

19 A. Okay.

20 Q. If you have the Interrogatory I
21 previously gave you, which was Public Advocate
22 Interrogatory PA-JM-3, I think that that
23 Interrogatory asked you to explain how the
24 water commodity rates for 2009 were
25 determined.

1 TECHNICAL HEARINGS - VOLUME II

2 And you state in the response, as I
3 understand it, that for fiscal year 2009 you
4 took the existing 2008 water commodity rate
5 and multiplied that by the overall proposed
6 9.6% revenue increase proposed for 2009.

7 Now, I can just read this to you.
8 You don't have to seek it out. Exhibit 2 to
9 Mr. Kalbarczyk's testimony -- I will just read
10 it to you -- actually calculates the increase
11 in the block rates, and the increases for 2009
12 that he has calculated on a percentage basis
13 for the second, third, and fourth blocks are
14 actually much higher than the 9.6% that's
15 cited in the Interrogatory Answer.

16 My understanding from
17 Mr. Kalbarczyk's calculation is for 2009 the
18 second block increases by 15.6%, the third
19 block by 19.6%, and the fourth block by I
20 think it's 21.48%.

21 I'm just wondering, they seem much
22 higher than the 9.6% that you identify in the
23 Interrogatory response. Maybe you could
24 explain why.

25 A. There's a couple things going on.

1 TECHNICAL HEARINGS - VOLUME II
2 Number one is the 9.6% is a revenue increase
3 and when we have the legally enacted basis, we
4 have to have collections, receipts, and so
5 basically part of the reason why the numbers
6 are all higher than 9.6% is because we only
7 collect approximately 85.5% of our billings
8 during the test year '09 so we have to have an
9 increase in the rate structure higher than the
10 revenue increase so that we actually collect
11 the revenue receipt.

12 So part of the adjustment between
13 9.6% and the increases in the block rates is
14 the lag factor adjustment, the receipts
15 adjustment.

16 The other reason why there's a
17 differential in the block rates between the
18 first, second, third, and fourth in terms of
19 the percentage increase, that has to do with
20 something we talked about this morning a
21 little bit and we talked about the system
22 coincidental demand factors, peak day, peak
23 hour.

24 Q. Yes.

25 A. And what we looked at was for the

1 TECHNICAL HEARINGS - VOLUME II
2 past five years, we looked at the system's
3 demands, the actual output of the treatment
4 plants, and the maximum peak demand in the
5 last five years was 1.33:1, the average max
6 day to average day ratio.

7 Q. Now you're talking about total
8 system demand?

9 A. I'm talking about the total system.
10 And how we use that in our cost allocation is
11 we say how is the water treatment plant
12 designed, for example. It's designed to meet
13 a maximum day demand, the system maximum day
14 demand.

15 But we break that into two pieces in
16 our cost allocation process. We use one of
17 the AWBA-sponsored methodologies, the
18 base-extra capacity method. So we take that
19 demand, the 1.33, and we assign part of it to
20 base costs, which is annual average costs, the
21 costs related to serving customers on an
22 average annual basis without any peaks. The
23 extra capacity piece, the .33 out of the 1.33,
24 is for the max day demand in excess of the
25 average day.

1 TECHNICAL HEARINGS - VOLUME II

2 What that means in terms of numbers
3 is we allocate 75% of our cost of the water
4 treatment plant, operating and capital cost,
5 75% gets allocated to base cost or annual
6 average usage; 25% gets allocated to extra
7 capacity cost, the peaking cost.

8 In our prior rate study in 2001, the
9 prior years for the Water Department there was
10 much higher peak demands placed on the system.
11 The 75%/25% relationship that we see now, that
12 we used now for our cost allocations, in the
13 prior study was 70% to the base cost and 30%
14 to the peaking cost because there were much
15 higher peaks on the system back in the past
16 five years prior to 2001.

17 All that means in terms of layman's
18 language is we've shifted cost, cost
19 responsibility, from peak cost, max day cost,
20 over to the base cost component. And the base
21 cost is reflected in all of the four rate
22 blocks. Nobody should pay less than the base
23 cost. That's what it costs to provide service
24 to customers under a perfect load factor
25 condition.

1 TECHNICAL HEARINGS - VOLUME II

2 So what we've done is shifted costs
3 from peaking costs to annual average costs,
4 and so that means all the rate steps have to
5 go up higher. The base cost is now more
6 costly than the peaking cost.

7 The difference in the rate steps are
8 related to peaking, residential versus
9 commercial versus industrial. We talked about
10 that a little bit this morning, the peak
11 demand costs.

12 So what we've done is we've
13 compressed/levelized the rates, made less of
14 an increase between the rate blocks, because
15 more of our system cost is allocable to the
16 base cost component.

17 So what we did in 2009 is reflected
18 that shift in cost. That's why the larger
19 rate blocks, the higher-use rate blocks, went
20 up by a larger percentage, because more cost
21 is now base cost or annual average use-based;
22 less cost is allocable to the peaking cost.
23 That's really the rationale why the rate steps
24 went up higher for the larger rate classes.

25 Q. In looking at the Interrogatory

1 TECHNICAL HEARINGS - VOLUME II
2 response, let me ask you about some of the
3 other factors that you've identified.

4 In the middle of the answer, the
5 second paragraph: "...we adjust the block
6 rates by varying factors to provide a
7 reasonably equitable cost recovery
8 distribution." What are you actually
9 referring to there?

10 A. That's what we started with. We
11 started with the 9.6% across-the-board revenue
12 increase. We applied those rates that
13 reflected the 9.6% increase to all of the rate
14 steps and compared the resulting billings that
15 we got under that methodology versus our
16 allocated cost of service.

17 And because we had shifted cost away
18 from the peaking cost to the annual average
19 usage, the billings under an across-the-board
20 increase understated the cost recovery for
21 commercial-industrial customers, the
22 higher-use rate blocks, because we had shifted
23 costs away from peaking cost to annual usage.

24 So what we had to do was we had to
25 increase the rates to the second, third, and

1 TECHNICAL HEARINGS - VOLUME II
2 fourth blocks by a greater percentage in order
3 to get better cost recovery. So that's what
4 we're talking about in that sentence that you
5 just referred to there.

6 So instead of a 9.6%
7 across-the-board increase, prior to the lag
8 factor we had a higher increase in the second,
9 third, and fourth rate blocks to get better
10 cost recovery from the billings.

11 Q. Okay. Thank you for that answer.

12 I just have one or two questions on
13 your sewer cost of service study. Can I
14 direct you to Table 30 in your exhibits?

15 A. (Witness complies.)

16 Q. Now, as I understand it, this is
17 Table 30, "Units of Wastewater Service Test
18 Year 2009," and would I be correct that the
19 table summarizes the 2009 units of wastewater
20 service for the retail and contract customers?

21 A. Yes. This is the units of service
22 for overall retail and overall wholesale
23 customer usage separated into our different
24 cost functions.

25 Q. All right.

1 TECHNICAL HEARINGS - VOLUME II

2 A. Volume-related, street-related
3 costs.

4 Q. And the responsibility for the
5 retail customers for sanitary wastewater
6 capacity flow rates in the collection system
7 is shown in Column (2), as I understand it.

8 A. That's the estimated, yes, estimated
9 flows between infiltration and sanitary flows
10 for both the collection system and for the
11 pumping and treatment-related costs.

12 Q. And Column (3) shows the peak
13 sanitary flow exclusive of the I&I flow from
14 retail customers to the treatment plants, as I
15 understand it, and we are talking about Column
16 (3).

17 A. On Line 8.

18 Q. Okay.

19 A. Infiltration is shown on Line 9.

20 Q. Now, looking at Line 1, as I
21 understand the table, the capacity
22 requirements in Column (2) and Column (3) are
23 assigned in Line 1 to the general service
24 retail class, which excludes senior citizens;
25 right?

1 TECHNICAL HEARINGS - VOLUME II

2 A. That's correct.

3 Q. And the general service class
4 consists of the residential, commercial,
5 industrial, charitable institutions, schools,
6 and the Philadelphia Housing Authority?

7 A. No. It only includes residential,
8 commercial, industrial classes and some other
9 miscellaneous. Charities and schools and the
10 Housing Authority are shown on separate line
11 items.

12 Q. The correction is the schools and
13 the Housing Authority are in a different
14 group?

15 A. Schools are under the "Charities"
16 cost line item.

17 Q. I see.

18 A. Line 6.

19 Q. Okay. Now, would I be correct that
20 assigning the capacity requirements to the
21 general service customers as you have defined
22 them as a group does not take into account the
23 peaking requirements of the individual
24 customer groups such as the commercial and
25 industrial customers?

1 TECHNICAL HEARINGS - VOLUME II

2 A. In ratemaking for wastewater
3 utilities the industry standard basically is
4 to not recognize peaking factors by customer
5 class for sanitary sewage contribution. The
6 real reason for that is while we have peaking
7 factors that we've talked at in some detail
8 this morning, what creates those peaking
9 factors on the water system is generally
10 discretionary-type water usage, like lawn
11 irrigation, car washing. That's not the only
12 reason, but that's the largest differentiator
13 on the water system.

14 Then when you look at sanitary
15 sewage inflow, it's that discretionary usage
16 that creates the different demands on the
17 water side basically that is not returned to
18 the sewer because it goes out onto the yard.
19 It's not a sewage flow contribution.

20 So basically there's very little, if
21 any, relative data in the industry that shows
22 peaking differentials by class, residential,
23 commercial, industrial, in terms of sanitary
24 sewage inflow into the system.

25 Certainly there are peaking factors

1 TECHNICAL HEARINGS - VOLUME II
2 with infiltration/inflow, extraneous water and
3 flow that gets into the system. When it
4 rains, it pours, so to speak. That's when the
5 water from I&I gets into the system.

6 But really there's no recognition
7 typically in the industry relative to sanitary
8 sewage flows by class in terms of peaking
9 requirements, and that's recognized in the
10 Manual M27 sponsored by the Water Environment
11 Federation.

12 Q. Now, the last time I think you
13 discussed this on the record, you cited a
14 manual that you are an editor of, which is the
15 "Water Environment Federation Financing and
16 Charges for Wastewater Systems," and I think
17 the page that you cited in your prior
18 testimony was Page 130.

19 I have that in front of me and my
20 understanding of the initial paragraph on that
21 page is that it does recognize that
22 "Residential loads may...peak in the winter,
23 in some parts of the country, when faucets are
24 turned on to keep pipes from freezing.
25 Customer classes may deliver peak wastewater

1 TECHNICAL HEARINGS - VOLUME II
2 volumes to the system at different times.
3 Wastewater volume from residential customers,
4 for example, is typically at its peak on
5 weekday mornings, as residents prepare for the
6 workday."

7 It says here: "The timing and
8 frequency of such events vary by industry.
9 Commercial use tends to peak seasonally or as
10 a result of a major influx of convention
11 visitors to the community." That's an
12 example. "Individual class wastewater peaking
13 estimates may be based on estimates of
14 noncoincidental class maximum day water
15 demands (excluding allowances for irrigation
16 and other non-sewered usage)."

17 Now, this is one of the manuals, I
18 think, that you cited in your prior testimony.

19 A. It is.

20 Q. Now, would you agree with me that
21 the AWWA rates manual and this manual are
22 really provided for general guidance and you
23 have to apply your own judgment at least in
24 some circumstances as to how you apply this
25 study and perform the study?

1 TECHNICAL HEARINGS - VOLUME II

2 A. Yes. I have been involved in
3 writing and editing both of these manuals
4 along with other folks, utility people and
5 consultants in the industry across the
6 country, and, yes, they are not prescriptive.
7 They're guidance manuals.

8 But with regard to the subject that
9 we're talking about in terms of sanitary flows
10 and whether there should be peaking factors by
11 class, I think you'll see in this new manual
12 that's about two, three years old that you
13 have in your hand there, the WEF Manual M27,
14 basically the use of peaking factors in
15 sanitary flows is not recognized in the
16 manual, it's not shown in the examples.
17 Basically there's not a lot of relevant data
18 on that point.

19 Yes, you can recognize that, yeah,
20 on Monday morning residents take showers. But
21 also stores open up their doors at 9 o'clock.
22 There's a lot of peaking that can go on. But
23 the ability to measure that kind of flow, the
24 ability to measure sewage flows by individual
25 residential and commercial customers,

1 TECHNICAL HEARINGS - VOLUME II
2 basically doesn't exist in the industry. It's
3 very, very difficult. It's very seldom used
4 in large industrial-type customers, sewage
5 flow monitoring.

6 Q. Well, returning to the manual here,
7 though, it says here: "Individual class
8 wastewater peaking estimates may be based on
9 estimates of noncoincidental class maximum day
10 water demands." So it can be based on water
11 demands.

12 I am looking at the last sentence of
13 this paragraph on 130 and it does say that
14 there is a lack of data which tends to limit
15 the practice of developing the factors. But I
16 don't see anything that actually prohibits
17 their use.

18 A. Well, again, people that write these
19 manuals come from across the country. They're
20 both utility folks, they're consultants.
21 Basically just the lack of the data that
22 exists in the industry makes the use of
23 peaking factors for sanitary sewage flow
24 basically a nonentity. Very, very few folks
25 have that information and very few rates that

1 TECHNICAL HEARINGS - VOLUME II

2 I've ever seen reflect declining block rates
3 on the wastewater as they do on the water
4 side.

5 Q. And this manual here suggests that
6 you could use the water data to develop those
7 factors; right?

8 A. It says that's something you might
9 look at, but then it talks about omitting the
10 discretionary uses, such as lawn irrigation,
11 which I contend is basically the same thing,
12 the very thing, that creates the different
13 peak demands on the water system. Those kinds
14 of demands don't find their way into the sewer
15 system so they're noneligible for sanitary
16 flow contribution.

17 Q. I know I have the book in front of
18 me and I'm reading it to you, but they defined
19 in the excerpt I read onto the record two or
20 three other types of wastewater peaks by
21 residential with the regular usage per day,
22 industrials with cycles of production,
23 commercial customers who are convention
24 centers having conventions.

25 So this manual, which you said is to

1 TECHNICAL HEARINGS - VOLUME II
2 be applied with the judgment of the person
3 using it, reflects in my view the fact that
4 there are wastewater peak demands, that there
5 is a proxy for doing it through the water
6 demand factors, and also that it can be done
7 but it's not prohibited or proscribed by
8 anything in this book. Would you agree with
9 that?

10 A. I would generally agree with that,
11 but I would also point out that the examples
12 in the manual do not reflect any peaking
13 elements; and I would further reflect that the
14 manual that was published maybe 20 years prior
15 to that did have an example in there that
16 showed peaking factors and it was agreed by
17 all of the folks that wrote this manual,
18 experts from across the country, that that had
19 not enough relevance to show an example that
20 reflected that.

21 Q. And you are talking about
22 conversations you had when you wrote the book
23 or edited it or what?

24 THE HEARING OFFICER: Was that a
25 question, sir?

1 TECHNICAL HEARINGS - VOLUME II

2 MR. DELANEY: I will withdraw the
3 question.

4 BY MR. DELANEY:

5 Q. I just have one or two more
6 questions on this.

7 I am looking at the summary of the
8 chapter here at the end and the first sentence
9 of it is -- and, again, this is the manual
10 that we're discussing -- "An equitable
11 allocation of revenue requirements to
12 wastewater system users begins with an
13 analysis of customer service demands," and
14 that's really what we're talking about here;
15 right?

16 A. And what we have on customer service
17 demands is annual water use data and the peak
18 flow from the water side is for lawn
19 irrigation and those types of things that
20 don't find their way back into the sewer
21 system. So we don't recognize those
22 discretionary uses when we're talking on the
23 wastewater side because they don't get into
24 the sanitary sewer system.

25 Q. But what about the kinds of demands

1 TECHNICAL HEARINGS - VOLUME II

2 that are identified in the manual here --

3 A. We're talking about flows --

4 Q. -- that are not like washing your
5 car or watering your lawn but are actually
6 customer activity-driven peak demands?

7 A. But there is no measure in the sewer
8 system to record what those demands might be.
9 The only measurement in a sewer system we have
10 is what ends up at the wastewater plant.

11 Q. But when someone takes a shower,
12 when an industrial customer has a process,
13 when a convention center has a convention with
14 people using its sanitary facilities, doesn't
15 that all flow into the system?

16 Would you agree with that?

17 A. (No response.)

18 Q. Maybe. Okay.

19 MR. DELANEY: That's all the
20 questions I have. Thank you,
21 Mr. McKinley. I'm done.

22 MR. DASENT: Nothing further.

23 THE HEARING OFFICER: I have a few
24 other questions of the witness, but they
25 relate to actually revenue issues; not

1 TECHNICAL HEARINGS - VOLUME II
2 design issues. We will take a break now
3 and we will deal with them when we come
4 back.

5 - - -
6 (Whereupon there was a recess in the
7 hearing.)

8 - - -
9 THE HEARING OFFICER: All right.
10 The hearing stands reconvened.

11 I have just a couple other
12 questions.

13 In connection with the experience
14 that you have with other municipal
15 utilities, do you have a handle or idea
16 as to what the average percent of revenue
17 uncollected is?

18 MR. MCKINLEY: Obviously that varies
19 across the board, but I would say 99% as
20 a reasonable average across the board.

21 MR. CLARE: Am I allowed to speak?

22 We had to do or we were looking at
23 doing a disclosure for Council on the
24 percentage of uncollectible bills and the
25 results of the data we had were that

1 TECHNICAL HEARINGS - VOLUME II

2 97.6% of all of our revenues were
3 collected eventually.

4 THE HEARING OFFICER: I understand
5 that and I think that's what we have on
6 the record. My question was with regard
7 to what is the experience of other
8 utilities.

9 MR. CLARE: Oh, other utilities; I'm
10 sorry.

11 THE HEARING OFFICER: And that was
12 my question.

13 You understood that to be the case?

14 MR. MCKINLEY: Yes, I did.

15 THE HEARING OFFICER: Right.

16 MR. MCKINLEY: And I think that's a
17 guess on my part, but I would say 99% is
18 a good number.

19 THE HEARING OFFICER: So the
20 Philadelphia Water Department comes in
21 below what the experience is?

22 MR. MCKINLEY: Slightly; yes.

23 MR. CLARE: I know we're well above
24 the Gas Works.

25 THE HEARING OFFICER: Joe, just hold

1 TECHNICAL HEARINGS - VOLUME II

2 on, Joe.

3 Slightly, but 1.5 percentage points
4 would amount to how much in revenue?

5 MR. MCKINLEY: 1.5%?

6 THE HEARING OFFICER: Yes. 99%
7 versus 97.5% would be 1.5%.

8 MR. MCKINLEY: Approximately
9 \$6 million or some number like that,
10 approximately \$6 million per year.

11 THE HEARING OFFICER: How much is
12 our revenues?

13 MR. MCKINLEY: 400 million.

14 THE HEARING OFFICER: No. Our
15 revenues are closer to 500 million,
16 aren't they?

17 MR. MCKINLEY: Well, given
18 500 million, that would be 7 --

19 THE HEARING OFFICER: 7.5 million.

20 MR. MCKINLEY: 7.5 million.

21 THE HEARING OFFICER: You wrote a
22 letter dated March 2, 2007, to
23 Mr. Jannetti, the Director of Finance.
24 Do you remember that comprehensive
25 letter?

1 TECHNICAL HEARINGS - VOLUME II

2 MR. MCKINLEY: In conjunction with
3 the bond issue?

4 THE HEARING OFFICER: Right.

5 MR. MCKINLEY: I don't remember the
6 specifics of it.

7 THE HEARING OFFICER: It's part of
8 the overall bond issue. I will give you
9 the letter so you have it in front of
10 you. It's a March 2 letter that I have
11 identified and it's part of the bond
12 issue. Is that familiar to you?

13 MR. MCKINLEY: Yes, sir.

14 THE HEARING OFFICER: Are you the
15 author of that letter?

16 MR. MCKINLEY: I believe so, yes.

17 THE HEARING OFFICER: And the
18 projections that are in that letter, did
19 you make those projections?

20 MR. MCKINLEY: They were made under
21 my direction, yes.

22 THE HEARING OFFICER: And those are
23 projections similar to what you made in
24 connection with Table 11 in this case?

25 MR. MCKINLEY: The format is

1 TECHNICAL HEARINGS - VOLUME II

2 similar; yes, yes.

3 THE HEARING OFFICER: And you knew
4 that the rating agencies were going to
5 rely upon those projections as testified
6 to by the witness this morning?

7 MR. McKINLEY: That was the purpose
8 of this document; yes.

9 THE HEARING OFFICER: Is that right?

10 MR. McKINLEY: Yes.

11 THE HEARING OFFICER: Could you tell
12 us what you projected in those
13 projections in March of 2007, the ones
14 that you knew the bond agencies were
15 going to be relying upon, what you
16 projected with regard to the balance at
17 the end of the year in the rate
18 stabilization fund from fiscal 2008 to
19 2012?

20 MR. McKINLEY: In this letter the
21 projected balances --

22 THE HEARING OFFICER: This is a
23 letter that was part of the bond issue --

24 MR. McKINLEY: Yes.

25 THE HEARING OFFICER: -- that you

1 TECHNICAL HEARINGS - VOLUME II
2 expected the rating agencies and the bond
3 issuers to rely upon; is that correct?

4 MR. MCKINLEY: I don't recall
5 specifically if this was a part of the
6 bond issue or what the purpose of this
7 document was. But it would have been --

8 THE HEARING OFFICER: Well, take it
9 subject to check, that it's specifically
10 referred to in the bond issue as Exhibit
11 2 in the document.

12 MR. MCKINLEY: Okay. And your
13 question is?

14 THE HEARING OFFICER: With regard to
15 that what were the rate stabilization
16 balances at the end of fiscal year 2008
17 to 2012?

18 MR. MCKINLEY: For 2008 the
19 projected balance was 38 million. For
20 2009 it was --

21 THE HEARING OFFICER: And that's
22 about 7 million less than the 45 which is
23 projected in this case?

24 MR. MCKINLEY: It is.

25 THE HEARING OFFICER: Okay.

1 TECHNICAL HEARINGS - VOLUME II

2 MR. MCKINLEY: -- 21 million.

3 THE HEARING OFFICER: And that's
4 about 24 million less than the amount you
5 projected in this case?

6 MR. MCKINLEY: It's 24 million less
7 than 45 million, yes.

8 THE HEARING OFFICER: Okay. The
9 next one?

10 MR. MCKINLEY: 2010 is 8 million.
11 2011 --

12 THE HEARING OFFICER: Wait. That's
13 about 37 million less than you projected
14 in this case?

15 MR. MCKINLEY: It's 37 million less
16 than 45 million, yes.

17 THE HEARING OFFICER: Okay.

18 MR. MCKINLEY: 2011 is 11.8 million.

19 THE HEARING OFFICER: So that would
20 be about 33 million less?

21 MR. MCKINLEY: It's 33 million less.

22 THE HEARING OFFICER: And 2012?

23 MR. MCKINLEY: 19.7 million.

24 THE HEARING OFFICER: And that would
25 be about 25 million less?

1 TECHNICAL HEARINGS - VOLUME II

2 MR. MCKINLEY: About 25 million less
3 than 45.

4 THE HEARING OFFICER: Did any of the
5 rating agencies discuss with you that
6 they were concerned about those balances
7 in the rate stabilization fund as
8 predicted in this report?

9 MR. MCKINLEY: I didn't discuss it
10 with the rating agencies. But for
11 purposes of our current filing based on
12 what the rating agencies --

13 THE HEARING OFFICER: No, no.
14 Excuse me. I'm asking about this letter
15 at this point in time.

16 MR. MCKINLEY: I did not talk with
17 the rating agencies, sir.

18 THE HEARING OFFICER: Did the
19 gentleman that testified here this
20 morning discuss with you any concerns
21 that he had about these projections?

22 MR. MCKINLEY: We didn't discuss it
23 in those terms, no.

24 THE HEARING OFFICER: I'm sorry; I
25 cut you off. Did you want to say

1 TECHNICAL HEARINGS - VOLUME II

2 something else?

3 MR. MCKINLEY: I was just saying
4 that the rating agencies with the
5 reports, the most recent report and other
6 reports that they make, have shown an
7 encouragement for the Water Department to
8 maintain an adequate rate stabilization
9 fund, which the Water Department has
10 done. They have had additional monies
11 over and above what we show here, which
12 has been to the rating agencies'
13 satisfaction that it better enables them
14 to manage to their coverage.

15 THE HEARING OFFICER: So was that
16 the basis upon which your calculations
17 changed so markedly between March of 2007
18 and March of 2008?

19 MR. MCKINLEY: That would be one
20 basis; yes.

21 THE HEARING OFFICER: What were the
22 other bases?

23 MR. MCKINLEY: The fact that the
24 Water Department needs the rate
25 stabilization money/funds to help manage

1 TECHNICAL HEARINGS - VOLUME II
2 to their coverage and provide for stable
3 revenue increases throughout the
4 four-year rate period.

5 THE HEARING OFFICER: If you refer
6 to Page 11 of that letter, where it says
7 "Statements and Conclusions" --

8 MR. MCKINLEY: Yes.

9 THE HEARING OFFICER: -- do you see
10 in the last sentence in that first
11 paragraph it says: "While Black &
12 Veatch..."?

13 MR. MCKINLEY: Yes.

14 THE HEARING OFFICER: Am I
15 pronouncing that correctly?

16 MR. MCKINLEY: Yes.

17 THE HEARING OFFICER: Could you read
18 that sentence into the record?

19 MR. MCKINLEY: "While Black & Veatch
20 believes the assumptions are reasonable
21 and the projection methodology valid,
22 actual results may differ materially from
23 those projected, as influenced by the
24 conditions, events, and circumstances
25 that actually occur."

1 TECHNICAL HEARINGS - VOLUME II

2 THE HEARING OFFICER: Does that
3 statement apply to projections that you
4 have made in this case, sir?

5 MR. MCKINLEY: I think that stands
6 with all projections; yes.

7 THE HEARING OFFICER: And that's the
8 idea of projections?

9 MR. MCKINLEY: The idea of
10 projections is to have financial planning
11 and use that financial planning as a
12 basis for setting rates.

13 THE HEARING OFFICER: Thank you very
14 much.

15 MR. CLARE: Can I add something?

16 THE HEARING OFFICER: Certainly.
17 This is unique that we allow you to add
18 things without questions, but in
19 furtherance of --

20 MR. CLARE: Well, it's unusual that
21 we let you ask questions actually.

22 THE HEARING OFFICER: Unusual that
23 the Hearing Officer is allowed to ask
24 questions? I guess maybe in the history
25 of these proceedings, but in the history

1 TECHNICAL HEARINGS - VOLUME II
2 of this Hearing Officer, he has always
3 been a very proactive individual with
4 regard to that. I'm sorry if that's not
5 what you bargained for when you agreed to
6 my selection.

7 MR. BERTOCCI: No. I believe in the
8 past Hearing Officers have been free to
9 ask questions.

10 THE HEARING OFFICER: I don't care
11 whether they did it or not in the past.
12 I am fulfilling my responsibilities to
13 the Mayor and to the President of City
14 Council and to the Controller, and I am
15 going to fulfill them to the best of my
16 ability in accordance with the fiduciary
17 responsibility that I have and that
18 includes inquiry on the part of the
19 Hearing Officer. I do not consider
20 myself a referee to idly sit by and
21 respond to objections.

22 So with that background in mind,
23 Deputy Commissioner?

24 MR. CLARE: This report was done in
25 conjunction with our 2007 bond series, I

1 TECHNICAL HEARINGS - VOLUME II
2 believe, and it should be read in
3 conjunction with the rating agencies'
4 reports with respect to this report.

5 I should point out that Moody's, in
6 particular, has a very ominous statement
7 which they inserted in their report after
8 they saw this cautioning that they were
9 concerned about the level of rate
10 stabilization and the drawdown of it, and
11 that certainly is a relevant point.

12 THE HEARING OFFICER: That's
13 certainly germane. Is that in --

14 MR. CLARE: The Moody's report is on
15 the record in the Standard
16 Interrogatories.

17 THE HEARING OFFICER: Maybe we can
18 pull out that specific provision for
19 tomorrow --

20 MR. CLARE: Sure.

21 THE HEARING OFFICER: -- so we can
22 have it right in front of us. That would
23 be helpful to me.

24 MR. CLARE: Absolutely. Thanks.
25 Sorry for taking any poetic license.

1 TECHNICAL HEARINGS - VOLUME II

2 THE HEARING OFFICER: My pleasure.

3 We always desire to have as much relevant
4 information on the record as we can.

5 Okay. Are we ready for our next
6 witness?

7 MR. DASENT: We have one transcript
8 response, TR-2.

9 THE HEARING OFFICER: That's
10 excellent.

11 MR. McKINLEY: Do you want me to
12 answer my own question or ask my own
13 question?

14 THE HEARING OFFICER: Just give us a
15 little context so we know where we are.

16 BY MR. DASENT:

17 Q. Could you provide the response for
18 the record to TR-2?

19 A. A question was asked with regard to
20 Table 23 of our testimony specifically with
21 regard to municipal service customers and
22 Philadelphia Housing Authority customers. In
23 Table 23 we show the adjusted cost of service
24 that has been discussed as to what that means.

25 Then there was a question with

1 TECHNICAL HEARINGS - VOLUME II
2 regard to the working papers related to the
3 generation of revenues under proposed rates.
4 The question was asked with regard to
5 municipal service customers with regard to the
6 workpaper Lag Rate 6 that showed for municipal
7 service \$8,422,000 versus a cost of service of
8 \$9.5 million, what the difference was.

9 And I made a misstatement with
10 regard to the \$8,422,000. That does reflect
11 the proposed billings under the proposed
12 rates, the \$8,422,000 in Lag Rate 6, the
13 calculation sheet.

14 The reason for the difference in
15 8,422,000 and 9.5 million cost of service is
16 that given the declining block rate structure
17 that has been proposed, which is the block
18 rate structure that the Water Department has
19 had for water rates, the total cost of service
20 for municipal service is not recovered under
21 the proposed rates because they do not fit the
22 pattern basically that other classes do.

23 Where we recover 100% of
24 residential, commercial, and industrial
25 customers' revenues and cost of service under

1 TECHNICAL HEARINGS - VOLUME II

2 - - -

3 MR. DELANEY: All right. Thank you,
4 Mr. McKinley.

5 THE HEARING OFFICER: The witness
6 may be excused.

7 MR. DASENT: Thank you.

8 - - -

9 (Witness excused.)

10 - - -

11 MR. DASENT: We are ready for
12 Mr. Kalbarczyk, I believe.

13 MR. DELANEY: Your Honor, can I have
14 marked for identification on the record
15 CCC Document No. DMK-1 with Tables DMK-1
16 to DMK-6 with Appendix A. I would like
17 to have it marked as it is currently
18 marked, which is CCC Statement No. DMK-1.

19 THE HEARING OFFICER: So ordered.

20 - - -

21 (Whereupon the document was marked,
22 for identification purposes, as CCC
23 Statement DMK-1.)

24 - - -

25 MR. DELANEY: We had previously

1 TECHNICAL HEARINGS - VOLUME II
2 served this document on all parties and
3 have given a copy to the court reporter.

4 With that I will call as our next
5 witness Dennis M. Kalbarczyk.

6 - - -
7 ...DENNIS M. KALBARCZYK, called...

8 - - -
9 DIRECT EXAMINATION

10 - - -
11 BY MR. DELANEY:

12 Q. Mr. Kalbarczyk, could you state your
13 name and spell your last name for the record?

14 A. Yes. My name is Dennis M.
15 Kalbarczyk, and that is spelled
16 K-A-L-B-A-R-C-Z-Y-K.

17 Q. Mr. Kalbarczyk, by whom are you
18 employed and in what capacity?

19 A. I am the principal in the firm of
20 Utility Rate Resources and I testify in the
21 area of utility rate and economic consulting
22 matters.

23 Q. Do you have before you what has been
24 marked for the record as CCC Statement

25 No. DMK-1?

1 TECHNICAL HEARINGS - VOLUME II

2 A. Yes, I do.

3 Q. Is this the direct testimony that
4 you prepared for this matter?

5 A. Yes, it is.

6 Q. Was this testimony prepared by you
7 or under your supervision?

8 A. Yes, it was.

9 Q. Do you have any changes or
10 modifications that you would like to make to
11 this testimony at this time?

12 A. I have a few minor corrections and
13 changes to make.

14 Q. Do you want to give them to us
15 slowly?

16 A. Yes, I will.

17 The first change is on Page 2 of my
18 testimony, Line 14. At the very end of that
19 sentence where it says "July 22, 2001," it
20 should be "2005."

21 Continuing on the same page at Line
22 19, the reference to "September 19" should be
23 stricken and inserted "November 1."

24 On Line 20, strike the last three
25 words "on October 30, 2008" and just enter the

1 TECHNICAL HEARINGS - VOLUME II

2 word "later."

3 THE HEARING OFFICER: I guess we
4 should strike "on" as well.

5 MR. KALBARCZYK: That's correct.

6 Moving to Page 3, Line 3, the
7 question, I would like to strike the
8 words "entered in late September" and
9 insert "effective on November 1," comma.

10 On Line 5, strike the words near the
11 middle of the sentence "near the end of
12 September" and insert "on November 1,"
13 comma.

14 On Line 7, strike the word "nine"
15 and enter "eight." The percentage "75"
16 should be stricken and "66%" should be
17 entered.

18 Moving to Page 16, on Page 16, Line
19 20, strike the words "late September" and
20 insert "on November 1," comma.

21 On Page 20, Line 9, at the end of
22 that sentence which says "determine," the
23 word should be changed to "determining."

24 And the last change is on Page 26,
25 Line 8. Near the end of that sentence

1 TECHNICAL HEARINGS - VOLUME II

2 the word "tale" is spelled incorrectly

3 and it should be spelled T-A-I-L.

4 That is the sum of my changes.

5 BY MR. DELANEY:

6 Q. Now, with those corrections, is all

7 of the information within this testimony true

8 and correct to the best of your knowledge,

9 information, and belief?

10 A. Yes, it is.

11 Q. If I were to ask you the questions

12 that are contained in this document today,

13 would the answers be the same as are contained

14 in the document?

15 A. Yes, they would be.

16 MR. DELANEY: Your Honor, at this

17 point I would move this testimony and the

18 attached tables and appendix into the

19 record.

20 THE HEARING OFFICER: So moved.

21 - - -

22 (CCC Statement DMK-1 admitted in

23 evidence.)

24 - - -

25 MR. DELANEY: Mr. Kalbarczyk is

1 TECHNICAL HEARINGS - VOLUME II

2 available for cross-examination.

3 THE HEARING OFFICER: Thank you,
4 sir.

5 Mr. Dasent?

6 MR. DASENT: Yes, thank you.

7 - - -

8 CROSS-EXAMINATION

9 - - -

10 BY MR. DASENT:

11 Q. Good afternoon, Mr. Kalbarczyk.

12 A. Good afternoon, counsel.

13 Q. You are appearing today on behalf of
14 the Interfaith Coalition on Energy; is that
15 correct?

16 A. Yes.

17 Q. And the members of that coalition
18 include Trigen, who we talked to earlier
19 today, the Interfaith Coalition on Energy or
20 ICE, St. Joseph's University, University of
21 the Sciences, Hospital of the University of
22 Pennsylvania, and I missed a couple. Who did
23 I miss?

24 A. The Delaware Valley Health Council,
25 the University of the Sciences Philadelphia,

1 TECHNICAL HEARINGS - VOLUME II
2 the Building Owners' and Managers' Association
3 of Philadelphia (BOMA), the University of
4 Pennsylvania. I don't think you mentioned
5 Tenet --

6 Q. No.

7 A. -- Healthcare, Drexel University.
8 There may be one more, but I just can't
9 remember the name.

10 Q. Thank you.

11 At least one of these members is in
12 the largest or the top-ten customers in the
13 Department, Trigen for certain.

14 A. Trigen.

15 Q. There may be others as well. But
16 these are all large users; am I right?

17 A. They are generally the large
18 industrials or large commercial users, that's
19 correct.

20 Q. Now, the general purpose of your
21 testimony is to make recommendations
22 concerning revenue requirements, cost
23 allocation, and rate design; correct?

24 A. Yes, that's correct, within those
25 areas.

1 TECHNICAL HEARINGS - VOLUME II

2 Q. And your revenue requirements
3 recommendations sort of surround the rate
4 stabilization fund and either its use to
5 offset any need for compression, assuming an
6 adjustment is asserted, and you also indicated
7 \$10 million of that rate stabilization fund
8 might be used to offset or you are
9 recommending that it be used to offset the
10 first year's rate hike; isn't that true?

11 A. That would be correct. It's a
12 two-part proposal as it relates to the rate
13 stabilization fund and I think you've fairly
14 characterized it.

15 Q. Now, in addition to that, you have
16 rate design and cost allocation
17 recommendations, including expanding customer
18 classes to reflect some of the unique
19 characteristics of your customer group, for
20 example, the hospitals, institutions,
21 universities, and other small or large
22 commercial and industrial customers?

23 A. That's correct.

24 Q. And concerning customer billing and
25 collection costs, you want those allocated on

1 TECHNICAL HEARINGS - VOLUME II

2 a cost causative basis?

3 A. That would be correct.

4 Q. And you are also -- go ahead.

5 A. Based on the differences of
6 interpretations of the way that the City made
7 its proposal for those as versus my
8 recommendations of the way that I believe it
9 should be allocated and the rates should be
10 designed; that would be correct.

11 Q. And you are also advocating the use
12 of a fixed-variable cost of service
13 methodology for wastewater?

14 A. Fixed-variable, yes. In that
15 regard, on the wastewater side, the Water
16 Department does use sort of a functional
17 allocation, and the second part of the
18 component that you get into is when you
19 allocate those cost components, how you
20 allocate them to the customer classes.

21 Q. All right.

22 A. And the easiest way to say it is I
23 guess my major beef here is I would like to
24 see a better expansion of the class; rather
25 than referring to a general service class, to

1 TECHNICAL HEARINGS - VOLUME II

2 have a specific residential, commercial, and
3 industrial class with also considerations for
4 the large commercial/large industrials for the
5 purpose of allocating wastewater costs.

6 Q. And you want rate designs to also be
7 developed for those various classes, your
8 expanded customer classes; isn't that true?

9 A. That's correct.

10 Q. And in terms of rate compression,
11 you want no compression rates if you can avoid
12 that?

13 A. If I could avoid that. I think that
14 the proposal was a little conservative in that
15 area, that there was the possibility that we
16 could avoid having the compression. If the
17 rates had to be compressed to some extent, I
18 would rather see that the compression move
19 further out into possibly the second and third
20 years, more preferably into the latter years,
21 rather than at the earlier stages.

22 Q. It seems like because of sort of an
23 accumulation of a lot of your concerns, you
24 then have sort of a catchall, or it's not
25 really a catchall, but you have a position

1 TECHNICAL HEARINGS - VOLUME II
2 that you take with respect to volumetric rates
3 for the second, third, and fourth blocks, that
4 they be maintained at a certain level because
5 of your concerns which historically have not
6 been addressed, as you put it.

7 A. A combination of factors, yes, that
8 went, in my opinion, not properly addressed
9 that would have some ultimate effect on rate
10 design that, if done a different way, would
11 have a different result in lowering the cost
12 of service to the various customer classes;
13 and the proposal that I had of keeping the
14 second, third, and fourth blocks at the same
15 percentage of ratio of what it is right now
16 under the prior rate scheme would be at least
17 one method of getting to that proposal rather
18 than the percentages of the increase as
19 recommended by the Water Department.

20 Q. Okay. Now, in the context of your
21 testimony you raised -- it's a bit of a ways
22 back in there, but it's sort of a core
23 argument -- that the primary objective of rate
24 design should be to reflect cost of service.
25 Do you remember that?

1 TECHNICAL HEARINGS - VOLUME II

2 A. That is the primary objective, to
3 reflect the cost causative factors for the
4 cost of service for the customer classes;
5 that's correct.

6 Q. And you have a quotation in there
7 and I happened to highlight it because I
8 thought it was sort of interesting. You do
9 indicate also there are other considerations
10 that come into play in ratemaking, not just
11 cost of service; isn't that true?

12 A. That's true, because some of the
13 considerations as to what the Water Department
14 currently does as required by the City is to
15 provide discounts to senior citizens, for the
16 charities and the schools, the Housing
17 Authority. So they differ from having to pay
18 100% of the cost of service. So those items
19 have to be taken into consideration and
20 recognition.

21 Q. In that quotation, the last line in
22 your testimony, where you are indicating that
23 there are other considerations that come into
24 play, like gradualism or customer acceptance,
25 you also indicate that it's usually the

1 TECHNICAL HEARINGS - VOLUME II
2 politicians that make the sort of
3 noncost-based changes in terms of rate design;
4 isn't that true?

5 A. Yes. The ultimate decision-maker
6 when it comes to those areas in the sort of
7 quasi-political atmosphere certainly is made
8 by the upper echelon, the real political
9 deciders.

10 Q. And you also made a point of saying
11 that if the choice is being a rate designer,
12 as indicated in the quotation on Page 18, or a
13 politician, you are the latter -- the former,
14 excuse me.

15 A. Yes, I am the former. Certainly I
16 hope that the decision-makers weigh carefully
17 the recommendations that I would make. But I
18 certainly do understand who the final
19 decision-makers are.

20 Q. Now, part of your testimony is to
21 advocate the use of this wastewater cost of
22 service methodology that the Department
23 currently doesn't employ and it goes back to
24 decisions in prior years, whether it's the
25 fiscal 2001 rate proceeding or 2005. I think

1 TECHNICAL HEARINGS - VOLUME II

2 you raised it in those proceedings as well, if
3 I remember. Am I correct?

4 A. That would be correct.

5 Q. And you are basically saying the
6 analysis and methodologies were to be explored
7 as a result of that decision in 2001, in the
8 first instance.

9 A. That's correct. In the first case
10 that I participated in in 2001, at least my
11 understanding of the way that the decision was
12 written, it was to be explored; and I guess
13 what I was looking for from my perspective is
14 when I would have seen the 2005 filing, I
15 would have at least seen some type of analysis
16 or studies that would have been done to
17 attempt to develop those different class
18 demand factors for the various customer
19 classes to see what the potential impact would
20 be on rate design, and I did not see evidence
21 of that.

22 Q. In the context of the 2001 decision,
23 the then Commissioner, Kumar Kishinchand,
24 indicated that as a long-time engineer
25 actually for the Water Department, that in his

1 TECHNICAL HEARINGS - VOLUME II
2 many years of experience the sewer system
3 peaks related to stormwater flows and not
4 sanitary flows. He indicated that right in
5 the body of his decision. Do you remember
6 that?

7 A. I would agree that that's in there.
8 But from my perspective and reading of the
9 literature, that certainly doesn't disqualify
10 the fact that there are some components within
11 a cost of service study that you could
12 recognize that there are certain demand
13 factors associated with the normal wastewater
14 usage.

15 I certainly agree that when you get
16 to I&I and stormwater, they have different
17 peaking factors. But there is still a small
18 component or some component within the cost
19 that would be valuable considering some demand
20 factor allocations.

21 Q. So Commissioner Kishinchand under
22 the 2001 decision was more or less saying to
23 the due diligence department or his employees
24 to verify his view of whether it's true or not
25 that peaking factors should not be included in

1 TECHNICAL HEARINGS - VOLUME II

2 a future cost of service analysis. He wanted

3 to know whether or not that was appropriate.

4 A. I'm not quite sure that I

5 interpreted it the same way as you did. I

6 believe that as I understand it, I certainly

7 do not disagree with his interpretation of

8 what the impact is of stormwater. But, again,

9 there are other parts and the literature does

10 sort of address the different components of

11 normal wastewater usage and also the

12 components that are associated with I&I and

13 stormwater. So there is this portion in my

14 opinion that is ripe for looking at for

15 allocations based on demand factors.

16 Q. I don't want to press this too hard,

17 but Mr. Kishinchand said at Page 13 of his

18 decision: "My own experience as an engineer

19 for the Department is that in our sewer system

20 such peaks are related to stormwater rather

21 than additional sanitary flows. However, I

22 will ask the Department and its consultants to

23 verify that peak loads should not be included

24 in future cost of service analyses."

25 To your recollection, is that

1 TECHNICAL HEARINGS - VOLUME II

2 basically what he was saying? I am literally
3 reading it.

4 A. I will accept your rendition and the
5 reading of that.

6 Q. Thank you.

7 Now, as you know, the Department did
8 reject that particular approach. You probably
9 inferred that.

10 A. Well, they did not, of course,
11 accept it in 2001. But with the caveat that
12 it be explored, in my opinion I don't think
13 that it was fully explored as well as I would
14 have liked to have seen in the 2005 case.

15 Q. And that's your concern in your
16 testimony?

17 A. Yes, it is; and it's my concern
18 because of what the final outcome is and the
19 final outcome is basically the same rate for
20 everyone. And I do believe there are
21 differences in the cost of service and
22 providing that service and those differences
23 should be reflected in what rates really are
24 charged to the various customer classes.

25 Q. Let me turn your attention to

1 TECHNICAL HEARINGS - VOLUME II
2 collection factors by customer class, another
3 area of your concern. As a part of your
4 testimony you recommend that collection
5 factors be developed for each customer class,
6 and that's at Page 7 of your testimony. You
7 recognize that?

8 A. Yes; and that has been consistent in
9 the prior two cases that I have been in, it's
10 been a major concern of mine, is that we do
11 not know what the collection factor is on a
12 customer class basis and, again, the
13 importance of that is because that's the
14 starting point to meet the City Code
15 requirements, the starting point, where are
16 you, what are you paying, and then what should
17 the increase be to move you toward your
18 appropriate cost of service.

19 And if you start too low in the one
20 class or too high in the other, then you have
21 these converses where you may be giving too
22 much of an increase to one class and not
23 enough to the other.

24 Q. Now, as I remember, in the 2001 case
25 you also made this recommendation and

1 TECHNICAL HEARINGS - VOLUME II
2 Commissioner Kishinchand indicated that the
3 Department should compile collection data to
4 track the relative cost of collecting revenue
5 by classes if feasible. Do you remember that
6 language roughly? I can read it verbatim if
7 you'd like.

8 A. I'll accept that.

9 Q. And are you aware from the discovery
10 responses in this case that there is not a lot
11 of reliable data to make it feasible to do the
12 analysis that you want?

13 A. Well, I guess that's the big
14 difference of opinion between the two,
15 especially when you look at the differences
16 between the normal perception of what
17 collections are by the various customer
18 classes.

19 Generally for commercials and
20 industrials, you generally see those
21 particular classes and groups as being
22 relatively good payers because of the
23 consequences that may befall them if they do
24 not pay on time. They are much more easily
25 shut off than what the residential class

1 TECHNICAL HEARINGS - VOLUME II
2 customers are based on a number of different
3 programs and the methodology. So generally
4 utilities have much more weight and much more
5 efforts and pressure they can put on those
6 classes to pay timely.

7 Q. So your sort of emphasis here is
8 basically there may be a cost subsidy between
9 classes with the larger customers you're
10 representing subsidizing the smaller
11 customers, residential customers.

12 A. Yes.

13 Q. That's your thesis.

14 A. Because of these payment factors;
15 that's correct.

16 Q. Now, this issue was raised also in
17 2005 when Commissioner Brunwasser made his
18 decision in this case. Do you recall that?

19 A. Yes, I do.

20 Q. And at that time he indicated that
21 there was no evidence to confirm or it would
22 be wrong to conclude, using his words, that
23 the subsidization of residential customers has
24 been going on for some period of time. Quite
25 the opposite, a single balancing of stormwater

1 TECHNICAL HEARINGS - VOLUME II
2 costs was undertaken during the previous rate
3 period and the result: that larger customers
4 are now paying their fair share.

5 He is suggesting, if anything, by
6 his decision, that there had been historic
7 problems which caused residential to
8 subsidize larger customers. Are you aware of
9 our stormwater cost reforms related to that?

10 A. I am not quite sure if I understood
11 the way the whole question or the statement is
12 put together here.

13 Q. Okay.

14 A. When we talk really about two
15 different parts, the first part we were
16 talking about was the collection factor.

17 Q. Yes.

18 A. And that is who pays what their
19 assigned cost responsibilities are based on
20 the rates that are currently in effect.

21 Q. Yes.

22 A. Once the decision has already been
23 made on those, rate costs are allocated.
24 Those rates are already based on some cost of
25 service principle or some decision by the

1 TECHNICAL HEARINGS - VOLUME II
2 decision-maker as far as what that rate is
3 going to be. So that's the collection
4 problem. That is not the cost allocation.

5 Now, the second part of the
6 statement there is that in the 2005 there was
7 a rate shift of moving the stormwater cost in
8 the belief that there was too much cost being
9 assigned to the residential customers. Those
10 costs were moved.

11 I don't believe I objected to that
12 shifting that was done in the last case. My
13 prior objection in the last case was that when
14 it was shifted, it was still being charged
15 based on a meter basis rather than what the
16 original intent was, which was to base it on a
17 parcel-based system.

18 So there's two different
19 considerations when you are talking collection
20 factor and when you are talking the actual
21 design phase.

22 Q. Two different issues. At the end of
23 the day we're talking about who is paying what
24 and is it cost causative or is there a cost
25 causative basis for the rates, for the cost

1 TECHNICAL HEARINGS - VOLUME II

2 allocation and the resulting rates, and as a

3 matter of dollars we're concerned that at the

4 end of the day everybody is paying their own

5 way. That seems to be your theme here.

6 A. Well, cost allocation, when you do a

7 cost of service study, determines what that

8 cost should be for each of the customer

9 classes. Then once those rates are set and

10 then charged to customers, the second part of

11 that component that comes in is is everyone

12 paying that, are the residential and

13 commercial and industrial customers paying

14 timely the rates that are being charged, and

15 that's the collection part.

16 And that is the part that there's no

17 data on to really say how well each of those

18 individual groups are doing, because when you

19 come to the next rate-setting process, then

20 the starting point is after we have our cost

21 of service, where are we, how much money have

22 these groups paid, how much of an increase

23 should I give these groups to move them

24 towards their cost of service.

25 And if you understate the value of

1 TECHNICAL HEARINGS - VOLUME II
2 what a particular customer class is paying,
3 then you are going to overstate how much the
4 increase is they should be assigned. So it's
5 a two-part component.

6 Q. I get the two parts. I guess what
7 sort of puzzles me and I will just sort of
8 bring my theme back, yours is cost of service,
9 mine is most of your customers, if I'm looking
10 at universities, looking at hospitals, looking
11 at the churches, enjoy 25% discounts on some
12 or all of their service.

13 So the person with the mantra cost
14 of service sort of, I don't know, is under the
15 shadow of I get discounted rates. Do you see
16 the dilemma that sort of I face in looking at
17 your testimony? I see a contradiction. I see
18 inherently in what you're saying a
19 contradiction just because you are getting
20 discounted rates and complaining about a
21 subsidy when you are being subsidized.

22 A. Let me help you. There's three
23 parts of the component now, because what you
24 are bringing in here as the first part is the
25 decision by the City to have these special

1 TECHNICAL HEARINGS - VOLUME II
2 provisions for these discount rates. That's
3 the City's decision. And once those decisions
4 are made, assuming that the cost of service
5 study is done properly, we have what the
6 indicated cost of service should be.

7 Then we accept the policy decisions
8 that were made by policy makers to give those
9 discounts to those particular groups. I may
10 not agree with them all, but there are
11 certainly, as I understand it, good social
12 economic principles that I think that the
13 regulator or the decision-making body puts
14 behind that for the reason for giving those
15 discounts.

16 As an example, I know that if you
17 would look at the Interfaith Coalition and the
18 hospitals, they're providing human-type
19 services that the City believes is valuable.
20 They're trying to minimize their costs. And
21 it is their decision then to reduce the cost
22 in rates for those services that are being
23 provided to benefit the public good.

24 So you accept that. Once it's moved
25 to that, then the question is, it's no

1 TECHNICAL HEARINGS - VOLUME II
2 different than anything else, once you assign
3 those costs to those classes at the discounted
4 rate, you want to make sure that they are
5 paying; and that is part of the collection
6 factor process, is you want to make sure that
7 you are collecting the dollars that you are
8 supposed to get even at those discounted
9 rates.

10 Q. I understand your statement. I
11 still see a dilemma for the Hearing Officer
12 and the Commissioner in looking at trying to
13 move costs more in your favor, move rates more
14 in your favor, whether it's the volumetric
15 rate design or any of your other proposals,
16 that shifts the burden away from your group to
17 residential users potentially, that it's a
18 problem.

19 A. Well, I don't think that you would
20 see from all the customers in our customer
21 class that every bill that they pay is
22 certainly getting that particular discount.
23 There are some of the meters in the services
24 at some of the institutions, as was discussed
25 earlier this afternoon, as the witness

1 TECHNICAL HEARINGS - VOLUME II
2 explained for St. Joseph's University --

3 THE HEARING OFFICER: I think we
4 have to understand also in terms of that
5 data that the 25% discount is not at
6 issue. That's not something that we are
7 deciding in the context of this case.
8 That's a given. That's already here.

9 Given that fact, that that's part of
10 the case, I think the witness is saying
11 then you want to get everything as close
12 to cost as possible. One cost that you
13 have is the cost of providing the
14 service. Another cost that you have is
15 collecting the money that you charge for
16 that service. And that's what he is
17 talking about has to be taken into
18 account or is not being taken into
19 account.

20 MR. KALBARCZYK: That's a fair
21 analogy.

22 BY MR. DASENT:

23 Q. Let me turn your attention to
24 Appendix A in your testimony where you outline
25 the few municipal clients you represent.

1 TECHNICAL HEARINGS - VOLUME II

2 Among them I see the Borough of Phoenixville,
3 the Borough of Ambler, the Borough of
4 Schuylkill Haven, the City of Lancaster, Sandy
5 Township, Lower Macungie Township, Borough of
6 Duncannon, Ridgway Township Municipal
7 Authority. These are your municipal clients?
8 I don't think I caught all of them, but they
9 are on Appendix A of your resume; isn't that
10 true?

11 A. Yes.

12 Q. Now, I take it these are all either
13 suburban or not big cities in terms of their
14 location?

15 A. In comparison to what the City of
16 Philadelphia is, of course, that's not the
17 case. The City of Lancaster is a fairly large
18 area. And the City of Lancaster, again, does
19 not only provide service within its municipal
20 limits, it provides service outside of its
21 municipal limits as well.

22 Q. Okay.

23 A. And it's in that context, the City
24 of Lancaster, the service that it provides
25 outside of its city limits, is regulated under

1 TECHNICAL HEARINGS - VOLUME II
2 the provisions of the Pennsylvania Public
3 Utility Commission and the service inside
4 then, of course, comes under the municipal or
5 the city code requirements.

6 Q. How large a customer base is the
7 City of Lancaster?

8 A. I would say it's, for residentials,
9 probably about 45,000 customers or so. That's
10 a combination of both inside and outside.

11 Q. And that's compared to customers
12 here of maybe ten times that?

13 A. It's compared to that. But that
14 doesn't mean that the rate philosophies and
15 the methodologies that you use are just thrown
16 out the window. I mean, you still try to
17 apply the same concepts/the same methodologies
18 as reasonably possible as you can.

19 Q. But a rural setting would affect, I
20 think, the relation to demand factors, things
21 like that?

22 A. When you talk about rural settings
23 for demand factors, certainly demand factors
24 for inside the City of Lancaster are certainly
25 going to be different from the suburban

1 TECHNICAL HEARINGS - VOLUME II
2 settings on the outside. But that's not to
3 say that when generally demand factor studies
4 are done -- and I review as many of these as I
5 can when they're submitted to the
6 Commission -- that demand factors, as an
7 example, on the residential class, that you
8 just don't go out and do residential. It's
9 broken down into subcategories. It's broken
10 down into low-density, high-density,
11 medium-density areas. When you get into the
12 commercials, they're broken down into some of
13 your smaller commercials, your hospitals, your
14 larger class customers. And the same thing is
15 true when you get into the industrials.

16 So it is a very sophisticated
17 analysis that is being done even though some
18 of them may be small. And some of those may
19 not have been actually my client, but they're
20 involved in cases that I have represented
21 others on one side, have looked at, or even if
22 I'm not representing them, I try to get copies
23 of cost of service studies to look at the
24 results.

25 Q. Now, as we talked about in informal

1 TECHNICAL HEARINGS - VOLUME II
2 discovery, when I looked on this list, I tried
3 to think of some of your recommendations and
4 sort of put it in context.

5 For some of your clients that you
6 represent in the list on Appendix A or for all
7 of them, if I remember, none of these
8 jurisdictions that you are involved in where
9 you are the rate consultant and that you are
10 operating on their behalf, none of them use
11 the fixed-variable cost of service method that
12 you are recommending in this case; isn't that
13 true?

14 A. On the wastewater side?

15 Q. Yes, on the wastewater side.

16 A. On the wastewater side, that would
17 be true that they are small and they generally
18 do not. But, again, in my opinion that
19 doesn't discount that when you have a much
20 larger utility that's much more sophisticated
21 with certain different levels of expertise,
22 that, you know, it certainly should not be
23 explored -- it should be explored.

24 Q. So you are saying it should be
25 looked at?

1 TECHNICAL HEARINGS - VOLUME II

2 A. Certainly with a large sophisticated
3 utility the size of the City of Philadelphia.

4 Q. Now, we are going down some of the
5 list of your recommendations and you have
6 indicated that the fixed-variable cost of
7 service that you are recommending here is not
8 used by any of your clients.

9 Is it also true that only one of the
10 municipal clients listed in your Appendix A
11 has the declining block sewer rates that you
12 are recommending in this case?

13 A. One of my clients, that's correct,
14 just one of my clients.

15 Q. Right.

16 A. That does not mean that other
17 utilities do not use it or have alternative
18 rates other than what the City of Philadelphia
19 is; it's just the same block rate for all of
20 its residential, commercial, and industrial
21 classes.

22 Q. And the City of Lancaster, in fact,
23 according to our informal discovery
24 discussion, only has declining block rates not
25 because of the cost of service study but

1 TECHNICAL HEARINGS - VOLUME II

2 because of the way they implemented rates in
3 recent cases?

4 A. Well, it's the way that it was based
5 on the prior cases and then there was no need
6 to come in and redo a cost of service study.

7 THE HEARING OFFICER: Speak up a
8 little bit.

9 THE WITNESS: There was no need to
10 come in and do a cost of service study.

11 In PUC ratemaking, when you do a
12 rate filing before the Public Utility
13 Commission, there are certain minimum
14 filing requirements that you have when
15 you do a rate case.

16 If there's a utility that's coming
17 in for an increase that may be less than
18 a million dollars, the requirement for a
19 cost of service study is not required.

20 If the increase is over a million
21 dollars, then certainly they are looking
22 for a cost of service study to come in.

23 That's why it's so easy when you see
24 a large utility coming in over a million
25 dollars, you're automatically looking for

1 TECHNICAL HEARINGS - VOLUME II

2 a cost of service study and seeing what
3 it is that they do and how they approach
4 it.

5 BY MR. DASENT:

6 Q. So the declining block rate for
7 sewer rates that exists in Lancaster is not
8 based upon some cost study; it's just based
9 upon sort of happenstance?

10 A. No, I'm not saying that. It may
11 have been based on something prior to that,
12 that rates were established before they became
13 one of my clients.

14 Q. Now, also with respect to one of
15 your recommendations, conjunctive billing, of
16 those clients listed on Appendix A that you
17 represent, do any of them use conjunctive
18 billing?

19 A. Not to my understanding on the water
20 side or the sewer side for them now.

21 Q. Now, one of the CCC members
22 recommended also a bulk rate design. Any of
23 your clients use a bulk rate design?

24 A. You will see some bulk rate designs
25 for some large manufacturing-type customers,

1 TECHNICAL HEARINGS - VOLUME II

2 some large users. There are some that are in
3 there, yes.

4 Q. And in those jurisdictions where you
5 are representing the municipality, I take it
6 you advocate the cost of service ratemaking?

7 A. To the extent that there are large
8 differences between the customer classes for
9 your residential, commercials, and
10 industrials, yes, I would, yes.

11 MR. DASENT: Thank you,
12 Mr. Kalbarczyk.

13 THE HEARING OFFICER: Anything?

14 MR. BERTOCCI: No, I don't have
15 anything.

16 MR. DELANEY: I have no redirect.

17 THE HEARING OFFICER: The witness
18 may be excused.

19 THE WITNESS: Thank you, Your Honor.

20 THE HEARING OFFICER: Thank you.

21 - - -

22 (Witness excused.)

23 - - -

24 MR. DASENT: The question now is
25 whether we have any rebuttal testimony

1 TECHNICAL HEARINGS - VOLUME II

2 for Mr. Kalbarczyk.

3 THE HEARING OFFICER: Let's take a
4 five-minute break and you can decide.

5 - - -

6 (Whereupon there was a recess in the
7 hearing.)

8 - - -

9 MR. DASENT: If Your Honor please, I
10 would like to call back to the stand Rowe
11 McKinley and Deputy Commissioner McCarty
12 just for some brief rebuttal on
13 Mr. Kalbarczyk.

14 - - -

15 ...DEBRA S. McCARTY and J. ROWE
16 McKINLEY, re-called on rebuttal...

17 - - -

18 MR. DASENT: Since this morning's
19 discussion, Ms. McCarty has gone back to
20 the Department to look at the
21 neighborhoods that were subject to the
22 demand study or the study that was
23 proffered by Mr. Delaney in his cross of
24 Mr. McKinley, but that related to peaking
25 factors, which were different from those

1 TECHNICAL HEARINGS - VOLUME II

2 utilized by the Water Department.

3 So in the first instance I would
4 like to ask Ms. McCarty --

5 MR. DELANEY: Wait a minute. Can I
6 just ask for a clarification? Now, you
7 are rebutting Mr. Kalbarczyk's testimony?

8 THE HEARING OFFICER: No. I think
9 he is rebutting your cross-examination.

10 MR. DASENT: Well, no.

11 You are right. Let me do it this
12 way. You have a fair point.

13 Mr. Kalbarczyk raised in his
14 testimony that we should be using
15 different peaking factors than the
16 Department is using and, in fact,
17 identified various peaking factors that
18 he thought were more representative that
19 could be utilized by the Philadelphia
20 Water Department.

21 So I would like to ask Mr. McKinley
22 to address those concerns, particularly
23 in the context of the types of
24 neighborhoods that are reflected --

25 MR. DELANEY: Wait a minute. I am

1 TECHNICAL HEARINGS - VOLUME II

2 going to object.

3 THE HEARING OFFICER: Let him finish
4 what he is saying, please.

5 MR. DELANEY: Go ahead.

6 MR. DASENT: I would like
7 Mr. McKinley to rebut Mr. Kalbarczyk
8 concerning his recommendation that this
9 different peaking factor should be
10 utilized, and I think that's a fair
11 question; and how you document that
12 question may raise an objection at some
13 point.

14 MR. DELANEY: Okay. Before we get
15 too much further, he does make that
16 recommendation about a different peaking
17 factor, but I don't think you actually
18 entered or proposed to have a study that
19 was the subject of that, in my
20 recollection. I mean, we talked about
21 studies in the cross-examination this
22 morning certainly.

23 THE HEARING OFFICER: From what the
24 neighborhoods are showing, I would assume
25 that you are going to rebut some of the

1 TECHNICAL HEARINGS - VOLUME II

2 cross-examination.

3 MR. DASENT: The evidence that was
4 proffered on cross, we were planning on
5 rebutting that.

6 MR. DELANEY: Well, we didn't
7 actually put exhibits in.

8 THE HEARING OFFICER: You didn't put
9 exhibits in. You asked questions about
10 two neighborhoods.

11 MR. DASENT: That's correct. One
12 was Normandy and the other one was --

13 MR. DELANEY: And my
14 misunderstanding of their location was
15 corrected on the record also with a
16 description of the housing. We didn't
17 object to that. And that should have
18 been the subject of redirect examination
19 this morning. So, I mean, I don't have a
20 problem doing rebuttal, but it has to be
21 tied to what his testimony says.

22 Now, he does make a recommendation
23 on allocation factors, but he didn't talk
24 about streets in Northeast Philadelphia
25 or Benton or Normandy Streets. That was

1 TECHNICAL HEARINGS - VOLUME II

2 not in his testimony.

3 So I will object to any attempt to
4 address those studies. It's out of the
5 scope of his testimony.

6 THE HEARING OFFICER: The objection
7 is overruled. My adherence to the scope
8 of direct testimony and cross is, I
9 think, ill-advised in a proceeding of
10 this nature. It is an ongoing proceeding
11 and you have the right to re-call any
12 witness at any point in time you want to.
13 Great latitude is given to everybody to
14 make sure we have a complete record.

15 So although you may be technically
16 correct with regard to the nature of
17 evidence being proffered and its
18 admissibility in a customary court
19 proceeding, in this type of proceeding
20 where the regulations specifically give
21 the Hearing Officer the right to
22 determine the admission of evidence and
23 his rules of evidence prevail, I am going
24 to allow the testimony.

25 Proceed.

1 TECHNICAL HEARINGS - VOLUME II

2 MR. DASENT: Thank you.

3 - - -

4 DIRECT EXAMINATION

5 - - -

6 BY MR. DASENT:

7 Q. Commissioner, could you tell us what
8 the various photographs in front of you tell
9 us about, let's say, the Normandy Drive area
10 of Philadelphia?

11 A. (McCarty) Well, Normandy Drive is
12 what I would call suburban-like. What I did
13 is I have looked at the GIS and the
14 orthophotography of that street and this is
15 what the overview of all of what would be
16 Normandy Drive is. Here's just the streets.
17 This is what reflects single-family homes. I
18 just took two different areas. Unfortunately,
19 this isn't as clear as it could be, but those
20 are what I would characterize as a suburban
21 community, not your typical Philadelphia row
22 house neighborhood by any stretch of the
23 imagination.

24 Q. Now, do you see parcel sizes that
25 would suggest these are singles?

1 TECHNICAL HEARINGS - VOLUME II

2 A. (McCarty) Oh, yes.

3 Q. Or describe that housing stock.

4 A. (McCarty) Yes, these are
5 single-family homes that I would characterize
6 as suburban-like. They have large front
7 yards, large back yards, lots of grass. I
8 have picked out two closeups of the area, the
9 last two photos, that I believe support that.
10 They were just kind of randomly selected. But
11 that's why thus the large overview that
12 reflects the whole neighborhood.

13 Q. Now, are these more akin to a
14 suburban setting? Is that a fair conclusion?

15 A. (McCarty) Yes.

16 Q. Now, with respect to Benton Avenue,
17 could you describe for the record what the
18 housing stock is like there?

19 A. (McCarty) Benton Avenue is twin
20 homes. Again, it looks somewhat suburban.
21 You have nice large front yards and back
22 yards. There are woods right across the
23 street and in that area. This is, again,
24 Northeast Philadelphia. And there is the
25 Pennypack Park and Creek right across the

1 TECHNICAL HEARINGS - VOLUME II
2 street from a good portion of Benton Avenue in
3 the Northeast.

4 Q. Now, Mr. McKinley, with respect to
5 the description of the housing stock and
6 parcel size in that area, does that tell you
7 one way or another whether your peaking
8 factors or Mr. Kalbarczyk's peaking factors
9 are more appropriate for Philadelphia given
10 its housing stock in general, which is
11 predominated by -- you will have to tell me if
12 it's twins or singles or rows.

13 A. (McKinley) As I said this morning,
14 I think the housing stock in Philadelphia is
15 largely comprised of row homes. It might be
16 on the order of 80, 85 percent of the housing
17 stock; another 15%, 10%, twins; and the
18 balance would be single-family. And I think
19 what we see in these photographs is more
20 indicative of the twins and single-family
21 detached housing, which is a very small
22 percentage of the overall housing stock of
23 Philadelphia.

24 So I believe that the demand factors
25 I have used are more indicative of an urban

1 TECHNICAL HEARINGS - VOLUME II
2 row home-type development and tie into the
3 actual max day/max hour demands put out by the
4 Philadelphia water treatment plants to serve
5 that row home-type community.

6 THE HEARING OFFICER: What was the
7 basis of your estimate of the housing
8 stock? Was that based on a study?

9 MR. MCKINLEY: Yes, sir. That's
10 based on the stormwater study that we are
11 performing in looking at the different
12 gross and impervious area of the housing
13 stock. Those percentages are just from
14 my memory, approximately, yes.

15 BY MR. DASENT:

16 Q. Now, there was also reference in the
17 testimony to the fiscal 2001 decision of Kumar
18 Kishinchand, our Commissioner back then, who
19 recognized peaking factors on the sewer system
20 will be tied more to stormwater flows than
21 sanitary flows. Do you have any comment on
22 that testimony?

23 A. (McKinley) Yes. I think
24 Commissioner Kishinchand at the direction or
25 at the request of the intervenors made a

1 TECHNICAL HEARINGS - VOLUME II
2 comment that in his opinion, in his experience
3 as an engineer at the Philadelphia Water
4 Department, that peaking on the sewer side is
5 more related to infiltration/inflow more so
6 than sanitary peaks. But he did say that we
7 should look at that further.

8 And I think I would corroborate our
9 testimony at that time, in 2001, 2004, and
10 again this year, 2008, we do recognize much
11 higher peaking related to infiltration/inflow
12 than we do sanitary wastewater.

13 It is a combined system, much of
14 Philadelphia's system, so the rainfall, the
15 stormwater system, the combined sewer system,
16 the sanitary sewer system, the
17 infiltration/inflow related to those systems
18 does have a much higher peaking factor
19 relative to the sanitary sewer. So we know
20 that. That's a fact. That's what
21 Philadelphia's sewer system is like.

22 But we also looked at sanitary sewer
23 peaking. It's not nearly as great or
24 significant as stormwater, but we looked at
25 the peaking factors on sanitary as well.

1 TECHNICAL HEARINGS - VOLUME II

2 But, again, through my work with the
3 Water Environmental Federation and in talking
4 with other people and establishing the rate
5 manuals of practice, which are guidance
6 manuals, we recognize that sanitary sewer
7 peaking by class has not a material impact on
8 the cost of service study or the study itself.

9 Certainly I&I, infiltration and
10 inflow, does have a much bigger impact on
11 peaking on the sewer system than does sanitary
12 sewer.

13 So I think we've looked at Kumar
14 Kishinchand's suggestion that we look into
15 this matter further and we have.

16 MR. DASENT: Thank you very much,
17 Mr. McKinley.

18 If your Honor please, we would mark
19 collectively, if it's necessary --

20 THE HEARING OFFICER: I don't think
21 it's necessary. They have been described
22 on the record.

23 MR. DASENT: Thank you.

24 THE HEARING OFFICER: Is there any
25 cross-examination?

1 TECHNICAL HEARINGS - VOLUME II

2 MR. DELANEY: Yes, I have some
3 questions. Give me a second.

4 THE HEARING OFFICER: Take as much
5 time as you need.

6 - - -

7 CROSS-EXAMINATION

8 - - -

9 BY MR. DELANEY:

10 Q. I just have a couple questions for
11 you actually, Commissioner McCarty.

12 THE HEARING OFFICER: And don't feel
13 bound by any scope.

14 MR. DELANEY: That's fine. I
15 appreciate that.

16 BY MR. DELANEY:

17 Q. The pictures that you distributed
18 today, they were printed off the Internet I
19 guess at 1 o'clock this afternoon, 12:53?

20 A. (McCarty) Off our system, our GIS
21 coverage, so this is the orthophotography from
22 our GIS.

23 Q. And I think when I was talking to
24 Mr. McKinley this morning, I think I was
25 partially reacting to his characterization of

1 TECHNICAL HEARINGS - VOLUME II
2 the housing stock in Philadelphia, which he
3 repeated again just a moment ago in your
4 rebuttal was that the vast majority of it were
5 row homes.

6 But isn't it correct that the Benton
7 Avenue properties and your descriptions of
8 them moments ago and also the Normandy Drive
9 properties and your description of them
10 moments ago indicated the City also has what
11 you described to be suburban areas with large
12 lawns, houses different than row homes --

13 A. (McCarty) Right. But they're not
14 typical of what is in Philadelphia within the
15 City limits. Yes, we have --

16 Q. Would you agree then that the City
17 has a diversity of housing?

18 A. (McCarty) Right. But the majority
19 is row homes and we know that from --

20 Q. Did you hear the description of the
21 cost of service study that we discussed this
22 morning with Mr. McKinley which had these
23 houses on it? Do you remember that?

24 A. (McCarty) I remember you bringing
25 up Benton Avenue and Normandy Drive; yes, sir.

1 TECHNICAL HEARINGS - VOLUME II

2 Q. And based on the demand factor
3 studies that were actually performed, they
4 actually had numbers that were much higher
5 than what Mr. McKinley had included in his own
6 testimony. Do you remember that?

7 A. (McCarty) I remember that, yes.

8 Q. Okay. And do you also remember that
9 Mr. McKinley has never, in the 26 years that
10 he's worked for the City, never produced a
11 demand factor study?

12 A. (McCarty) Well, I remember that;
13 but I also remember that we stated that these
14 properties, these two streets, were not
15 typical or representative of the entire City.

16 THE HEARING OFFICER: I don't think
17 the answer was responsive to the
18 question.

19 Repeat the question again, please.

20 BY MR. DELANEY:

21 Q. Do you remember that he said he had
22 never performed a demand factor study in the
23 entire time he's worked for the City?

24 A. (McCarty) Yes.

25 THE HEARING OFFICER: That was

1 TECHNICAL HEARINGS - VOLUME II

2 responsive.

3 BY MR. DELANEY:

4 Q. Okay. Mr. McKinley, let me just
5 return to some of your comments a little bit
6 here.

7 You were talking about the 2001
8 Commissioner rate decision, and I can actually
9 find the language, but I think you basically
10 paraphrased it to some extent. He did end
11 with directing the Department to evaluate.

12 Now, what evaluation did you
13 actually do? I mean, do you have a section of
14 your 2004 testimony that actually has a
15 citation to his decision and then provides,
16 other than using your judgment, a study that
17 addresses what the Commissioner's request was?
18 What did you actually do? How did you
19 evaluate it?

20 A. (McKinley) I guess the point we're
21 trying to make here is we didn't let that
22 statement go unheeded. The valuation that
23 I've done since that time is a part of the
24 committee that writes the WEF manual. I
25 collaborate with professionals across the

1 TECHNICAL HEARINGS - VOLUME II

2 country as to what the wisdom is of sanitary
3 sewer peaking factors and ratemaking for
4 wastewater utilities.

5 Q. Okay. Well, didn't you tell me --

6 A. (McKinley) And the consensus
7 judgment of that collaboration is that
8 generally speaking they aren't utilized,
9 peaking factors are not utilized. So I'm just
10 trying to tell you that we did not let
11 Commissioner Kishinchand's admonition go
12 unheeded.

13 Q. But you haven't answered my
14 question. What did you do when he asked you
15 to evaluate it? What did you do? The book
16 that we were discussing this morning was
17 written and published before the Commissioner
18 made the direction, wasn't it?

19 A. (McKinley) No. It was published in
20 2004-2005. His direction was in 2001.

21 Q. Let me just look at the front of it.

22 THE HEARING OFFICER: Make sure we
23 are talking about the same edition.

24 BY MR. DELANEY:

25 Q. It is approximately the same time.

1 TECHNICAL HEARINGS - VOLUME II
2 But the direction seemed to be to you as an
3 employee or as a consultant, I should say, to
4 the Department to evaluate it and I am just
5 asking, you know, you are talking again about
6 a book that you participated in the writing of
7 or edited, but what did you actually do in
8 response to what the Commissioner told you to
9 do?

10 THE HEARING OFFICER: I think we are
11 being argumentative now. He told you
12 what he did. Next question.

13 MR. DELANEY: All right.

14 BY MR. DELANEY:

15 Q. My understanding is what you did is
16 you exercised the judgment that you thought
17 was appropriate in responding to that; is that
18 correct?

19 A. (McKinley) I reviewed the issue of
20 sanitary wastewater peaking by class with
21 other experts in the field during that period
22 from 2001 to 2004.

23 Q. And did your 2004 testimony describe
24 the steps you had taken to evaluate --

25 A. (McKinley) I don't recall.

1 TECHNICAL HEARINGS - VOLUME II

2 Q. Did you write a report and provide
3 it to the Commissioner?

4 A. (McKinley) I had many discussions
5 with Water Department staff during this
6 period, 2001 through today, regarding this
7 issue itself. I didn't write a report on it.
8 My testimony speaks for itself.

9 Q. Okay. But how about the
10 Commissioner; did you talk to him about it?

11 A. (McKinley) I'm sure he was a part
12 of those discussions over the past six or
13 seven years.

14 Q. Okay. Just one last thing here. My
15 recollection is this morning we actually did
16 discuss the manual that you are citing and,
17 again, on Page 130 we talked a little bit
18 about what you had cited in the prior case.

19 Again, would you agree with me that
20 the section of the manual that you relied upon
21 in evaluating the Commissioner's direction to
22 you actually does talk about the fact that the
23 wastewater customers can have peaks which are
24 different than the ones that you described in
25 your answer and actually it suggests that you

1 TECHNICAL HEARINGS - VOLUME II

2 can use water demand factors to measure that
3 and does not proscribe doing what
4 Mr. Kalbarczyk has suggested? Would you agree
5 with that? I am looking at Page 130.

6 A. (McKinley) I would say it does not
7 prohibit looking at that, but I also mentioned
8 that an analysis that was in a previous manual
9 20-some years prior to that, which did look at
10 peaking factors, that analysis was not carried
11 forward to this manual because the consensus
12 of the group writing the manual was it was not
13 basically a practice of the industry.

14 Q. Okay. Just to end the discussion,
15 in the summary at the end of the chapter the
16 first sentence says: "An equitable allocation
17 of revenue requirements to waste system users
18 begins with analysis of customer service
19 demands." Isn't that's what's on Page 142?

20 A. (McKinley) And we made such an
21 analysis in our study. We chose not to show
22 any differential. We had no information upon
23 which to base the decision to have a
24 differential on demands.

25 Q. Okay. But we talked about the

1 TECHNICAL HEARINGS - VOLUME II
2 study. My understanding was you didn't do a
3 study, you didn't do a study of allocation
4 factors, that you've never done one.

5 A. (McKinley) I did a cost of service
6 study that did not recognize differentials
7 because we didn't have any relevant
8 information that would indicate there are
9 differences in peak demands.

10 MR. DELANEY: All right. I think we
11 are arguing back and forth. Thank you
12 for the answers.

13 MR. DASENT: Nothing more.

14 THE HEARING OFFICER: Okay. The
15 witnesses are excused for the moment but
16 subject to re-call in accordance with my
17 previous comments.

18 - - -

19 (Witnesses excused.)

20 - - -

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

23 - - -

24 (Discussion held off the record.)

25 - - -

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TECHNICAL HEARINGS - VOLUME II

THE HEARING OFFICER: We'll stand in
recess until 10 o'clock tomorrow morning.

- - -

(Whereupon the hearing recessed at
4:30 p.m.)

- - -

Reported By: Susan Marie Migatz, RMR, CRR

- - -

1 TECHNICAL HEARINGS - VOLUME II

2 CERTIFICATE

3 I HEREBY CERTIFY that the
4 proceedings, evidence and objections are
5 contained fully and accurately in the
6 stenographic notes taken by me on August 13,
7 2008, and that this is a true and correct
8 transcript of same.

9
10 _____
11 SUSAN MARIE MIGATZ
12 Registered Professional Reporter
13 Certified Realtime Reporter
14 Notary Public

15 (The foregoing certification of this
16 transcript does not apply to any reproduction
17 of the same by any means unless under the
18 direct control and/or supervision of the
19 certifying reporter.)

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