

Philadelphia Water, Sewer, and Storm Water Rate Board
April 10, 2024 Monthly Meeting Notes
4/10/2024, by Zoom (Online and Telephone) Only
Open for public participation via Zoom

Board Members Present

Irwin “Sonny” Popowsky, Chair
Abby Pozefsky, Secretary
Debra McCarty
Mac Williams
Tony Ewing

Others Present

Robert Ballenger
Dan Cantú-Hertzler
Marcy Chestnut
Andre Dasent
Adriana Gonzalez
Daniel Gordon
Lance Haver
T.J. Jourian
Bonny Lynch
Sarah Stoner
Deland L. Bryant- Zoom Administrator

Mr. Popowsky called the meeting to order at 3:01 p.m.

1. Mr. Popowsky introduced the draft minutes from the March 13, 2024, meeting of the Water Rate Board. There were no corrections or additions to the March 13, 2024 minutes. Ms. Pozefsky moved to approve the minutes. Mr. Ewing seconded the motion. The minutes were approved unanimously, 5-0.

2. Mr. Popowsky turned the discussion to the appeal filed by Mr. Lance Haver regarding whether to hold public hearings on the appointment of the Public Advocate. Mr. Popowsky asked for a motion to adopt or deny the appeal. Ms. Pozefsky moved to deny the appeal and Ms. McCarty seconded the motion. Mr. Popowsky asked if any Board members wished to discuss the motion. Ms. McCarty commented that the City and the Board have followed the City’s and Board’s regulations and rules, and in doing so have maintained transparency during the entire process. Information relevant to the selection of the Public Advocate, as with all other significant actions of the Board, was and is posted on the Board’s website. Ms. McCarty stated that she found Mr. Haver’s appeal to have numerous factual errors as well as points that are impertinent and unnecessarily inflammatory. Ms. Pozefsky commented that the Board has previously considered and rejected several of the contentions that Mr. Haver brought forth before the Board and continued to find many of them to be erroneous and a waste of the Board’s time and efforts. Mr. Popowsky added that he thought that some of the comments in Mr. Haver’s appeal regarding the Hearing Officer were totally off base and that he held the character of the Hearing Officer in the highest regard. As to the selection of the Public Advocate, he stated his belief that the City’s contracting process was followed to the letter and that the proceeding should move forward with the selected Public Advocate. Mr. Popowsky asked for a vote on Ms. Pozefsky’s motion to deny Mr. Haver’s appeal. The motion to deny the appeal passed 5-0.

3. Mr. Popowsky asked the Hearing Officer, Ms. Chestnut, for an update on the TAP-R proceeding. Ms. Chestnut reported that since the Advance Notice filing was made on February 28, 2024, and the Formal Notice filing was made on April 1, 2024, there has been discovery ongoing. On April 10, 2024, a pre-hearing conference was held, and a schedule was adopted. The schedule provides that testimonies will be submitted; there will be public and technical hearings held on May 10, 2024, with an additional day if necessary. The parties will then have an opportunity to settle or not settle, but they will file a petition if there is a settlement or briefs if there is not a settlement. The Hearing Officer will write her Report with the expectation of it being completed on or about June 3, 2024. The parties will have a chance to respond to the Report, and the Board will deliberate at the June 12, 2024 meeting, with a final Rate Determination to follow on June 19, 2024. The Hearing Officer noted that she had issued an order today, April 10, 2024, summarizing the results of the pre-hearing conference, which contains the schedule and will be posted to the Water Rate Board's website.

4. Mr. Popowsky opened the meeting to Board members' comments regarding the rate proceedings. There were no comments from the Board members.

5. Mr. Popowsky asked if there were any other matters to be brought before the Board. Hearing of no other matters, Mr. Popowsky stated that there is a need to schedule at least one special meeting for June 19, 2024, to issue the Board's Rate Determination. Mr. Popowsky asked for a motion to schedule an additional special Board meeting for June 19, 2024. Mr. Williams moved to approve Mr. Popowsky's request to schedule a special Board meeting for June 19, 2024, and Mr. Ewing seconded the motion. The motion was approved unanimously, 5-0.

6. Mr. Popowsky opened the meeting to members of the public and any other participants for comments. Mr. Popowsky recognized Mr. Haver for comments. Mr. Haver commented that, in his opinion, it was clear that the Board does not care what the public has to say about the Public Advocate. Mr. Haver stated that he was not given the opportunity to speak before the Board took a vote on his appeal. Mr. Haver commented that the public was not notified in advance that there was a possibility of renewing the Public Advocate's contract. Mr. Haver said that he felt the Board is not interested in the public's involvement and that the Hearing Officer, by not having hearings on issues other than the number of participants in the TAP-R program, has prejudged the case and is unfit to preside over the proceedings.

Mr. Popowsky opened the meeting to Board members' and other participants' comments. Mr. Dasent replied to Mr. Haver that the parameters of the proceeding are well known, and that the regulations outline the narrow scope of the issues that are under consideration. Mr. Dasent further commented that the projected number of TAP-R participants for the upcoming period beginning September 1, 2024 is the sole matter before the Board. He went on to say that the methodology for calculating participants has been established and the participation numbers are significant. Mr. Dasent reported that, as of today's meeting, he has a count of 34,558 new auto-enrolled participants in the TAP-R program. The current proceeding is dealing with how to successfully reflect the increase in participants in the cost structure of the program. This is what he and the Public Advocate will be discussing. Mr. Ballenger commented, as a follow-up to Mr. Dasent, that the Public Advocate is under way investigating the Department's projections. Mr.

Ballenger pointed out that it is not solely about the number of participants, but the cost associated with the growth of the TAP-R program with which the proceedings are concerned. Mr. Ballenger stated that the participants' goal is to ensure the costs associated with the program are estimated in a reasonable and just way.

Mr. Cantú-Hertzler commented on the procedure that was used by the Board to enter into contracts with the Public Advocate and the Hearing Officer. The Board had a public meeting last June, which authorized the issuance of requests for proposal according to the City's contracting practice for professional services contracts. The requests for proposal were discussed at the Board's public meeting held on October 11, 2023, and the requests for proposal were publicly posted for more than two weeks each. They were publicly posted on the website used for all City professional services contracts. They were open to any qualified person to make a proposal. The Board made its choices and entered into contracts based on the submitted proposals, such process having been reflected in prior Board meeting minutes. Mr. Cantú-Hertzler stated that this is the way the City lets professional services contracts and is proper.

Mr. Haver asked if the public was notified that the Board was seeking proposals through press releases or emails. Mr. Cantú-Hertzler stated that were no separate notices sent, but information about the proposals was publicly available through postings to the Board's website. Ms. McCarty commented that anyone interested in the rate proceedings can go to the website and find all the pertinent information there, including meeting minutes and motions. Mr. Williams asked Mr. Cantú-Hertzler if the Board followed all procedures required by law and Mr. Cantú-Hertzler's response was affirmative. Mr. Popowsky added that this forum is not an oral argument. The Board's public meetings are for the purpose of the Board to decide the issues that were already brought before them in the pleadings of the participants and the Hearing Officer's prior report. He stated that, as in the case of Public Meetings held by the Pennsylvania Public Utility Commission, there is no provision for oral arguments on motions that are final before the Board.

7. Mr. Popowsky asked for a motion to adjourn. Mr. Ewing moved to adjourn and Mr. Williams seconded the motion. The motion was approved 5-0 and the meeting was adjourned at 3:30 PM.