



September 29, 2015

VIA ELECTRONIC MAIL TO WATERRATEBOARD@PHILA.GOV

Philadelphia Water, Sewer and Storm Water Rate Board
City of Philadelphia
1515 Arch Street
Philadelphia PA 19102

Dear Board Members:

We appreciate the opportunity to informally participate in the Philadelphia Water, Sewer and Storm Water Rate Board's September 17th meeting, regarding the consideration of potential rate process regulations. As you know, we have represented the interests of Philadelphia's residential customers in the Philadelphia Water Department's rate proceedings for over two decades and consider the fairness and adequacy of a new process to be of paramount concern.

We would appreciate your further attention to the considerations expressed in this letter as you move forward with drafting proposed regulations.

As a threshold matter, we do not agree that City Council intended for the new rate process to be less formal and less adversarial. Although City Council set certain deadlines in its legislation establishing the Board, we find no support for an assertion that Council intended the Board's review to be informal. To the contrary, the Board was established to balance the Water Department's power, with the Board vested with jurisdiction and power to determine appropriate rates. At a minimum, the Board's process must satisfy the due process standards applicable to an appealable agency adjudication, which would include procedures similar to those afforded parties in rate proceedings throughout the Commonwealth.

As to the upcoming PWD rate proceeding, it is imperative that discovery commence as soon as possible following PWD's notice of proposed changes, submitted at least thirty days in advance of PWD's formal commencement of the rate proceeding. Interested parties should be encouraged to intervene as quickly as possible, but not prohibited from participation by a fixed deadline. We would support the Board's guidance that PWD should, together with its advance notice, provide responses to a series of standard interrogatories, to be developed based on prior rate proceedings and updated from time to time in collaboration with past parties. Ongoing discovery should be conducted through written exchange, allowing for expert consultants to frame suitable testimony. Periodic discovery meetings can help clarify and eliminate issues, but are no substitute for written discovery, upon which qualified experts must rely.



Testimony and briefs serve vital purposes in rate proceedings, highlighting areas of controversy or agreement for the Board’s consideration. PWD should include pre-filed testimony with its advance notice, and parties should have the opportunity to submit testimony (testimony deadlines should be timed to ensure that significant discovery can be accomplished in advance, although discovery should continue thereafter), with on-the-record witness examination, followed by briefing. The most sensible way to manage deadlines for these tasks is for the Board to delegate to the Hearing Officer, in consultation with the parties, to establish an appropriate schedule. The Board should set a general guideline for when the record must be concluded and submitted to the Board for its final consideration. The Board should not establish specific deadlines for any tasks, however, since doing so provides one party, PWD, an unfair advantage in that PWD can submit its filing with the knowledge of such firm deadline(s) in advance, even if such deadline(s) work hardship to other parties. The Hearing Officer can establish a fair schedule that does not unduly prejudice the parties while also meeting deadlines for the Board’s ultimate decision.

Just as the technical review process must be adequate, so must the opportunity for public participation be adequate. Under current PWD rate regulations, any “individual, corporation or entity” affected by proposed rate increases may provide public input. While reasonable time limitations may be necessary, and should be established by the Hearing Officer depending on the number of participants at public input hearings, we respectfully submit that the Board should adopt no rule regarding repetitive or redundant testimony, due to the likely chilling effects such a rule would have. To the contrary, affected individuals expressing similar concerns may constitute important evidence for the Board’s consideration concerning the prevalence of service issues, grievances, or unanticipated impacts of rate changes. The Board should encourage all public input, written and oral, in order to fulfill its commitment to PWD customers and those affected by PWD rates and services.

It must be recognized that what is at stake in the Board’s rate determinations is its responsibility to the ratepayers to ensure that rates are just and reasonable, taking into consideration both the technical aspects of ratemaking and the interests and concerns of those affected by PWD rates. We appreciate the Board’s diligence and conscientiousness to the tasks before it, and look forward to the Board’s rate process guidance.

Sincerely,

Robert W. Ballenger
Thu B. Tran
George D. Gould

On behalf of the Energy Unit
Community Legal Services, Inc.