

M E M O R A N D U M

TO: Jeanne Reedy, Administrative Services Director, Records Department
FROM: Bernard Brunwasser, Chair of the Water, Sewer and Storm Water Rate Board
DATE: October 23, 2015
SUBJECT: Promulgation by the Water, Sewer and Storm Water Rate Board of Regulations

*BB
by JMB*

Describing the processes and procedures that the Board will follow to set rates and charges.

Will you kindly proceed to advertise, in accordance with Section 8-407(b) of the Philadelphia Home Rule Charter, the attached regulations adopted by the Board at its October 22, 2015 meeting. Please include in the advertisement that if you receive one or more requests for a hearing, the hearing will be held in conjunction with the Board's regularly scheduled meeting on December 3, 2015 at 3:00 in the City Planning Commission Conference Room (No. 18-029), 18th Floor, One Parkway Building, 1515 Arch Street, Philadelphia PA 19102.

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DEPARTMENT OF RECORDS
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**CITY OF PHILADELPHIA
LAW DEPARTMENT**

M E M O R A N D U M

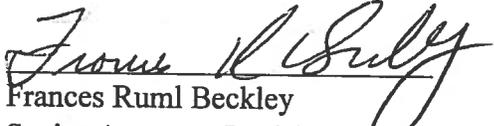
TO: Bernard Brunwasser, Chair, Water, Sewer and Storm Water Rate Board

FROM: Frances Ruml Beckley, Senior Attorney

DATE: October 23, 2015

SUBJECT: Promulgation by the Rate Board of Regulations

I have reviewed the attached regulations to govern the Water, Sewer, and Storm Water Rate Board's proceedings as authorized by Philadelphia Code § 13-101(3)(e). I find the attached amended regulations to be legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may now forward these amended regulations to the Department of Records where they will be made available for public inspection.


Frances Ruml Beckley
Senior Attorney, Legislation and Appeals

**REGULATIONS OF THE PHILADELPHIA WATER,
SEWER AND STORM WATER RATE BOARD**

SECTION I. DEFINITIONS.

(a) **Advance Notice:** The Department's notice filed with Council and the Board pursuant to Section 13-101(7) of the Code and Section II.2(a) of these Regulations that the Department intends to propose any change in rates or charges.

(b) **Board:** The Philadelphia Water, Sewer and Storm Water Rate Board, established pursuant to Section 5-801 of the Home Rule Charter and Section 13-101 of the Code.

(c) **City:** The City of Philadelphia.

(d) **City Council:** The Council of the City of Philadelphia, existing pursuant to Section 1-101 and Sections 2-100 and following of the Home Rule Charter.

(e) **Code:** The Philadelphia Code, the body of general ordinances enacted and published by City Council pursuant to Section 2-304 of the Home Rule Charter.

(f) **Department:** The City of Philadelphia Water Department, established pursuant to Sections 8-500 and following of the Home Rule Charter; and for all purposes related to water, sewer and storm water rates and collections, the City of Philadelphia Revenue Department established as the Department of Collections under Sections 6-200 and following of the Home Rule Charter.

(g) **Department of Records:** The City of Philadelphia Department of Records, established pursuant to Sections 5-1100 and following of the Home Rule Charter.

(h) **Formal Notice:** The Department's filing with the Department of Records of notice pursuant to Section 13-101(8) of the Code and Section II.2(b) of the Regulations of any proposed change in rates and charges.

(i) **Hearing Officer:** The person chosen to preside over the Rate Change Proceeding.

(j) **Hearing Officer Report:** The Hearing Officer's summary of all written information submitted and all testimony presented in both public hearings and technical review hearings.

(k) **Home Rule Charter:** The Philadelphia Home Rule Charter, as adopted pursuant to the Pennsylvania First Class City Home Rule Act, April 21, 1949, P.L. 665, 351 Pa. Code §1-100 et seq.

(l) **Participant:** Any individual, corporation or other entity affected by the Department's proposed rates and charges who timely notifies the Department of Records and the Board of a desire to participate in the technical review hearings. A Participant may give that notice as soon as the date of the filing of Advance Notice and, unless the Board specifically grants permission to join the Rate Change Proceeding later, no later than seven (7) days after the filing of Formal Notice with the Department of Records. Both the Department and, if one is appointed, the Public Advocate will be deemed to be Participants without notification to City Council and the Board.

(m) **Rate Change Proceeding:** The process described in the Regulations governing the evaluation and determination of a proposed change in rates, charges, rate structure and/or tariff.

(n) **Rate Determination:** The Board's final decision as to the proposed changes in rates and charges.

(o) **Regulations:** These regulations adopted by the Board.

(p) **Small User Customers:** All residential and small business customers of the Department within the City of Philadelphia, typically with 5/8 inch pipes.

SECTION II. PROCESS FOR SETTING WATER, SEWER AND STORM WATER RATES AND CHARGES

1. Purpose.

(a) Pursuant to Section 5-801 of the Home Rule Charter, the Board shall evaluate and determine proposed changes to the rates and charges fixed for supplying water, sewer and storm water service for accounts and properties located in the City of Philadelphia. In conducting the Rate Change Proceeding and reaching its Rate Determination, the Board shall adhere to the standards set forth in Section 13-101 of the Code.

(b) The Regulations establish an open and transparent process for public input and comment on proposed rates and charges. Consistent with Section 13-101, the Rate Proceeding shall be conducted within 120 days of the filing of the Formal Notice and shall address only rates and charges and topics directly related thereto.

2. Department Filings.

(a) The Department shall file its Advance Notice with City Council and the Board. The Advance Notice shall include all documents that the Department intends to file with the Formal Notice pursuant to Section II.2(c) hereof (although those documents may be amended between the Advance Notice and Formal Notice).

(b) The Department shall file its Formal Notice with the Department of Records no less than thirty (30) days after its filing of the Advance Notice with City Council and the Board. The Formal Notice shall include all documents required by Section II.2(c) and such other documents as the Department believes will be useful to the Participants and the Board. The Formal Notice shall clearly highlight any changes from the Advance Notice, and shall explain the rationale for such changes.

(c) The documents that the Department files with its Advance Notice and Formal Notice shall include, but not be limited to, the following:

(1) clear estimates of the effects of the proposed rate changes on customer bills, including, but not limited to, the estimated average percentage Small User bill increase;

(2) all financial, engineering and other data upon which the proposed rates and charges are based;

(3) evidence demonstrating that such rates and charges (A) were developed in accordance with sound utility rate making practices, (B) are consistent with current industry standards for such rates and charges, and (C) are consistent with the Department's bond covenants and other legal requirements; and

(4) a summary fact sheet, designed for the layperson, that explains the proposed rates and charges, the need for such rates and charges, and the information relied upon by the Department to develop and support such proposed rates and charges.

Nothing herein shall preclude the Board from relying on additional documents and other evidence in its Rate Determination.

(d) The Board shall post the Advance Notice and the Formal Notice, with all accompanying documents, on the Board's website for public review and the convenience of the Participants. The Board, by itself or through the Department of Records, also shall provide public notice of the Formal Notice by advertising in accordance with Section 8-407 the Home Rule Charter and Section 21-1703 of the Code.

(e) Beginning when the Department makes its Advance Notice and until the close of the final public hearing, the Department shall post notice of the proposed changes in rates and charges, including the estimated average percentage Small User bill increase, in conspicuous locations in all Water Department and Water Revenue Bureau offices that accept customer payments or that provide customer walk-in service. In addition to the notice provided by the Department of Records, the Board and the Department may publish additional advertisements in newspapers or on the Internet to bring the proposed changes in rates and charges to the attention of affected customers.

3. Hearing Officer.

(a) A Hearing Officer shall be appointed by the Board, which appointment shall take effect, pursuant to a formal City contract with the Board, on or after the date of the Advance Notice.

(b) The Hearing Officer shall have the power and authority to:

(1) Schedule conferences that the Hearing Officer deems appropriate;

(2) In consultation with the Board, schedule all public hearings and technical review hearings, including time and locations of such hearings;

(3) Conduct and preside over all public hearings and technical review hearings;

(4) Make all procedural rulings necessary to conduct a fair, impartial and expeditious hearing process, including the exclusion of irrelevant or redundant testimony or evidence.

(5) Make rulings on any requests for information submitted by a Participant in conjunction with the Rate Change Proceeding;

(6) In conjunction with Department staff, post on the Board's website all written information submitted during the Rate Change Proceeding and any other documents the Board believes are relevant; and

(7) Prepare and submit the Hearing Officer Report to the Board and all Participants.

(c) The Hearing Officer shall be paid reasonable compensation as negotiated with the Board, pursuant to the formal City contract.

4. Public Advocate.

(a) A Public Advocate may be appointed by the Board, which appointment shall take effect, pursuant to a formal City contract with the Board or the Public Advocate's employment with the City, on or after the date of the Advance Notice.

(b) If appointed, the Public Advocate shall be a Participant to the Rate Change Proceeding and shall have the responsibility of ensuring that the Board understands the interests of all Small User Customers in the Rate Change Proceeding.

(c) Unless he or she is already a City employee, the Public Advocate shall be paid reasonable compensation as negotiated with the Board, pursuant to the formal City contract.

The contract shall include a budget permitting the Public Advocate to be reimbursed for reasonable expenses of hiring experts to analyze and to comment on the Department's proposed rates and charges and on issues directly related to those rates and charges. If the Public Advocate is a City employee, the Department shall fund such a budget in an amount acceptable to the Board.

5. Technical Expert

(a) The Board may hire or appoint a Technical Expert to advise the Board on the Department's proposed rates and charges and directly related issues. Unless the Technical Expert is a City employee, the terms shall be set forth in a formal City contract with the Board.

(b) The Technical Expert shall be paid reasonable compensation as negotiated with the Board, pursuant to the formal contract if the Technical Expert is not a City employee.

6. Public Hearings.

(a) The Hearing Officer, on behalf of the Board, shall hold public hearings for the following purposes:

(1) to ensure an open and transparent Rate Change Proceeding;

(2) to make Department personnel available to answer relevant questions about the proposed changes in rate and charges;

(3) to permit the Department and any person or entity affected by the proposed rates and charges to provide information to the Board regarding any change in rates or charges as proposed by the Department; and

(4) to assist the Board in the collection of information relevant to the Department's proposed changes in rates and charges.

(b) The public hearings shall be held at least ten (10) days and no more than sixty (60) days after the Formal Notice.

(c) A minimum of four (4) public hearings shall be held. Additional public hearings may be scheduled by the Hearing Officer at the Board's discretion.

(d) Notice of public hearings shall be advertised by the Board on its website and, at its discretion, by other means at least seven (7) days prior to any such hearings.

(e) Each Public Hearing shall begin with a brief presentation by the Department summarizing its proposed rates and charges and the reasons supporting them.

(f) Participation at Public Hearings.

(1) Members of the public may provide written submissions to the Board prior to or at any public hearing. Any submissions must be signed and submitted electronically to the Board at or before the public hearing at which the written submission is to be entered into the record. The Board shall post instructions for submitting written information and any restrictions on length or format on its website.

(2) Members of the public may also provide information orally at a public hearing. Time limits for such presentations may be established by the Hearing Officer as appropriate. Members of the public who desire to provide information orally at a public hearing shall sign a log-in sheet at the hearing, as provided by the Hearing Officer. The Hearing Officer may exclude from a public hearing any person who poses a threat to the safety of any other person or who interferes with the Hearing Officer's ability to conduct a fair and orderly hearing.

(g) Information and comments provided in oral or written form shall become part of the record used by the Hearing Officer to develop the Hearing Officer Report.

(h) A stenographic record shall be made of all public hearings.

7. Technical Review Hearings.

(a) Procedure.

(1) The Hearing Officer shall schedule and conduct any technical review hearings that may be required in order for the Hearing Officer Report to be submitted to the Board within ninety (90) days from the Formal Notice.

(2) Notice of technical review hearings shall be duly advertised, except that once a technical review hearing has been convened by the Hearing Officer, the hearing may be continued to another time, date or location by the Hearing Officer without any additional notice except to the Participants and by announcement at the previous technical review hearing.

(3) Within fifteen (15) days of the Formal Notice, the Department shall present a representative or representatives for questioning by the Board and the Participants. Such representative or representatives shall be fully familiar with the proposed changes in rates and charges and shall be able to respond to questions regarding such proposed changes.

(4) After the conclusion of questioning of Department representatives by Participants other than the Board, such other Participants shall file their position papers with the Hearing Officer, including all supporting documents to the extent practicable. This filing with the Hearing Officer shall be made within thirty (30) days of the opportunity to question Department representatives pursuant to Section 7(a)(3) of these Regulations.

(5) The Hearing Officer may schedule one or more additional technical review hearings, for example to permit questioning by the Board, the Department and other Participants of the position papers and supporting documents filed by Participants pursuant to Section 7(a)(4) of these Regulations. The Hearing Officer shall schedule any additional hearings requested by the Board.

(6) Presentations at the technical review hearings shall not be under oath or affirmation.

(7) A stenographic record shall be made of all technical review hearings.

(b) Information Exchange.

(1) Participants shall be granted reasonable information gathering rights so as to permit development of a complete hearing record. There shall be a presumption that any information already existing should be exchanged by the Participants; there shall be a counterbalancing presumption that no Participant shall be required to create information or to gather data solely to respond to the request of another Participant. The Hearing Officer may rule in an appropriate case that either presumption has been overcome.

(2) Information requests to any Participant must be in writing. A Participant may begin to make information requests as soon as it has registered with the Department of Records.

(3) Responses to requests for information by any Participant shall be submitted to the Board and shall be posted on the Board's website. Participants may, but are not required to, supply each other with paper copies of responses. The Hearing Officer shall have discretion to make changes to these general rules as circumstances require.

(4) Responses to information requests shall be provided as agreed by the Participants or, in the absence of such agreement, as directed by the Hearing Officer. Any objections to information requests shall be served on all Participants and the Hearing Officer within three (3) business days after receipt of the request, unless the Hearing Officer extends the time for objections for good cause shown.

(5) The Hearing Officer shall not be bound by formal rules of procedure except as the Hearing Officer has determined and has ruled are appropriate for the purpose of compiling a full record.

8. Hearing Record.

(a) Completion of Hearing Record:

(1) All hearings shall be completed and the record shall be closed no later than seventy-five (75) days after the Department's filing of proposed changes on rates and charges with the Philadelphia Department of Records.

(2) Within fourteen days of the close of the hearing record, the Hearing Officer shall file a Hearing Officer Report with the Board and any Participant wishing to do so may file a post-hearing summary. The Hearing Officer Report and any post-hearing summaries received by the Board shall be posted on the Board's website. After that date, no further filings will be permitted and no further information will be received unless specifically requested by the Board.

(b) The Hearing Record shall consist of the following:

(1) The Advance Notice and Formal Notice, including any supporting documents.

(2) Evidence of proper advertising and posting as required by these Regulations and other applicable law.

(3) All information accepted into the record by the Hearing Officer, from both the public hearings and the technical review hearings.

(4) The stenographic record of the public hearings and technical review hearings.

9. Decision on Changes in Rates and Charges.

(a) The Board, in making the Rate Determination on the proposed changes in rates and charges, shall fully consider and give substantial weight to the Hearing Officer Report and the Hearing Record. The Rate Determination shall make reference to sections of the Hearing Record supporting the conclusions contained in the Rate Determination.

(b) The Rate Determination of the Board shall include instructions to the Department to prepare a new tariff incorporating the new rates and charges and any changes in rate structure or terms of service and other issues included in the Rate Determination. The new tariff shall conform to the Rate Determination.

(c) The Rate Determination of the Board shall be filed with the Department of Records, shall be posted on the Board's website and shall be sent to all Participants.

(d) The effective date of the changes in the rates and charges shall be the date set in the Rate Determination, but shall not be sooner than ten (10) days after the Department files the new rates and charges with the Department of Records.

10. Computation of Time. In computing any time(s) set forth in these Regulations, days shall mean calendar days unless otherwise stated. If the last day is a Saturday, Sunday or a legal holiday for the City of Philadelphia, the Commonwealth of Pennsylvania or the United States of America, the deadline shall be the next business day.

11. Conformity with Existing Law.

Nothing contained in these Regulations shall be deemed to overrule or annul any existing provisions of the Home Rule Charter or the Code.

12. Severability.

If any provision, paragraph, word or section of these Regulations is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words and sections shall not be affected and shall continue in full force and effect.