

PHILADELPHIA WATER, SEWER, AND STORMWATER RATE BOARD
HEARING OFFICER RULING ON DISCOVERY DISPUTE

March 16, 2018

On February 22, 2018, Michael Skiendzielewski propounded two requests for documents from the Philadelphia Water Department (PWD). They have been designated as MS-I-1 and MS-I-2. They are as follows:

MS-I-1. Please provide documents, evidence, reports, etc. relating to any and all payments made by PWD customers to replace short and/or long laterals and inlet pipes over the past 8 years.

MS-I-2. Please provide documents, evidence, reports, etc. relating to any cancellation and/or reduction of PWD HELP Loans offered to PWD customers over the past 8 years.

PWD OBJECTIONS

On February 27, 2018, PWD filed its objections to these discovery questions. As to both questions, PWD stated that the interrogatories are overly broad and irrelevant to the instant rate proceeding which addresses prospective rate relief for the period FY 2019-2021. In support of this argument, PWD stated as follows:

- No nexus has been established between historic payments going back as far as 2010 and the current rate case.
- The Department further objects to the above interrogatory and request for production of documents to the extent same requests privileged information (involving the names, account numbers and personal data such as social security numbers of PWD customers and HELP loans extended to such customers) which would be contained in the documents requested.

With respect to interrogatory MS-I-1, the PWD also objected on the grounds that it has no knowledge of all payments made by its customers related to all sewer lateral repairs, “many of which are private transactions not involving PWD.” The PWD further stated that it:

“objects to this interrogatory as unduly burdensome in requesting the compilation of documents, evidence reports, etc. over a period of eight years. The Department has extended approximately 7,000 HELP loans during this period. The interrogatory/request is particularly burdensome given the shortened period allotted to compile discovery responses in this proceeding.

With respect to interrogatory MS-I-2, PWD also argued that the interrogatory is unduly burdensome in requesting compilation of documents, evidence reports, etc. over a period of eight years. PWD stated that the interrogatory/request is particularly burdensome “given the shortened period allotted to compile discovery responses in this proceeding. Notwithstanding the above objection, the requested information may be requested through the Right to Know Law (65 P.S. 67.101, *et seq.*)”

ANSWER OF MR. SKIENDZIELEWSKI

To help resolve this discovery dispute, I asked Mr. Skiendzielewski to explain how these questions are related to the issues before the Board in this ratesetting case. On February 28, 2018, Mr. Skiendzielewski filed his answers to my questions. He also filed his answer to PWD objections.

In pertinent part, he stated that his focus is on “how the Water Department lateral replacement and HELP loan programs affect water and sewer rates.” He further argued that it is his belief that his discovery request “will lead to a greater understanding of how much money is involved and how the expenses are accounted for.”

Mr. Skiendzielewski further argued:

If my discovery shows, as I believe it will, that the Water Department has failed to make attempts to collect from those that damaged laterals and/or inlet pipes, I will then argue that the Water Rate Board should reject any rate increases caused by the failure of the water Department to seek payment from those that damage the Water Department's and/or home owner's property and direct the Water Department to seek restitution.

There can be no question that my requests are legitimate. How costs are accounted for, and if/when costs are recouped are legitimate concerns for rate making. The number of years requested will allow a technical expert to establish trends and that a few years could not allow such analysis. Since the Water Department has never reported the amount spent or how it was accounted a few years, such a study/analysis would not provide an accurate picture. The intervener does not at this time request the name and/or addresses of the accounts.

In this filing, Mr. Skiendzielewski answered my questions as follows:

RESPONSE TO HEARING OFFICER'S MEMORANDUM –FEBRUARY 28, 2018

1. *What is the relief Mr. Skiendzielewski seeks from the Board in this general rate proceeding?*

Lower water/sewer rates for the customers of the Philadelphia Water Department.

2. *How is it within the Board's power to grant such relief?*

[Mr. Skiendzielewski copied the following portion of the REGULATIONS OF THE PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD, Section II. PROCESS FOR SETTING WATER, SEWER AND STORM WATER RATES AND CHARGES]:

II, 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, Rate Change Proceedings shall be conducted within 120 days of the filing of the Formal Notice and shall address rates and charges and **any service related issues relevant thereto.** (Emphasis supplied)

3. *Does Mr. Skiendzielewski dispute any of the factual assertions made by the PWD in its objection to his questions, as quoted above?*

Since it is unclear what “factual assertions” are being referenced (the PWD objections themselves or the PWD’s summary paragraph of their understanding of the case), I am unable to provide definitive responses to this query. However, what I can offer is the following appraisal:

With regard to all of the evidence, facts, correspondence, records, etc. at the disposal and possession of the PWD management and its counsel, the integrity of the Water Rate Board proceedings would be better served by a more complete and thorough presentation of events and circumstances relative to my request for discovery of documents related to lateral repairs and PWD HELP loans.

DISCUSSION

A. UNACCEPTABLE FORMS OF DISCOVERY

Before discussing the merits of the discovery dispute, I must dispense with arguments on both sides that are not relevant to the question. As to PWD’s objections, the Department repeats a technique it has used in other objections – putting forth a laundry list of all possible forms of objection, and arguing that “to the extent” they apply, the discovery should not be required. This form of argument is not helpful. Objections to discovery must provide a specific reason or specific reasons related to the question at issue. All parties should be on notice that I will disregard any such laundry lists of objections that come without a declared application in the particular case.

In its objections, the Department also included a footnote describing a set of interactions between Mr. Skiendzielewski, the Department, and the Tax Review Board over a City demand for repayment of a loan to Mr. Skiendzielewski. This *ad hominem* response does not assist the hearing officer. Whatever motivates Mr. Skiendzielewski to participate in this rate case and ask the discovery questions he has is beside the point. The question is whether the material is discoverable and whether the objections have merit.

For his part, Mr. Skiendzielewski accuses the Department of disclosing personal information about him that should have been protected. Every fact stated by the Department in its *ad*

hominem argument, however, is apparently a matter of public record. Further, Mr. Skiendzielewski's veiled threat to disclose personal information concerning the Department's lawyer is beyond the bounds of civil argument. For this reason alone, I could uphold the Department's objections. There are, however, more relevant grounds to deny the request to compel answers from the Department.

B. DECISION ON REQUEST FOR DOCUMENTS

I cannot see how the information requested could be useful to the Board in determining rates and charges in this rate proceeding. I also do not see that it would likely lead to the discovery of such relevant information.

The rate case is not an audit. An open and transparent process does not require a participant to demand all documents on a topic for a number of years without showing that the information will likely help the Board decide the rate case in front of it, or lead to information that will. Mr. Skiendzielewski states his belief that the information will show that "the Water Department has failed to make attempts to collect from those that damaged laterals and/or inlet pipes." He provides no basis for his belief.

It might be possible to permit such an open-ended and unsupported request for documents if not for the fact that the burden on the Department of collecting, redacting and collating all the documents, for 8 or 10 years, is unreasonable. I uphold the Department's objections to MS-I-1 and MS-I-2. The Department need not answer these requests for documents.

C. ORDER DIRECTING SUBSTITUTE DISCOVERY

Mr. Skiendzielewski avers that the documents will enable him to determine the following facts relevant to the rate case:

1. Are the costs for lateral replacements taken from operating or capital budgets?
2. Does it make sense to charge the costs to the rate base, which must have a coverage ratio or would it make more sense in terms of keeping rates lower for everyone to use the rate stabilization fund to pay for these repairs and loans?
3. How often, if ever, the Water Department attempts to collect from contractors who damage laterals and/or inlet pipes when they do road repairs or other work.
4. When, during the course of lateral repair, the PWD identifies errors/mistakes in the contractor's installation what action, if any, does the PWD take against the contractor for recovery of expenses and damages.

It is not clear that the answers to these questions are relevant to the rate case. However, I cannot rule out the possibility that they might lead to relevant information. For this reason, in lieu of Mr. Skiendzielewski's open-ended document request, I direct the Department to provide a narrative answer to these four specific questions. I direct the Department to provide these answers within 7 days of this Hearing Officer Ruling.