

**Before the
Philadelphia Water, Sewer and Storm Water Rate Board**

In Re: Philadelphia Water Department :
Proposed FY2019-2021 : **Formal Notice Filed March 14, 2018**
Rate Increase :

**Public Advocate’s Answer to PWD Objections
And Motion to Compel Responses to Discovery Requests**

The Public Advocate submits this Answer and Motion, requesting that the Hearing Officer deny the Philadelphia Water Department’s (PWD) Objection and compel PWD to respond to the Public Advocate’s Interrogatory and Request for Production of Documents, PA-IX-23. The request at issue provides as follows:

PA-IX-23. Regarding the reply to PA-ADV-10, Rate Case Expense, please provide a similar breakdown showing budgeted and actual rate case expense for the last three base rate cases.

PWD objects on the basis that information regarding rate case expense under the regime prior to the establishment of the Rate Board is not relevant to the subject matter and claims in this action. On that basis, PWD asserts that such information is not reasonably calculated to lead to the discovery of admissible evidence. PWD also complains that it has received numerous other data request requiring its attention.¹ In correspondence with PWD counsel, and as indicated in PWD’s objection, PWD states it will provide this expense information for the 2016 and 2018 rate proceedings.

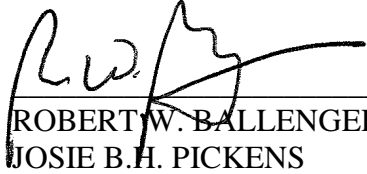
¹ PWD appears to suggest that it should not have to respond to this issue, because, in its judgment, its attention is better spent on “more substantive issues.” The Public Advocate submits that rate case expense is a substantive issue, and deserving of the Board’s attention. Regardless, PWD does not have the authority to limit discovery on its own terms and the Hearing Officer should compel response to PA-IX-23.

In Pennsylvania, a party is permitted to seek discovery of such matters as may be relevant to the subject matter, so long as they are not privileged, even though such evidence may be inadmissible. There must be some connection between the information sought and the action itself before it becomes discoverable. The Public Advocate's request is directly related to PWD's rate filing, as that filing includes an assumption regarding the amount of rate case expense from this proceeding that should be recovered from customers in higher rates. In order to assess that claim, the Public Advocate is seeking to scrutinize the reasonableness of PWD's assumptions, which cannot be determined solely by examining rate case budgeted expense from two rate proceedings (2016 and 2018), against only one actual rate case expense (2016).

While the Public Advocate acknowledges that the Rate Board's oversight has fundamentally altered the landscape for PWD rate setting, in terms of providing meaningful due process review, the Public Advocate does not believe (and PWD does not claim) that PWD has changed its manner of budgeting rate case expense since the Rate Board was established. If it has changed its manner of budgeting rate case expense, that is a separate assertion PWD can make and seek to support, but it is not grounds for a discovery objection. A fuller historical analysis of PWD's assumptions, compared to its actual results, must be undertaken in order to assist the Board in making a decision regarding the amount of PWD rate case expense that can reasonably be expected to be charged to customers, over a reasonable period of time.

The Public Advocate submits that the Hearing Officer should deny PWD's Objection and direct it to answer the Public Advocate's discovery request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R.W. Ballenger", is written over a horizontal line.

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JOSIE B.H. PICKENS

JOLINE R. PRICE

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April 2, 2018