

**PHILADELPHIA WATER DEPARTMENT RESPONSE TO
DISCOVERY PROPOUNDED BY MICHAEL SKIENDZIELEWSKI**

The Philadelphia Water Department (“Department” or “PWD”) responds to the following discovery request propounded by Michael Skiendzielewski (“Requestor”) via email (receipt for which was deemed to be May 2, 2018 by the Hearing Officer). PWD requests that the Hearing Officer sustain the Department’s Objections and strike the discovery request identified below.

Discovery Request

MS-III-1. I reiterate my request to receive any and all records, payments, emails, etc. related to the reporting, management, identification, repair and reconstruction of long lateral problems and failures throughout the City. This information is to include addresses, names (to be redacted), dates, contractors used, payments made (either by PWD, homeowners or other arrangements).

Response: It should be noted that the discovery request is much the same (in scope and subject matter) as was stricken by the Hearing Officer in response to the Department’s prior Objections filed on February 27, 2018. Therefore, in the first instance, the Department renews its objections to Mr. Skiendzielewski’s discovery request for all the reasons stated heretofore with respect to lateral repairs and replacements. Those Objections included the following (and are incorporated herein by reference):

- PWD objects to the discovery request as overly broad and irrelevant to the instant rate proceeding which addresses prospective rate relief for the period FY 2019-2021. No nexus has been established between historic sewer lateral repairs, HELP loans extended to fund same during such historic period and this rate case.
- PWD objects to the discovery request in connection with documentation related to payments made by its customers and third parties related to all sewer lateral repairs as to which it would not have in its possession and control (many of which are private transactions not involving PWD).
- The Department further objects to the discovery request 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.

In addition to the foregoing, the Department further objects to the instant discovery request for reasons stated below:

1. The Department objects to the discovery request as it is duplicative and cumulative and relates to matters already ruled upon by the Hearing Officer.

2. The Department further objects to the discovery request as sought in bad faith. The request is clearly the upshot of a long-standing private dispute concerning the Requestor’s property.¹

¹ Mr. Skiendzielewski’s electronic communications document that his real interest in this proceeding is personal and pecuniary. In short, he is seeking to recover damages from the City and is using the rate process as leverage to settle a long standing dispute.

3. The Department objects to the discovery request because it seeks information that is not relevant to the proposed changes in PWD rates and charges as set forth in the rate filing, and as such, is not reasonably calculated to lead to the discovery of admissible evidence for purposes of rate setting.

4. The Department objects to this discovery request as it is unreasonably burdensome in seeking information related to sewer lateral repairs throughout the City of Philadelphia. Even if the discovery request is interpreted to be focused upon sewer lateral repairs in connection with the HELP loan program, it would be unduly burdensome given the program's long history (established 26 years ago). In fact, the discovery request, as written, seeks documentation of all abatement actions taken by the Department across the City in connection with lateral repairs for a period not limited in time or scope. Such request is plainly over-broad, unduly burdensome and an unreasonable annoyance – which should not be tolerated by the Rate Board.²

5. The Department objects to the discovery request as it seeks confidential, and proprietary information (customer names and addresses; information concerning payments made for lateral repairs directly by the homeowner or by other arrangements; and names of contractors many of whom were not engaged by PWD directly).³

6. The Department objects to the discovery request to the extent it seeks information not in PWD's possession, custody and control (i.e., requested payment information made to contractors by the homeowner or third parties outside the Department's control and possession), and to the extent it seeks documents which are already in the possession of the Requestor or accessible to the Requestor or are a matter of public record.

WHEREFORE, the Department formally objects to the discovery request identified above and requests that its Objections be sustained and that it be relieved of the requirement of any further response.

Respectfully submitted,

/s/ Andre C. Dasent

Andre C. Dasent, Esquire
Attorney for Philadelphia Water Department

Centre Square East
1500 Market Street, 12th Floor
Philadelphia, Pennsylvania 19102

Date: May 4, 2018

On April 27, 2018, he specifically indicates to the Hearing Officer that he was seeking a resolution of long standing PWD-related matters; and suggested that his involvement in future hearings might be tied to the outcome of negotiations with the Law Department.

² The Department contends that sanctions are appropriate for participants who abuse the discovery process and/or disrupt the rate proceedings more generally, as Mr. Skiendzielewski is attempting to do. PWD suggests that any further actions seeking to circumvent the Hearing Officer's orders or disrupt the proceedings should trigger such sanctions, i.e., bar such intervener from further participation in hearings.

³ This request assumes that PWD is in possession and control of documents from private transactions. To the extent that PWD may be aware of such transactions, the requested documents may be confidential, privileged, proprietary or commercially sensitive for reasons that should be asserted by third parties affected by such disclosures (e.g., homeowners, contractors or other third parties).