

# PHILADELPHIA WATER, SEWER, AND STORMWATER RATE BOARD

## HEARING OFFICER RULING ON DISCOVERY DISPUTE

May 16, 2018

On various recent dates, Michael Skiendzielewski served three requests for documents or information from the Philadelphia Water Department (PWD). They have been designated as MS-III-1, MS-IV-1 and MS-V-1. They are as follows:

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).

MS-IV-1

In September 2017, I was notified by the PWD Deputy Commissioner of Operations that a work crew had “parged”<sup>1</sup> the sewer inlet in the street in front of my residence. Specifically, the correspondence stated that parging was performed “... to reduce the possibility of seepage into the inlet. This work does not mean there was a defect with the inlet and it has no impact on the sewer lateral, it was just a precaution.....”

I am seeking, through discovery, the PWD policy and procedure regarding the use of “parging” and under what circumstances, reasons and conditions warrant such construction steps to be taken. Also copies of any and all reports the PWD generated prior to and subsequent to the use of “parging” at sewer inlets throughout the city. Also, identify the PWD “parging” policy regarding follow-up, review, maintenance and tracking of those incidents where parging was used according to the needs and reasons spelled out in PWD policy.

MS-V-1 During the public hearing held at 5th and Huntingdon, the Water Commissioner Debra McCarty stated that she had investigated claims that safety protocols were not followed during sewer inlet lateral repairs at my residence in Philadelphia and “we (PWD) have investigated the claims and followed up and found no issue really.”

I am seeking, as discovery, copies of any and all reports the Commissioner used to investigate the claims, any and all notes and reports Water Department Staff created during the investigation and the names and positions of any and all

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<sup>1</sup> It is likely that the word Mr. Skiendzielewski heard was “purging.” What activity the PWD was doing is not relevant to the determination of whether the data request should be allowed.

Philadelphia Water Department employees and/or agents who conducted the investigation.

MS-VI-1

With respect to the contractor work to replace failed long laterals under the PWD HELP loan at my residence and the continued erosion of concrete and earth on my property, I was advised on February 25, 2016 by the PWD Commissioner in an email:

“.....have you contacted the plumber or [name deleted to protect privacy]? The work is guaranteed by the plumber, but the warranty period may have expired.....”

Despite several calls to the private contractor (name deleted to protect privacy) approved by PWD under the HELP loan program, I was repeatedly informed by the company management that according to the regulations in place under the PWD contractor program, they were not allowed to discuss any of the details, reasons, causes, conditions, etc. that were discovered at the time of the excavation and refused to provide any information or facts whatsoever.

I am seeking, through discovery, the PWD policy and procedure that provides the regulations and conditions under which the approved private contractors operated under the PWD HELP loan program. Specifically, what information, facts, findings, causes, and reasons for the excavation and/or pipe failure may be shared with the PWD customer who is responsible for repayment of the HELP loan? Are there are restrictions or limitations to sharing information and facts with the consumer that are part of the agreement between the approved private contractor and PWD? Within PWD management, who, by title, is responsible for executing, monitoring and evaluating the approved private contractor program under the PWD Help loan initiative.

On May 4, 2018, PWD filed its objections to MS-III-I.

By email on May 16, 2018, I advised Mr. Skiendzielewski that I deny all of these requests, with this decision to follow.

MS-III-1 as stated in the request itself reiterates earlier information requests for “records, payments, emails, etc. related to the reporting, management, identification, repair and reconstruction of long lateral problems and failures throughout the City.” Those earlier requests are set out here:

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.

I upheld a PWD objection to essentially the same request in my decision dated March 16, 2018. I see no reason to revisit that decision.

Turning to MS-IV, MS-V and MS-VI, the requests are each preceded by a reference to an incident involving Mr. Skiendzielewski at his residence. Mr. Skiendzielewski makes no effort to tie these isolated incidents at one customer's home to any widespread practice or policy of the PWD, nor to one that would affect water rates for FY 2019 through 2021.

MS-IV and MS-V may be an effort to find information that "parging" and lateral safety investigation are conducted city-wide in the way Mr. Skiendzielewski claims they were used at his remedy. It may be that his request for documents on "parging" and lateral investigations are based on a good-faith belief that he must not be the only person in his situation. But his belief is not sufficient to force the Department to undertake what would surely be a huge task to identify and provide "any and all" such documents. This is especially the case where, as here, Mr. Skiendzielewski has failed to show any connection between the information sought and the revenue requirements of the Department for the proposed rate years.

MS-VI is a different type of request. Essentially, Mr. Skiendzielewski seeks information about access to information necessary to pursue his complaint. Again, however he does not make an effort to show that information gathered by this request would have any relevance to the Board's work, to determine the revenue requirement of the Department.

In his public input testimony, the tone of his communications with the Hearing Officer, and these information requests, it is clear that Mr. Skiendzielewski feels that he has been treated unfairly. Whether that is the case is nothing the Water Rate Board can examine or determine. I permitted his initial request to go forward as I amended it, to make it reasonably related to the rate-setting process. Mr. Skiendzielewski has not provided any reason to examine whether his particular experience is pervasive among Department customers, nor that it would affect ratesetting if it were widespread. PWD is not obliged to respond to these information requests.