

**BEFORE THE
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD**

In the Matter of the Philadelphia Water Department's Proposed Change in Water, Wastewater and Stormwater Rates and Related Charges	Fiscal Years 2019-2021
--	------------------------

**PHILADELPHIA WATER DEPARTMENT'S MEMORANDUM IN RESPONSE TO
THE APPEAL OF MICHAEL SKIENDZIELEWSKI**

I. INTRODUCTION.

This Memorandum is submitted on behalf of the Philadelphia Water Department ("Water Department" or "PWD") in response to the Appeal of Michael Skiendzielewski, dated June 2, 2018. Although the subject document is captioned as an "appeal," in view of the fact that Mr. Skiendzielewski is representing himself, it is reasonable for the Philadelphia Water, Sewer and Storm Water Rate Board ("Rate Board" or "Board") to disregard the label of his document and treat same as a Motion seeking the Rate Board's review of rulings made by the Hearing Officer in connection with certain of his discovery requests.

II. DISCUSSION

As the Rate Board is aware, Mr. Skiendzielewski ("Movant") has filed numerous interrogatories and requests for production of documents during the course of the rate proceeding, including: Skiendzielewski Discovery Set I (dated March 23, 2018), Set II (dated March 26, 2018); Set III (dated May 1, 2018); Set IV (dated May 3, 2018); Set V (dated May 4, 2018); and Set VI (dated May 7, 2018). The Department timely objected to the Movant's Set I and Sets III-VI discovery requests ("PWD Objections").¹ The Hearing Officer ruled on the aforesaid PWD Objections on March 16, 2018 (Set I) and May 16, 2018 (Sets III-VI) – sustaining the Department's position. Movant's filing expresses general

¹ PWD Objections to Skiendzielewski Discovery, Set I (February 27, 2018); Set III (May 4, 2018); Sets IV-VI (May 7, 2018).

dissatisfaction with the Hearing Officer's discovery rulings identified above. However, Movant does **not** explicitly identify any specific discovery ruling by the Hearing Officer (that is the focus of disagreement). Nor does Movant provide any supporting reasons to show how any discovery ruling by the Hearing Officer was made in error.

This is likely because the discovery rulings related to Skiendzielewski Discovery Sets I and III through VI are correct. In the first instance, the Rate Board should be aware that, as a part of ruling on Set I, the Hearing Officer directed the Department to provide responses to substitute questions (propounded at her direction), which was done.² It does not appear that the Movant has any logical basis to disagree with the ruling on Set I. Next, the Hearing Officer dismissed Set III, as same repeated discovery in Set I that was already determined to be objectionable.³ Finally, Sets IV, V and VI were dismissed, by the Hearing Officer, because they were not relevant to the proceeding. More specifically, these discovery requests were found to be, on their face, related to an isolated incident, rather than an issue presented in the rate proceeding. As such, they did not relate to any widespread practice or policy of the Department. Nor did they relate to any practice or policy that would affect the proposed rates and charges for FY 2019 through 2021. In addition, Sets V and VI were filed after the deadline for submission of discovery requests.⁴

It bears emphasis that the proper scope of this proceeding is limited to the changes in rates and charges proposed by the Department. In this context, the Rate Board must make a determination as to the reasonableness of such proposed changes in rates and charges,⁵ based upon relevant evidence presented at

² See, PWD Response to Skiendzielewski Discovery, Set I (dated March 23, 2018) and Attachment.

³ Hearing Officer Ruling on Skiendzielewski Discovery Disputes, Sets III-VI (dated May 16, 2018).

⁴ The discovery period ended May 3, 2018, per the Hearing Officer's directive.

⁵ Hearing Regulation at §10(a).

public input and technical hearings.⁶ The Rate Board is not authorized to address private disputes, or non-rate related ancillary claims in rate proceedings.⁷

In the instant proceeding, Movant was afforded reasonable notice and an opportunity to be heard by the Hearing Officer. He was not denied due process in connection with public input hearings or technical hearings (where he appeared on at least three occasions). The mere fact that objections to Movant's discovery requests (advanced approximately nine days before the start of technical hearings) were sustained does not mean that the process for receiving information and comments from the public and/or participants was flawed or unfair. To the contrary, Movant was allowed to fully participate in the proceeding. As alluded to above, he participated in discovery and received responses from the Department as to all relevant requests. Movant also appeared or made oral statements/presentations at the public input hearings on April 23, 2018 and April 30, 2018, as well as, at the technical hearing on May 17, 2018.⁸ He indicated that he wanted to be treated fairly, equitably and reasonably⁹ and, in the context of the proceedings – he most certainly was. As a participant, the Movant was further entitled to present written testimony and file a brief¹⁰ to explain his positions on the issues, as was explained to him by the Hearing Officer. But, he chose not to do so.

⁶ Hearing Regulation at §6(3). See also, Hearing Regulation at §6(4) relating to the “collection of information relevant to the Department's proposed changes in rates and charges.

⁷ In the instant context, Movant's claims relate to a HELP loan (related to a service lateral repair at his property) as to which he wants to negotiate a discounted amount. The Board should be informed that PWD regulations provide an appeal process to the Tax Review Board (“TRB”) in the circumstances presented. See, PWD Regulations §§100.7(b); 200.1-200.5. As explained in the PWD Response to Skiendzielewski Discovery, Set I (dated March 23, 2018) and Attachment, on two occasions, Movant has already availed himself of this TRB appeal process – and has lost (after requests for reconsideration). For reasons unknown to PWD, Movant did not pursue an appeal to the Philadelphia Court of Common Pleas.

⁸ See, Public Hearing Transcript (April 23, 2018) at 27-32; Tr. 28-73 (May 17, 2018). Movant did not prepare written testimony. *Id.* See also, Tr. 27-28, 38 (May 17, 2018).

⁹ See, PWD Brief at 76.

¹⁰ See, Tr. 27-28, 38 (May 17, 2018); Hearing Regulations at §3(b)(5), 7(a)(1)(iii), 8(a)(2), 8(b)(3).

III. CONCLUSION

Based upon the foregoing, the Department respectfully requests that the Rate Board (a) disregard the label of the subject document filed by Mr. Skiendzielewski and treat said document as a motion;¹¹ (b) deny any and all relief requested by Mr. Skiendzielewski; and (c) grant relief in favor of the Department as may be just and reasonable under the circumstances.

Respectfully submitted,

/s/ Andre C. Dasent

ANDRE C. DASENT, ESQUIRE
Attorney for Philadelphia Water Department

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

Of Counsel:

SCOTT SCHWARZ, ESQUIRE
JI JUN, ESQUIRE
SUSAN CROSBY, ESQUIRE

Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102

Date: June 8, 2018

¹¹ See discussion, *supra*. Briefs were due June 4, 2018 – Movant did not file a brief.