

**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
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**EXCEPTIONS OF THE
PHILADELPHIA LARGE USERS GROUP**

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Newman & Company, Inc.
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I. INTRODUCTION

On February 12, 2018, the Philadelphia Water Department ("PWD" or "Department") submitted a preliminary rate increase proposal to the Philadelphia Water, Sewer and Storm Water Rate Board ("Rate Board"). On March 14, 2018, the PWD submitted a final proposed rate increase preserving the same rate proposal initially presented on February 12, 2018. PWD proposes to establish rates for water, sanitary sewer, and stormwater services, projected to increase its annual revenues by \$116 million over Fiscal Years ("FY") 2019, 2020, and 2021.

Pursuant to its Regulations, the Board appointed Nancy Brockway as the Hearing Officer to preside over formal proceedings concerning the rate filing. In accordance with the Regulations, the Hearing Officer established a schedule for litigated proceedings, including intervention, testimony, technical hearings, and briefs. Consistent with the approved schedule, the Philadelphia Large Users Group ("PLUG")¹ intervened in the proceeding on March 21, 2018.² Additional intervenors include Community Legal Services ("Public Advocate"), Philadelphia Land Bank, PennEnvironment, PECO Energy Company and Exelon Generation Co., LLC ("PECO"), and *pro se* intervenor Michael Skiendzielewski.

The Public Advocate, PennEnvironment, and the Philadelphia Land Bank submitted Direct Testimony on April 20, 2018. In compliance with the procedural schedule, PLUG submitted the Rebuttal Testimony of Richard A. Baudino on May 4, 2018.³ PWD also submitted Rebuttal Testimony from various witnesses on May 4, 2018.

¹ PLUG is an *ad hoc* group of Large Commercial & Industrial ("C&I") customers comprised, for the purposes of this proceeding, of Thomas Jefferson University, Temple University, Newman & Company, Inc., and Einstein Healthcare Network.

² PLUG additionally submitted an updated Notice of Intervention on April 20, 2018.

³ PLUG Statement No. 1.

The Hearing Officer presided over technical hearings from May 10, 2018, through May 18, 2018, at which parties offered witnesses for cross-examination.⁴

Pursuant to the approved procedural schedule, PLUG, the Philadelphia Land Bank, and the Public Advocate submitted briefs to the Hearing Officer and Rate Board on June 4, 2018. Individual participant Michael Skiendzielewski submitted a brief on June 7, 2018.

On June 19, 2018, the Hearing Officer issued a Hearing Officer Report ("Report"). Consistent with the procedural schedule, PLUG hereby submits Exceptions to the Report.

II. EXCEPTIONS

Exception No. 1. The Hearing Officer's Report Erred in Approving the Public Advocate's Proposal to Maintain Present Water Rates for the 0-2 Mcf Usage Block Throughout FYs 2019-2021

The Report appropriately adopts PWD's Cost of Service Study ("COSS"), concurring with PLUG's argument that PWD's COSS reflects specific characteristics of PWD's system in contrast to the Public Advocate's more generalized COSS proposals. However, the Report committed a serious error in recommending that the Rate Board maintain present water rates for the 0-2 Mcf usage block and shift any rate increase to the higher usage blocks, including a misstatement of the testimony submitted by the Public Advocate. The effect of this radical and unsupported proposal would be to insulate Residential customers from an increase to water rates and force all Non-Residential customers to shoulder the entire water rate increase. Such a result is not supported from a cost-of-service basis or any other empirical basis. As a result, the Rate Board must reject this unfounded recommendation and allocate any rate increase across all customer classes and usage blocks.

⁴ The Rebuttal Testimony of Richard Baudino was admitted to the record without cross-examination, as both PWD and the Public Advocate waived cross, and no parties objected to admission of the testimony. Hearing Transcript, May 17, 2018, at 12-13.

The Report's recommendation to maintain present rates for the 0-2 Mcf usage block is completely unsupported by the record and based on an incomplete reference to PWD's COSS.

The Hearing Officer describes the basis for the recommendation follows:

I recommend that the Board order the Department not to change the usage rate for customers consuming 0-2 Mcf of water. The Advocate is persuasive that the present rate is satisfactory under all identified assumptions.⁵

In contrast to the Hearing Officer's conclusion, the evidence presented by the Public Advocate entirely fails to justify the recommendation. The recommendation originates from the testimony of Public Advocate witness Jerome Mierzwa. As stated in the Report, Mr. Mierzwa proposed that PWD maintain present water rates for the 0-2 Mcf usage block, alleging that PWD has designed water rates which "significantly exceed the cost of providing service to the Residential customer class."⁶ Notably, Mr. Mierzwa based his recommendation not on PWD's COSS, but on the modified COSS prepared by the Public Advocate.⁷ However, the Report rejected the Public Advocate's COSS and approved PWD's COSS. As a result, there is no basis supporting Mr. Mierzwa's recommendation to maintain present rates for the 0-2 Mcf usage block.

Although the Report references a basis for maintaining present rates for the 0-2 Mcf usage block other than the Public Advocate's flawed COSS study, this observation confuses arguments made by the Public Advocate's witness with arguments made in the Public Advocate's Main Brief. Specifically, the Report makes the following erroneous statement:

Mr. Mierzwa further determined that even the existing rates of the Residential customer class are "more than sufficient to recover the indicated cost-of-service."⁸

⁵ Report, at 105.

⁶ *Id.*, at 95.

⁷ Mr. Mierzwa bases the recommendation to maintain present water rates for the 0-2 Mcf usage block on Table 1 of his Direct Testimony, which shows that the "existing rates for Residential customers significantly exceeds the indicated cost-of-service." Public Advocate Statement No. 2, at 18 (Emphasis added). Table 1 presents the difference between existing rates for Residential customers and the Public Advocate's revised COSS, not the difference between existing rates and PWD's as-filed COSS. See Public Advocate Statement No. 2, at 16.

⁸ Report, at 95.

Contrary to the Report, *Mr. Mierzwa did not make the above-referenced statement.* Again, Mr. Mierzwa's testimony only proposed to maintain present rates for the 0-2 Mcf usage block because of the results of the Public Advocate's COSS, which the Hearing Officer properly rejected in favor of PWD's as-filed COSS. The Public Advocate did alternatively argue in support of maintaining present rates for the 0-2 Mcf usage block based on PWD's COSS, but this argument was made for the first time in the Public Advocate's Main Brief, not in Mr. Mierzwa's testimony.

In its Brief, the Public Advocate, apparently in response to PLUG's testimony demonstrating the flaws in the Public Advocate's COSS, added an additional proposal not proffered by its witness. The Public Advocate's Main Brief argues that the Rate Board should maintain present water rates for the 0-2 Mcf usage block because present revenues from Residential customers are sufficient to recover the cost-of-service under both the Public Advocate's modified COSS and PWD's as-filed COSS.⁹ Because the procedural schedule established for this proceeding does not allow for Reply Briefs, PLUG did not have an opportunity to address this argument in advance of the Report and clarify the logical fallacy and fundamental unfairness of maintaining present water rates for the 0-2 Mcf usage block.¹⁰ As set forth in PLUG's Main Brief and recounted in the Report, the Public Advocate's COSS contains numerous flaws, relies on data subsequently corrected and clarified by PWD, and was properly rejected by the Report.¹¹ As a result the only valid COSS on record remains PWD's COSS. As demonstrated below, a review of PWD's COSS shows the Public Advocate's proposal to maintain present water rates for the 0-2 Mcf usage block lacks credible support, would result in

⁹ Public Advocate Main Brief, at 98-99.

¹⁰ PLUG also notes that a Motion to Strike may be appropriate under the circumstances, but understands that such Motions are disfavored before the Rate Board.

¹¹ See PLUG Main Brief, at 3-4; *see also* Report, at 95-105.

interclass subsidization, and would subject higher usage customers to unjust and unreasonable rates.

First, the primary evidence cited by the Public Advocate omits critical information that, when considered, precludes any rational consideration of its proposal. While it is true that PWD's COSS shows Residential customers paying present rates slightly above cost-of-service, the Public Advocate ignores the countervailing fact that the same is true for Commercial and Industrial customers.¹² The Rate Board cannot justify shifting costs away from a lower usage block on the basis that Residential customers are paying present water rates above cost-of-service when higher usage customers are also paying present water rates above cost-of-service.

Additionally, the Public Advocate proposes to maintain present water rates for the period 2019-2021 based only on PWD's COSS for FY 2019. As noted in the Report, PWD does not use a historic test year, but bases its proposed 3-year rate increase on its cost-of-service over three fully-projected future test years from 2019-2021.¹³ In recommending that the Rate Board maintain present water rates for the 0-2 Mcf usage block based solely on PWD's 2019 COSS, the Public Advocate ignores the fact that 97% of PWD's proposed rate increases would occur in FYs 2020 and 2021.¹⁴ PWD only proposed a \$668,000 water rate increase for FY 2019, compared to \$6.5 million and \$13.6 million water rate increases proposed for FY 2020 and 2021 respectively.¹⁵ Notwithstanding the additional flaws in its proposal to maintain present rates for

¹² See PWD Statement No. 9A, Schedule BV-EI, Table W-17. PWD's COSS shows Residential customers paying current water rates 0.9% higher than present revenues, but also shows Industrial customers paying current water rates 3.6% higher than present revenues. *Id.* Commercial customers are also also paying present rates 0.7% higher than present revenues. *Id.*

¹³ Report, at 20 (stating "[b]ased on its analysis of these three years (FPFTY 2019-2021), the Department requests authorization to recover additional revenues over this period."). See *id.* PLUG notes that the Report recommends that the Rate Board reject any proposed increase for FY 2021 on the grounds that such projections are excessively speculative. See Report, at 27. While PLUG references PWD's as-filed COSSs for 2019-2021 for purposes of addressing the Public Advocate's rate design arguments, these references should not be taken as support for PWD's proposed three-year rate increase.

¹⁴ See PWD Statement No. 9A, Schedule BV-EI, Table W-17.

¹⁵ See *Id.*

the 0-2 Mcf usage block over FY 2019, the Public Advocate provides no evidence supporting its proposal to maintain present rates for the 0-2 Mcf usage block for FY 2020 or FY 2021.

Finally, the Rate Board must consider that maintaining water rates for the 0-2 Mcf usage block would unduly burden higher usage customers by shifting the entire water rate increase to higher usage blocks. In PLUG's Rebuttal Testimony, witness Richard Baudino provided an illustrative example showing how shifting a 10% increase to the 0-2 Mcf usage block would shift \$13.77 million to be recovered from the higher usage blocks.¹⁶ The Public Advocate claims that Mr. Baudino's illustrative example should be disregarded because PWD only proposes system-wide increases of 0.3% in FY 2019, 2.6% in 2020, and an additional 2.6% in 2021.¹⁷ The Rate Board should reject the Public Advocate's attempt to conflate the rate impact upon specific customer classes with system-wide rate impacts. Additionally, the Rate Board should consider that shifting the costs allocated to the 0-2 Mcf usage block would result in non-Residential customers bearing the costs of the initial water rate increase allocation, costs shifted from the 0-2 Mcf rates, and the added costs of the TAP Rider, which collectively would unreasonably burden customers and result in significant rate shock.

¹⁶ PLUG Statement No. 1, at 7-8.

¹⁷ Public Advocate Main Brief, at 99.

III. CONCLUSION

WHEREFORE, the Philadelphia Large Users Group respectfully requests that that the Philadelphia Water, Sewer and Storm Water Rate Board grant these Exceptions and: (1) reject the Hearing Officer's recommendation to maintain present rates for the 0-2 Mcf usage block; or alternatively (2) limit the recommendation to maintain present rates for the 0-2 Mcf usage block to the FY 2019 rate increase.

Respectfully submitted,

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