

**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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**PHILADELPHIA WATER DEPARTMENT'S MEMORANDUM IN RESPONSE TO
THE COMMENTS OF THE PUBLIC ADVOCATE TO THE COMPLIANCE FILING**

I. INTRODUCTION

On July 23, 2018, consistent with the directive of the Philadelphia Water, Sewer and Storm Water Rate Board ("Rate Board"), the Philadelphia Water Department ("Department" or "PWD") proffered its compliance filing (incorporating new Rates and Charges for FY 2019 and FY 2020 and changes in rate structure) in connection with the above captioned proceeding ("Compliance Filing"). The agreed-upon proceeding schedule permitted comments by participants concerning the Compliance Filing through July 30, 2018. The Public Advocate ("Advocate") filed its Comments to PWD Compliance Filing on the aforesaid date ("Comments").¹

This memorandum is submitted on behalf of the Department in response to the Comments of the Advocate. Needless to say, the deliberations are now concluded and a final Rate Determination² has been rendered. The Compliance Filing itself is required under the regulations. But, no additional substantive action by the Rate Board is contemplated or required under the regulations. Any additional issues the Advocate may have concerning the outcome of this rate proceeding, including the Compliance Filing, are appropriately held for judicial review, as opposed to resolution by and before the Rate Board.

¹ The Philadelphia Land Bank ("Land Bank") also informally shared its comment concerning a drafting revision in Section 5.2(m) of the Compliance Filing on July 24, 2018. This comment was addressed by agreement with the Department. See discussion, *infra*.

² The Rate Board's final decision as to new rates and charges dated, July 12, 2018.

II. LEGAL STANDARD

Generally speaking, a rate determination authorizes rates and charges that are different from the prior rates and charges listed in the utility's regulations/tariff. In the instant context, the Department must create new schedules of rates and charges/tariff pages to comport to the Rate Determination.³ However, prior to filing such new rates and charges, the Department supplies copies of new rates and charges (the "Compliance Filing") to the Rate Board, hearing participants and the public.⁴ This provides an (informal) opportunity for participants to identify drafting errors and other concerns.

Nothing in Section 13-101 of the Philadelphia Code ("Rate Ordinance") or the Rate Board's Regulations empowers the Board to re-open deliberations (to re-examine Table C-1 or other components of the Rate Determination). The Rate Ordinance⁵ empowers the Rate Board to make a decision to approve, modify or reject the proposed rates and charges.⁶ It does not explicitly empower the Rate Board to enforce the Rate Determination. Nor does it explicitly empower the Rate Board to review or approve the Department's implementation of the rates and charges that were approved or modified by the Rate Determination. Sections 10(b) through (d) of the Regulations specifically indicate that the Rate Determination will include instructions directing PWD to prepare a new tariff, including new rates and charges, any rate structure changes or other issues or terms of service addressed therein. But, there is no provision in the Regulations for revisiting Board deliberations or reconsideration of the Rate Determination.

³ See, Rate Determination at 95; Rate Board Regulations at Section 10(b-d).

⁴ The Compliance Filing is posted on the Rate Board's website.

⁵ See, Philadelphia Code §13-101. Under The Philadelphia Code (§13-101), the Rate Board has the power to approve modify or reject the proposed rates and charges. That Section does not give the Rate Board continued oversight over the actual changes imposed by the Department. Nor does that Section empower the Rate Board to approve conformity of the Department's tariff with the Rate Board's Determination.

⁶ In 2016, the Rate Board accepted the advice of the Law Department, which advised, *inter alia*, that: (a) the Rate Board has the power to fix and regulate rates and charges, which includes the power to deny any rate increase above the baseline required by the Home Rule Charter and Philadelphia Code on any reasonable basis, and the power to grant a rate increase for a shorter period than the Department has requested; and (b) the Rate Board does not have the power to direct how the Department provides service. 2016 Determination of Water Department Rates and Charges for FY 2017-2018 at 39 and Appendix B.

The Rate Board should note that, in rate proceedings, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) requires compliance filings.⁷ The PUC’s regulations explicitly permit the filing of “exceptions” to a compliance filing.⁸ Exceptions are, however, strictly limited in scope to the factual issue of alleged deviation from requirements of the PUC’s order.⁹ The PUC’s regulations go beyond the scope of subject regulations by clearly and explicitly requiring separate approval of the compliance filing by the PUC.¹⁰ That being said, the Commission may allow rates and charges to become effective, notwithstanding the filing of an exception.¹¹

III. ARGUMENT

A. The Compliance Filing Comports With the Rate Determination.

The Compliance Filing, at issue, was prepared in accordance with the Rate Determination. Table C-1 and additional supporting tables were prepared by Black & Veatch consistent with the directions provided by the Rate Board. Table C-1 was specifically adopted and incorporated into the Rate Determination.¹² Moreover, the aforesaid table accurately reflects the various adjustments adopted by the Rate Board in its deliberations.

The table below compares the originally proposed rate adjustments with the Compliance Filing with reference to Table C-1.

**Comparison of Revenue Adjustments – Original Filing and Compliance Filing
(\$000)**

	<u>Table C-1 Reference</u>	<u>Percentage Increase</u>	<u>FY 2019</u>	<u>FY 2020</u>
PWD Originally Proposed Revenue Adjustment	Line 4	1.60%	\$9,204	\$11,186
	Line 5	4.50%		26,133
Compliance Filing Revenue Adjustment	Line 4	1.34%	\$7,884	\$9,461
	Line 5	1.20%		7,184

⁷ 52 Pa.Code § 5.592.

⁸ 52 Pa.Code § 5.592(c).

⁹ 52 Pa. Code §5.592(c).

¹⁰ See, 52 Pa. Code §5.592(b), (d). This “compliance” tariff is examined by PUC’s Bureau of Technical Utility Services (TUS) and, if in accordance with the Commission’s final order, is approved by secretarial letter.

¹¹ 52 Pa. Code §5.592(d).

¹² Rate Determination at 95.

The difference in revenue adjustments depicted above is \$1.320 million and \$20.674 million in FY 2019 and FY 2020, respectively. This variance is a clear indication that the various adjustments recommended by the Rate Board have been reflected in Table C-1. Viewed together with Table C-1(TAP), it is clear that the TAP lost revenues cause the rate impact on customers in FY 2019, as is the case in FY 2020 together with a modest increase in base rates. All of the above is consistent with the Rate Board's direction.

With regard to FY 2019, Table C-1 shows the cumulative effect of no revenue adjustment to base revenues and only reflects the recovery of the TAP revenue loss via a separate surcharge. This revenue effect is also shown in Table C-1(TAP) which was also attached to the Rate Determination and Compliance Filing. Public Fire Protection revenues under existing rates (\$7.8 million) were included in existing revenues as a part of the proposed filing and are no longer included in the additional revenues required from general service rates and charges in the Compliance Filing. Given that there is no base rate revenue adjustment in FY 2019, existing public fire protection revenues from the General Fund flow to the Residual Fund and Rate Stabilization Fund ("RSF") resulting in higher debt service coverage of 1.30x and a higher year-end balance.¹³

Similarly, with regard to FY 2020, the revenue adjustment is the cumulative effect of a nominal increase in base revenues, recovery of the TAP revenue loss via a separate surcharge and reductions in base rate revenue requirements. Existing Public Fire Protection revenues (\$7.8 million) are also no longer presented as additional revenues required from general service rates and charges. Although criticized by the Advocate, the timing of withdrawals from the RSF are impacted by the revenue adjustments directed in the Rate Determination. The timing and use of the RSF monies is an integral part of the multi-year cash

¹³ In FY 2019, the majority of the impact of revenue adjustments is reflected in the increased RSF balance (\$8.1 million) due largely to the increase in revenue under existing rates due to the inclusion of public fire protection revenues from the General Fund. In addition, debt service coverage ("DSC") increased from 1.28x to 1.30x consistent with the Rate Board's general direction concerning targeted DSC and cash funded capital.

flow analysis and is designed to mitigate the magnitude of revenue adjustments during the financial planning period.¹⁴

The point of the foregoing is that Table C-1 already reflects the Rate Board deliberations which are now concluded and fully reflected in the final Rate Determination. There is nothing more to do substantively – only drafting revisions need to be reviewed. One such change has already been identified and resolved by agreement (Land Bank edits to Section 5.2(m)). Additional edits to Section 10 of the Compliance Filing have also been identified by the Advocate, as discussed in sub-section III.B below.

B. PWD Agrees to Certain Drafting Revisions Suggested by the Advocate.

The Department concurs with the Advocate that Section 10 of the Compliance Filing should be edited to reflect the Rate Board’s finding that the reconciliation process should permit affected participants to be included in the initial reconciliation process. This is a shared concern with the Advocate.¹⁵ The revised language is set forth below and provided in black-line in Attachment A to this Memorandum.

10.2 Filing with the Philadelphia Water, Sewer and Storm Water Rate Board

(a) Annual Reconciliation

The Water Department shall initiate the annual TAP Rate Rider Reconciliation by filing a TAP-R reconciliation request statement (“Statement”) with the Rate Board. The Statement filed by the Water Department shall be a matter of public record. The Water Department shall file the annual Statement with the Philadelphia Water, Sewer and Storm Water Rate Board (“Rate Board”) at least 60 days prior to the effective date of the new surcharge rate, or at such other time as the Rate Board may prescribe, and in accordance with any procedures and standards for the contents of such reconciliation submissions established by the Rate Board.

In this context, the Board also indicated that over time the reconciliation process may become a routine process (as envisioned by PWD) consisting primarily of examining the numerical calculations provided

¹⁴ In FY 2020, the base rate increase was reduced to reflect the Rate Board’s revenue requirement adjustments. The transfer from the RSF was also increased (utilizing the higher RSF ending balance in FY 2019) to levelize FY 2019 and FY 2020 revenue increases.

¹⁵ Comments at 12.

by the Department for the Rate Board's review.¹⁶ This is the basic model provided by PECO Energy and Philadelphia Gas Works for reconciliation processes associated with their respective low-income affordability programs.

C. Action On the Advocate's Remaining Comments Is Neither Required or Appropriate.

The crux of the remaining Comments by the Advocate are that (i) the narrative of the Rate Determination and (ii) Table C-1¹⁷ are not, in its view, perfectly aligned.¹⁸ The remedy the Advocate suggests is that the Rate Board should "clarify how the revenue requirement adjustments should be reflected in the aforesaid table"¹⁹ which would require the Rate Board to revisit (re-open) its deliberations and, presumably, reconsider its Rate Determination.

So, the Advocate is, in effect, asking for reconsideration by the Rate Board of their determination as opposed to pursuing judicial review of the Rate Determination. The practical problem presented is that we are at the end of the rate process — deliberations have already concluded, the Rate Determination has been timely rendered and the appeal period is running. At this point, the prescribed remedy for the Advocate (assuming it feels aggrieved by the outcome of the proceeding) is to seek judicial review.

Additionally, as explained in greater detail herein, action on the Advocate's remaining Comments is neither required nor appropriate.

¹⁶ Rate Determination at 89-90.

¹⁷ The narrative of the Rate Determination explicitly adopts Table C-1 and appends this table and other supporting tables thereto prepared by Black & Veatch at the Rate Board's direction. References to the Rate Determination herein collectively refer to both the narrative and tables. Rate Determination at 95.

¹⁸ The Advocate acknowledges that the Compliance Filing accurately reflects the Rate Board's downward expense adjustments as reductions to total operating expenses (Table C-1, Line 16); reduced debt service on projected future bonds (Table C-1, Line 21); and public fire protection costs (Table C-1, Line 1). Comments at 4 (footnote 3). It insists, however, that Table C-1 is illustrative of PWD's interpretation of the Rate Board's deliberations and must be subject to further review by the Board at this time. *Id.* at 3. As if to confirm that its Comments were essentially a motion for reconsideration, the Advocate notes that the Rate Board failed to make a determination regarding the Advocate's downward adjustment on debt interest on FY 2017 bonds. *Id.* at 2 (footnote 2). The problem with all of the foregoing is that the Board's deliberations have already taken place, during which time representatives from the Advocate and Department were present. At the end of these deliberations, the Chairman specifically asked all present was there any issue overlooked. Since that time, Table C-1 and additional supporting tables were prepared by Black & Veatch consistent with the directions provided by the Rate Board. The above tables were adopted and incorporated into the Rate Determination. The Compliance Filing, at issue, was prepared in accordance with the Rate Determination.

¹⁹ The Advocate should be reminded that Table C-1 is a part of the Rate Determination and was specifically adopted by the Rate Board. Table C-1 was also prepared in the context of the Rate Board's deliberations which took place on June 29 and July 2, 2018 and concluded with the adoption of the Rate Determination on July 11, 2018.

1. The Requested Remedy Does Not Comport With Rate Board Regulations.

The Public Advocate's Comments suggest that the Rate Board should re-open its deliberations and direct the Department to make a revised Compliance Filing with different Table C-1 assumptions.²⁰ The Advocate also indicates that it would also review and scrutinize this subsequent filing. Conceivably, the process, as proposed by the Public Advocate, would have no end. The Department maintains that this approach is at odds with the Rate Board's Regulations. There is no provision in the Regulations for revisiting Board deliberations or reconsideration of the Rate Determination. Section 10 specifically provides:

(b) The Rate Determination of the Board shall include instructions to the Department to prepare a new tariff incorporating the new rates and charges and any changes in rate structure or terms of service and other issues included in the Rate Determination. The new tariff shall conform to the Rate Determination.

(c) The Rate Determination of the Board shall be filed with the Department of Records, shall be posted on the Board's website and shall be sent to the Participants.

(d) The effective date of the changes in the rates and charges shall be the date set in the Rate Determination, but shall not be sooner than ten (10) days after the Department files the new rates and charges with the Department of Records.²¹

The above regulations do not allow for the iterative process that the Public Advocate requests here (revised compliance filing to be made also subject to its review). Nor is there time to revisit the Rate Board deliberations and Rate Determination within the statutory time-frame established for decision-making.

²⁰ Comments at 6; 14. The Advocate's over-arching argument is that the Board must clarify how revenue requirement adjustments should be reflected in Table C-1 and that it stands prepared to review any revised Compliance Filing. Comments at 14.

²¹ Rate Board Regulations at Section 10(b-d).

2. The Rate Board Cannot Accommodate the Public Advocate's Request.

The Rate Board lacks the statutory authority to grant the relief sought by the Public Advocate. The Rate Ordinance dictates the timeline for the rate process.²² The Rate Ordinance provides that the decision to approve, modify or reject the proposed rates and charges shall be made in a timely manner, but no later than 120 days from the filing of notice of any proposed change in rates and charges.²³ Under its rules, if the Rate Board is unable to act within 120 days, PWD can establish emergency rates and charges on a temporary basis pending a final determination by the Board.²⁴ As stated previously, the Rate Board must act within, and cannot exceed, its jurisdiction. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy or grant relief. The Rate Board is authorized to approve, modify or reject proposed rates and charges. Nothing in the Philadelphia Code or the Rate Board's Hearing Regulations authorizes the Rate Board to revisit its deliberations, reconsider its Rate Determination or extend the appeal period (which is already running).²⁵

3. The Rate Board Must Allow Time for the Logistics of Rate Implementation.

The Rate Board should also be aware that there are logistical requirements associated with the implementation of new rates and charges. That is, following the Rate Determination there is a required compliance filing and, numerous billing system changes that are required to implement approved changes in rates and charges and to (hopefully) implement the new TAP Rate Rider. This is a complicated process that the Advocate ignores altogether. The rate calendar for the current Proceeding partially addresses these issues, but does not capture the time required for billing changes, to comport with the Rate Determination. The table below depicts a likely time-line for (i) the Rate Board's deliberations and

²² See, Philadelphia Code §13-101(4)(b)(iv), 8.

²³ See, Philadelphia Code §13-101(4)(b)(iv), (8).

²⁴ Rate Board Hearing Regulations at Section II(1)(b); Philadelphia Code §13-101(8).

²⁵ See Letter of May 9, 2018 to Board Members Concerning Motion for Certification of Interlocutory Appeal and Stay from Law Department (Daniel W. Cantú-Hertzler, Senior Attorney). This letter states in footnote 6 that: "The Rate Board would likely have the authority to enter a stay if the law afforded it no discretion but to enter a stay. In such a case, the stay would not be the cause of the delay. But that is not the case here."

decision, (ii) the compliance filing, (iii) required billing system changes and (iv) submission of approved rates to the Department of Records – with no changes in scheduling.

Timeline for Rate Determination and Implementation of New Rates

<u>Projected Date</u>	<u>Description of Event</u>	<u>Parameters</u>
July 12	Rate Board Decision	No later than 120 days following Formal Notice
July 23	PWD Compliance Filing	
July 23 - August 22	Customer Billing System Changes to Comport with Rate Board Decision	Basis-2 changes will require roughly 30 days for new base rates
August 22	Compliance Filing Made with Department of Records	Filing required at least 10 days before new rates become effective.

In addition to the foregoing, PWD needs to notify customers of changes in rates and charges at least 30 days before implementation. PWD submits that there is no time, nor need to re-open deliberations, re-run the rate model, undertake additional review, as envisioned by the Advocate, and timely implement new rates on September 1, 2018. There is barely enough time to implement the present schedule.²⁶

²⁶ PWD notes that the Board Chair took great care to schedule deliberations within the 120-day decision period and around Board Members availability. The Department has also worked diligently to meet rate schedule deadlines throughout the proceeding.

IV. CONCLUSION

Based upon the foregoing, the Water Department submits that, except as noted in sub-section III.B, the Comments of the Public Advocate to PWD Compliance Filing should be rejected, as no further action is required by the Rate Board.

Respectfully submitted,

/s/ Andre C. Dasent

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Date: August 2, 2018

Attachment A

10.2 Filing with the Philadelphia Water, Sewer and Storm Water Rate Board

(a) Annual Reconciliation

The Water Department shall initiate the annual TAP Rate Rider Reconciliation by filing a TAP-R reconciliation request statement ("Statement") with the Rate Board. The Statement filed by the Water Department shall be a matter of public record.

The Water Department shall file the annual Statement with the Philadelphia Water, Sewer and Storm Water Rate Board ("Rate Board") at least 60 days prior to the close of the current period in which rates are effective date of the new surcharge rate, or at such other time as the Rate Board may prescribe, and in accordance with any procedures and standards for the contents of such reconciliation submissions established by the Rate Board.

~~Absent good reason be shown to the contrary, the Rate Board shall, within 60 days following the submission of the Statement, direct the Water Department to either increase or decrease the water and sewer TAP R rates during the Next Rate Period.~~

~~If the Rate Board does not render a decision within 60 days of the filing, the requested TAP R shall go into effect at the beginning of the next period.~~