

Philadelphia Water, Sewer, and Storm Water Rate Board  
Meeting Notes  
6/6/2018, 3pm, 1515 Arch Street, 18<sup>th</sup> Floor, Mayor’s Media Room

Members Present:

Irwin “Sonny” Popowsky, Chair  
Tony Ewing  
Rasheia Johnson

Also Present:

Daniel Cantú-Hertzler	Susan Crosby
Ed Markus	David Jagt
Abby Pozefsky	Jaclyn Rogers
Andre Dasent	Pat Edouard
Rob Ballenger	Thomas Boynton
Debra McCarty	Cody Williams
Melissa LaBuda	

Mr. Popowsky called the meeting to order at 3:10 p.m.

Mr. Ewing moved to approve the minutes from the May 2, 2018 monthly meeting without additions or corrections. The motion was seconded by Ms. Johnson. The motion approved with Mr. Popowsky, Mr. Ewing, and Ms. Johnson in favor, Ms. Olanipekun-Lewis absent, and no members opposed or abstaining.

Mr. Ewing moved to approve the minutes from the May 9, 2018 special meeting without additions or corrections. The motion was seconded by Mr. Popowsky. The motion was approved with Mr. Popowsky and Mr. Ewing in favor, Ms. Johnson abstaining, Ms. Olanipekun-Lewis absent, and no members opposed.

Mr. Popowsky offered his view that the Technical Hearings went smoothly and cordially, noting that both Mr. Ewing and Ms. Johnson had also attended some of the proceedings. He has also examined the Participant Briefs, which he thought were of excellent quality and which presented the difficult issues before the Board.

Of the procedural issues that emerged from the Technical Hearings, only Mr. Michael Skiendzielewski’s Appeal remains unresolved. Mr. Popowsky expressed his view that this Appeal should be considered when the Board decides substantive issues. He asked other participants, particularly the Department, to respond to Mr. Skiendzielewski’s Appeal. Mr. Popowsky referred to the packets distributed to members of the Board, which included Mr. Skiendzielewski’s appeal and two rulings by the Hearing Officer on Mr. Skiendzielewski’s discovery disputes dated March 16, 2018 and May 16, 2018. He also noted that there has been a significant amount of correspondence between the Hearing Officer and Mr. Skiendzielewski, much of which has been entered into the record and is available on the 2018 Rate Proceeding website.

Mr. Cantú-Hertzler noted that Mr. Skiendzielewski had requested certain information in order that it might be considered by the Board as it arrives at ratemaking decisions. If the Board were to decide that it desires the information requested by Mr. Skiendzielewski, then waiting until the deliberation phase may be too late. Mr. Popowsky asked members of the Board to read the Appeal and other information and to contact him so that a special meeting could be scheduled if necessary.

Mr. Popowsky noted that both he and Abby Pozefsky are to be considered by City Council respectively for re-nomination and nomination to the Board. Their hearing date is June 14, 2018.

Mr. Popowsky referred back to the distributed packet, which included the Charter resolution authorizing the creation of the Water, Sewer, and Storm Water Rate Board (Resolution No. 120188), which lays out the specific purposes and functions of the Board. The packet also included the text of the ordinance which created the Board (Bill No. 130251-A) and includes the standards for fixing and regulating rates which the Board is required to follow. The packet included the ordinance (Bill No. 140607-AA) which created the low-income assistance program, now known as the Tiered Assistance Program (“TAP”), which was included for distribution because many of the issues which will be considered by the Board will involve the TAP program, despite the Department and the Public Advocate having arrived at agreements on many of the key issues involving the Tiered Assistance Program. Finally, the packet contains a memorandum to the Board from the then-City Solicitor, Sozi Pedro Tulante, dated June 6, 2016, regarding the scope of the Board’s authority. Mr. Popowsky explained that in the previous water rate proceeding, the Board adhered to the limitations on its authority expressed by the City Solicitor in this memorandum.

Mr. Popowsky stated that as the Board moves toward its deliberative phase of the current rate proceeding, he understood the issues its consideration as consisting of three categories. “Major focus” issues include the Department’s request for the Board to rule on three years of rates, Fiscal Years 2019-2021, while the Public Advocate requests that the Board should only focus on Fiscal Years 2019 and 2020.

Other “big focus” issues are major financial questions such as appropriate targets for coverage ratios, the Rate Stabilization Fund, the Residual Fund, and Department credit ratings, along with the percentage of construction expenditures covered under a “pay-go” basis vis-à-vis debt issuance.

Secondly, the Board must consider more narrowly-focused financial questions, which involve anticipated revenues and expenses; the Department and the Public Advocate have different projections for revenue under current and proposed rates, so the Board must determine which to adopt. Specific expense items also have varying rates of increase. The difference between projected revenues and expenditures, with many other factors taken into account, will determine the rate increase, if any.

The question then turns to the question of the allocation of the rate increase among Water Department customers. The Department would like to transfer the cost of fire protection from the Fire Department to all other customers. Another question concerns the allocation of costs and rates between the small users and large industrial users. A corollary issue for determination concerns the Tiered Assistance Program (“TAP”). The Department and the Public Advocate have agreed that that the cost of TAP should be collected through a reconcilable automatic surcharge, but disagreements concerning cost calculation still remain among the participants.

Mr. Popowsky stated that the Board must address the disagreement concerning the scope of its authority as it pertains to the implementation of the Tiered Assistance Program.

Mr. Popowsky explained that a pertinent legal question which has existed since the creation of the Board is whether its decision is an “adjudication,” a question which determines its scope of review in case of a challenge. Ultimately, if a decision is appealed, this will be determined by a court.

Moving forward, Mr. Popowsky further explained that the next step in the current rate proceeding will be for the Hearing Officer to submit a recommended decision by Monday, June 18, 2018. The

participants will then have one week to file exceptions, expressing disagreements with the Hearing Officer's proposed decision. Mr. Popowsky hopes that the Department will then run financial modeling on the proposed decision, yielding its impact on the various facets of Department finances. The Board members will review the exceptions, and proceed to the deliberative stage, in which members will have a recorded vote on particular issues in publicly-held meetings.

Making reference to Table C-1 in the Department's Participant Brief, Mr. Popowsky noted that the Department had already adopted certain financial adjustments proposed by the Public Advocate, which had resulted in a revenue reduction of approximately \$8 million less than the Department had previously requested.

After the Board finalizes its decisions, the Hearing Officer will be asked to compile an order using her recommended decision as a template, which will be submitted to the Board for a final vote, which will hopefully be completed by July 12, 2018. The Department must transfer this decision into tangible rates, which will take the form of a compliance filing. The new rates will be put into effect on September 1<sup>st</sup>.

Any appeal or challenge to the rate order must be filed within 30 days of the issuance of the Board's final decision, Mr. Popowsky continued. He recommended allowing some time to pass after the submission of the exceptions before the beginning of deliberations in order to allow Board members to consider the materials. Mr. Popowsky suggested that therefore the available scheduling window for the deliberative meetings is between June 28<sup>th</sup> and July 10<sup>th</sup> or 11<sup>th</sup>, to allow the Hearing Officer time to draft the Board's final decision utilizing the results of the Board's deliberations, which will be completed by July 12, 2018.

Ms. Johnson moved to authorize Mr. Popowsky to schedule the Board's deliberative meetings, with June 29, July 2, July 3, July 9, July 10, and July 11 as the days in which Mr. Ewing and Ms. Johnson indicated their availability, between 2 p.m. and 5 p.m. Mr. Ewing seconded the motion. The motion was approved with Mr. Popowsky, Ms. Johnson, and Mr. Ewing in favor, Ms. Olanipekun-Lewis absent, and no members opposing or abstaining.

Mr. Popowsky encouraged the participants to utilize the present time, between the submission of Participant Briefs and the Hearing Officer Report, to discuss the issues in contention with an eye toward arriving at points of agreement; likewise he is able to discuss matters of procedure or scheduling as the need arises.

Mr. Ewing moved to adjourn the meeting at 4:11 p.m. Ms. Johnson seconded the motion. The motion was approved with Mr. Popowsky, Mr. Ewing, and Ms. Johnson in favor, Ms. Olanipekun-Lewis absent, and no members opposed or abstaining.

*Prepared by Cody Williams, Legal Assistant*