

Philadelphia Water, Sewer, and Storm Water Rate Board  
Special Meeting Notes  
6/25/2018, 3 p.m., 1515 Arch Street, 18<sup>th</sup> Floor, Mayor's Media Room

Members Present:

Irwin "Sonny" Popowsky, Chair  
Tony Ewing  
Rasheia Johnson  
Folasade A. Olanipekun-Lewis, via conference line  
Abby Pozefsky, via conference line

Also Present

Robert Ballenger	Edward Fisher
Andre Dasent	Susan Crosby
Adeolu A. Bakare, via conference line	David Becker
Melissa LaBuda	Cody Williams
Scott Schwarz	
Jaclyn Rogers	

Mr. Popowsky called the meeting to order at 3:05 p.m.

Mr. Popowsky asked the participants present whether they had anything to add to their written materials submitted concerning the Public Advocate's Motion for the Enlargement of Time for the Hearing Officer Report presently being considered.

Mr. Dasent stated that the Water Department's Memorandum in Opposition to the Public Advocate's Motion offers the full scope of the Department's reaction to the Motion, which was submitted "at this late date." There was limited time available; he must now concern himself with writing the Department's Exceptions.

Mr. Ballenger stated that the Public Advocate stood behind the Motion for Enlargement of Time for the Hearing Officer Report, which was entered the day following receipt of the Hearing Officer Report. He added that it is difficult to draft Exceptions to a report on matters on which it does not make findings, conclusions, or recommendations. The Public Advocate faces the same time crunch as the Department.

Mr. Bakare said that the Philadelphia Large Users Group ("PLUG") shared many of the same concerns as the Public Advocate; it is challenging to compile Exceptions to a document which lacks many citations. He desired a more complete document for the Rate Board to consider.

Mr. Dasent responded that the Department was endeavoring in its Exceptions to address the shortcomings of the Hearing Officer Report, which is the prevailing practice for such documents. The Department was filling in any blanks, bringing forward its arguments in the Department's Brief, and offer every possible explanation so that the Board can reach conclusions independently of the Hearing Officer. He drew attention to the Department's proposed findings of fact and conclusions of law, which detail matters which could be imputed into the Board's final determination. Any shortcomings can be addressed in the Exceptions.

Mr. Ballenger pointed out that the Hearing Officer Report and her findings of fact and conclusions of law are required for the Board's final determination. The Department's findings and conclusions are not requested nor required. He did not believe that the Board should consider the Department's submissions, but instead a complete summary from the Hearing Officer, who chaired every hearing, reviewed every piece of testimony, and reviewed discovery. He believed the incompleteness of the Hearing Officer Report reflected the unreasonable time imposed throughout this process.

Mr. Popowsky invited Board members to discuss the issue. Mr. Ewing opined that he wished that the Report were as complete as possible, so as to make his task as a Board member easier. The timeline creates limitations; nevertheless there is a body of data in the record to which Board members can turn to fill in any gaps in information, and he could consult with the Hearing Officer to answer questions. He asserted that it would be a “big leap” for the Board to extend the Hearing Officer’s time while a body of work exists to which Board members can turn in light of the ordinance’s delineation of 120 days unless the Board “cannot” reach a decision. He believed that that the bar set by the ordinance requires a uniquely compelling reason to grant a motion which would extend the Rate Proceeding beyond 120 days.

Ms. Pozefsky expressed agreement with Mr. Ewing’s remarks, stating that she considered the record from the Rate Proceeding to be complete and that there will be ample time in deliberations to address issues of concern. She further communicated that she was comfortable proceeding with the Hearing Officer Report as it is.

Ms. Olanipekun-Lewis concurred with the position articulated by Mr. Ewing and Ms. Pozefsky. She held that any gaps from the Hearing Officer Report could be filled by the information in the Proceeding record.

Ms. Johnson echoed the previously-expressed sentiments of the Board members; she regarded the Proceeding record to be a sufficient resource to which to refer back.

Lastly, Mr. Popowsky agreed with the other members; ideally, he wished for a more complete record, but what has been provided is sufficient. He reiterated the language of the ordinance, which created a term of 120 days for the Rate Proceeding unless the Board is “unable” to reach a decision, whereupon the Department may, at its discretion, establish “emergency” rates. He did not believe that the present issue renders the Board “unable” to reach a decision. He disagreed with Mr. Dasent’s assertion that the Board lacks jurisdiction to extend the Proceeding beyond 120 days, and disagrees with Mr. Ballenger that the present issue in consideration meets the bar imposed by the ordinance.

Mr. Popowsky called the question on the Public Advocate’s Motion for Enlargement of Time for the Hearing Officer Report. The motion was denied with no members voting in favor; Mr. Popowsky, Mr. Ewing, Ms. Johnson, Ms. Olanipekun-Lewis, and Ms. Pozefsky opposed, and no members abstaining.

The 2018 Rate Proceeding was set to continue, with deliberations scheduled for the afternoon of Friday, June 29, 2018. Mr. Popowsky addressed the Board and the participants of his intentions for the procedural dimensions of the deliberative stage. He also requested that Mr. Williams send an email to the participants informing them that the Public Advocate’s Motion was denied and that the Exceptions would be due on Tuesday, June 26, 2018.

Ms. Olanipekun-Lewis moved that the meeting be adjourned. Mr. Ewing seconded. The meeting was adjourned at 3:28 p.m.

*Prepared by Cody Williams, Legal Assistant*