

Philadelphia Water, Sewer, and Storm Water Rate Board
Special Meeting Notes
8/7/2018, 1515 Arch Street, 18th Floor, Gas Commission Hearing Room

Members Present:

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

Also Present:

Andre Dasent
Rob Ballenger
Debra McCarty
Melissa LaBuda
Susan Crosby
Scott Schwarz
Rebecca McCord
Peter Nissen
Cody Williams

Mr. Popowsky called the meeting to order at 10:04 a.m.

Ms. Olanipekun-Lewis moved to approve the minutes as presented from the June 6, 2018 meeting, the June 25, 2018 special meeting, the deliberative meetings on June 29, 2018 and July 2, 2018, and the meeting called to consider the Board’s Final Determination in the 2018 Rate Proceeding on July 11, 2018. Ms. Johnson seconded the motion. The motion was approved with Mr. Popowsky, Ms. Olanipekun-Lewis, Mr. Ewing, Ms. Johnson, and Ms. Pozefsky voting in favor, and no members opposed, abstaining, or absent.

Mr. Popowsky explained that the only substantive agenda item for this special meeting was the consideration of comments upon the Water Department’s Compliance Filing by participants. He confirmed with Mr. Dasent that the issue concerning the language in the Compliance Filing about the Philadelphia Land Bank had been resolved and a revised version would be included in the compliance tariff.

The other comments on the Compliance Filing were filed by the Public Advocate. The first issue raised there concerns the establishment of revenue requirements in Table C-1 of the Board’s Final Determination. The second issue pertains to the reconciliation of the TAP Rider. The Water Department entered a response to the Public Advocate’s comments, copies of which were distributed. In its written response, the Department agreed to modify the reconciliation language; Mr. Popowsky queried Mr. Ballenger whether the Public Advocate had a chance to review the Department’s revised language in its response.

Mr. Ballenger stated that there were two points that remained unresolved in the Department’s response to the Public Advocate’s TAP Rider proposals. First, the Public Advocate wanted to ensure that there was adequate notice for the reconciliation filing for the TAP Rider. The Advocate’s proposed language included a requirement that the Department’s submission be contemporaneously served upon the Rate Proceeding participants and publicly advertised per the Board’s public notice standards. Second, the Advocate proposes that the compliance filing should reflect the Board’s direction that affected participants in the 2018 Rate Proceeding have the right to participate in the reconciliation review process. Mr. Ballenger stated that he recognized that much of the substance of the TAP Rider reconciliation review is for the Board to determine, a process which is not currently included in the Board’s regulations.

Mr. Dasent stated that he did not believe that notice would present an obstacle for the Department, although he needed to confirm that with his client. He believed that the issue of participation in the reconciliation process was a matter for the Board to determine; the Board's regulations could be modified to set out a satisfactory procedure for the reconciliation process and participation by parties thereto.

Mr. Popowsky asked whether the Department would object to the Public Advocate's proposed language that "[t]he reconciliation submission will be contemporaneously served upon participants in the Water Department's most recently concluded General Rate Increase Proceeding (...) and publicly advertised pursuant to such standards as shall be adopted...". Mr. Dasent believed that the language could be worked out. Mr. Popowsky stated that he believed that the original language presented by the Department was too prescriptive and may have prevented some future actions. Revised language submitted by both the Water Department and the Public Advocate leave the door open to the Board to determine the final procedure for the TAP Rider reconciliation process. Mr. Popowsky suggested that the Public Advocate's language on notice requirements be included in the Compliance Filing.

Ms. Olanipekun-Lewis moved to accept Attachment A to the Philadelphia Water Department's Memorandum in Response to the Comments of the Public Advocate to the Compliance Filing with the addition of language from page 13 of the Comments of the Public Advocate to PWD Compliance Filing regarding contemporaneous service and notice, which will be reflected in section 10.2 of the Compliance Filing. Mr. Ewing seconded the motion. The motion was adopted with Mr. Popowsky, Ms. Olanipekun-Lewis, Mr. Ewing, Ms. Johnson, and Ms. Pozefsky voting in favor, and no members opposed, abstaining, or absent.

Mr. Popowsky returned the meeting to a consideration of the Public Advocate's objection to the manner in which the Department calculated the rate increases in Table C-1 attached to the Board Final Determination and which formed the basis for the Compliance Filing. Mr. Ewing requested Messrs. Dasent and Ballenger to orally outline a concise version of the arguments contained in their submissions.

Mr. Ballenger explained that the Board has examined all the revenue requirement assumptions, from both the Department and the Public Advocate, in the 2018 Rate Proceeding and which were the basis for the Department's request for a rate increase. The Board then made various adjustments to the Department request; the totaled amount of Board-approved and agreed adjustments are summarized on page five of the Public Advocate's Comment. The Public Advocate believes that the benefit of the revenue requirement adjustments should go to ratepayers in the form of reductions in the proposed rate increases.

According to Mr. Ballenger, the Board had concluded that the Department's reserve requirements were higher than necessary. As a result of the way the Department has reflected the revenue requirement adjustments in Table C-1, however, the end of fiscal year 2020 will find the Department with higher reserves than their projection at the commencement of the 2018 Rate Proceeding. Additionally, part of the benefit of the revenue requirement adjustments is also flowing to pay-go capital, which sees an increase from the Department's request at the commencement of the 2018 Rate Proceeding.

Mr. Ballenger contended that the main issue here is that when the Board voted to reduce the Department's revenue requirements, the Department had an obligation to construe the Board's

decision in the manner that is most favorable to customers by reducing their requirements for higher rates and charges. Taking together fiscal years 2019 and 2020, the total revenue requirement adjustments are approximately \$27.4 million, but the total amount of rate relief, i.e. lowered rate increases, is approximately \$21.9 million. This leaves approximately \$5.4 million in adjustments that were approved by the Board but which is being put into reserves or pay-go capital. Mr. Ballenger indicated his belief that this is a result of a very compressed rate proceeding time frame and the extent to which the materials in the rate proceeding needed to be assembled "at the last moment." There was inadequate time to review the Department's Table C-1 which was appended to the Board's Final Determination. Because the Board completed the rate proceeding within 120 days, the Public Advocate believes that correcting a mistake so that the benefit of adjustments can flow to ratepayers lies within the scope of the Board's authority. Mr. Ballenger believes that the intention of the Board is reflected in its Rate Determination, but that intention is not reflected in Table C-1, which was, he contends, included mistakenly. In the rate proceeding process, the Board and the Public Advocate are reliant upon the Department to run financial modeling, but the Department's experts mistakenly chose to flow the benefits of the revenue requirement adjustments to the reserves and to pay-go capital and not to customers in the form of reduced rates.

Mr. Dasent indicated that the Department does not believe that a mistake has been made. The Department followed the general directions of the Board to reduce the rate increase and reflect adjustments. In Table C-1, one can see that the rate increase figures are driven by TAP revenue loss. If one compares that to the TAP-only Table C-1, there is very little difference between the two aside from a modest increase in fiscal year 2020. He noted that 5/8 inch customers will see a decrease in rates by .13% in fiscal year 2019. The Board's Final Determination made an impact, and the Department's financial modeling attempts to reflect that impact. The numbers do run through the model: if increased revenue from the General Fund for fire protection is reflected, a higher balance for the Rate Stabilization Fund results. This outcome is the best outcome for customers because it uses the Rate Stabilization Fund for its intended purpose; likewise, the Department has stayed within the 20% limit set by the Board for pay-go capital spending.

Mr. Dasent believes these questions skirt the issue which he believes should be the focus of the Board, namely, what actions are permitted by the Board's regulations? The regulations permit the Board to direct the Water Department to prepare a compliance filing and tariff; the compliance filing must be in accordance with the Board's determination. But the Board does not have the authority to revisit the compliance filing or revise its final order. The Board must now examine its process and its regulations to determine whether it has the power to require a wholesale revision of the tariff, save the corrections of minor errors. Mr. Dasent believes the Board cannot, and if any participant or party feels aggrieved, then their recourse is in the Court of Common Pleas, which is the proper next stage in the process.

Ms. Olanipekun-Lewis asked whether Mr. Dasent's position reached the merits of the Public Advocate's arguments. Mr. Dasent responded that from the perspective of the Department, the Public Advocate's position is incorrect both in terms of its merits and in terms of procedure. Other than lost TAP revenues in the new TAP Rider, there is no increase aside from a modest increase in 2020, and the Board will be able to participate in the TAP reconciliation process later on. Mr. Ballenger argued that the Department relies on the TAP Rider in fiscal year 2019 to justify a rate increase; there is no basis for that. The TAP Rider is simply a different way of recovering a cost that was already reflected in base rates.

Mr. Popowsky suggested that the issue raised here by the Public Advocate is not a compliance issue, but rather an order issue. The Board explicitly approved Table C-1, appended to the Final Determination, on July 12, 2018. Mr. Popowsky confirmed with Mr. Ballenger that the Public Advocate is not contending that the Department's Compliance Filing does not comply with said Table C-1; rather, Mr. Ballenger maintained, that the Public Advocate is now arguing at its first available opportunity, that the Board adopted the Water Department's position in Table C-1 without giving other participants, including the Public Advocate, the opportunity to review it.

The Public Advocate believes that the ability to hear and act upon this issue lies within the scope of the Board's authority because it affects the rates customers will pay and because they believe that it is inconsistent with the Board's determination.

Ms. Olanipekun-Lewis asked Mr. Ballenger how he would rebut Mr. Dasent's assertion concerning relief in the Court of Common Pleas. Mr. Ballenger responded that the Public Advocate has a right of appeal under the ordinance and that they could go down that path, but that it is important that an administrative agency have the opportunity to correct issues within its authority, and Board does have authority to act with respect to rates and charges. Mr. Ballenger stated that the absence of regulations addressing this particular issue does not preclude the Board from taking action under the Board's broad authority over rates and charges.

Mr. Dasent disagreed with Mr. Ballenger, and asserted that a re-opening of the Final Determination differs from the considerations of exceptions or objections to the Compliance Filing. The Department believes that the 2018 Rate Proceeding was thorough, open, and is now complete, and the Department must now begin the implementation of putting the new rate and charge regime into place by September 1, 2018, but now the Public Advocate proposes to re-open consideration of the Final Determination.

Mr. Ballenger stated that by preparing Table C-1, the Department had the opportunity to have the "last say" in the 2018 Rate Proceeding. The Board now has an opportunity to rectify this; the Public Advocate itself did not have the opportunity to see the problematic Table C-1 until July 10, 2018, after the Board's deliberations were concluded.

Ms. Pozefsky noted that the Board did approve an order to which Table C-1 was attached. She added, however, that Mr. Ballenger makes a good point, and that in the future, the Board should make sure that future Table C-1s are subject to review and adequately reflect all of the Board's intentions. But at this point, in the current proceeding, the Board has approved the Order and its appendices as they are. Mr. Olanipekun-Lewis indicated that she agreed with Ms. Pozefsky; she does not know how, practically and in concordance with the Board's regulations, the Board can go back and revisit the Final Determination.

Mr. Ewing said that the Board should learn lessons from the current situation and apply them to future rate cases; it is unusual that only one party, the Water Department, is solely responsible for creating the financial model. He expressed discomfort with the nature of the financial model as a "black box," which cannot be easily re-created and which takes a great amount of time to run. He believes that the problem raised is resultant from the closed nature of the financial model and the financial modeling process. Ultimately, however, he also considered the scale of impact of the problem presented today; he is heartened that the money will stay in the system, as it were, in reserves and pay-go, and not paid out to shareholders.

Ms. Pozefsky expressed agreement with Mr. Ewing, and hoped that the participants can work together to construct a process which avoids issues such as this, in which modeling is more comprehensible and subject to review. Ms. Johnson also expressed agreement, stating that she doesn't see how the Board can reach back into the process, but hoping that in the future the participants can work together to make sure that this doesn't happen again.

Mr. Popowsky stated that he has worked many rate cases in the past; typically, all parties and the regulatory agency have the opportunity to review the presented financial model. In the next rate case, he urged the Department to come forward with a simplified revenue requirements model which covers the rate period and through which the participants and the Board could run numbers to examine potential outcomes and test the rates.

At the end of the discussion, the Board took no action on the Water Department's Compliance filing apart from the change agreed to between the Water Department and the Philadelphia Land Bank, and the revision concerning TAP Rider reconciliation notice requirements adopted earlier in the meeting.

Mr. Ewing moved to adjourn the meeting. The motion was seconded by Ms. Olanipekun-Lewis. The Board voted to approve the motion with Mr. Popowsky, Ms. Olanipekun-Lewis, Mr. Ewing, Ms. Pozefsky, and Ms. Johnson voting in favor, and no members opposed, abstaining, or absent. The meeting was adjourned at 10:52 a.m.