

Philadelphia Water, Sewer, and Storm Water Rate Board
October Monthly Meeting Notes
10/10/2018, 1515 Arch Street, 18th Floor, Mayor's Media Room

Members Present:

Irwin "Sonny" Popowsky, Chair
Tony Ewing
Rasheia Johnson
Abby Pozefsky

Also Present:

Daniel W. Cantú-Hertzler
Ed Markus
Andre Dasent
Rob Ballenger
Debra McCarty
Melissa LaBuda

Susan Crosby
Scott Schwarz
Ji Jun
Jaclyn Rogers
Dave Jagt
Cody Williams

Mr. Popowsky called the meeting to order at 3:02 p.m.

Ms. Johnson moved to approve the minutes as presented for the Special Meeting which took place on August 7, 2018. The motion was seconded by Mr. Ewing. The motion was approved with Mr. Popowsky, Ms. Johnson, Mr. Ewing, and Ms. Pozefsky voting in favor, no members opposed or abstaining, and Ms. Olanipekun-Lewis absent.

Mr. Popowsky explained that the Board had been without a Vice Chair since the resignation of Lee Huang and asked for nominations to that position. Ms. Pozefsky nominated Mr. Ewing. Ms. Johnson seconded Mr. Ewing's nomination. There were no other nominations; Mr. Ewing was elected as the Vice Chair of the Water, Sewer, and Storm Water Rate Board with Ms. Pozefsky, Ms. Johnson, and Mr. Popowsky. Mr. Popowsky voted in favor, Mr. Ewing abstaining, no members opposed, and Ms. Olanipekun-Lewis absent.

Mr. Popowsky called attention to a draft of internal Rules for the Board contained in the distributed packet which had been drafted by Mr. Cantú-Hertzler. Mr. Popowsky stated that he did not intend to call for a vote on the adoption of the draft Rules at this meeting, but asked for the Water Department and Community Legal Services to examine it in anticipation of the next regular Board meeting.

Mr. Popowsky then directed the attention of the meeting to the language in the Compliance Filing of the 2018 Water Rate Proceeding pertaining to the annual TAP ("Tiered Assistance Program") Rate Rider Reconciliation, which was included in the distributed packet. The Compliance Filing obligates the Department to make a filing at least sixty (60) days in advance of a change to the TAP Rider, "in accordance with any procedures and standards" established by the Rate Board. The Board must now establish such procedures and standards.

Mr. Popowsky told the meeting that in the past, the major parties have been able to present joint proposals which identify the areas in which there is concordance and disagreement. Mr. Popowsky encouraged such a discussion among the major parties in the present instance, and asked them to reach out to Mr. Cantú-Hertzler to initiate such a discussion. Thereupon a discussion of the timing of such a TAP Rider Reconciliation filing took place. Mr. Popowsky stated that the target date for implementation of any changes to the TAP Rider is September 1, 2019. Ms. Crosby explained that IT challenges are faced when initiating changes to the billing system for water rates and charges, saying that at least six weeks were needed to set up changes and test them to ensure that any glitches could be worked out to avoid misbillings.

Mr. Schwarz suggested, therefore, that Board regulations for the TAP Rider Reconciliation proceeding should be in place by May 1, 2019. Mr. Cantú-Hertzler thought there was no reason to wait until May to finalize the Regulations; and hoped that discussions could occur in the coming month which could lead to the mutually-acceptable procedure for the process.

Mr. Ewing questioned whether the Board's current contract with Community Legal Services to serve as the Public Advocate has an end date and whether it contemplates the upcoming Board procedures. Mr. Ballenger explained that it is a one-year contract term and that there is an ability to add an additional term to the contract. Mr. Cantú-Hertzler clarified that the contract with Community Legal Services is for the 2018 Water Rate Proceeding, and said the ability to add a year to the contract could depend on whether the upcoming TAP Rider Reconciliation is considered part of the principal, previous rate proceeding. Mr. Popowsky elucidated that a Public Advocate representing small users must be retained for major rate proceedings, and may be retained for special rate proceedings. However, the Regulations as they currently stand do not address that role for the TAP Rider Reconciliation; in the interim, Community Legal Services has elected to remain active in the process by attending meetings and participating in Board processes.

Ms. Pozefsky asked that, as the parties discuss the structure of the upcoming TAP Rider Reconciliation, they also make an endeavor to come together on a mutually-acceptable timeline for said process.

Ms. Crosby mentioned that the potentiality of opening of a new Request for Proposals (RFP) for a new Public Advocate contract must also be considered in the time frame for the TAP Rider Reconciliation process. Mr. Ballenger suggested that if the development of new regulations for the TAP Rider Reconciliation considers that process to be discrete from the now-completed major rate proceeding, then the Board may be required to be subject to public noticing and public hearing requirements for the TAP Rider Reconciliation.

The discussion proceeded to the related issue of the potential development of regulations for future major rate proceedings. Mr. Popowsky believed the 2018 Rate Proceeding went smoothly, but there are nevertheless areas from which lessons could be learned. For instance, in future major rate cases, it would behoove the Board to approach members of City Council for suggestions about locations for Public Hearings before the schedule of Public Hearings is finalized. At the end of the Proceeding, more time would have been helpful for the production of the Hearing Officer's Report and for consideration of financial tables prior to the issuance of the Board's Final Determination.

Mr. Ewing concurred that it would be helpful to schedule all appropriate Public Hearings at the same time. He also commented on the voluminous number of documents in the process, particularly in the Formal Notice, discovery, and participant testimony phases, much of it of a highly technical nature. He suggested that there be some sort of interpretive report which condenses the issues to hand. Echoing Mr. Popowsky's statement, Mr. Ewing said that more time for participants to understand and digest financial data, particularly Table C-1, would have been helpful. He found the opaque nature of the financial modeling "distressing" and thought that the amount of time it took to create these models led to the contention at the end of the Rate Proceeding concerning Table C-1.

Ms. Johnson agreed with Mr. Ewing's remarks concerning the volume of documents that needed review and the tedious nature of cross-referencing issues among them. Summaries would be helpful. Similarly to Mr. Popowsky and Mr. Ewing, she thought that the schedule was compressed at the end of the Proceeding and suggested that elements of the process be more evenly spaced out.

Ms. Pozefsky paraphrased *Alice in Wonderland*: there were “too many words” in the Rate Proceeding, which she believes cut against the Board’s objective to make rate-setting transparent, comprehensible, and accessible to Board members, the public, and rating agencies. She emphasized that much of the data presented was somewhat repetitive, and in future rate proceedings asked the participants to consider steps to consolidate data and arguments to avoid repetition. She also urged a re-examination of the Board’s charge to the Hearing Officer, who was laboring with the same issues of document volume, repetition, and lack of clarity by parties in articulating their positions. Finally, she spoke of her desire to make the financial model more accessible and responsive, not only to the Department but also to the Board, other parties, and to the public.

Mr. Popowsky suggested that there are two areas of the concern that the Board could address when endeavoring to improve the major rate proceeding process. The first concerns material changes to the process which require revision of the Board’s Regulations. Other improvements, however, might not require changes to the Regulations and could come about through instructions delivered to the Hearing Officer and to the participants in future rate proceedings. Mr. Cantú-Hertzler suggested that some time might be saved if any changes to the Board’s Regulations for major rate proceedings are promulgated at the same time as the Regulations for the TAP Rider Reconciliation proceeding, although this may not ultimately be convenient. Mr. Popowsky indicated that the Regulations do not address financial modeling, for instance. At the end of a major rate proceeding but before the Board reaches its final decisions, Mr. Popowsky suggested that there might be an additional meeting among the participants to discuss areas of agreement and disagreement, which may obviate the need for Board members and the Hearing Officer to rely solely on the many documents in the record.

Mr. Popowsky agreed that too much of a burden was placed on the Hearing Officer to produce her large Report in too short of a time. Indicating that he much preferred a format in such a report which presented a summary of the issue and the positions of the participants, he found a list of “conclusions of law and findings of fact” to be unhelpful. He also suggested a common brief format to be utilized by all participants.

Mr. Ewing suggested revisiting the number of Public Hearings, currently four, required by the Regulations. The experience of the previous proceeding might indicate this is too few, he said. Mr. Ewing also suggested the inclusion of a template timeline for rate proceedings as an exhibit in hearings.

Mr. Popowsky invited Mr. Markus of Amawalk Consulting Group, LLC, the Board’s Technical Consultant, to speak to the possibility of creating a simplified revenue requirements model for use in future major rate proceedings, which would generate revenue and revenue requirement figures based on variables inputted by Board members, rate proceeding participants, and the Hearing Officer. Mr. Markus elaborated that such a simplified model would be based on Table C-1 and would allow for the Board members to immediately observe the anticipated impact of various decisions, such as revenue and interest rate assumptions, on revenue requirements. Thus, the Board would still not be directly creating the specific rate structure, but would rather have immediate access to the effect on rates of various decisions instead of relying on the Water Department to produce such a report several days after decisions have been rendered. Such a model would utilize a spreadsheet and would be non-proprietary.

Mr. Popowsky asked the floor for thoughts on possible revisions to the rate proceeding process and a simplified financial model. Mr. Dasent requested time to put together a proposal for future rate proceedings rather than delivering a response off the cuff. Mr. Schwarz questioned whether discovery materials should be available on the website, indicating that proceedings heard by the Pennsylvania Public Utility Commission are not part of the record or posted as such.

He also averred that the question of a common brief format had previously been raised and there are benefits to such a format, but also drawbacks insofar as such a template may not be appropriate in every instance. Mr. Ballenger opined that the point of having discovery documents included in the record is to avoid the need for additional steps later in the process. He suggested that the website could be streamlined by including such materials in a separate section, and stated that he personally had found it helpful knowing that all discovery materials would be available.

Moving forward, Mr. Ballenger suggested that the Hearing Officer could be encouraged to begin work on the Hearing Officer Report before the arrival of Participant Briefs, which could then be used to supplement the Report. The expectation that that the Hearing Officer condense all the materials into the Report subsequent to the receipt of the Participant Briefs is unrealistic in Mr. Ballenger's estimation. He supports the creation of a simplified model, but has reservations about the complex interconnection between a simplified model and the background model, which is confidential. Ms. LaBuda emphasized that for ratemaking purposes, there are three distinct entities with different rate systems. Mr. Popowsky explained that a simplified model would only reach the overall revenue requirement figure, and would not touch rate design or revenue allocation. Mr. Ewing envisioned giving rate proceeding participants the opportunity to review a simplified model, which could have several iterations.

Ms. Pozefsky moved to authorize Mr. Popowsky to work with the Law Department to extend the contract with Amawalk Consulting Group, LLC, to complete the work that began during the 2018 Rate Proceeding, including the development of a simplified financial model, and that he report to the next regular meeting of the Rate Board. The motion was seconded by Mr. Ewing. The motion was carried with Mr. Popowsky, Mr. Ewing, Ms. Pozefsky, and Ms. Johnson voting in favor, no members opposed or abstaining, and Ms. Olanipekun-Lewis absent.

Ms. Pozefsky moved to authorize Mr. Popowsky to negotiate the terms and funding of a renewal of the Board's contract with Community Legal Services up to the amount remaining on its contract, in order to complete the dialogue concerning the development of a simplified revenue requirements model and other tasks discussed at the meeting. Ms. Johnson seconded the motion. The motion was carried with Mr. Popowsky, Mr. Ewing, Ms. Pozefsky, and Ms. Johnson voting in favor, no members opposed or abstaining, and Ms. Olanipekun-Lewis absent.

Mr. Ewing requested an update on the status of the appeal from the Board's decision in the 2018 Rate Proceeding. Mr. Cantú-Hertzler explained that Community Legal Services has filed an appeal and also for a stay. The request for a stay is scheduled to be heard by the Court of Common Pleas on November 7, 2018.

Mr. Ewing moved to adjourn the meeting; the motion was seconded by Ms. Pozefsky. The motion was carried with Mr. Popowsky, Mr. Ewing, Ms. Pozefsky, and Ms. Johnson voting in favor, no members opposed or abstaining, and Ms. Olanipekun-Lewis absent. The meeting was adjourned at 4:27 p.m.

Prepared by Cody Williams, Legal Assistant