

**BEFORE THE PHILADELPHIA WATER, SEWER AND STORM WATER
RATE BOARD**

In the Matter of a Proposed Rate Increase in :
Water, Sewer and Storm Water Rates : **FY 2017-2018 Rates**

Community Lawyering Clinic's Response to PWD's Objection to Interrogatories

The Community Lawyering Clinic (CLC) submits this Answer, requesting that the Hearing Officer deny the Philadelphia Water Department's (PWD) Objections to the CLC Interrogatories and Requests for Production of Documents (Set II), CLC-II-1 through II-13. PWD submitted its objections to CLC-II 1 to 13 on April 12, 2016. We have sent messages to Mr. Dasent and Ms. Ji, counsel for PWD, in an effort to resolve this discovery dispute without a ruling from the Hearing Officer, but PWD's counsel has not responded to them. For the reasons set forth, the CLC submits that the Hearing Officer should compel PWD to respond to CLC-II 1 to 13.

The regulations of the Philadelphia Water, Sewer and Storm Water Rate Board (Board) establish that the Water Rate Board and the water ratemaking proceeding were created to "establish an open and transparent process for public input and comment on proposed rates and charges." Rate Board Regulation Section II (1)(b). PWD's objections to our request for information violate the spirit of the water ratemaking proceeding, asking the Water Rate Board to deny the public's right to information. Indeed, the regulations specifically provide that participants shall have "reasonable information gathering rights." Board Reg. Section II.7(b)(1). In Pennsylvania, a party is permitted to seek discovery of such matters as may be relevant to the subject matter, so long as they are not privileged, even though such evidence may be

inadmissible. There must be some connection between the information sought and the action itself before it becomes discoverable. As we will fully set forth below, all of the CLC's requests are reasonable and wholly relevant to PWD's rate filing and PWD should be directed to respond to them.

I. Response to PWD's General Objections

1. PWD's objections overgeneralize the difficulty in complying with CLC's discovery request and mistakenly assert that the Hearing Officer closed discovery. The CLC does not request PWD create new documents or undertaken time-consuming searches, as PWD alleges. Instead, the CLC requests PWD supply existing internal training manuals and policies, answer simple contextual questions for documents already supplied, and list grant programs available for customers. It defies reason that all thirteen CLC requests require such in-depth inquiry as to be so overly burdensome as to be denied response from PWD.

2. PWD incorrectly alleges that discovery has closed. The proceeding's fluid nature featuring concurrent public and private hearings warrants ongoing discovery. As stated above, the purpose of the ratemaking proceeding is to ensure "an open and transparent process for public input and comment on proposed rates and charges." Rate Board Regulation Section 2(1)(b). In the interest of transparency, discovery should continue until the end of the public comment period, which closes April 18, 2016. At a minimum, discovery should continue until the last public hearing, which took place April 8, 2016. The CLC's discovery request was filed April 7, 2016—before each date.

Additionally, the Hearing Officer has never formally set a deadline for discovery. Pursuant to the scheduling order produced on March 9, 2016, the date of information gathering was listed as "TBD" and was to be established "between Advance Notice and technical hearings,

per [Hearing Office] procedural order.” The technical hearings are scheduled through April 13, 2016—a full week after the CLC submitted its second request for documents and the technical hearings record will not close until April 18, 2016. The Hearing Officer never posted a deadline and technical hearings are ongoing, and therefore the information gathering session should remain open. Moreover, in the technical hearings, multiple requests for additional information have been granted, as documented on the record, so discovery continues to be ongoing.

3. PWD alleges the CLC request is burdensome and duplicate of previous discovery requests. If PWD has already released information requested by the CLC, the Hearing Officer should require PWD to direct the CLC to the relevant public information.

4. As discovery was open when CLC submitted its April 7 documents request and technical hearings record is slated to close on April 18, PWD’s objection due to timeframe fails the balancing test required by Rate Board Regulation Section 2(7)(b). Due to the Rate Board’s stated purpose of providing the public with information, the balancing test favors disclosing information. Rate Board Regulation Section 2(1)(b).

5. PWD denies compliance with discovery request because it incorrectly alleges that CLC requests further legal research. Instead, the CLC requested PWD supply existing departmental justification. The PWD should supply any legal justifications for policies that affect the public at large it has already generated.

6. PWD alleges the CLC requests refer to public statute and regulation. If PWD has based its policy decision in existing law, PWD should supply those justifications.

7. PWD alleges attorney-client privilege and work product doctrine. In order to exclude discovery requests due to the privilege, the party must make the claim expressly—not generally as done here—and must describe the nature of the documents, communications, or things not

produced or disclosed in a manner that, without revealing privileged or protected information, would enable other parties to assess the applicability of the privilege or protection. PWD has failed to do so. Also, CLC requests records that should be public and not shielded by attorney client privilege or work product doctrine. These requests are at the heart of the rate-making hearing—to justify the increase of the rate—and therefore policy decisions made by PWD internally should be explained to public at large.

8. PWD also alleges that CLC document requests related to PWD customer service policies are irrelevant to the rate-making hearing. This reasoning is flawed for three reasons. First, courts have determined that rate-making boards, such as the Water Rate Board here, may consider fair return and quality service in evaluating a public utility's rates. D.C. Transit Sys. Inc. v. Washington Metro Area Transit Comm'n, 466 F.2d 394, 421 (D.C. Cir. 1972). Specifically, in determining a utility's rate, a commission may constitutionally weigh whether "the caliber of a utility's service may . . . qualify as a prominent and even decisive factor in the regulation of its rates." Id. at 422.

Pennsylvania courts have ratified this doctrine by upholding a Pennsylvania Utility Commission's decision to deny a rate increase due to a regional water utility's poor customer service. National Utils. v. Pennsylvania PUC, 709 A.2d 972, 973 (Pa. Cmmwlth. Ct. 1998). Applying D.C. Transit Sys. Inc., the Commonwealth Court held "a utility's fulfillment of its service commitment is a sine quo non to constitutional protection under confiscation principles. To hold otherwise would mean that regardless of the level of service provided by a utility, or if the utility provided no service, the PUC would be required to give the utility a reasonable rate of return solely because it exists. In this case, there was ample evidence of an inadequate level of service that did not justify any increase in rates." Id. at 979.

If a utility continually fails to provide competent customer service, the utility should not increase its rates. Thus, questions about PWD's customer service policies are relevant in order for the utility to raise its rates.

Second, multiple parties have identified customer service as a relevant issue in this case. The Hearing Officer is permitting the parties to develop a record on these vital issues, and to articulate the Board's jurisdiction over them in briefs. Foreclosing information gathering on service related issues is incompatible with the Hearing Officer's orders, and would deprive the CLC of its right to obtain information necessary to assist the Board in concluding that, in fact, service related issues are at the core of this proceeding.

Third, PWD cited a declining customer base as a justification for its rate-increase. Although the population of Philadelphia has increased over 34,000 the past five years, PWD listed a declining customer base as a justification for its rate-increase. The CLC would like to determine whether poor PWD customer service and the failure of its employees to follow policies that would increase its customer base, not any decline in water consumption, has led to the decrease in customers. The information related to customer service sought by the CLC is relevant to evaluating the merits of its proposed increase. Because PWD has the obligation to fulfill customer service obligations, the Hearing Officer has expressly permitted the parties to develop a record concerning customer service, and resolution of customer service issues may affect PWD's requested rate increase, the Hearing Office should deny PWD's objection.

II. Response to PWD's Specific Objections

CLC-II-1.

CLC requested what training, if any, the Philadelphia Water Department (PWD) provides to and/or requires of those employees who interact with customers or potential customers.

PWD objected to the interrogatory for being untimely and duplicative.

PWD's objection should be overruled and should be directed to provide a full response. The request for documentation is timely and it is not duplicative of previous requested information. The Hearing Officer should deny the objection because discovery remains open for all reasons stated in Response to General Objection 4. Additionally, the CLC seeks already created material (internal policies), not for PWD to create new documents. If PWD does not have training resources for its customer service employees, it can so state in its written response. The CLC is not asking PWD to undertake additional research but to provide information that is readily available to them, or confirm its absence. The request should be granted for all the reasons stated above and in the General Objections.

CLC-II-2.

The CLC requested PWD supply any documents or records, including but not limited to legal memoranda, employee manuals, handouts, or other materials, that describe PWD's policy on what documentation is required to establish new residential customer accounts.

PWD objected to the interrogatory for being untimely, duplicative, beyond the scope of the rate-making hearing, and shielded by attorney-client privilege.

PWD's objection should be overruled and should be directed to provide a full response. The request for documentation is timely and it is not duplicative of previous requested information. The Hearing Officer should deny the objection because discovery remains open for all reasons stated in Response to General Objection 4. Additionally, the CLC seeks information that PWD should have readily available and the question is very limited in its scope. The CLC is

not asking PWD to undertake additional research but to provide information that is readily available to it. Further, the technical hearings in this proceeding have directly addressed customer service issues, and therefore requests for information on customer service are relevant. Also, CLC requests records that should be public and not shielded by attorney-client privilege or work product doctrine. The request should be granted for all the reasons stated above and in the General Objections.

CLC-II-3.

The CLC requested PWD provide information regarding the training that employees receive on what documentation is required to open a residential customer account.

PWD objected to the interrogatory for being untimely, duplicative, and beyond the scope of the rate-making hearing.

PWD's objection should be overruled and should be directed to provide a full response. The request for documentation is timely and it is not duplicative of previous requested information. The Hearing Officer should deny the objection because discovery remains open for all reasons stated in Response to General Objection 4. Additionally, the CLC seeks information that PWD should have readily available and the question is very limited in its scope. The CLC is not asking PWD to undertake additional research but to provide information that is readily available to them. Although the population of Philadelphia has increased over 34,000 the past five years, PWD listed a declining customer base as a justification for its rate-increase. The CLC would like to determine whether poor PWD customer service and the failure of its employees to follow policies that would increase its customer base, not any decline in water consumption, is a contributing factor to PWD's projected need for higher rates. Further, the Hearing Officer has permitted the parties to create a record regarding customer service issues, and therefore requests

for information related to customer service are relevant at this time. Also, CLC requests records that should be public and therefore not shielded by attorney-client privilege or work product doctrine. The request should be granted for all the reasons stated above and in the General Objections.

CLC-II-4.

The CLC requested that PWD provide any documents or records, including but not limited to legal memoranda, employee manuals, handouts and other training materials that describe PWD's policy addressing how its staff should interact with a customer's legal representative, including but not limited to whether there are any restrictions that prevent a legal representative from attending meetings (on behalf of or with their client) in order to aid their client in the process of becoming a PWD customer.

PWD objected to the interrogatory for being untimely, duplicative, beyond the scope of the rate-making hearing, and shielded by attorney-client privilege.

PWD's objection should be overruled and should be directed to provide a full response. The request for documentation is timely and it is not duplicative of previous requested information. The Hearing Officer should deny the objection because discovery remains open for all reasons stated in Response to General Objection 4. Additionally, the CLC seeks information that PWD should have readily available and the question is very limited in its scope. The CLC is not asking PWD to undertake additional research but to provide information that is readily available to it. Further, the Hearing Officer has permitted the parties to create a record regarding customer service issues, and therefore requests for information related to customer service are relevant at this time. Also, CLC requests records that should be public and therefore not shielded

by attorney client privilege or work product doctrine. The request should be granted for all the reasons stated above and in the General Objections.

CLC-II-5.

The CLC requested PWD provide us with any documentation, including but not limited to legal memoranda, policy papers, case law statute, regulation or other written justification for why PWD believes that debt from delinquency on water bills attaches to the property (in rem) versus the individual account holder (in personam).

PWD objected to the interrogatory for being untimely, duplicative, beyond the scope of the rate-making hearing, and shielded by attorney client privilege.

PWD's objection should be overruled and should be directed to provide a full response. The request for documentation is timely and it is not duplicative of previous requested information. The Hearing Officer should deny the objection because discovery remains open for all reasons stated in Response to General Objection 4. Additionally, the CLC seeks information that PWD should have readily available and the question is very limited in its scope. The CLC is not asking PWD to undertake additional research but to provide information that is readily available to it. Also, CLC requests internal records that should be public records and therefore not shielded by attorney-client privilege or work product doctrine. The request should be granted for all the reasons stated above and in the General Objections.

CLC-II-6.

The CLC requested PWD provide any documents or records, including but not limited to memoranda, policy papers, administrative outlines, and regulations that described the PWD's prioritization in debt collection, including but not limited to whether PWD distinguishes between

delinquent residential customers versus commercial or industrial customers when shutting off water.

PWD objected to the interrogatory for being untimely, duplicative, and beyond the scope of the rate-making hearing.

PWD's objection should be overruled and should be directed to provide a full response. The request for documentation is timely and it is not duplicative of previous requested information. The Hearing Officer should deny the objection because discovery remains open for all reasons stated in Response to General Objection 4. Additionally, the CLC seeks already created material (internal policies), not for PWD to create new documents. The CLC is not asking PWD to undertake additional research but to provide information that is readily available to it. The request should be granted for all the reasons stated above and in the General Objections.

CLC-II-7.

The CLC requested PWD provide any documentation, including but not limited to legal memoranda, policy papers, case law, statute, regulation or other written justification, that describes the PWD's policy delineating what infrastructure a residential customer is responsible for as opposed to PWD.

PWD objected to the interrogatory for being untimely, duplicative, beyond the scope of the rate-making hearing, and shielded by attorney client privilege.

PWD's objection should be overruled and should be directed to provide a full response. The request for documentation is timely and it is not duplicative of previous requested information. The Hearing Officer should deny the objection because discovery remains open for all reasons stated in Response to General Objection 4. Additionally, the CLC seeks information

that PWD should have readily available internally and the question is very limited in its scope. The CLC is not asking PWD to undertake additional research but to provide information that is readily available to it. Further, the Hearing Officer has permitted the parties to create a record regarding customer service issues, and therefore requests for information related to customer service are relevant at this time. Also, CLC requests internal records that should be public records and therefore not shielded by attorney-client privilege or work product doctrine. The request should be granted for all the reasons stated above and in the General Objections.

CLC-II-8.

The CLC requested that PWD provide information on top twenty commercial delinquent customers including the monetary amount they owe.

PWD objected, asserting that this interrogatory is untimely and is duplicative of previous requested information, that it is unduly burdensome to answer as the CLC already has access to this information, and additional time would be needed to respond given the scope of the question and the research that would be required.

PWD's objection should be overruled and PWD should be directed to provide a full response. The request for documentation is timely and it is not duplicative of previous requested information. This is information that PWD should have readily available internally and the question is very limited in its scope. No additional research would be required of PWD to provide this information. Additionally, the CLC does not have access to this information as we do not have access to PWD delinquent client records. The request should be granted for all the reasons stated above and in the General Objections.

CLC-II-9.

The CLC requested that PWD provide information on the top twenty industrial delinquent customers including the monetary amount they owe.

PWD objected, asserting that this interrogatory is untimely and is duplicative of previous requested information and additional time would be needed to respond given the scope of the question and the research that would be required.

PWD's objection should be overruled and PWD should be directed to provide a full response. The request for documentation is timely and it is not duplicative of previous requested information. This is information that PWD should have readily available internally and the question is very limited in its scope. No additional research would be required of PWD to provide this information. The CLC would amend this question to providing the name and the amount owed by each of the top twenty industrial delinquent customers. The request should be granted for all the reasons stated above and in the General Objections.

CLC-II-10.

The CLC requested that PWD Please provide information on what fees for repair or installation of infrastructure, including but not limited to pipes, shutoff valves, and meters exist for residential customers.

PWD objected, asserting that this interrogatory is untimely and is duplicative of previous requested information, that to provide this information would be "unduly burdensome" as the CLC already has access to this information and that customer service issues are beyond the Rate Board's rate setting authority and additional time would be needed to respond given the scope of the question and the research that would be required.

PWD's objection should be overruled and PWD should be directed to provide a full response. The request for documentation is timely and it is not duplicative of previous requested information.

This information would not be unduly burdensome for the water department to provide as they state the CLC already has access to this information. The CLC would ask in the alternative that PWD simply state where the information can be accessed. Further, the Hearing Officer has permitted the parties to create a record regarding customer service issues, and therefore requests for information related to customer service are relevant at this time. The Water Rate Board has jurisdiction over the fees in question and PWD has not yet obtained the Board's approval of its existing fee structure for these types of services. This is not information that PWD would need more time to respond to as no further research is necessary on the issue. The request should be granted for all the reasons stated above and in the General Objections.

CLC-II-11.

The CLC requested that PWD provide information on assistance programs including but not limited to available grants, partial payment programs, installment agreements or plans or other measures available to customers who are unable to pay costs or fees associated with infrastructure problems.

PWD objected, asserting that this interrogatory is untimely and is duplicative of previous requested information, that to provide this information would be "unduly burdensome as the CLC already has access to this information", that requests related to customer service issues which are beyond the Rate Board's rate setting authority, as "such request is further objectionable as it will fail to lead to the discovery of information that is relevant and

admissible”, and additional time would be needed to respond given the scope of the question and the research that would be required.

PWD’s objection should be overruled and PWD should be directed to provide a full response. The request for documentation is timely and it is not duplicative of previous requested information. This information would not be unduly burdensome for the water department to provide as they state the CLC already has access to this information. The CLC would ask in the alternative that PWD simply state where the information can be accessed and found. Further, the Hearing Officer has permitted the parties to create a record regarding customer service issues, and therefore requests for information related to customer service are relevant at this time. This is not information that PWD would need more time to respond to as no further research is necessary on the issue. The request should be granted for all the reasons stated above and in the General Objections.

CLC-II-12.

The CLC requested that PWD provide the number of water shutoffs of residential customer accounts for FY 2015, FY 2014, FY 2013, FY 2012, FY 2011, and FY 2010.

PWD objected, asserting that this interrogatory is untimely and is duplicative of previous requested information and additional time would be needed to respond given the scope of the question and the research that would be required.

PWD’s objection should be overruled and PWD should be directed to provide a full response. The request for documentation is timely and it is not duplicative of previous requested information. The CLC is simply looking for PWD to confirm the number of residential water shutoffs for customer accounts FY 2015, FY 2014, FY 2013, FY 2012, FY 2011, and FY 2010. This is information that PWD should have readily available. The CLC is not asking PWD to

conduct additional research but to provide information that pre-exists this rate hearing. The request should be granted for all the reasons stated above and in the General Objections.

CLC-II -13

The CLC requested that PWD identify what geographic location is covered by each district they identified in their previous response in which they provided statistics.

PWD objected, asserting that this interrogatory is untimely and is duplicative of previous requested information and additional time would be needed to respond given the scope of the question and the research that would be required.

PWD's objection should be overruled and should be directed to provide a full response. The request for documentation is timely and it is not duplicative of previous requested information. The previous asked for statistics were presented in five different City districts with no accompanying definition or geographical indicator of where the district exists and their boundaries. Furthermore, this is not information that PWD would need additional time to comply as the scope of the question is narrowly tailored to the geographic boundaries of the five districts that PWD has identified in an already existing document. The CLC is not asking PWD to undertake additional research but to provide information that is readily available to it. Additionally, the request should be granted for all the reasons stated above and in the General Objections.

III. Conclusion

The CLC requests that the Hearing Officer deny PWD's Objections and direct it to answer the CLC's discovery requests. PWD's Objections, if sustained, would undermine the free flow of information that is required in order for a full and transparent review of PWD's rate change request to be conducted, and, ultimately, in order for the Board to establish rates and

charges that satisfy the legal requirement that PWD rates be just and reasonable. PWD's discovery objections amount to nothing more than an unconstructive and unnecessary procedural dispute, undermining the public purpose objectives of this proceeding. The Hearing Officer should deny PWD's Objections in order to ensure that discovery continues without the further introduction of unnecessary procedural wrangling.

Respectfully submitted,

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