

OBJECTIONS TO INTERROGATORY AND REQUEST FOR PRODUCTION OF DOCUMENTS OF MICHAEL SKIENZIELEWSKI

The Philadelphia Water Department (“Department” or “PWD”) responds to the following Interrogatory and Request for Production of Documents of Michael Skiendzielewski (MS-I-1), (the “Interrogatory and Request”), submitted via email (receipt of which was deemed to be March 16, 2020) as follows. PWD requests that the Hearing Officer sustain these Objections and strike or limit the subject discovery request.

Introduction

1. PWD customers are responsible for repairing the pipes and fixtures that carry water from the City’s water mains to their home and that carry wastewater from their home to the City’s sewer in the street. PWD’s Homeowner’s Emergency Loan Program (HELP) offers zero interest loans for repairs to customer-owned water service lines and customer-owned sewer laterals. Customers have 60 months to pay off the loan, which will remain interest free unless they fail to make payments on time. Customers often use HELP loans to fix problems with their water service lines and sewer laterals. They can also use this loan to replace service lines that are made of lead – which may pose a health risk. HELP loan funding is intended to be a revolving fund that is replenished as the customer repays the loan. The Department believes that it is important to collect repayments so that the program may continue and not be a burden on ratepayers.¹

2. By way of background, the Hearing Officer should be aware similar discovery requests were made by Mr. Skiendzielewski (“Requester”) in the 2018 Rate Proceeding; and were stricken by the Hearing Officer in response to PWD Objections (dated February 27, 2018) filed in that case. There, the discovery requests sought information over an historic period of eight years for sewer lateral repairs and related HELP loans. The Objections to those discovery requests included (in relevant part) the following:

- PWD objects to the discovery requests as overly broad and irrelevant to the instant rate proceeding which addresses prospective rate relief. No nexus has been established between historic sewer lateral repairs, HELP loans extended to fund same during an eight-year historic period; and
- PWD objects to the discovery requests to the extent same request privileged information (involving the names, account numbers, and personal data for HELP loan recipients) which would be included in the documents requested.

The above Objections were sustained in the last rate proceeding (as to analogous discovery requests) and should guide the Hearing Officer’s decision here. The Hearing Officer’s discovery order in the 2018 Rate Proceeding (dated May 16, 2018) is posted at the Rate Board website. The Rate Board also sanctioned the Hearing Officer’s discovery order in its 2018 Rate Determination (dated July 10, 2018) at page 9.

¹ See, PWD website, <https://www.phila.gov/programs/homeowners-emergency-loan-program-help/>; Tr. 71;18-72:8 (Technical Hearings 5/17/18).

General Objections

1. The Department objects to the Interrogatory and Request as same seek information that is not relevant to the proposed changes in PWD rates and charges, and as such, is not reasonably calculated to lead to the discovery of admissible evidence for purposes of rate setting.

2. The Department objects to the Interrogatory and Request to the extent it requests information related to customer service issues (i.e., HELP loans) which are beyond the jurisdiction of the Rate Board (jurisdiction is limited to rate setting issues).

3. The applicable general objections, as stated herein (“General Objections”), are incorporated into the specific objections and responses that follow. Stating a specific objection or response shall not be construed as a waiver of these General Objections.

4. By answering any part of the Interrogatory and Request and/or providing any part of the requested information, PWD does not concede the relevance, materiality or admissibility of any of the information sought therein for use as evidence in any hearing. PWD expressly reserves the right to object to further discovery on the subject matter raised in the Interrogatory and Request.

Response to Interrogatory and Request for Production of Documents

MS-I-1. I again request all information, records, applications and financial data related to loan amounts and discounts provided to PWD customers via the HELP LOAN PROGRAM over the past 12 years.

Response: Objection. In addition to the aforesaid General Objections, the Department further objects to the discovery request for the reasons stated below:

1. The Department objects to the Interrogatory and Request because it is unrelated to the proposed changes in PWD rates and charges as set forth in the rate filing, and as such, is not reasonably calculated to lead to the discovery of admissible evidence.²

2. The Department objects to the Interrogatory and Request, as it is overly-broad in scope and unduly burdensome. The discovery request seeks information for an historic 12-year period. Given the fact that ratemaking is prospective, such an extensive look-back will not lead to the production of admissible evidence and is extremely burdensome. Specifically, the

² By way of background, Mr. Skiendzielewski has been trying for years to get the Water Department to pay for a defective water service line and sewer lateral at his home (which was apparently improperly installed when his house was built over twenty years ago). Mr. Skiendzielewski secured a HELP loan to pay for plumbing repairs at his home in 2014. After receiving loan proceeds to effect a sewer lateral repair, he disputed his obligation to fully pay the loan. In this context, he filed a petition with the Tax Review Board (“TRB”), seeking partial abatement in settlement of this obligation. The TRB rejected his petition as unsupported by substantial evidence on or about March 3, 2016. The TRB also granted a re-hearing whereupon it again rejected his petition on the same grounds (January 18, 2017). Mr. Skiendzielewski failed or refused to timely appeal the above TRB decisions to the Philadelphia County Court of Common Pleas. Therefore, this matter has been fully litigated. The Department maintains, in addition to the Objections stated above that Mr. Skiendzielewski is collaterally estopped from re-litigating this issue before the Rate Board. See attached TRB decisions.

discovery request is seeking the production of approximately 12,000 files over the period FY 2008 to the present (each file is about 25 to 40 pages).

3. The Department objects to the Interrogatory and Request to the extent it seeks confidential privileged, proprietary or other privileged information. The request involves the production of files with the names and addresses of HELP loan recipients. This raises significant privacy concerns (rights of privacy related to personally identifiable information). See, *Pennsylvania Liquor Control Board v. Beh*, 215 A.3d 1046 (Pa. Cmwlth. 2019). To address privacy concerns, each file would have to be redacted to exclude names, addresses and other personal information. The Department estimates that redaction of the aforesaid files would take approximately 6 minutes for each file (times 12,000 files equals a total of 1,200 hours). PWD submits that such an extensive request for information that is unrelated to new rates and charges is, by definition, unduly burdensome and should be stricken off by the Hearing Officer.

WHEREFORE, the Department formally objects to the Interrogatory and Request identified above and requests that its Objections be sustained and that it be relieved of the requirement of any further response to same except as described above.

Respectfully submitted,

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