

Philadelphia Water, Sewer and Storm Water Rate Board
June Monthly Meeting Notes
6/9/2021, by Zoom (Online and Telephone) Only

Board Members Present

Irwin “Sonny” Popowsky, Chair
Tony Ewing, Vice Chair
Rasheia Johnson, Secretary
Abby Pozefsky

Also Present

Daniel W. Cantú-Hertzler
Lance Haver
Marlane Chestnut, Hearing Officer
Susan Crosby
Danielle Lavery
Robert Ballenger
Scott Schwarz
Melissa LaBuda
Ji Jun
Andre Dasent
Steven Liang
Michael Skiendzielewski
Edward Markus, Technical Consultant
Carl Shultz
Megan

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

1. Mr. Ewing moved to approve the minutes of the May 12, 2021 monthly meeting. Ms. Pozefsky seconded the motion. The minutes were approved 4-0.

2. Ms. Pozefsky moved to adopt the draft rate determination on the TAP-R Proceeding submitted to the Board by the Hearing Officer, Marlane Chestnut. Mr. Ewing seconded the motion. Members raised no comments or concerns. The Board approved the TAP-R rate determination 4-0 and asked Mr. Cantú-Hertzler and Mr. Popowsky to file it with the Department of Records.

3. The Board discussed the recommendations in the Hearing Officer Report on the General Rate Proceeding, as well as the exceptions and reply exceptions thereto. Despite various exceptions and reply exceptions raised by Mr. Haver and Mr. Skiendzielewski, the Board voted to approve the Joint Petition for Partial Settlement without modification based on its determination that the proposed rates and charges are supported by the record, are in compliance with the Rate Ordinance and other applicable requirements, and therefore may properly be placed in effect for service rendered on and after September 1, 2021, and September 1, 2022, consistent with the Partial Settlement. Ms. Pozefsky lauded the work of the Hearing Officer.

The Board voted to approve the terms in the Joint Petition calling for a special rate reduction proceeding in the first half of 2022 if the Water Department has received certain federal stimulus funding or the Rate Stabilization Fund balance has increased as of deadlines set forth in the Joint Petition. Board members agreed to consider amending Board Regulations to the extent necessary to allow for such a proceeding.

In matters not settled by the Joint Petition, the Board voted (a) to require the Water Department – which filed no exception to the Public Advocate’s request – to report monthly on the amount and type of arrearage forgiveness it is providing to TAP customers, the result of its efforts to determine what legal and/or operational barriers must be overcome to implement ratable forgiveness for each month the TAP participant pays the TAP bill, and the efforts it is taking to reduce TAP denials and TAP churn; (b) to reject the Department’s proposal to recover through the TAP-R surcharge rider costs associated with arrearage forgiveness earned by TAP program participants, since it appeared that such costs were already factored into the rates; and (c) to permit the Department to place into effect the uncontested tariff changes and changes to miscellaneous rates and charges.

The Board also rejected Exceptions submitted by Mr. Skiendzielewski relating to other rulings of the Hearing Officer. The Board voted to affirm the Hearing Officer’s Orders (a) granting the Water Department’s Motion in Limine to bar Mr. Skiendzielewski from propounding certain discovery or presenting testimony in a technical hearing concerning allegations of misconduct in connection with administration of the HELP loan program; (b) denying his Request for Recusal of Board Counsel (Mr. Cantú-Hertzler, Board Counsel, recused himself during this deliberation and vote); and (c) denying his Request to declare that the Water Department had negotiated the Partial Settlement in bad faith and to compel the Department to negotiate with him.

The wording of the eleven determinations adopted by the Board is set forth on the Board Polling Sheet attached hereto, which also records each member’s vote and briefly summarizes the basis of the Board’s decisions.

4. The Board discussed the scheduling of future Board meetings. A special meeting had been preliminarily scheduled for June 16 for a final vote on the matters in the General Rate Proceeding, including the adoption of a formal Rate Determination. The meeting was officially scheduled for June 16 at 3:00 p.m.

5. Mr. Popowsky opened the meeting for public comments. Mr. Haver asked whether the Board was aware of how the meeting had been advertised on the Water Rate Board’s website. He believed that the public had insufficient notice that polling would take place. Mr. Popowsky stated that it had been included in the Meeting Agenda. Mr. Haver stated that he would be filing an appeal and seeking an injunction to prevent the implementation of the joint-settlement rates based on his belief that the public had not been properly heard.

6. Mr. Cantú-Hertzler informed the Board that the City's COVID Emergency Order would be expiring, such that the Board could decide to meet in person once again. Mr. Popowsky said they would discuss the issue going forward. Mr. Haver expressed his belief that it was a mistake not to hold meetings in person.

There being no further matters to discuss, the meeting adjourned at 3:57 p.m.

BOARD POLLING SHEET JUNE 9

	Wording of Resolution	Basis	Mr. Popowsky	Mr. Ewing	Ms. Johnson	Ms. Pozefsky
1	Hearing Report Recommendation #1 That the Rate Board approve without modification the Joint Petition for Partial Settlement.	Hearing Officer Report Supported by record, in compliance w/ regs, ordinance, reasonable bal of PWD need for rate relief v customers	Yes	Yes	Yes	Yes
2	Hearing Report Recommendation #2 That the Rate Board find that the proposed rates and charges are supported by the record, are in compliance with the Rate Ordinance and other applicable requirements and therefore should be permitted to be placed in effect for service rendered on and after September 1, 2021, and September 1, 2022, consistent with the terms and conditions contained in the Joint Petition for Partial Settlement.	Hearing Officer Report Supported by record, in compliance w/ regs, ordinance	Yes	Yes	Yes	Yes

	Wording of Resolution	Basis	Mr. Popowsky	Mr. Ewing	Ms. Johnson	Ms. Pozefsky
3	Hearing Report Recommendation #3 That the Rate Board accept the proposal to utilize a special rate reduction proceeding be approved by the Rate Board consistent with the terms and conditions contained in the Joint Petition for Partial Settlement. Further recommend that the Rate Board amend its regulations concerning use of special rate proceedings to clarify the appropriate use of such limited, non-general rate proceedings if necessary.	Hearing Officer Report Reasonable and appropriate	Yes	Yes	Yes	Yes
4	Hearing Report Recommendation #4 (unsettled) That the Rate Board require the Philadelphia Water Department to report monthly on the amount and type of arrearage forgiveness that PWD is providing to TAP customers, the result of its efforts to determine what legal and/or operational barriers must be overcome to implement ratable forgiveness for each month the TAP participant pays the TAP bill; and the efforts PWD is taking to reduce TAP denials and TAP churn.	Hearing Officer Report Accept PA —	Yes	Yes	Yes	Yes

	Wording of Resolution	Basis	Mr. Popowsky	Mr. Ewing	Ms. Johnson	Ms. Pozefsky
5	Hearing Report Recommendation #5 (unsettled) That the Rate Board reject the proposal of the Philadelphia Water Department to recover through the TAP-R surcharge rider costs associated with arrearage forgiveness earned by TAP program participants.	Hearing Officer Report Accept PA	Yes	Yes	Yes	Yes
6	Hearing Report Recommendation #6 That the Rate Board permit the Philadelphia Water Department to place into effect the uncontested tariff changes and changes miscellaneous rates and charges.	Hearing Officer Report approve	Yes	Yes	Yes	Yes
7	Hearing Report Recommendation #7 That the Rate Board permit the Philadelphia Water Department to place into effect the uncontested tariff changes and changes miscellaneous rates and charges	Hearing Officer Report Approve	Yes	Yes	Yes	Yes
8	Hearing Report Recommendation #8 That the Rate Board reject any remaining issues, proposals, modifications and/or adjustments by the other participants that are not contained in the Partial Settlement except as otherwise directed.	Hearing Officer Report Approve	Yes	Yes	Yes	Yes

	Wording of Resolution	Basis	Mr. Popowsky	Mr. Ewing	Ms. Johnson	Ms. Pozefsky
9	Skiendzielewski Exc. #1 Affirm Hearing Officer's grant of Water Department's Motion in Limine/discovery objections	Hearing Officer Report Rejected this objection Order: Outside scope of proceeding	Yes	Yes	Yes	Yes
10	Skiendzielewski Exc. #2 Affirm Hearing Officer's denial of Motion for Recusal of counsel	Hearing Officer Report Rejected this objection Order: No basis for recusal	Yes	Yes	Yes	Yes
11	Skiendzielewski Exc. #3 Affirm Hearing Officer's rejection of request to find that PWD bargained in bad faith and to order PWD to negotiate	Hearing Officer Report Rejected this objection Settlement negotiations confidential, can't order a party to negotiate	Yes	Yes	Yes	Yes