

Philadelphia Water, Sewer and Storm Water Rate Board  
April Monthly Meeting Notes  
4/13/2022, by Zoom (Online and Telephone) Only  
Open for public participation via Zoom

Board Members Present

Irwin “Sonny” Popowsky, Chair  
Tony Ewing, Vice Chair  
Abby Pozefsky, Secretary  
McCullough “Mac” Williams

Non-Board Members Present

Marlane Chestnut  
Kintéshia Scott  
Andre Dasent  
Daniel W. Cantú-Hertzler  
Carl Shultz  
Brook Darlington  
Lance Haver  
Steven Liang

Mr. Popowsky called the meeting to order at 3:01 p.m.

1. The meeting began with a brief introduction of Mr. McCullough “Mac” Williams, who was officially appointed and approved as the newest member of the Water Rate Board by City Council. Mr. Williams has had a distinguished public and private sector finance career and said that he looked forward to serving on the Board. Mr. Popowsky then spoke briefly in recognition of Ms. Johnson, who had recently resigned from the Board. He thanked her for her years serving the Board, including as Board Secretary, and for the outstanding service that she has provided the City of Philadelphia over her career.

2. Mr. Popowsky asked for any corrections or additions to the draft minutes from the March 9, 2022 monthly meeting. There were none. Mr. Ewing moved to approve the minutes. Ms. Pozefsky seconded the motion. The minutes were approved 3-0. Mr. Williams, not having attended the meeting, abstained.

3. Mr. Popowsky asked for nominations to fill the recently vacated position of Board Secretary. Mr. Ewing nominated Ms. Pozefsky to the position. Mr. Williams seconded the nomination. Ms. Pozefsky was elected as the new Board Secretary 4-0.

4. Mr. Popowsky opened the meeting to members of the Public to address any matters on the meeting agenda. Mr. Haver addressed his [Motion to Remove the Public Advocate](#) and subsequent [Direct Appeal of Hearing Examiner’s Order Denying Haver Motion to Remove the Public Advocate](#). Mr. Haver stated that the Hearing Officer had ruled that Community Legal Services (CLS) was currently serving as Public Advocate as a condition of the [2021 Rate Proceeding Joint Petition for Partial Settlement](#). Mr. Haver contended that the Public Advocate’s contract was thus an inducement given to it as part of that settlement. Mr. Haver said that the Public Advocate had not filed financial disclosure forms or conflict of interest statements and that because members of the management team of CLS represents US Bank or one of its major

stockholders and US Bank does business with the Water Department, CLS had a financial conflict of interest or, at the very least, the appearance of a conflict of interest.

Mr. Haver said also that the Public Advocate has, at minimum, the appearance of having been given a no-bid contract as a result of agreeing to two rate increases. Additionally, CLS had failed to meaningfully engage the public in the proceedings, evidenced by lack of public participation. For these reasons Mr. Haver believed CLS should be removed from the position of Public Advocate for cause and replaced with someone who would engage the public and not someone who would take a no-bid contract as an inducement to settlement.

Mr. Popowsky asked for responses to Mr. Haver's comments. Ms. Scott responded for the Public Advocate, noting that the Public Advocate had also submitted a written [opposition](#). First, the Public Advocate is not required to make a financial disclosure statement and neither Mr. Ballenger nor Ms. Scott owns stock in US Bank Corp; their only direct personal interests in the outcomes of the Proceedings stem purely from the fact that they too are customers of PWD.

Ms. Scott added that the CLS Board members serve without compensation, and that Mr. Haver erroneously assumed CLS's Board Chair also served in some capacity as its president, managing partner or part of its management team. She stated that the Board Chair has no influence on CLS's work as Public Advocate. That effort is solely for the benefit and interests of small water users, thus neither Mr. Ballenger nor Ms. Scott has a conflict of interest.

In response to Mr. Haver's repeated concerns that PWD reserve funds were held by US Bank, Ms. Scott stated that neither the Rate Board, PWD nor the Public Advocate determined where those funds were deposited. Instead, they are deposited at the discretion of the City Treasurer with a bank approved by City Council. Ms. Scott closed by stating that the Public Advocate wanted to focus on what the Rate Board and the Water Department could do in the proceeding and not on distractions.

Mr. Dasent spoke for the Water Department, having also filed an [Answer](#) to Mr. Haver's appeal. PWD saw no quid pro quo in the 2021 Rate Proceeding Settlement. Both Mr. Ballenger and Ms. Scott are salaried employees of CLS, and do not receive any additional compensation for their involvement in rate proceedings. They have no personal financial interests. Moreover, CLS's decades of service as Public Advocate, both in this forum and others, are evidence of its integrity; it had even taken appeals from Rate Board decisions to Common Pleas Court and Commonwealth Court with no compensation.

Mr. Dasent stated that CLS had not received a "no-bid contract." Rather, the City contracted with CLS following a rigorous procurement process with specific criteria including history of service and competency. Mr. Dasent went on to discuss his own experience working for CLS in the 1970s, suggesting that CLS attorneys had no financial incentive to do extra work. He stated his distaste for what he believed to be the devolution in the conduct exhibited in the recent Rate Proceedings, specifically mentioning the ad hominem attacks made towards the Public Advocate.

5. Mr. Popowsky asked Mr. Cantú-Hertzler to explain the contracting process that was utilized in hiring the Public Advocate. Mr. Cantú-Hertzler stated that CLS was hired in October 2019 through standard procedure under the “Anti Pay-to-Play” Ordinance, now Chapter 17-1400 of the Philadelphia Code. Generally, notice of professional services contracts, which include the Public Advocate’s, are posted to the City’s public website, [eContract Philly](#), for a minimum of 14 days and are open to all applicants. If the City does not award to the lowest-cost proposer, it publicly lists the reasons for the choice before executing the contract.

In October of 2019, the Board posted its Requests for Proposals for the positions of Public Advocate, Technical Consultant, and Hearing Officer. The Board considered all the proposals received for each position and entered into the contracts as of December 2, 2019. Each contract established a one-year initial term with the option to renew for three additional one-year terms. The Board renewed each of the contracts in 2020 and 2021. The contracts would permit the Board to renew for one additional year before it must post new Requests for Proposals, unless a Code exception applies.

Mr. Cantú-Hertzler stated that the contracts require that the Providers declare that they have no adverse interests, or to disclose any such interests. No such interests were disclosed, but CLS noted that it represents individuals that may be suing or making claims against PWD, asserting that these were not conflicts of interest but instead assisted CLS in fulfilling its purpose as Public Advocate: to ensure that the Rate Board understands the interests of small users in making rate determinations.

Mr. Popowsky asked if Board members had any questions, reminding them that the Board had voted to authorize the Board Chair and Board Counsel to enter into these contracts during its November 13, 2019 meeting, the minutes of which are located [here](#). The Board voted to renew these contracts for Public Advocate, Hearing Officer, and Technical Consultant at its October 14, 2020 and August 11, 2021 meetings, the minutes of which are available [here](#) and [here](#) respectively.

Mr. Ewing asked a clarifying question: whether there had been anything done in the contracting process that may have circumvented or otherwise skirted the standard legal procedures in contracting these Providers, Community Legal Services, Amawalk Consulting LLC, and Marlane R Chestnut.

Mr. Cantú-Hertzler stated that all rules had been followed and that while the 2021 Settlement Agreement had stipulated a Public Advocate be part of the Special Rate Proceeding, it did not stipulate that CLS would be the assigned Public Advocate. The Board voted to authorize CLS to serve once again as Public Advocate in that capacity. Ms. Pozefsky expressed her satisfaction that after having been part of the discussions and reviewing the meeting minutes, everything done by the Board had been within the bounds of prescribed legal procedure.

Mr. Popowsky spoke to Mr. Haver's claim that there was a quid pro quo in the 2021 Rate Proceeding. The Board had specifically addressed the issue in its 2021 Final Rate Determination, rejecting that argument, and there had been no appeals following that decision. Moreover, the settlement agreement was between the Public Advocate and PWD, but the Water Department has no role in retaining the Public Advocate.

In the partial settlement, the Public Advocate and PWD agreed that there should be a Public Advocate for this Special Rate Proceeding, which is a specific requirement in General Rate Proceedings but not in Special Rate Proceedings. The Board approved that agreement, and subsequently agreed to renew the contract with CLS to serve as Public Advocate for another year.

Mr. Popowsky asked Mr. Cantú-Hertzler to address the issue of financial disclosure statement requirements. Mr. Cantu-Hertzler stated that he was not aware of any requirement or history of any Public Advocate, Technical Consultant, or Hearing Officer having filed such statements. Such statements are typically only asked of elected officials, city employees, or individuals appointed to boards and commissions. However, Mr. Cantú-Hertzler stated that he had filed a request with the Board of Ethics to make a determination as to whether or not any or all of the Rate Board's professional services contractors should be filing financial disclosure statements, and that he expected a decision sometime in May.

6. Mr. Popowsky asked members of the Board if they had any additional comments or questions. Mr. Pozefsky echoed Mr. Dasent's earlier statements that from her personal experience serving in Camden Regional Legal Services, any claims that the CLS's attorneys are motivated by financial gain are unfounded. Ms. Pozefsky criticized the level of discourse that had occurred in this and recent Rate Proceedings, highlighting the "repeated baseless ad hominem attacks" made at the Public Advocate and Hearing Officer. She stated her belief that Mr. Ballenger had zealously and successfully represented his client with "absolute loyalty to the public trust" and that Ms. Chestnut, a distinguished and trusted jurist with over 25 years of PUC experience, had presided over these proceedings with "patience, with dignity, and with skill." She expressed her concern as to how the exchanges that took place in the proceedings may have a "chilling effect" on those who seek a future in public service, and expressed the hope that in the future all involved would act in a more constructive, respectful, and civil manner.

Mr. Ewing echoed Ms. Pozefsky's sentiment, making note of the Public Advocate's dogged persistence in advocating for the public, the professionalism of the Hearing Officer, and the productive and professional manner of the Technical Consultant.

Mr. Popowsky also added his personal comments, believing that CLS had zealously represented the interests of PWD's small water customers. He stated that Ms. Chestnut, whom he has known for many years, was one of the most respected, experienced and diligent judges who had served at the Public Utility Commission. Mr. Popowsky stated his belief that the manner in

which she had acted and her overall integrity were beyond reproach and that the Board was very fortunate to have acquired her services, as well as the services of their other contractors.

7. The Board voted 3-0 to deny Mr. Haver's Appeal. Mr. Williams abstained, not having attended the bulk of the prior meetings relevant to this issue.

8. Mr. Popowsky asked Ms. Chestnut for an update on the pending rate proceedings. Before responding, Ms. Chestnut expressed her belief that the criticisms lodged at her in these proceedings had been untoward comments against her character. She stated that having served as a public servant for so long, she had filed financial disclosure statements for decades. She said that while one could criticize her competency, attacks on her integrity were wrong and should not be made without explicit evidence. She said she would follow any requirements or recommendations made by the Board of Ethics.

Ms. Chestnut then gave an update on the rate proceedings. The TAP-R proceeding was going according to schedule: testimony and hearings were complete and she was awaiting briefs or a settlement petition. Ms. Chestnut hoped that the Public Advocate and PWD would be able to come to agreement. The Special Rate Proceeding was on a slightly later schedule; testimony was ongoing, and a technical hearing was to be held on April 26.

9. Mr. Popowsky opened the meeting to any further comments from the public. Mr. Haver stated that, if Ms. Pozefsky's comments were directed at him, he did not believe that his comments constituted personal attacks and would continue to argue that the Public Advocate should create an advisory committee that spanned the spectrum of members of the public to assist with the rate proceedings.

The meeting adjourned at 3:38 p.m.