

January 10, 2020

IN RE: Kinder Morgan Liquids Terminal  
DOCKET NO: 35WRMERZW2404

STATEMENT OF RECORD:

1. Kinder Morgan Liquids Terminal (hereafter "Petitioner") filed a Petition for Appeal with the Office of Administrative Review (OAR) on July 13, 2018. The petition requested a review of the water/sewer bill for the period October 28, 2014 through June 15, 2015 for the property at 6310 West Passyunk Avenue, Philadelphia, PA.
2. A public hearing before the Tax Review Board was scheduled for November 20, 2018. Petitioner requested and was granted a continuance.
3. A public hearing before the Tax Review Board was held on October 15, 2019. At the conclusion of the hearing, the Tax Review Board announced its decision to:
  - a. Abate the penalty charge
  - b. Order the City to pursue the prior owner for the bill period from October 28, 2014 through January 22, 2015
  - c. Adjust the water usage from the bill period January 23, 2015 through June 15, 2015 based on 14,000 cubic feet per month
  - d. Order the Petitioner to enter into a payment arrangement with the Department of Revenue within thirty (30) days of the date of the revised bill.
4. The City has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner requested a review of a delinquent water/sewer bill for the property at 6310 West Passyunk Avenue, Philadelphia, PA. This bill covered the period from October 28, 2014 through June 15, 2015. The principal amount due for that period was \$53,374.33 and penalty charges of \$2,668.97, for a total amount due of \$56,043.30.
2. Petitioner was represented by Counsel who acknowledged that Petitioner purchased the property on January 7, 2015 from Point Breeze Terminal LLC. The property is a large petroleum storage facility with above ground sewer shanks.
3. Petitioner claimed that a settlement agreement was reached with the prior owner resolving the water usage bill up until January 22, 2015.
4. Petitioner further alleged that the portion of the bill for which he is responsible is excessively high, averaging \$7,000 a month for the period in question.
5. Ms. Taliba Hieke from the Water Revenue Bureau testified that the majority of the billings were based on actual readings from the meter. There was nothing in their records to indicate that a meter problem had been reported or found.

CONCLUSIONS OF LAW:

The burden of proof to establish that the bill under challenge is inaccurate is on the Petitioner. The presentation by the City of the assessment or bill is sufficient as prima facie proof of their accuracy. The burden then shifts to the petitioning party to present evidence to establish that the assessment is incorrect or inaccurate. City of Philadelphia v. Litvin, 235 A.2d 157 (Pa. Super 1967).

Petitioner argued that the meter readings were inaccurate and therefore requested the Board to adjust the readings to reflect the usage based on the previous meter usage history. In reviewing the usage history and the usage being captured during the billing period in question, the Chairman noted that the usage history often fluctuated, asserting that there had been readings with usage at 100 CCFs and “one that is 3,700” (Notes of Testimony, p. 42, ln. 18). Additionally, the meter was a fire meter, specifically to measure water usage from the internal the fire hydrant. The Petitioner asserted that the fire hydrant had not been used nor was there a leak. The Board could not ignore the high fluctuation among the meter usage and found the differences in per unit consumption as so significant as to establish that the readings were inaccurate on their face.

The Board also held that Petitioner was not liable for the usage on the property prior to January 22, 2015, due to a settlement with the prior owners, Point Breeze Terminal. The settlement included all liabilities up to January 22, 2015. As the back billing in question spanned over that period, the Board directed the City to that agreement and to address all arrangements with Point Breeze Terminal.

Concurred:

Nancy Kammerdeiner, Chairman

Ryan Boyer

Joseph Ferla

Gaetano Piccirilli