

Philadelphia Water, Sewer and Storm Water Rate Board
June Monthly Meeting Notes
6/8/2022, 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
Debra McCarty

Non-Board Members Present

Marcy Chestnut
Robert Ballenger
Andre Dasent
Megan Kester
Danielle Lavery
Daniel W. Cantú-Hertzler
Brook Darlington
Carl Shultz
Steven Liang

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

1. Ms. Pozefsky, Board Secretary, introduced the draft minutes from the May 11, 2022, monthly meeting. There were no corrections or additions to the minutes. Ms. Pozefsky moved to approve the minutes. Mr. Ewing seconded the motion. The minutes were approved 5-0.

2. Mr. Popowsky opened the meeting to public comments. Mr. Skiendzielewski had asked Mr. Popowsky if he could submit a written statement to the Board because he would be unable to attend. Mr. Popowsky moved to attach his statement to the June 8 meeting minutes; Ms. Pozefsky seconded the motion. The Board voted to attach the statement 5-0. The statement is Attachment A hereto. No others asked to make public comments.

3. The Board deliberated on issues in the 2022 TAP-R Proceeding. The Board member votes on each of the proposed findings and exceptions are Attachment B hereto.

4. The Board deliberated on issues in the 2022 Special Rate Proceedings. The Board member votes on each of the proposed findings and exceptions are Attachment C hereto.

5. Mr. Popowsky asked if there were any other business to be brought before the Board. The Public Advocate and Department thanked the Board for their efforts. There were brief discussions concerning the production of the tables to be attached to the final Rate Determination.

The meeting was adjourned at 4:03 p.m.

Attachment A

Comments of Michael Skiendzielewski

June 8, 2022

Sonny Popowsky

Chairman

Water Rate Board

City of Philadelphia

Re: Correspondence re WRB prior to Board Meeting – June 8, 2022

Dear Sir:

As you may recall from last week's correspondence, I was considering whether to make a presentation at the Board Meeting this afternoon. I have decided that it is best that I send this document to your attention prior to the WRB meeting, and you can decide whether this is to be included in the notes of the WRB meeting or posted on the City's WRB website at an alternate location. In any event, please inform me where it will be posted or if the decision has been made not to post these concerns at all on the city website.

Sir, I just want the WRB to know because of the newest appointment to the WRB it has become even more important and urgent that I participate as fully as possible in the next round of WRB hearings which appears likely in 2023. The facts and evidence clearly indicates that two city professionals, one currently employed and one retired, are inextricably involved in the issues I have presented over the past set of WRB hearings and so I will most assuredly proceed with several of the past motions (though denied at all levels of appeal within the WRB process) as well as two new motions that need to be placed before the WRB for their consideration, review and action.

In keeping with the oft-repeated dictate that the WRB proceedings are considered specifically with those issues that impact water and sewer rates, it is obvious that the issue involving the PWD's operation at my residence speaks to the issues of financial concerns. Why? The PWD, its management and administration, simply failed to properly diagnose, define and properly remedy ALL of the street failures in the PWD operation at my residence in the Spring of 2014. Despite repeat notifications to the PWD Commissioner and other personnel before and after I paid for the long lateral replacement, the area in and around this

location continued to erode and sink. A full two years later, after a TRB hearing, the former PWD Commissioner finally sent out personnel who diagnosed that the PWD's own sewer laterals were defective and PWD equipment and personnel were sent out once again to address this issue. If such incompetence does not impact water and sewer rates and possibly impact the eventual failure of my long laterals in the street which cost this homeowner nearly \$11,000, then I would like to know what other issues can negatively impact water and sewer rates. Even at the TRB hearing held prior to the PWD finally acknowledging their failures in the work at my residence, their employee stated on the record that there was a crack in the sewer inlet wall, which the PWD Commissioner denied, but was clearly evident. Her Deputy Commissioner eventually sent personnel out to "parge" the crack though asserting that such steps were precautionary and had nothing to do with sinking or inlet failure.

The second issue is and has been the most significant, serious and consequential of all that I have raised in other forums within city government, professional associations and industry circles. Though it certainly will be rejected as a motion in the upcoming WRB hearings, whenever the next one occurs, due to the explicit purpose of financial concerns relative to water and sewer rates, I submit that there is no other concern or matter of greater importance since it is concerned with the safety of PWD employees and passersby at the scene of the PWD excavation to repair THEIR failed sewer lateral in 2016. As shared with PWD administration, the Commissioner, Risk Management and the Deputy Managing Director, OTIS, I have digital photos of a specific portion of the excavation which clearly shows that the PWD employees utilized the outriggers and stabilizers in an unsafe and dangerous manner, risking the safety of employees and passersby at the site. I researched this incident extensively with industry professionals, engineering companies, etc. and shared the photos with experienced civil engineers and I was informed that such use of the equipment violated industry standards and protocol.

Despite repeated offers to the PWD Commissioner and city administration to have them examine these digital photos, not a simple city official decided to review these photos yet determined in correspondence that the operation was safe and according to regulations. As a matter of fact, at a WRB public meeting at 5th and Somerset Sts., I presented this evidence to the attendees as well as an OSHA document which described a utility worker fatality in Massachusetts due to the improper use of the outriggers/stabilizers. The most egregious conduct followed my presentation when the PWD Commissioner followed mine and informed the PWD customers and citizens in attendance that the operations was safe.

Regardless of what information, evidence and interviews that the PWD and city may have conducted on their own relative to my allegation of unsafe operation, it is clear incompetence and unprofessional conduct to review other information, evidence and photos so that the city has completed a thorough, objective and complete investigation of the matter.

I even shared with the PWD and city management a company who specializes in the engineering field of “near-miss” management and it is only blocks from City Hall at 1800 JFK Boulevard. I spoke with management there about the incident and photo and this is a company of experts in the field whose work is international in scope.

Near-Miss Management: Resolve Your Process Risks at Their ...

<https://www.nearmissmgmt.com>

Near-Miss Management (NMM) provides one-of-its-kind enterprise risk detection and advanced warning platform for the process industries.

Of course, I can understand why members of the WRB may be concerned why I am sharing this matter with you. It is because this lifelong Philadelphia citizen is attempting to prevent the tragic Trifecta for the City of Philadelphia and its citizens. There have already been two PREVENTABLE fatal tragedies where city administration and officials were notified in advance of dangerous and unsafe conditions and the administration did not take action and citizens were killed and seriously injured: (1) Pier Collapse in 2000 and (2) Salvation Army Collapse in 2013. Whether or not the WRB is the correct forum or not, this singular issue, above all others this writer has raised, contested or advocated for, must be addressed and resolved.

As a matter of fact, I shared correspondence and evidence with the Chairman of the Commission set up by Mayor Nutter to investigate the circumstances of the Salvation Army collapse (where a daughter of a senior city official was killed). Peter Vaira, former US Attorney for the Eastern District in PA, was not surprised at all since the city did not act on the commission’s recommendations and clearly separate the safety protocol and review from the certification process and review.

In conclusion, it is important for the Water Rate Board, as I mentioned earlier, to know that I will be participating again in the upcoming water rate hearings. However, as each of my motions follow through the process of review, response submitted by PWD, review and decision by the Hearing Officer and final appeal with the WRB, I will copy the public record of each issue and share them with citizens and neighborhood associations throughout the city.

Sincerely,

Michael Skiendzielewski
Captain (retired)
Philadelphia Police Department
516 Parkhollow Lane
Philadelphia, PA 19111

Attachment B

BOARD POLLING SHEET JUNE 8, 2022 – TAP-R PROCEEDING

	Hearing Report Recommendations	Exceptions	Mr. Popowsky	Mr. Ewing	Ms. Pozefsky	Mr. Williams	Ms. McCarty
1	The Rate Board should approve the Joint Petition for Settlement without modification and find that the modified TAP-R rates are supported by the record and are just and reasonable.	Mr. Haver: The settlement is not in the public interest and should be rejected, because the TAP-R surcharge represents an improper tax; the notice of the TAP-R rate increase provided to the public was inadequate; the Public Advocate had undisclosed conflicts of interest, and provided inadequate and ineffective representation; the Hearing Officer was biased and acted prejudicially by, inter alia, permitting the Public Advocate to file an exhibit after the close of the hearings.	Findings	Findings	Findings	Findings	Findings
			Accept	Accept	Accept	Accept	Accept
			Exceptions	Exception	Exception	Exception	Exception
			Deny	Deny	Deny	Deny	Deny
2	The Rate Board should authorize the Water Department to file revised TAP-R rates and charges as contained in Joint Settlement Petition Exh. 1 , as set forth in Table 1, for service rendered on and after September 1, 2022.	[Same]	Findings	Findings	Findings	Findings	Findings
			Accept	Accept	Accept	Accept	Accept

Attachment C

BOARD POLLING SHEET JUNE 8, 2022 – SPECIAL RATE PROCEEDING

	Hearing Report Recommendations	Exceptions	Mr. Popowsky	Mr. Ewing	Ms. Pozefsky	Mr. Williams	Ms. McCarty
1	The condition in the Joint Settlement Petition regarding the receipt of federal stimulus funding has <u>not</u> been satisfied, thereby warranting no reduction to the FY 2023 Base Rate Incremental Increase.	Mr. Haver: The Water Department failed to make a good faith effort to obtain stimulus funding in order to obviate the need for a rate increase.	Findings Accept	Findings Accept	Findings Accept	Findings Accept	Findings Accept
			Exception Deny	Exception Deny	Exception Deny	Exception Deny	Exception Deny
2	The condition in the Joint Settlement Petition regarding PWD's FY 2021 financial performance as measured by the Rate Stability Fund balance as of June 30, 2021, <u>has</u> been satisfied.	¹ PWD: The condition for financial performance has not been met because the Hearing Officer should have utilized the \$135 million RSF target adopted by the Board in its 2018 general rate determination. ² PWD: If a lower financial performance measure is adopted for the purposes of this proceeding, the Board should clarify that it is not changing the \$135 million target for the RSF balance over time.	Findings Accept	Findings Accept	Findings Accept	Findings Accept	Findings Accept
			^{1st} Exception Deny	^{1st} Exception Deny	^{1st} Exception Deny	^{1st} Exception Deny	^{1st} Exception Deny
			^{2nd} Exception Accept	^{2nd} Exception Accept	^{2nd} Exception Accept	^{2nd} Exception Accept	^{2nd} Exception Accept
3	The minimum threshold for potential sharing of the better than projected financial performance with customers should be set at \$113.988 million for this limited special rate proceeding.	PWD: The Hearing Officer erred by using the \$113.988 RSF balance from Table C-1 in the 2021 Settlement as the minimum threshold for financial performance.	Findings Accept	Findings Accept	Findings Accept	Findings Accept	Findings Accept
			Exception Deny	Exception Deny	Exception Deny	Exception Deny	Exception Deny

	Hearing Report Recommendations	Exceptions	Mr. Popowsky	Mr. Ewing	Ms. Pozefsky	Mr. Williams	Ms. McCarty
4	The amount by which the FY 2023 Base Rate Incremental Increase should be reduced, to reflect the sharing of the amount by which the FY 2021 RSF balance exceeded the minimum threshold for financial performance, should be no more than \$3 million.	¹ Public Advocate: Hearing Officer erred by implicitly placing undue weight on PWD's updated financial outlook.	Findings Accept	Findings Accept	Findings Accept	Findings Accept	Findings Accept
		² Public Advocate: Hearing Officer should have adopted the Public Advocate's proposed reduction of \$5.35 to \$6.6 million to the FY 2023 Rate Increase.	^{1st} Exception Deny	^{1st} Exception Deny	^{1st} Exception Deny	^{1st} Exception Deny	^{1st} Exception Deny
		³ PWD: There should be no reduction to the FY 2023 rate increase.	^{2nd} Exception Deny	^{2nd} Exception Deny	^{2nd} Exception Deny	^{2nd} Exception Deny	^{2nd} Exception Deny
		⁴ Mr. Haver: Due to lack of adequate notice, prejudicial actions by the Hearing Officer, inadequate representation by the Public Advocate, and PWD's failure to make its best efforts to obviate the need for a rate increase, the Hearing Officer's report should be rejected, the settlement agreement should be set aside, and the FY 2023 Base Rate Incremental Increase should be rescinded in its entirety.	^{3rd} Exception Deny	^{3rd} Exception Deny	^{3rd} Exception Deny	^{3rd} Exception Deny	^{3rd} Exception Deny
			^{4th} Exception Deny	^{4th} Exception Deny	^{4th} Exception Deny	^{4th} Exception Deny	^{4th} Exception Deny

	Final Determination						
	Hearing Report Recommendations	Exceptions	Mr. Popowsky	Mr. Ewing	Ms. Pozefsky	Mr. Williams	Ms. McCarty
5	The Rate Board determines that the FY 2023 rate increase of \$34.110 million beginning September 1, 2022, previously set by the Board in its June 2021 General Rate Determination pursuant to the terms of the Joint Petition for Partial Settlement, should be reduced by \$(_____).		Findings \$3 million Accept	Findings \$3 million Accept	Findings \$3 million Accept	Findings \$3 million Accept	Findings \$3 million Accept