

BEFORE THE
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD

In the Matter of the Philadelphia Water Department's Proposed Change in Water, Wastewater and Stormwater Rates and Charges	Fiscal Years 2024-2025
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**OBJECTIONS AND RESPONSES TO
SKIENDZIELEWSKI INFORMATION REQUESTS (SET I)**

The Philadelphia Water Department (“Department” or “PWD”) objects to the following Set I Information Requests of Michael Skiendzielewski: MS-I-1, MS-I-2, MS-I-3 and Final Paragraph. The aforesaid requests (sometimes individually referred to as, “interrogatory and request” or collectively as “discovery requests”) were deemed received via email on April 25, 2023.¹ PWD requests that the Hearing Officer appointed by the Philadelphia Water, Sewer and Storm Water Rate Board (“Rate Board” or “Board”) in this proceeding sustain these Objections and strike or limit the subject discovery requests.

General Objections

1. PWD objects to each interrogatory and request to the extent that it seeks information that is not relevant and not material to the PWD proposed changes in rates and charges as set forth in the 2023 general rate case filing, and as such, is not reasonably calculated to lead to the discovery of admissible evidence for purposes of rate setting.

2. By answering any part of the interrogatory and request or producing 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.

3. The Department objects to each interrogatory and request insofar as it seeks the production and disclosure of documents or information subject to any applicable privilege (including government decision making and deliberations; attorney client privilege; and attorney work product), rule, doctrine or immunity whether created by statute or common law.

¹ Email transmitted at 10:00 PM on April 24, 2023.

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

Objections to Interrogatories and Requests for Production of Documents

MS-I-1: “... I am requesting from the PWD the current protocol and standards used in the identification, investigation, planning and initiation of work at consumer's residences related to necessary long lateral sewer repairs and other related or contingent repair work, which may or may not be the responsibility of the PWD or the property owner.”

Response: Objection and Limited Response.

[1] The proper scope of this proceeding is limited to the change in rates and charges proposed by PWD. The Department objects to this 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. The requested information will not assist the Rate Board in determining prospective rates and charges. No nexus has been established between the requested information and the prospective rates and charges proposed for the Rate Period.

[2] The Department objects to this request as it is overly-broad in scope and unduly burdensome given the context and timing of this proceeding. The request, as written, relates to any long lateral sewer work in the City (regardless of responsibility). Such information (decisions and policies) is unrelated to proposed rates and charges and will cause an unreasonable annoyance, burden and expense to PWD. This request does not appear to support any proposals by Mr. Skiendzielewski for FY 2024 and FY 2025, since Mr. Skiendzielewski did not make comments at the public input hearings (on either March 22 and 23, 2023) or in written direct testimony (before the deadline of April 12, 2023). This request also does not refer to any of testimony filed by the Department or by any other Participant.

[3] The Rate Board has limited jurisdiction. The Board is empowered to approve, modify or reject proposed rates and charges. The Board does not have general oversight over PWD. The Department objects to the Interrogatory and Request to the extent it requests information related to management decisions, operational issues and/or customer service issues which are beyond the jurisdiction of the Rate Board (which jurisdiction is limited to rate setting issues).

[4] The Department’s responses to MS-I-3, MS-I-2, and the Final Paragraph are incorporated herein by reference.

Subject to and without waiving the above objections, the Department responds to this request as follows:

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 wastewater main in the street.² Customer responsibilities are explained at:

<https://water.phila.gov/customer-responsibilities/>

<https://www.phila.gov/services/water-gas-utilities/water-pipe-meter-maintenance/customer-responsibilities/>

This information was also provided to Mr. Skiendzielewski as part of the 2018 rate proceeding:

<https://www.phila.gov/media/20180326171537/PWDResponseMSI120180323.pdf>

https://www.phila.gov/media/20180326171537/PWDResponseAttachmntMSI1_CustomerResponsibilityDiagram.pdf

PWD's Homeowner's Emergency Loan Program (HELP) offers zero-interest loans for repairs to customer-owned water service lines and customer-owned sewer lines. Customers have 60 months to pay off the loan, which will remain interest-free unless they fail to make payments on time. Information on HELP is available at <https://www.phila.gov/programs/homeowners-emergency-loan-program-help/>

Response Provided By: Philadelphia Water Department

MS-I-2: "I also request any PWD correspondence or files that describe the monitoring and oversight process and procedure by management in the initiation of any PWD excavation projects related to such work in place while such excavation and repair work is being conducted either by the PWD or private contractor as a result of a notice to the property owner that a sewer defect must be corrected."

Response: Objection and Limited Response.

[1] The proper scope of this proceeding is limited to the change in rates and charges proposed by PWD. The Department objects to this 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. The requested information will not assist the Rate Board in determining prospective rates and charges. No nexus has been established between the requested information and the prospective rates and charges proposed for the Rate Period.

[2] The Department objects to this request as it is overly-broad in scope and unduly burdensome. The request, as written, relates to any excavation work in the City. Such information (operations and performance) is unrelated to proposed rates and charges and will cause an unreasonable annoyance, burden and expense to PWD. This request was propounded does not appear to

² See, <https://www.phila.gov/media/20210414161712/OBJECTION-L0997356xA35AE1.pdf>

support any proposals by Mr. Skiendzielewski for FY 2024 and FY 2025, since Mr. Skiendzielewski did not make comments at the public input hearings (on either March 22 and 23, 2023) or in written direct testimony (before the deadline of April 12, 2023). This request submitted at 10:00 PM on April 24, 2023 also does not refer to any of testimony filed by the Department or by any other Participant. In view of the above, this request, as written, will cause unreasonable annoyance, burden and expense to PWD and as the expansive and vague request is impossible to answer in any reasonable manner during the time allotted in this proceeding.

[3] The Rate Board has limited jurisdiction. The Board is empowered to approve, modify or reject proposed rates and charges. The Board does not have general oversight over PWD. The Department objects to the Interrogatory and Request to the extent it requests information related to management decisions, operational issues and/or customer service issues which are beyond the jurisdiction of the Rate Board (which jurisdiction is limited to rate setting issues).

[4] The Department's responses to MS-I-1 and MS-I-3 are incorporated herein by reference.

Subject to and without waiving the above objections, the Department responds to this request as follows:

If the Homeowners Emergency Loan Program plumber ("HELP") is observed improperly installing a lateral, that plumber is directed to correct the error/mistake.

<https://www.phila.gov/media/20180326171537/PWDResponsetoMSI120180323.pdf>

Response Provided By: Philadelphia Water Department

MS-I-3: "... I request any and all information related to a review, evaluation, critique and study after the assignment is completed of a particular excavation project under the auspices of the PWD which provides an analysis of the standards followed, any difficulties identified, and any excavation work, conduct and decision-making, whether on-site or in PWD management, that was in accordance with the PWD protocol in such projects or alternatively, any steps, actions or decisions that did not adhere to the policy and protocol established by PWD management for such excavation and repair work regarding residential sewer matters. Such a study, review and analysis of the elements of the PWD diagnosis, investigation, initiation, excavation, monitoring of the project, as well as follow-up review, study, critique and professional analysis of the steps and decisions in the entire process related to excavation for sewer problems at consumers' residences is of critical importance since it is a time, employee and resource rich and expensive endeavor and every professional organization should be interested in and dedicated to ongoing study and evaluation of its practices and procedures."

Response: Objection.

[1] The proper scope of this proceeding is limited to the change in rates and charges proposed by PWD. The Department objects to this 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. The requested information will not assist the Rate Board in determining prospective rates and charges. No nexus has been established between the requested information and the prospective rates and charges proposed for the Rate Period.

[2] The Department objects to this request as it is overly-broad in scope and unduly burdensome. The request, as written, relates to any evaluation of any excavation work in the City. Such information (operations and performance) is unrelated to proposed rates and charges and will cause an unreasonable annoyance, burden and expense to PWD. This request submitted at 10:00 PM on April 24, 2023 does not appear to support any proposals by Mr. Skiendzielewski for FY 2024 and FY 2025, since Mr. Skiendzielewski did not make comments at the public input hearings (on either March 22 and 23, 2023) or in written direct testimony (before the deadline of April 12, 2023). This request also does not refer to any of testimony filed by the Department or by any other Participant. In view of the above, this request, as written, will cause unreasonable annoyance, burden and expense to PWD and as the expansive and vague request is impossible to answer in any reasonable manner during the time allotted in this proceeding.

[3] The Rate Board has limited jurisdiction. The Board is empowered to approve, modify or reject proposed rates and charges. The Board does not have general oversight over PWD. The Department objects to the Interrogatory and Request to the extent it requests information related to management decisions, operational issues and/or customer service issues which are beyond the jurisdiction of the Rate Board (which jurisdiction is limited to rate setting issues).

[4] The Department's response to MS-I-2 is incorporated herein by reference.

[5] Different potential meanings of the phrase "particular excavation project" make this request vague and ambiguous. That phrase is not defined. The Department reads that phrase as referring to any evaluation of any excavation. But, the phrase could be read as referring to the evaluation of excavation work summarized in the "Final Paragraph" of Mr. Skiendzielewski's Information Requests (Set I) to the Department.

Response Provided By: Philadelphia Water Department

Final Paragraph: With the final paragraph, Mr. Skiendzielewski summarizes his experience with "excavation for a faulty sewer lateral."

Response: Objection.

Information requests are neither public comment nor testimony, and should not be considered by the Rate Board.

The Department's responses to MS-I-1 through MS-I-3 are incorporated herein by reference.

Ratemaking is prospective and historical repairs or renovations have no bearing on the present rate case. On March 21, 2023, Mr. Skiendzielewski made written public comments in this rate case that (a) discuss a dispute (which is more than 5 years old);³ and, (b) questioning his right to make an opening statement in a prior General Rate Proceeding.⁴ Mr. Skiendzielewski raised the same or substantially the same issues in 2018 General Rate Proceeding.⁵

In a prior proceeding, the Department has explained that: “[After receiving a HELP Loan, Mr. Skiendzielewski] 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 ... that Mr. Skiendzielewski is collaterally estopped from re-litigating this issue before the Rate Board.”⁶

Response Provided By: Philadelphia Water Department

WHEREFORE, the Department formally (i) objects and responds to the (Set I) Information Requests propounded by Michael Skiendzielewski; (ii) requests that its Objections be sustained; and (iii) requests that it be relieved of the requirement of any further response to same except as described above.

Respectfully submitted,

/s/ Andre Dasent

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³ <https://www.phila.gov/media/20230321193523/M.-Skiendzielewski.pdf> Those comments by Skiendzielewski are the same as his written comments in the 2016 General Rate proceeding, <https://www.phila.gov/media/20200129105842/Skiendzielewski.Michael-4.5.16.pdf>

⁴ <https://www.phila.gov/media/20230321193522/M.-Skiendzielewski-Memo-Re-Opening-Statements.pdf>

⁵ See PWD Main Brief (2018) at 76. <https://www.phila.gov/media/20180606113627/PWDBrief-FINAL201806041.pdf>

⁶ 2020 Objections to Interrogatory and Request For Production Of Documents Of Michael Skiendzielewski at footnote 2. <https://www.phila.gov/media/20200320145119/Objection-to-Skiendzielewski-Discovery-Requests-3.19.20.pdf>