

**BEFORE THE
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD**

In the Matter of the Philadelphia Water	:	
Department’s Proposed Changes in Water, Sewer	:	2023 General Rate Proceeding
and Storm Water Rates and Related Charges	:	
	:	

ORDER SUSTAINING OBJECTIONS TO DISCOVERY: SKIENDZIELEWSKI

This Order addresses and sustains the Objections to information requests (including requests for production of documents) served by pro se participant Michael Skiendzielewski on the Philadelphia Water Department (PWD, Department). Specifically, the Department has objected to Set I, MS-1 through MS-3 (served April 25, 2023, 10:00 p.m.) and Set II, MS-1 through MS-12 (Served April 26, 2023).¹ By email sent on April 26, 2023 (6:20 p.m.), Mr. Skiendzielewski responded.

None of these information requests relate to the sole issue before the Philadelphia Water, Sewer and Storm Water Rate Board (Rate Board), which is the determination of the rates and charges to be applied to service provided during Fiscal Years (FY) 2024 and 2025. The proposed rates not only define the scope of this proceeding but determine the parameters of the Rate Board’s jurisdiction.

As Mr. Skiendzielewski has been informed **many** times in this and other proceedings,² the Rate Board does NOT have oversight authority over the Water Department, in the way that the Pennsylvania Public Utility Commission has jurisdiction over the rates (past and current) and service (defined broadly) of the public utilities it regulates. The Rate Board has no jurisdiction over the service provided by PWD – this means that **THERE IS NO ACTION THE RATE BOARD CAN TAKE** to address Mr. Skiendzielewski’s concerns about the excavations undertaken by PWD (or its contractors) or the administration of the HELP loan program.

¹ It should be noted that despite and without waiving its objections, PWD did in fact answer a number of these information requests.

² The [2021 General Rate Proceeding](#); the [2018 General Rate Proceeding](#).

In its simplest terms, jurisdiction relates to the competency of a particular court or administrative body to determine controversies. To decide a controversy, the court or tribunal must have subject matter jurisdiction to decide the matter at issue. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Commwlth. 1992).

Since the Rate Board lacks jurisdiction – and therefore can take no action - over these issues, it would be a fruitless exercise and a misuse of scarce resources of time and money to allow Mr. Skiendzielewski to continually raise issues which he has been explicitly and repeatedly told are not within the Rate Board’s jurisdiction.

Most recently, in the 2021 General Rate Proceeding, on April 16, 2021, I issued an [Order Granting PWD’s Motion in Limine: Skiendzielewski](#)³, stating that: “The Department is correct: The Rate Board does not have the authority to investigate, administer or enforce public integrity laws or ethical codes. Therefore, discovery or testimony intended to address allegations of misconduct in connection with administration of the HELP loan program will be excluded from the scope of this rate proceeding.” Order at 2.

PWD correctly defined the scope of the Rate Board’s jurisdiction in its various objections, such as the Objections to each information request contained in Set I, MS 1-3: “The Rate Board has limited jurisdiction. The Board is empowered to approve, modify or reject the 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.)”

While I encourage participants to engage in discovery, this discovery must be designed to elicit information that is relevant to the current proceeding and is not burdensome or otherwise privileged. See, the [Rate Board regulations](#) at II.B.5(b)⁴. Or, as well-stated in PWD’s General Objections to Set I, MS-1 at 2, “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

³ <https://www.phila.gov/media/20210503164501/Order-Limine-Skiendzielewski-april-15-1-acjs.pdf>

⁴ <https://www.phila.gov/media/20230120160159/WRB-regulations-restated-with-amendments-2022-11-09.pdf>

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.**” (emphasis supplied)

It is clear from the information requests themselves (all of which are directed to issues relating to excavation projects including associated HELP loans, as well as risk management and payouts relating to them) and also in his response to the Objections that Mr. Skiendzielewski is interested only in exposing what he sees as inadequate service and unfair settlement practices based on his experience a number of years ago in connection with such a project.⁵ He asserts that the information is necessary for what he characterizes as “my legitimate and consequential [omitted word] for management and operational review and monitoring of excavation projects.”

Or, as he went on to explain, “There is clear, factual and indisputable information, evidence, and senior level decision-making that demonstrates the failure and inability of PWD to properly, professionally, accurately and competently evaluate, diagnose, plan for and execute the task of long lateral sewer repair while failing to identify concomitant, related and critical other elements that needed to be brought to the attention of senior management. . . . examples of unprofessional and unethical conduct and decision-making over the span of several years re the PWD HELP loan under the direct control of the counsel to the Water Rate Board.”

I will note that this issue – the parameters of the Rate Board’s jurisdiction with respect to the scope of the issues involving HELP loans and excavations – also was addressed by the Rate Board in the [2018 General Rate Proceeding](#)⁶ (which affirmed rulings by the Hearing Officer) in the [2018 Rate Determination](#) at 9 (pdf at 14): “The Hearing Officer denied Mr. Skiendzielewski’s discovery requests regarding payments made by PWD customers to replace laterals and inlet pipes and PWD HELP loans offered to PWD customers with respect to such replacements, on the ground that the information requested would not be ‘useful to the Board in

⁵ PWD explained this background in its Objection to Set I at (unnumbered) page 5: “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 Court of Common Pleas.”

⁶ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2018-proceeding/>

determining rates and charges in this rate proceeding’ and would not ‘likely lead to the discovery of such relevant information.’” The same result should occur here.

Therefore, PWD’s Objections on the ground of lack of relevance are sustained. In addition, a number of the information requests are overly broad and burdensome, especially considering how late in the proceeding they have been propounded.

The Set II information requests seek look-back data for a number of years (2 or 5 years, or indefinitely back to the inception of the HELP program); PWD in its Objections contends that these requests are “. . . overly broad in scope and unduly burdensome given the context and timing of this proceeding. . . ; such information (decisions and policies) is unrelated to proposed rates and charges and will cause an unreasonable 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 testimony . . . This request also does not refer to any of the testimony filed by the Department or by any other participant.” I agree.

In addition, a number of other information requests also are clearly overly broad and unduly burdensome on their face. MS-I-1, for example seeks “the “current protocol and standards” for all lateral sewer work (as well as “related or contingent repair work”) regardless of responsibility. MS-I-2 seeks “correspondence or files that describe the monitoring and oversight process . . for any excavation work in the City,” while MS-I-3 requires the submission of “any and all information related to a review, evaluation, critique and study after the assignment is completed of any particular excavation project under the auspices of the PWD which provides an analysis of the standards followed, any difficulties identified, and any excavation conduct and decision-making . . .”

Therefore, PWD’s Objections to Skiendzielewski Information’s Requests (Sets I and II) are sustained, and no further response is required.

Marlane R. Chestnut
Hearing Officer

May 1, 2023