

BEFORE THE  
PHILADELPHIA WATER, SEWER AND STORMWATER RATE BOARD

In the Matter of the Philadelphia Water Department's Proposed Change in Water, Wastewater, and Stormwater Rates and Related Charges      Fiscal Years 2024 – 2025 Rates and Charges to Become Effective : September 1, 2023 and September 1, 2024

EXCEPTION

6/5/23

Filed by Michael Skiendzielewski, Pro Se

**Re: Violation of Procedural Order established by Hearing Officer, Marlane Chestnut on 3/7/23**

**Section of Procedural Violated by Hearing Officer:**

**Objections to information requests will be communicated orally or via email to the propounder as soon as practicable upon receipt. The participants are directed to confer, by telephone or e-mail, and attempt to resolve the objections. If the objection is not resolved, a written objection may be filed within three business days after receipt of the information request, pursuant to the Rate Board's regulations at II.B.5.(b).**

**Hearing Officer, when notified by PWD counsel that he would be reaching out to this participant and follow-up re document request, replied that she would be sending out an order, which directive impeded and/or rendered irrelevant any follow-up discussion to compromise and resolution that may have been considered or possible should both the participant and PWD representative follow-up on the directive the Hearing Officer declared on 3/7/23 and which she ignored or violated in email correspondence to this participant, PWD counsel and all participants in the WRB proceedings.**

On Sat, Apr 29, 2023 at 9:41 AM Andre Dasent  
<[andre.c.dasent@gmail.com](mailto:andre.c.dasent@gmail.com)> wrote:

Dear Judge Chestnut,

Mr. Skiendzielewski and I will discuss the pending PWD  
Objections on Monday and report back to you.

-Andre Dasent

Mr. Dasent -

April 29, 2023 10:24AM

That is not necessary. I am drafting an order now.

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Good morning, all - May 1, 2023 9:05AM

Attached please find my Order Sustaining Objections to  
Discovery: Skiendzielewski.

mrc

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The procedural violation is significant, factual, supported in the record  
and is detrimental to the efforts of this participant in the WRB forum who  
welcomes any legitimate, sincere and genuine opportunity to discuss the  
outstanding issues with PWD management and counsel.

The fact that PWD engages in accurate, realistic and viable discussions  
and alternatives to resolution is of the utmost importance. In the last set  
of WRB hearings, a similar opportunity for discussions toward resolution  
and PWD submitted options or alternatives for this participant to seek out  
and employ the mechanisms in city management that were presented in  
PWD correspondence sent to this participant.

**However, the paths and methods presented for resolution were bogus, out-dated, inappropriate and not relevant to the issues, facts and circumstances of the issues in my case. PWD was aware of these fallacious and futile options for resolution and compromise and yet when I attempted to raise and share the false and disingenuous nature of such unprofessional conduct on the part of PWD, I was blocked by WRB management because of a claim that discussions between parties in such a hearing were confidential.**

**I share what I consider very important, serious and troubling details from the last effort for discussions, resolution and compromise and if such an opportunity and effort presents itself once again, for which I am hopeful, PWD management and counsel must and need to be genuinely, honestly and professionally committed to just such discussions, compromise and final resolution to the issues in the case.**

**Any similar attempt for PWD to act in such a manner as in the last attempt at discussion and resolution will simply not be tolerated and I am prepared to take the critical issue in this brief to other forums for review and consideration.**

**The brief I am filing here represents a serious breach of professional conduct, trust and impartiality and I simply cannot believe that WRB management and counsel, who can clearly see from the facts and record, that a serious error was committed re procedure, told me that I would have to file a brief for this issue to be reviewed and addressed. So, the professionals responsible for conducting, managing and insuring an impartial and independent WRB process rely on another party to address the error.**

**Finally, if in fact this brief and other decisions by WRB personnel make possible a serious, factual and committed effort on the part of PWD for discussion, compromise and resolution, I would participate and the elements for discussion, review, consideration and compromise will primarily focus on the facts, decisions, work, investigation, planning and intervention by PWD at my residence that spanned several years without a professional, comprehensive and thorough investigation and diagnosis of the entire issues impacting on long lateral sewer failures, which necessitated my repeatedly reaching out to PWD management until they finally returned to diagnose faulty and failed systems that were PWD RESPONSIBILITY. There are a variety of facts, details, and messages that corroborate the fact that there was no overall plan and mechanism in**

place by PWD to professionally resolve the water sewer issues at my residence. The site is still sinking and deteriorating both on my property as well as in the street.

For professionals involved in the WRB process and procedure to assert that such a matter as this is not relevant to the setting of water and sewer rates is simply without merit. Excavation work is a large part of PWD operations and the methods, review, evaluation, monitoring and follow-up for certain is a critical matter in the establishment of new water and sewer rates.

Michael Skiendzielewski

Submitted May 15, 2023

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In response to my brief filed re the Hearing Officer's violation of her own procedural orders posted at the start of the WRB hearings, Ms. Chestnut offered the following in her final Hearing Report:

".....More importantly, my actions were well within the scope of my authority to "make all procedural rulings necessary to conduct a fair, impartial and expeditious hearing process, including the exclusion of irrelevant or redundant testimony or evidence..."

This statement, used oftentimes by the Hearing Officer, has exactly no relevance or significance relative to her professional conduct in the violation of her procedural order in my filing. The elements of her statement are incongruous to the issue and concern filed by this pro se participant and it is apparently an effort to conflate her overall responsibilities in the hearing process with the particular decision that she made in blocking the availability of discussion and follow-up between this participant and PWD representative. The statement from PWD counsel included in this correspondence reflects that department's willingness and readiness to enter a discussion and consideration in order to resolves issues in this matter. Abruptly and unilaterally, the Hearing Officer decided to eliminate and remove such an opportunity for resolution and it is abundantly clear that this professional decision by the Hearing Officer has nothing at all to do with making "...all procedural rulings necessary to conduct a fair, impartial and expeditious hearing process, including the exclusion of irrelevant or redundant testimony or evidence..." It is clear the Hearing Officer in fact had no participation or involvement in what was ordered in her procedural order (discussion

between parties) and she really had no reason to remove the opportunity of discussion and follow-up since it was not a matter of her concern and involvement and had nothing at all to her responsibility to conduct a fair, impartial and expeditious hearing process.

*Another item of note, that reflects directly on the claims of impartiality and independence of the WRB, the Hearing Officer and the proceedings is*

***The Law Department advised that the Rate Board does not have the power to direct how the Water Department (and WRB) provide service***

And who has ever suggested or implied that .....**the Rate Board is (not) a super board of directors**

***Below I have copied the nearly 4 page response from the Hearing Officer in her final Hearing Report, a large portion of which is unrelated to and insignificant to the issue in my brief, the Hearing Officer's violation of her own procedural order.*** I have emboldened, underlined and italicized those sections relative to the matter in this brief, along with my response.

B. Objections by Mr. Skiendzielewski

A Brief was filed in this proceeding by pro se participant Michael Skiendzielewski.145 He did not discuss or take a position on the proposed rates which are before the Rate Board.

**Rather, the sole issue in his Brief is addressed to an order I issued sustaining PWD's Objections to information requests he had served on the Department, Order Sustaining Objections to Discovery: Skiendzielewski (May 1, 2023 Order). He contended that this Order allegedly violated my directive in the Prehearing Conference Order which directs participants to attempt to resolve discovery disputes prior to the filing of written objections, in that I had "preempted" any such discussion by issuing the May 1, 2023 Order, thus resulting in a "significant" procedural violation. This argument is without merit.** 144 It would require the Department to analyze hundreds of census tracts in the City for race, poverty, and TAP participation. 145 On May 24, 2023, he supplied a supplemental brief that contained additional attachments. Although I have reviewed them, these have not changed my decision. Regardless of the many pieces of correspondence, emails or photographs he supplies, it does not change the nature of his issue or the scope of the Rate Board's jurisdiction. **71 First, Mr. Skiendzielewski has misread the Prehearing Conference Order. While I did direct the participants confer to resolve discovery disputes prior to the filing of objections, that duty to confer arises when an objection is communicated (orally or via email) to the propounder of the information requests; it ceases upon the filing of written objections. Here, PWD filed both general and specific objections (Objections to Set I, Objections to Set II) separately to Sets I and II (Set II was actually addressed to me) on April 28, 2023, well before issuance of my Order (or the email in which I indicated that I would be issuing it).**146 **More importantly, my actions were well within the scope of my authority to "make all procedural rulings necessary to**

**conduct a fair, impartial and expeditious hearing process, including the exclusion of irrelevant or redundant testimony or evidence.”**

*No, I did not misread your procedural order; your interpretation and logic is faulty regarding my conduct relative to this order; in any event, you have to be right since you always have at the ready (which has no bearing, importance or relevance in this particular issue and matter) your never-fail authority, i.e., “make all procedural rulings necessary to conduct a fair, impartial and expeditious hearing process, including the exclusion of irrelevant or redundant testimony or evidence.”*

See Rate Board Regulations, II.b.1(B). As I explained in the May 1, 2023 Order, the information requests were clearly improper, in that they were overbroad and unduly burdensome (especially considering the late stage of the proceeding at which they were propounded) and were not designed to elicit information relevant to the instant general rate proceeding, as required by the Rate Board’s regulations at the Rate Board regulations at II.B.5(b).147 “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.” May 1, 2023 Order at 2. Although not raised in his Brief (but based on countless emails, including the two written comments and memorandum, he submitted in this proceeding), I do feel it important for the Rate Board to recognize that Mr. Skiendzielewski’s focus is how the HELP

loan associated with his lateral replacement in 2016 was handled, compared to a neighbor's similar project: "The primary objective and understanding in presenting and pursuing these matters is that this homeowner is simply and only asking for fair, equitable and reasonable treatment regarding the expenses involved in lateral replacements in relation to the processing of a similar request for 146 Mr. Skiendzielewski submitted an email Response to the Objections on May 1, 2023. It should be noted that despite its Objections, PWD did supply responses to a number of these information requests. 147

<https://www.phila.gov/media/20230120160159/WRB-regulations-restated-with-amendments-2022-11-09.pdf> 72  
reconsideration of lateral expenses at the adjoining property and neighbor of this homeowner." Comment at 1. Mr. Skiendzielewski tried to connect his concerns about PWD's past and present management of lateral repairs (and associated HELP loans) by making the following statement in his most recent submission, "In summary, the records request is related to the PWD operational procedures and processes that monitor, control, investigate, review, follow-up and critique the street excavation procedures that make up a great deal of PWD human resources, equipment, time and consequently expense IMPACTING THE SETTING OF WATER AND SEWER RATES FOR PWD CUSTOMERS." This statement again shows Mr. Skiendzielewski's refusal to recognize the scope of the Rate Board's jurisdiction. Of course, any activity undertaken by PWD incurs expenses that are reflected in rates; but reviewing past expenditures or evaluating the service provided by PWD is not the purpose of this proceeding nor within the scope of the Rate Board's jurisdiction. What is relevant in this proceeding is not how PWD has performed



those repairs, or the expenses already incurred, but to what extent the projected costs associated with them should be prospectively recovered during the period the rates established in this proceeding will be in effect. To be clear, information concerning the forecasted prospective cost of such Water Department expenses as lateral repairs or HELP loans may be pertinent to a rate proceeding. However, Mr. Skiendzielewski's particular requests for information did not reference either the Advance Notice or Final Notice (or any participant testimony), were served at the very end of the discovery period, after the filing of all direct and rebuttal testimony, and clearly had nothing to do with the prospective rates for FY 2024 and FY 2025 that are the subject of this proceeding.<sup>148</sup> <sup>148</sup> Certainly, participants in future rate proceedings might provide and seek information making it clear that the levels of such expenditures should be at issue. But to enable the participants and the Rate Board to consider this, information material to the proposed rates should be presented in time to be addressed by other participants, by being the subject of testimony, which could be tested and evaluated. <sup>73</sup> He has been told numerous times, by the Rate Board, by the previous Hearing Officer<sup>149</sup> and me that the Rate Board is not able to address his issue of "fair, equitable and reasonable treatment" in terms of the HELP program, or "PWD operational procedures and processes that monitor, control, investigate, review, follow-up and critique the street excavation procedures." For example, in the 2021 Rate Determination at 7, the Board affirmed a ruling that stated "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.” The Rate Board addressed Mr. Skiendzielewski’s Exceptions at 29-30, 32 (emphasis supplied): We welcome the opportunity for PWD customers to share their concerns and suggestions with us about the proposed rates, and the impact that those rates may have on them. Of course, these issues need to fall within the scope of the particular proceeding before us, otherwise the result is to waste valuable resources having to address irrelevant or immaterial matters. While we do not doubt Mr. Skiendzielewski’s sincerity, the fact remains that he has raised his concerns about PWD’s administration of the HELP loan program previously in our proceedings, and it should have been clear that rate proceedings are not a proper venue to address these concerns. . . . This statement shows that Mr. Skiendzielewski still fails to acknowledge the limits of our jurisdiction. We do not have subject-matter jurisdiction over the Department, in the manner that the Public Utility Commission has over the rates and service of jurisdictional utilities. It is not correct that the Rate Board “review[s] facts and information that impact water rates” without limitation. Our jurisdiction is limited to the authority to “fix and regulate rates” before us in proceedings to set rates prospectively. See, Philadelphia Code § 13-101(3). We welcome Mr. Skiendzielewski’s participation in future rate proceedings; we reiterate, however, that we will not permit him to bring up issues that he has repeatedly been told are beyond our jurisdiction. \* \* \* In addition, as noted above, the Rate Board does not have jurisdiction to examine how PWD administers its HELP loan program, regardless of any allegations of improper discounting. The sole issues in this proceeding are the rates and charges proposed for FY 2022 and 2023 as

contained in the Advance and Final Notices, and in the Proposed Partial Settlement Agreement. The Rate Board expressly recognized the limits of our jurisdiction to examine the operation of 149 In the 2018 Rate Proceeding Hearing Officer Report at 111, the Hearing Officer stated “Mr. Skiendzielewski was not able to support requests for what would have been a fishing expedition of discovery concerning Department handling of HELP loans for lateral repairs, evidently his primary concern. He was not able to marshal a presentation that related his own situation to that of ratepayers generally, nor to revenue requirements analysis in particular.” 74 the Department’s programs in our 2018 Rate Determination at 9: “As set forth more fully below, the Board recognizes its limitations with respect to service issues as opposed to rate issues.” Most recently, in the May 1, 2023 Order, I tried to make clear to Mr. Skiendzielewski what the lack of jurisdiction on the part of the Rate Board means in terms of being able to address his concerns: 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. 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. Commwlt. 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. Since the Rate Board has already stated that "we will not permit him to bring up issues that he has repeatedly been told are beyond our jurisdiction," the same result should occur here.

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The Hearing Officer's response in her final Hearing Report is excessive, unprofessional and specious in that over 75% of the response reflects what is obvious a retelling of facts, conduct and correspondence which is already part of this hearing's record as well as hearings earlier. What part and purpose does such a reckless and unnecessary display of critical comments and opinion have to do with the matter of the violation of the procedural order, but more importantly, by her professional decision and conduct, ensuring that a discussion, review and consideration was blocked and ended between this pro se participant and counsel PWD who had expressed an interest and desire in that regard.

Why and how is that the right, duty and authority of the Hearing Officer to eliminate by her order, the legitimate and reasonable opportunity to bring the issues in this case to a fair resolution, when both parties express an interest to do so? So there is no doubt in that regard, a follow-up by this pro se participant with two members of professional counsel of the PWD were contacted and now there is no interest or commitment to initiate and discussion or follow-up in this matter as a result of the ill-advised and unprofessional order by the Hearing Officer, in violation of her own procedural directive.

In such proceedings as these, where is the reasonableness, common sense, professionalism and ability to do what is the better alternative when faced with a difficult issue? Given the

present forum, I certainly do not have to point out the distinction between the letter of the law/regulation vs. the spirit of the law/regulation. In most instances, the letter of the law is the simplest and most direct but what about our discretion, principles and assessment regarding what may be reasonable and beneficial in order to effect a positive outcome.

Interestingly, in both of the professions represented here, legal and law enforcement, particularly at the management level, we have a wide discretion in the values, principles, rules and ethics we bring to some of the more difficult concerns and problems. There is no way that I am asserting that the issue at hand, re procedural violation, is of a vital and critical nature but there certainly has been an abundance of less than professional and wise decision making and conduct in the issues, facts and evidence in my case with the PWD which reflects poorly on the judgment of many involved.

Michael Skiendzielewski