

**Submitted by Michael Skiendzielewski on May 17, 2024**

## **Direct Appeal Of Hearing Examiner's Censorship**

1. Before the deadline I submitted, for Public Testimony, an article that I wanted entered into the record.
2. There is no prohibition against entering articles into the record. Mr. Ballenger did so in his objection and response to data requests.
3. There is no prohibition against entering into the public record any testimony, even testimony that the Hearing Examiner believes is "off point" or "not relevant". In announcing how the Hearing Examiner would proceed, she did not state on the record that she would limit public testimony based on content. From the Transcript

In terms of how I will conduct this

22. ·hearing, I will first call on people who have
23. ·registered.· If you have not registered or
24. ·want to comment, that's fine, we'll get to
- ·you.
- 2· . . . . . ·Everyone will have a chance to make
- 3· ·a statement if they wish, or you can send a
- 4· ·letter or comment by email to the Rate Board.
- 5· ·The Rate Board email address is
- 6· ·waterrateboard@phila.gov.
- 7· . . . . . ·We will post these email comments
- 8· ·and letters at the 2024 TAP-R reconciliation
- 9· ·tab.· When it is your turn, I will call your
- 10· ·name and you will unmute your microphone or
- 11· ·telephone.
- 12· . . . . . ·I will ask your name, ask you to
- 13· ·spell it, and ask if you are a customer of
- 14· ·the Water Department and if you are appearing
- 15· ·on behalf of a group.· Please try to confine
- 16· ·your remarks to the issue in this proceeding,
- 17· ·which again is limited to the TAP-R

18. -Surcharge.

I want to also thank the customers

19. -who took the time to send comments.· I can

20. -assure you the Rate Board does consider these

21. -very carefully and it's important for you to

22. -speak up and be heard.

Pps 7,8,9 transcript.

4. During the public hearing portion of the hearings, the hearing

examiner allowed testimony that was not germane to the

proceedings, including testimony about conservation and rain

barrels, billings for a property without water service, the failure of the

water department to file liens against properties owing thousands

of dollars in bills and the failure of PWD to execute on existing liens.

5. The only difference between the public testimony that was “off

point” and the copy of an existing published document and what I

submitted is that what I submitted was critical of the process used by

the hearing examiner, the rate board, and the rate board’s advocate.

6. There was no objection filed to my public testimony, hence

nothing before the hearing examiner to rule upon.

7. The hearing examiner, based on the criticism in my public

testimony, censored my testimony making it impossible for the

members of the public and rate board itself to read and consider my public testimony.

8. Both witnesses for the PWD and the rate board's advocate testified during the non-public hearings that public testimony is important, with the rate board's public advocate clearly testifying that even when the public testimony is not germane to the rate board's bought and paid for expert position, it is still important.

9. There is no harm in allowing the testimony I submitted as public testimony. If allowed in, it would have as much or little impact on the proceedings as other public testimony.

10. Federal and State Courts have ruled time and time again that it is impermissible to censor content based on the point of view expounded, *Even when some or most find the content objectionable. Hence the expression, attributed to the philosopher many believe is one of the founders of America's Bill of Rights, "I may not agree with what you are saying, but I will fight to the death for your right to say it."*

11. The hearing examiner's decision to strike my public testimony, without an objection filed by any participant, based solely on her displeasure with the content, must be overturned.

12. If public hearings are to have any meaning, the rate board must follow the guidelines of allowing all public testimony into the record and then weighing its probative value in deliberations. It must not allow testimony critical of the process or the participants to be censored.

13. Further, the hearing examiner's censorship, a unilateral decision to strike public testimony without an objection, must be sanctioned so that the hearing examiner and the public know that the hearing examiner does not have the right to silence her critics.

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