

The City of Philadelphia
Water, Sewer and Storm Water Rate Board
Sonny Popowsky, Chair

MEMORANDUM

TO: Jeanne Reedy, Administrative Services Director, Records Department
FROM: Sonny Popowsky, Chair of the Water, Sewer and Storm Water Rate Board *SP*
DATE: September 11, 2017
SUBJECT: **Report on Amended Regulations of Water, Sewer and Storm Water Rate Board**

On September 8, 2017, the Water, Sewer and Storm Water Rate Board (the "Board") held a public hearing on the amendments to the existing Regulations of the Board proposed by the Board on August 3, 2017. The Board filed a clean copy of the amended and restated Regulations, along with a version showing the proposed changes, with the Department of Records on August 4, 2017. A public hearing on the proposed amendments was duly advertised for Friday, September 8, 2017 at 2 p.m. at One Parkway, 18th Floor, 1515 Arch Street, Philadelphia PA 19102.

The Board received no comments or proposed changes to the amendments, and accordingly reaffirmed them without change on September 8, 2017. These amendments make changes to the Regulations originally promulgated in December 2015 pursuant to Section 8-407 of the Philadelphia Home Rule Charter and Section 13-101(3)(e) of the Philadelphia Code.

Pursuant to Section 8-407(c) of the Charter, on behalf of the Board, I am forwarding herewith the Report of the Water, Sewer, and Storm Water Rate Board on the Public Hearing of September 8, 2017, a memorandum of approval by the Law Department, and the amended and restated regulations as reaffirmed by the Board at the conclusion of the September 8 hearing.

Attachments

cc (w/att): Daniel W. Cantú-Hertzler, Senior Attorney

REPORT OF THE
WATER, SEWER AND STORM WATER RATE BOARD
ON HEARING ON THE BOARD'S PROPOSED REGULATIONS

September 11, 2017

On August 4, 2017, the Water, Sewer and Storm Water Rate Board (the "Board") filed with the Department of Records, pursuant to Section 8-407(a) of the Philadelphia Home Rule Charter, proposed amended regulations to govern the Board's proceedings as authorized by Section 13-101(3)(e) of The Philadelphia Code.

Public notice of the filing of the proposed amended regulations was published, along with notice of a public hearing to be held at 2:00 p.m. on Friday, September 8, 2017, at One Parkway Building, 18th Floor, 1515 Arch Street, Philadelphia, Pennsylvania 19102. The Board held a public hearing at the scheduled time and place.

Nobody objected to the amended regulations at or prior to the hearing. At its meeting of August 3, 2017, the Board had approved the amended regulations unanimously at the joint recommendation of the Water Department and Community Legal Services. Accordingly, on September 8, 2017, the Board reaffirmed the amended regulations as originally filed with the Department of Records.

Accordingly, amended regulations to govern the Board's proceedings as authorized by Section 13-101(3)(e) of the Code are hereby filed without change.

MEMORANDUM

TO: Sonny Popowsky, Chair,
Water, Sewer and Storm Water Rate Board

FROM: Daniel W. Cantú-Hertzler, Senior Attorney *DWCH*

DATE: September 11, 2017

SUBJECT: Amended Regulations of Water, Sewer and Storm Water Rate Board

I have reviewed the amended and restated Regulations of the Water, Sewer and Storm Water Rate Board, as adopted by the Board in its public meeting on August 3, 2017 and reaffirmed without further change at the close of the Board's public hearing on September 8, 2017. I have also reviewed the Board's Report concerning the public hearing at which it reaffirmed the Regulations as amended and restated.

I attach a clean copy of the amended and restated Regulations. The same version and a version showing the changes from the existing Regulations adopted in December 2015 were filed with the Department of Records on August 4, 2017. The proposed Regulations remain legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may now forward these Regulations to the Department of Records, where they will be made available for public inspection.

Attachment

**REGULATIONS OF THE PHILADELPHIA WATER,
SEWER AND STORM WATER RATE BOARD**

*As amended and restated by the Board on August 3, 2017, and
reaffirmed by the Board following public hearing on September 8, 2017*

SECTION I. DEFINITIONS.

(a) **Advance Notice:** The Department's notice filed with Council and the Board pursuant to Section 13-101(7) of the Code and Section II.2(a) of these Regulations that the Department intends to propose any change in rates or charges.

(b) **Board:** The Philadelphia Water, Sewer and Storm Water Rate Board, established pursuant to Section 5-801 of the Home Rule Charter and Section 13-101 of the Code.

(c) **City:** The City of Philadelphia.

(d) **City Council:** The Council of the City of Philadelphia, existing pursuant to Section 1-101 and Sections 2-100 and following of the Home Rule Charter.

(e) **Code:** The Philadelphia Code, the body of general ordinances enacted and published by City Council pursuant to Section 2-304 of the Home Rule Charter.

(f) **Department:** The City of Philadelphia Water Department, established pursuant to Sections 8-500 and following of the Home Rule Charter; and for all purposes related to water, sewer and storm water rates and collections, the City of Philadelphia Revenue Department established as the Department of Collections under Sections 6-200 and following of the Home Rule Charter.

(g) **Department of Records:** The City of Philadelphia Department of Records, established pursuant to Sections 5-1100 and following of the Home Rule Charter.

(h) **Formal Notice:** The Department's filing with the Department of Records of notice pursuant to Section 13-101(7)-(8) of the Code and Section II.2(b) of the Regulations of any proposed change in rates and charges.

(i) **General Rate Increase Proceeding:** A proceeding concerning any increase in customer rates and charges proposed by the Department for supplying water, sewer and storm water service for accounts and properties located in the City of Philadelphia, excluding any Special Rate Proceeding.

(j) **Hearing Officer:** The person chosen to preside over the Rate Change Proceeding.

(k) **Hearing Officer Report:** The Hearing Officer's summary of all written information submitted and all testimony presented in both public hearings and technical review hearings with the Hearing Officer's proposed findings of fact and conclusions of law for the Board's

consideration. The Hearing Officer Report may also include a discussion and recommended decision.

(l) **Home Rule Charter:** The Philadelphia Home Rule Charter, as adopted pursuant to the Pennsylvania First Class City Home Rule Act, April 21, 1949, P.L. 665, 351 Pa. Code §1-100 et seq.

(m) **Participant:** Any individual, corporation or other entity affected by the Department's proposed rates and charges who timely notifies the Board of a desire to participate in the technical review hearings. A Participant may give that notice as soon as the date of the filing of Advance Notice and, unless the Board specifically grants permission to join the Rate Change Proceeding later, no later than seven (7) days after the filing of Formal Notice. Both the Department and, if one is appointed, the Public Advocate will be deemed to be Participants without notification to the Board.

(n) **Public Advocate:** A qualified firm, organization or individual(s) appointed to represent the interests of Small User Customers pursuant to a formal City contract.

(o) **Rate Change Proceeding:** The process described in the Regulations governing the Board's review, evaluation and determination in General Rate Increase Proceedings and Special Rate Proceedings.

(p) **Rate Determination:** The Board's final decision as to the proposed changes in rates and charges.

(q) **Regulations:** These regulations adopted by the Board.

(r) **Small User Customers:** All residential and small business customers of the Department within the City of Philadelphia, typically with 5/8 inch meters.

(s) **Special Rate Proceeding:** A proceeding concerning a proposed change in rate structure, which has not more than a de minimis impact on residential customer bills, arising from a City Council ordinance, or a change in State or Federal law, that, due to factors beyond the Department's ability to control, cannot reasonably be addressed in a General Rate Increase Proceeding.

SECTION II. PROCESS FOR SETTING WATER, SEWER AND STORM WATER RATES AND CHARGES

1. Purpose.

(a) Pursuant to Section 5-801 of the Home Rule Charter, the Board shall evaluate and determine proposed changes to the rates and charges fixed for supplying water, sewer and storm water service for accounts and properties located in the City of Philadelphia. In conducting the Rate Change Proceeding and reaching its Rate Determination, the Board shall adhere to the standards set forth in Section 13-101 of the Code.

(b) The Regulations establish an open and transparent process for public input and comment on proposed rates and charges. Consistent with Section 13-101, Rate Change Proceedings shall be conducted within 120 days of the filing of the Formal Notice and shall address rates and charges and any service-related issues relevant thereto. If the Board is unable to act on proposed rates and charges within 120 days of the filing of the Formal Notice, and so must extend the duration of the Rate Change Proceeding, the Water Department may establish emergency rates and charges on a temporary basis pending a final determination by the Board.

2. Department Filings.

(a) The Department shall file its Advance Notice with City Council and the Board. The Advance Notice shall include all documents that the Department intends to file with the Formal Notice pursuant to Section II.2(c) hereof (although those documents may be amended between the Advance Notice and Formal Notice).

(b) The Department shall file its Formal Notice with the Department of Records no less than thirty (30) days after its filing of the Advance Notice with City Council and the Board. The Formal Notice shall include all documents required by Section II.2(c) and such other documents as the Department believes will be useful to the Participants and the Board. The Formal Notice shall clearly highlight any changes from the Advance Notice, and shall explain the rationale for such changes.

(c) The documents that the Department files with its Advance Notice and Formal Notice shall include, but not be limited to, the following:

(1) clear estimates of the effects of the proposed rate changes on customer bills, including, but not limited to, the estimated average percentage Small User bill increase;

(2) all financial, engineering and other data upon which the proposed rates and charges are based;

(3) evidence demonstrating that such rates and charges (A) were developed in accordance with sound utility rate making practices, (B) are consistent with current industry standards for such rates and charges, and (C) are consistent with the Department's bond covenants and other legal requirements; and

(4) a summary fact sheet, designed for the layperson, that explains the proposed rates and charges, the need for such rates and charges, and the information relied upon by the Department to develop and support such proposed rates and charges.

(d) The Board shall post the Advance Notice and the Formal Notice, with all accompanying documents, on the Board's website for public review and the convenience of the Participants. The Board, by itself or through the Department of Records, also shall provide public notice of the Advance Notice and Formal Notice by advertising in accordance with Section 8-407 the Home Rule Charter and Section 21-1703 of the Code.

(e) Beginning when the Department makes its Advance Notice and until the close of the final public hearing, the Department shall post notice of the proposed changes in rates and charges, including the estimated average percentage Small User bill increase, in conspicuous locations in all Water Department and Water Revenue Bureau offices that accept customer payments or that provide customer walk-in service. In addition to the notice provided by the Department of Records, the Board and the Department may publish additional advertisements in newspapers or on the Internet to bring the proposed changes in rates and charges to the attention of affected customers.

(f) The Department may incorporate certain documents by reference in its Advance Notice and Formal Notice. Such documents must be specifically enumerated, shall be deemed a part of the Advance Notice and Formal Notice, and shall be incorporated into the record. The documents that may be incorporated by reference are documents ordinarily produced by the City of Philadelphia other than for the Department's rate request. Documents incorporated by reference must be publicly available on City-owned web pages.

3. Hearing Officer.

(a) Except as set forth in Section II.9 for Special Rate Proceedings, an independent Hearing Officer shall be appointed by the Board, which appointment shall take effect, pursuant to a formal City contract with the Board, on or after the date of the Advance Notice.

(b) The Hearing Officer shall have the power and authority to:

(1) Schedule conferences that the Hearing Officer deems appropriate;

(2) In consultation with the Board, schedule all public hearings and technical review hearings, including time and locations of such hearings;

(3) Conduct and preside over all public hearings and technical review hearings;

(4) Make all procedural rulings necessary to conduct a fair, impartial and expeditious hearing process, including the exclusion of irrelevant or redundant testimony or evidence;

(5) Issue and modify a plan and schedule for discovery, submission of Participant testimony and briefs, issuance of the Hearing Officer Report, and submission of Participant exceptions;

(6) Make rulings with regard to all objections to information requests including those related to privilege, relevance, timing, scope, expense, extent and/or unreasonable burden associated with responding to such requests;

(7) In conjunction with Department staff, post on the Board's website all written information submitted during the Rate Change Proceeding; and

(8) Prepare and submit the Hearing Officer Report to the Board and all Participants.

(c) Except as permitted in Section II.9 for Special Rate Proceedings, the Hearing Officer appointed by the Board through a formal City contract shall be paid reasonable compensation as negotiated with the Board, pursuant to the formal City contract.

4. Public Advocate.

(a) A Public Advocate shall be appointed to participate in General Rate Increase Proceedings.

(b) A Public Advocate may be appointed to participate in Special Rate Proceedings.

(c) The Public Advocate's appointment shall take effect no later than the date of the Advance Notice. The Public Advocate shall be a Participant in the Rate Change Proceeding.

(d) The Public Advocate shall be paid reasonable compensation as negotiated with the Board, pursuant to the formal City contract. The contract shall include a budget permitting the Public Advocate to be compensated for its services and costs and reimbursed for reasonable expenses of hiring experts to analyze, prepare testimony, and participate in hearings concerning the Department's proposed rates and charges and service-related issues relevant to rates and charges.

5. Technical Expert

(a) The Board may hire or appoint a Technical Expert to advise the Board on the Department's proposed rates and charges and directly related issues. Unless the Technical Expert is a City employee, the terms shall be set forth in a formal City contract with the Board.

(b) The Technical expert shall be paid reasonable compensation as negotiated with the Board, pursuant to the formal contract if the Technical Expert is not a City employee.

6. Public Hearings.

(a) The Hearing Officer, on behalf of the Board, shall hold public hearings for the following purposes:

(1) to ensure an open and transparent Rate Change Proceeding;

(2) to make Departmental personnel available to answer relevant questions about the proposed changes in rates and charges;

(3) to permit the Department and any person or entity affected by the proposed rates and charges to provide information to the Board regarding any change in rates or charges as proposed by the Department; and

(4) to assist the Board in the collection of information relevant to the Department's proposed changes in rates and charges.

(b) Generally, the public hearings shall be held at least ten (10) days and no more than sixty (60) days after the Formal notice.

(c) Except as set forth in Section II.9 for Special Rate Proceedings, a minimum of four (4) public hearings shall be held. Additional public hearings may be scheduled by the Hearing Officer at the Board's discretion.

(d) Notice of public hearings shall be advertised on the Board's website, in at least one daily newspaper with substantial circulation in the City, and, as feasible, also in newspapers with community circulation at least three (3) days prior to any such hearing.

(e) Each Public Hearing shall begin with a brief presentation by the Department summarizing its proposed rates and charges and the reasons supporting them.

(f) Participation at Public Hearings.

(1) Members of the public may provide written submissions to the Board prior to or at any public hearing. Any submissions must be signed and submitted in person, electronically, or by mail to the Board at or before the public hearing at which the written submissions is to be entered into the record. Members of the public also may make written submissions at any time before the close of the record. The Board shall post instructions for submitting written information, including an address for first-class mail and any restrictions on length or format on its website.

(2) Members of the public may also provide information orally at a public hearing. Time limits for such presentations may be established by the Hearing Officer as appropriate. Members of the public who desire to provide information orally at a public hearing shall sign a log-in sheet at the hearing, as provided by the Hearing Officer. The Hearing Officer may exclude from a public hearing any person who poses a threat to the safety of any other person or who interferes with the Hearing Officer's ability to conduct a fair and orderly hearing.

(g) Information and comments provided in oral or written form shall become part of the record used by the Hearing Officer to develop the Hearing Officer Report.

(h) A stenographic record shall be made of all public hearings.

7. Technical Review.

(a) Procedure.

(1) The Hearing Officer shall schedule and preside over the technical review process of the Rate Change Proceeding, including:

(i) the submission of Participant testimony;

- (ii) the conduct of technical review hearings;
 - (iii) the submission of Participant briefs;
 - (iv) the preparation and submission of the Hearing Officer Report;
 - (v) the submission of Participant exceptions to the Hearing Officer Report;
- and

(v) such additional aspects of the technical review process as the Hearing Officer may determine to be necessary for a rigorous and thorough assessment of potential changes in rates and charges (and related issues) and the establishment of a full Hearing Record.

(2) Notice of technical review hearings shall be duly advertised, except that once a technical review hearing has been convened by the Hearing Officer, the hearing may be continued to another time, date or location by the Hearing Officer without any additional notice except to the Participants and by announcement at the previous technical review hearing.

(3) A stenographic record shall be made of all technical review hearings.

(b) Information Exchange.

(1) Subject to the direction of the Hearing Officer, Participants shall be permitted to propound information requests regarding any matter, not privileged, that is relevant to the proceeding. The Hearing Officer may limit discovery (i) as to subject matter that is privileged, (ii) to the extent the information request is unreasonably burdensome (e.g., because of time, extent or expense related to producing the information requested) and/or (iii) to the extent the request is otherwise objectionable.

(2) Information requests to any Participants must be in writing. A Participant may begin to make information requests as soon as it has registered with the Board.

(3) Responses to requests for information shall be timely provided by the responding party to all Participants, submitted to the Hearing Officer and the Board and posted on the Board's website. Participants may, but are not required to, supply each other with paper copies of responses. The Hearing Officer shall have discretion to make changes to these general rules as circumstances require.

(4) Any objections to information requests shall be served on all Participants and the Hearing Officer within three (3) business days after receipt of the request, unless the Hearing Officer extends the time for objections for good cause shown.

(5) The Hearing Officer shall not be bound by formal rules of procedure but shall generally employ procedural standards analogous to those utilized in utility ratemaking proceedings at the Pennsylvania Public Utility Commission.

8. Hearing Record.

(a) Completion of Hearing Record:

(1) Except as may be required to ensure a thorough and fair Rate Change Proceeding and a full Hearing Record, public and technical hearings shall generally be completed within seventy (70) days of the Department's filing of Formal Notice.

(2) Following the conclusion of technical review hearings, any Participant wishing to do so may file its brief according to the schedule promulgated by the Hearing Officer, which may include proposed findings of fact and conclusions of law. The Hearing Officer shall thereafter complete and file the Hearing Officer Report with the Board. The Hearing Officer Report and Participant briefs shall be posted on the Board's website and shall become part of the Hearing Record.

(3) Any Participant may file exceptions to the Hearing Officer Report according to the schedule promulgated by the Hearing Officer. Such exceptions shall identify the proposed findings of fact and conclusions of law to which exception is taken and the supporting reasons for the exceptions, and/or indicating that its position has been misstated, that a false impression was created, or that an error or omission has been made. The exceptions shall be posted on the Board's website and shall become part of the Hearing Record.

(b) The Hearing Record shall consist of the following:

(1) The Advance Notice and Formal Notice, including any supporting documents and any documents incorporated by reference as part of the documents submitted with the Advance Notice or Formal Notice.

(2) Evidence of proper advertising and posting as required by the Regulations and other applicable law.

(3) All information accepted into the record by the Hearing Officer, from both the public hearings and the technical review hearings, including written statements from members of the public, Participant responses to information requests, Participant testimony, and Participant briefs.

(4) The stenographic record of the public hearings and technical review hearings.

(5) The Hearing Officer Report and any exceptions to the Hearing Officer's Report filed by the Participants.

9. Special Rate Proceedings.

(a) Any Participant may petition the Board for a determination of whether a rate change proposal qualifies as a Special Rate Proceeding.

(b) The Board shall have flexibility in Special Rate Proceedings to schedule fewer public hearings, to consider an appropriate alternative to the appointment of an independent Hearing Officer, and to establish (or delegate to the Hearing Officer to establish) appropriate procedures to ensure that the Special Rate Proceeding review process remains open and transparent.

10. Decision on Changes in Rates and Charges.

(a) The Board, in making the Rate Determination on the proposed changes in rates and charges, shall fully consider and give substantial weight to the Hearing Officer Report and the Hearing Record. The Rate Determination shall adopt, modify or reject the Hearing Officer Report and shall incorporate (by reference or otherwise) those portions of the Hearing Record containing the information used by the Board in reaching its decision and supporting the conclusions contained in the Rate Determination.

(b) The Rate Determination of the Board shall include instructions to the Department to prepare a new tariff incorporating the new rates and charges and any changes in rate structure or terms of service and other issues included in the Rate Determination. The new tariff shall conform to the Rate Determination.

(c) The Rate Determination of the Board shall be filed with the Department of Records, shall be posted on the Board's website and shall be sent to all Participants.

(d) The effective date of the changes in the rates and charges shall be the date set in the Rate Determination, but shall not be sooner than ten (10) days after the Department files the new rates and charges with the Department of Records.

11. Computation of Time. In computing any time(s) set forth in these Regulations, days shall mean calendar days unless otherwise stated. If the last day is a Saturday, Sunday or a legal holiday for the City of Philadelphia, the Commonwealth of Pennsylvania or the United States of America, the deadline shall be the next business day.

12. Conformity with Existing Law.

Nothing contained in these Regulations shall be deemed to overrule or annul any existing provisions of the Home Rule Charter or the Code.

13. Severability.

If any provision, paragraph, word or section of these Regulations is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words and sections shall not be affected and shall continue in full force and effect.