

Philadelphia Water, Sewer and Storm Water Rate Board  
May Monthly Meeting Notes  
6/14/2023, by Zoom (Online and Telephone) Only  
Open for public participation via Zoom

Board Members Present

Irwin “Sonny” Popowsky, Chair  
Tony Ewing, Vice Chair  
Abby Pozefsky, Secretary  
McCullough “Mac” Williams III  
Debra McCarty

Others Present

Marcy Chestnut  
Robert Ballenger  
Andre Dasent  
Daniel W. Cantú-Hertzler  
Daniela Rakhlina-Powsner  
Adriana Gonzalez  
Edward Markus  
Megan Kester  
Michael Skiendzielewski  
Maryn Lowell  
Carl ShultzAde Bakare  
Susan Crosby  
Steve Furtek  
Kevin Birriel  
Steven Liang  
Deland Bryant

Mr. Popowsky called the meeting to order at 3:01 p.m.

1. Mr. Popowsky noted that Mr. Liang, the legal assistant who has been doing much of the Board’s administrative work over the past several years, had been at Temple Law School this year and had now left his position with the City; his final Board meeting would be June 21. Mr. Popowsky thanked Mr. Liang for his invaluable service to the Board, the Hearing Officer, and the participants. Ms. McCarty, Mr. Dasent for the Water Department, and Mr. Ballenger for the Public Advocate echoed these statements. Mr. Liang said it had been an honor and a privilege.

2. Mr. Popowsky asked whether there were any additions or corrections to the draft minutes from the May 11, 2023, monthly meeting. There were none. Mr. Williams moved to accept the minutes. Mr. Ewing seconded the motion. The minutes were approved unanimously.

3. Mr. Popowsky requested Board members to discuss and vote upon the Motion that was filed with the Board by Mr. Lance Haver to remove the “Hearing Examiner” for cause, to which the Water Department and Philadelphia Large Users Group (PLUG) had filed responses. Mr. Williams moved to deny the Motion to Remove and Ms. Pozefsky seconded. Ms. McCarty praised the work done by Ms. Chestnut, said the Board should not entertain these motions on a repeated basis, and asked that Mr. Haver’s motion be denied. Mr. Popowsky seconded the praise and thanked Ms. Chestnut for all her work. The Board voted 5-0 to deny Mr. Haver’s motion.

4. Mr. Popowsky invited the Board to consider the Hearing Officer's recommendation in the TAP-R Reconciliation Proceeding, to approve the proposed settlement between the Water Department and the Public Advocate to set the TAP-R surcharge at 15 cents per 1000 cubic feet (Mcf) for water and 24¢/Mcf of wastewater. While Mr. Haver had opposed the settlement, no participant filed exceptions to the Hearing Officer's recommendation to approve the settlement. Mr. Ewing moved to accept this recommendation, Mr. Williams seconded the motion, and the Board voted 5-0 to approve the settlement. Mr. Popowsky noted that the Board would be asked to consider and approve a written rate determination during the Board's June 21 special meeting.

5. The Board proceeded to deliberate on the Hearing Officer's recommendations in her Report on the General Rate Proceeding. Attached to these Minutes is a list of issues and exceptions from the polling sheet that the Board had before it during this discussion. Board members generally agreed to accept the Hearing Officer's recommendations on the listed issues (numbered as in the attachment) without substantial discussion except as noted below, subject to review and vote on a Rate Determination during the June 21 special meeting.

Issue Number 2 Operating Revenues. Ms. McCarty agreed with the recommendation to use the 3-year average for water usage but recommended adjusting the calculation to reflect the loss of revenue from the Department's loss of Vicinity as a major water customer in FY 2024. Mr. Ewing asked what the monetary loss would be. Ms. McCarty stated that the total revenue from Vicinity was quoted at \$7.5 million including water, sewer, and stormwater. Mr. Popowsky said he would consult with Mr. Marcus to make this adjustment in the final text and tables; he estimated the water revenue loss at approximately \$3.6 million. Mr. Popowsky, Mr. Williams, Ms. Pozefsky, and Mr. Ewing also supported using the 3-year average adjusted to reflect the loss of Vicinity revenues as proposed by Ms. McCarty.

Issue Number 5 Expense escalation factors. Mr. Popowsky noted the Hearing Officer's recommendation to utilize the escalation factors proposed by the Public Advocate for services, materials and supplies, and transfers, and to use the Department's proposed expense escalation factors for chemicals and equipment. Ms. McCarty said this was a difficult issue but that she agreed. Mr. Popowsky stated that he also supported the Hearing Officer's recommendation. All members of the Board agreed to accept the Hearing Officer's recommendation.

Issue Number 8 Lien Filing Expenses. Mr. Popowsky noted that this issue is related to issue 18, regarding whether the Board has the authority to direct the Water Department not to file liens related to TAP arrearages. He stated that he did not believe the Board had the authority to direct the Water Department not to file liens, so he agreed with the Hearing Officer's recommendation to deny the adjustment. However, he called this an important issue that should be discussed between the Water Department and the Law Department. Ms. McCarty commented that the cost of filing liens must be paid by someone. Mr. Ewing asked if Mr. Cantú-Hertzler or anyone from the Law Department had an opinion on the authority in question. Mr. Cantú-Hertzler said that filing liens requires action by the Law department and cannot be done by the Water Department alone. All members of the Board agreed to adopt the Hearing Officer's recommendation to deny the Public Advocate's Exception on this issue.

Issue Number 10 Cost of Service: Base Extra Capacity Factor. Mr. Popowsky noted that the Hearing Officer had accepted the use of PWD's Base Extra Capacity Factor method, but had agreed with PLUG that a complete study of customer usage factors should be completed for use in the next rate proceeding. PWD excepted to the requirement to perform such a study. Ms. McCarty commented that if the Board had the authority to require the Department to perform a complete study of customer usage factors for consideration in the next General Rate Proceeding, as requested by PLUG, the Board should do so. Mr. Popowsky stated that the Board could require this because it is directly tied to water rates. Ms. Pozefsky noted her agreement that this was within the Board's authority. All members of the Board agreed and denied PWD's exception.

Issue Number 15 TAP Issues: Enrollment, Data, Recertification. Board members discussed whether the inquiries and additional reporting proposed by the Public Advocate should be required, requested or only encouraged. Mr. Popowsky noted that there appeared to be agreement that PWD should continue to report to the Board on TAP enrollment data, but should do so on a quarterly rather than a monthly basis. Ms. Pozefsky stated that the state Public Utility Commission restricted data-sharing between utilities, such as PWD and PGW, and suggested that the Board did not have the power to order the sharing of customer data. She said that rather than requiring or requesting PWD to discuss this issue with PGW, the Department should be encouraged by the Board to do so. Mr. Ewing noted the importance of encouraging best practices by the Department. Ms. McCarty, Mr. Williams, Mr. Popowsky and Mr. Ewing all agreed to the language proposed by Ms. Pozefsky.

Issue Number 16 TAP Reports and Account Audits. Ms. Pozefsky opined that the Board lacked the authority to tell the Water Department how to do its business, but that, again, the Board should encourage best practices. All members of the Board agreed.

Issue Number 17 TAP Arrearage Forgiveness. Mr. Popowsky commented that his primary concern was whether individual customers should be qualified for TAP arrearage forgiveness retroactively, which the Department said would be overly burdensome. He proposed that the Board grant the Department's exception as to retroactive arrearage forgiveness but proposed to direct the Department to put in place a process to determine if the program is working as intended going forward on a prospective basis. Mr. Ewing and Ms. McCarty noted their agreement, that the Department should address this issue prospectively.. Mr. Ewing asked if there is a mechanism for customers to appeal any denial of arrearage forgiveness. Mr. Cantú-Hertzler stated that the customers can file an appeal with the Tax Review Board. He stated that he fully agreed that qualified customers should be getting arrearage forgiveness, but he was unsure whether the Rate Board could directly mandate this..

Ms. Pozefsky commented that the Board should "recommend" rather than "direct" the Department to report on arrearage forgiveness going forward. Mr. Ewing said he preferred "direct," and the other Board members agreed. Mr. Cantú-Hertzler said he had no issue with "direct" after clarification that the Board would be directing the Department to report on forgiveness, not to grant forgiveness.

Issue Number 18 Municipal liens and lien blockers. Mr. Popowsky opined that the Rate Board does not have the authority to order the PWD not to file liens, or to use lien blockers, so he agreed with the recommendation of the Hearing Officer. Ms. McCarty said her concern was whether declining to file the lien would reduce the incentive for a TAP customer to achieve full forgiveness. If the customer does not pay for the entire 24 months, the lien protects the City, and the City is in line for payment if the property is sold. She thus questioned whether it would make sense to have a lien blocker. Mr. Popowsky agreed. Mr. Cantú-Hertzler added that under the Municipal Claim and Tax Lien Law, there is an automatic lien on delinquent water bills, but the First Judicial District charges a fee if the city perfects the lien to give notice to potential buyers. Again, that is a legal procedure and not something done by PWD on its own. As with respect to Issue Number 8 above, the Board urged the Department to consult with the Law Department on this issue.

Issue Number 21 Compliance with Prior Settlement Agreement. Regarding the Public Advocate's position that the PWD did not meet certain commitments from the 2021 settlement regarding engagement with community leaders, particularly members of the Black community, Mr. Popowsky suggested that the Board recognize the continuation of those settlement commitments but not impose any additional specific requirements on the Department at this time. The members of the Board agreed.

Issue Number 23 Use of Board Model for the Calculation of Rate Increase. Last year the Board amended its regulations to require the Board to use a simple financial model in its Rate Determinations of General Rate Proceedings, like that prepared for the Board by Mr. Markus. The Hearing Officer attached a Table C-1A from the simple model. The Water Department filed exceptions, stating that the simple model did not correctly calculate or show billed volumes (allocated between water and wastewater rates), liquidated encumbrances, and the calculation of interest earnings .

Mr. Popowsky noted that this was the first time the Board was using the simple model in its Rate Determination. He said he found the Table C-1A to be beneficial to everyone. Mr. Popowsky stated for clarity that the Board should not change the Hearing Officer's recommendations but, instead, change the inputs to the model to reflect the exceptions, particularly with respect to the calculation of liquidated encumbrances, which were well taken. The members of the Board agreed with this course of action.

Mr. Popowsky stated that the results of today's polling would be reflected in the Final Order which is scheduled to be voted upon at a Special Meeting of the Board on June 21, and he thanked Ms. Chestnut for her preparation of the excellent Hearing Officer Reports.

6.

With respect to other business before the Board, Mr. Popowsky noted that the Board's contracts for Hearing Officer, Public Advocate, and Technical Consultant are to end on December 1, 2023. That means it is time for the Board to post new Requests for Proposals to get people on board in new contracts. Mr. Popowsky asked for a motion to authorize and direct Mr. Cantú-Hertzler and Mr. Popowsky to issue RFPs for new contracts. Mr. Williams so moved, and Ms. McCarty seconded the motion. Mr. Cantú-

Hertzler commented that the City's policy has changed to allow 4 additional 1-year terms, rather than 3, so that City agencies like the Board have the discretion to renew for up to a total of 5 years between RFPs. The Board adopted the motion 5-0.

7. Mr. Popowsky suggested the calendar reflect future Rate Board meetings for the remainder of the calendar year, to held on the 2<sup>nd</sup> Wednesday of each month @ 3:00 p.m., in addition to the special meeting scheduled for June 21, 2023. Mr. Popowsky asked Mr. Liang or his successor to schedule and advertise the future meetings. Mr. Dasent asked if he could meet with Mr. Ballenger and share via email with the board and all Participants if any confusion or technical issue should arise as a result of the discussion at today's meeting.

8. Mr. Popowsky opened the meeting to members of the public for comments. There were none.

9. Mr. Popowsky asked if there were any other matters to be brought before the Board. Mr. Ewing moved to adjourn, and Ms. McCarty seconded the motion. The meeting was adjourned at 4:54 p.m.

**BOARD ISSUES FOR DELIBERATION JUNE 14, 2023**  
**from Hearing Officer Report Recommendations**  
**in the General Rate Proceeding**

- 1 **Financial Plan and Metrics.** Adopt PWD proposed 1.25 Senior Debt Service Coverage Ratio for this proceeding and confirm prior Board financial metrics as future targets.  
**No exceptions**
- 2 **Operating Revenues.** Adopt PA sales volumes based on three-year average. Increase base revenues and reduce revenues needed from rate increase by \$5,610,000 in FY 24 and \$5,871,000 in FY 25.  
**PWD excepts**
- 3 **Increased revenue attributable to TAP enrollment.** Adopt in part and deny in part PA adjustment to increase revenues attributable to TAP enrollment. Increase revenues and reduce revenues needed from rate increase by \$4,927,000 in both FY 24 and FY 25.  
**PWD excepts**
- 4 **Capital Improvement Program (CIP) Budget.** Deny PA adjustments to reject CIP inflation factor for FY 25 and modify carry-forward of CIP amounts for FY 24 and 25.  
**PA excepts**
- 5 **Expense Escalation Factors.** Adopt PA reductions to escalation factors for services, materials and supplies, and transfers; adopt PWD escalation factors for chemicals and equipment. Reduce expenses and reduce rate increase by \$9,386,000 in FY 24 and \$18,816,000 in FY 25.  
**PWD excepts**
- 6 **Debt Interest Rate.** Adopt PA adjustment to reduce interest rate on new bond issuances from 5.5% to 5.0%. Reduce interest cost and reduce rate increase by \$1,917,000 in FY 24 and \$3,748,000 in FY 25.  
**No exceptions**
- 7 **Interest Income.** Adopt PA adjustment to increase interest income on PWD accounts from 1.0% to 1.5%. Reduce rate increase by \$1,821,000 in FY 24 and \$1,999,000 in FY 25. **PWD excepts to calculation of this adjustment in Table C-1A. See Number 23 below. No exceptions to the underlying adjustment.**
- 8 **Lien Filing Expense.** Deny PA adjustment to disallow PWD municipal lien filing expense.  
**PA excepts**
- 9 **Necessity for Rate Increase.** Deny Mr. Haver's proposal to reject proposed rate increases in their entirety due to failure of PWD to implement cost-cutting measures. **Mr. Haver excepts**
- 10 **Cost of Service: Base/Extra Capacity Factor.** Deny PA modification to PWD base/extra capacity factor. Adopt PLUG proposal to require PWD to perform complete study of customer usage factors for consideration in next proceeding.  
**PA excepts; PWD excepts to requirement of study**
- 11 **Cost Allocation to Public/Private Fire Protection Service.** Deny PA modification to PWD cost allocation to public and private fire protection service.  
**No exceptions**
- 12 **Revenue Allocation.** Deny PA modification to PWD revenue allocation among customer classes. Adopt PWD revenue allocation (supported by PLUG), scaled back proportionally for any rate reductions.  
**PA excepts**

**13 Storm Water Costs.** Deny PA modifications to storm water charges regarding allocation of SMIP/GARP credits, residential building types, and rain barrels, but direct PWD to evaluate these issues as part of its ongoing discussions with stakeholders regarding stormwater costs and credits, and to report on these discussions and be prepared to present specific proposals in its next general rate proceeding. **No exceptions**

**14 Stormwater External Funding.** Adopt PA proposal to direct PWD to actively seek revenues from non-ratepayer sources to fund, at least in part, stormwater and combined sewer overflow remediation projects and to report to the Board quarterly on the status and activities undertaken in pursuit of such non-ratepayer funding. **No exceptions**

**15 TAP Issues: Enrollment, Data, Recertification.** Require PWD to report to the Board on expanded TAP participation efforts, including pre-qualification of potential TAP recipients, discussions with PGW about possible data sharing, implementation of a text-based recertification program, and continued reporting on a quarterly basis of detailed TAP enrollment data. **PWD excepts**

**16 TAP Reports and Account Audits.** Adopt PA recommendation to require PWD to report quarterly on specific work done to upgrade accounting and billing systems, and, once upgrades are completed, to provide monthly billing and collection data, after consultation with WRB and the Public Advocate as to what information can reasonably be compiled. **PWD excepts**

**17 TAP Arrearage Forgiveness.** Adopt PA recommendation to direct PWD to provide an accounting of TAP participants, TAP re-enrollees, and occupant customer accounts, and to provide retroactive arrearage forgiveness for those customers who had earned such forgiveness but not received it. **PWD excepts; PLUG requests clarification**

**18 Municipal Liens and Lien Blockers.** Deny PA recommendation for the Board to direct the use of lien blockers, but urge PWD to consider use of lien blockers on TAP accounts. **No exceptions, but see Exception 8 above**

**19 Late Fee Revenues.** Deny PA proposal to “ earmark” certain late fee revenues to provide additional funding for low-income conservation programs and hardship funds. **No exceptions**

**20 Sequestration.** Accept Stipulation between City and PA concerning sequestration of rents to satisfy delinquent liens for water and wastewater service. **No exceptions**

**21 Compliance with Prior Settlement Agreement.** Agrees with PA that PWD has not met 2021 settlement commitments regarding engagement with leaders of the Black community, but does not adopt the specific requirements proposed by PA. **No exceptions**

**22 Objections by Mr. Skiendzielewski.** Deny appeal by Mr. Skiendzielewski of Hearing Officer Order that granted PWD objections to his discovery regarding the PWD Help Loan Program and management of line/lateral replacement program. **Mr. Skiendzielewski excepts**

**23 Use of Board Model for Calculation of Rate Increase.** Pursuant to Board regulations, utilize “simple model” to calculate required rate increases as set forth in Table C-1A to the Hearing Officer Report. **PWD excepts to 3 elements of the calculation: interest earnings; liquidated encumbrances; and billed volumes**