Exceptions to The Hearing Examiner's Report
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Overview:

In a 2018 issue of "The Journal of Politics," Dr. Avidit Acharya, Stanford University, Dr. Matthew Blackwell, Harvard University, and Dr. Maya Sen, Harvard University, explain why it is so difficult for decision-makers to admit they have committed mistakes, made mis judgments and corrupted public proceedings:

"We develop a framework for how a decision maker chooses preference parameters to maximize an objective function, which can be interpreted as a utility. The decision maker seeks to minimize certain costs, which happen to be psychological rather than material." (The article itself is not attached because the hearing examiner has ruled that articles published elsewhere are not admissible unless they are submitted by the rate board's advocate, see below)

For the rate board to even consider rejecting the settlement, it would have to acknowledge that the advocate it hired lacked either the fortitude or ability to represent the public; the hearing examiner, whom the rate board has constantly hired, established a two-tiered system of rulings, and have corrupted the regulatory process.

Realistically, it is unlikely that any member of the rate board is willing to evaluate its own behavior and its own decisions. As is pointed out in the article, it is far more likely that the members of the rate board will attack those who challenge the people the rate board has hired and challenge the rate board itself. As has been seen in past rulings, the first and foremost action of the rate board has been to "circle the wagons" defend its employees, contractors and its own decisions.

An honest and open review of the decisions the rate board has made shows how the rate board has corrupted the proceedings. Review the facts:

1. The owner of the utility is allowed to select the body that regulates its utility. If this practice were allowed anywhere else, PECO, PPL and other utilities would be allowed to select the members of the body that sets rates and practices. No one would suggest that such a process, to allow the owners of the utilities to select the regulators, is fair or just. And no one would believe the regulators the utility owners select are acting in the public interest.

2. In the process that the rate board has established, it offers continual contracts to a hearing examiner. Despite the protestations of the hearing examiner, the fact remains that her continual appointment depends upon the utility's owner's appointees' pleasure. If, for example, the hearing examiner were to call into question the actions of the rate board, would anyone be surprised if the hearing examiner were not retained for the next rate case?

3. There was only one hope for a check on the power of utility's owners, a public advocate that represents the public. The rate board, with the acquiescence of its contractor, removed that possibility. Time and time again, the rate board has stated that although it calls the entity "the public advocate", it does not represent the public in any legal manner and serves the rate board. The rate board retained the entity without so much as a public hearing or meeting on the choice. Certainly, if the rate board had any desire for its appointment to represent anyone other than the rate board itself, it would have sought public input. How well does the entity notify the public of proceeding?; how often does it meet with community groups? How well does it represent the public? All questions to which the rate board did not want to hear what the rate payers thought. Instead, the privileged and conflicted rate board members believed they needed no public input when it came to selecting a "public advocate." Perhaps it comes as a surprise, but the former Water Commissioner, former chief legal counsel for PGW, and a developer may have different opinions as to what is important, than do low-income workers and struggling homeowners.

Further, as every witness has stated, and even the captured hearing examiner herself has acknowledged, people showing up protesting and speaking out has an impact. It is inconceivable that Ivy League-educated lawyers are unaware of this fact. It is also inconceivable to believe that those same people do not understand that informing the public, holding public meetings, explaining the issues, and including people in the decision-making process will increase public participation. How sad to see 11 people out of 1.5 million participating being suggested as proof that people had been informed. The only rational conclusion any person could come to is that the rate board did not want its entity to bring hundreds of people to the hearings, as that would have made it more difficult, and perhaps impossible, to continue to impose rate hikes.

Reasons to Reject the Settlement

1. The public was not represented. From the very beginning, the rate board's decision to retain its advocate once again, without seeking public comment regarding its advocate's performance, shut the public out of the proceedings. The rate board compounded this error by refusing to include in an unposted on its web page contract (yes, if a

person were to jump through many hoops, one could find just how much of ratepayers' money the rate board was taking to pay its advocate, but the fact remains, if the rate board wanted the public to know, it would place the contract on its web page) requirements that the public be included in directing the positions of the person hired by the rate board. By eliminating the public's representation, the rate board has denied public representation. As the rate board itself has said, the "public advocate" does not legally represent the public in any way.

2. The failure to hold public hearings in the public. While every other decision-making body has gone back to public meetings, some of which have included a virtual meeting option, the rate board's advocate, in collusion with the hearing examiner and Philadelphia Water Department, held only virtual hearings. The hearing examiner stated as a way of explanation that doing so was less expensive and more convenient for her and the other paid witnesses.

By holding virtual hearings, the public was denied the right to protest, a constitutional right, which the hearing examiner has stated matters to decision makers. Virtual hearings stopped consumers from picketing the hearing, holding signs up, calling into question the unfair rulings of the hearing examiner, the untruthful statement of the rate board's advocate, and other constitutionally protected activities. Perhaps more important to the rate board and those who received contracts, holding virtual hearings prevented participant Haver, and others from sharing information with other concerned rate payers, including who is on the rate board, the name and phone numbers of City Council members and circulating a petition calling for the replacement of the chair of the rate board for failing to protect the consumer interests. Because of the collusion between the rate board's advocate, PWD and the hearing examiner consumers were deprived of their constitutional right to protest and petition for redress of grievances.

3. The hearing examiner established a two-tiered justice system, censored public comment, bullied a member of the public attempting to right an injustice, and allowed PWD to illegally enroll people in TAP. The hearing examiner exposed her prejudice by not allowing Police Captain Michael Skiendzielewski, retired, to enter into the public record an article he wanted to be part of his public testimony. It is important to note that no other participant was limited in what they could include in their public testimony, and the article Captain Skiendzielewski wanted to be entered into the

record was critical of the hearing examiner. Censoring Captain Michael Skiendzielewski was not enough for the hearing examiner. She also attacked him for sending emails.

Captain Michael Skiendzielewski placed his life on the line to protect the citizens of Philadelphia; he rose through the ranks of the police, becoming a Captain. Since his retirement, he has been an advocate for the disabled and has shared his knowledge by teaching at Philadelphia Community College. The hearing examiner, rather than being thankful for all he has done, for his public participation, for his perseverance in righting a wrong, attempts to ridicule him for sending “many, many emails.”

The hearing examiner does not reference any rule or regulation that limits the number of emails one may send to government officials, nor does she attempt to ridicule any other party for sending “many, many emails”. Her prejudice against public participation is clear; she supports the lawyers and attacks the public. The rate board should not allow her to censor and ridicule Captain Michael Skiendzielewski. Instead, the rate board should direct the hearing examiner to do what she does for others who attend the hearings and direct PWD to meet with the consumer and solve the problem. The hearing examiner’s elitism should not be allowed. The proceeding belongs to the public, not the well-connected, well-paid, and appointed lawyers with whom the hearing examiner shares confidence.

The hearing examiner would not allow any testimony examining where else funds could be found to cover the cost of tap; the efficiency of the bureaucracy running TAP, the outreach of the rate board’s advocate, the failure of PWD to control cost, or even how the rate board’s advocate considers what the public wants, continually stating the regulations do not allow such inquiries. In the settlement agreement she approves, she allows PWD, with the collusion of the rate board’s advocate, to collect from ratepayers for people placed into the TAP program without their affirmative consent, violating the rules and regulations. Yes, the rules and regulations have been changed, but not until after PWD began violating them and was caught. The settlement rewards PWD for violating the regulations, making it clear that the hearing examiner has two tiers of justice. Rate payers cannot even get on the record facts outside the regulations, but PWD can charge rate payers for its actions outside of the regulations.

4. The Settlement allows PWD to recover costs incurred for actions that it was not allowed to take.

If PWD were allowed to enroll people in TAP prior to the change in regulations, why did the regulations have to be changed? The regulation was changed because the regulations did not allow automatic enrollment. The settlement allows PWD to violate the regulations and face no consequence.

Conclusion

For the reasons set forth above, the settlement agreement must be rejected. Any other action would reward PWD for violating regulations, allow the hearing examiner to censor and ridicule a participant, establish a two-tiered form of justice, and shut the public out of the hearing process.