

Philadelphia Water, Sewer and Storm Water Rate Board
June 12, 2024, Monthly Meeting Notes
by Zoom (Online and Telephone) Only
Open for public participation via Zoom

Board Members Present

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

Others Present

Robert Ballenger
Kevin Birriel
Dan Cantú-Hertzler
Marcy Chestnut
Brooke Darlington
Andre Dasent
Ronald Edwards
Adriana Gonzalez
Daniel Gordon
Lance Haver
Elizabeth Scattergood
Carl Shultz
Michael Skiendzielewski
Keithshawna Williams
Deland L. Bryant (Zoom Administrator)

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

1. Mr. Popowsky asked for any corrections or additions to the draft minutes from the May 8, 2024, meeting of the Water Rate Board. Ms. Pozefsky introduced the minutes and moved to approve them. Mr. Ewing seconded the motion. No Board members requested any corrections or additions to the minutes. The minutes were approved 5-0.

2. Mr. Popowsky turned to a discussion regarding the Hearing Officer Report in the TAP-R Reconciliation Proceeding as well as the Exceptions and the Direct Appeal filed in the Proceeding. Mr. Popowsky provided the following introduction to the matter before the Board:

a. The issue before the Board is whether to adopt the recommendation in the Hearing Officer Report to approve the rates and charges contained in the Joint Petition for Settlement of the TAP-R Proceeding without modification and to find that the modified TAP-R rates and charges are supported by the record and are just and reasonable. Under the settlement proposed by the Philadelphia Water Department and the Public Advocate, the TAP-Rate surcharge for service rendered on and after September 1, 2024 would be \$3.08 per thousand cubic feet for water service and \$4.40 per thousand cubic feet for wastewater service, rather than the \$4.19/Mcf (water) and \$6.04/Mcf (wastewater) originally requested by the Department, or the \$2.57/Mcf (water) and \$3.68/Mcf (wastewater) proposed by the Public Advocate’s expert witness.

b. Participants Lance Haver and Michael Skiendzielewski filed Exceptions to the Hearing Officer Report, and Mr. Skiendzielewski filed a Direct Appeal of a ruling by the Hearing Officer, which was addressed in the Hearing Officer Report.

c. Members of the Board have all had the opportunity to review the proposed Settlement, the Hearing Officer Report, the Exceptions, and the Direct Appeal, as well as the Formal Notice, the testimony, and the various other documents in the record.

d. In his Exceptions, Mr. Haver set forth several reasons why the Board, in his opinion, should reject the Settlement and the Hearing Officer Report:

1) The Hearing Officer allowed PWD to illegally enroll people in TAP through an enrollment process that was not permitted under the Department's regulations at the time that process was implemented.

2) The public was not represented by the Public Advocate.

3) By holding virtual hearings, rather than in-person public hearings, the public was denied the right to protest the TAP rate increase.

4) The Hearing Officer established a two-tiered justice system and censored public comment by not allowing Mr. Skiendzielewski to enter into the public record an article he wanted to be part of his public testimony.

5) The Hearing Officer did not allow any testimony examining: where else funds could be found to cover the cost of the TAP program; the efficiency of the bureaucracy running TAP; the outreach of the [R]ate [B]oard's advocate; and the failure of PWD to control costs.

e. Mr. Skiendzielewski filed an Exception which stated (among other things) that:

The [Hearing Officer], by censoring a participant's public input testimony, did not follow best practices. ... [A]nd allowing PWD to collect for enrolling families in the TAP program when it did not have the regulatory right to do so... also fails to meet the standard of best practices.

f. Mr. Skiendzielewski also filed a Direct Appeal with the Rate Board in which he contended that the Hearing Officer improperly censored him by declining to include in the record an article which he sought to include in the record.

3. Mr. Popowsky, before requesting a vote, asked the Board members if they had any comments on whether the Board should approve the recommendations contained in the Hearing Officer Report in their entirety or whether the Board should grant any of the Exceptions or the Direct Appeal that have been filed in this Proceeding.

a. Ms. McCarty commented that the regulations did not preclude the TAP-R auto-enrollment. Additionally, the Board has encouraged the Water Department in the past to increase TAP-R enrollment and they have done so. The Department sent letters to consumers notifying them of the auto-enrollment and allowing them the opportunity to opt out of enrollment. Ms. McCarty referenced Mr. Dasent's statement that only a few consumers have chosen to opt out of the TAP-R program. Ms. McCarty lauded the increased TAP-R participation numbers and

concluded by saying that the settlement is reasonable and the Board should adopt the decision recommended by the Hearing Officer without modifications.

b. Ms. Pozefsky agreed with Ms. McCarty regarding TAP-R enrollment, and noted that the Board, the Department, and the Public Advocate are all in agreement concerning the initiative to increase enrollment. Ms. Pozefsky thanked the Rate Proceeding participants and particularly the Hearing Officer and the Public Advocate for coming to a reasonable set of conclusions and moving the program forward. Ms. Pozefsky stated that the Exceptions and the Appeals are non-meritorious and that they should be denied and rejected.

c. Mr. Ewing lauded the hard work of the team. Mr. Williams commented that he accepts the findings presented to him in the Hearing Officer Report and the report of the Public Advocate. Mr. Popowsky agreed with the Board members' comments.

d. Mr. Popowsky stated that it was important to reiterate the scope of the TAP Rider Reconciliation proceeding, which was added to the normal ratemaking process that occurs in General Rate Proceedings every two or three years when all issues involving the rates of the Water Department can be addressed. This includes the cost related to the operation of the TAP-R program and factors relating to the TAP-R program. The purpose of the reconciliation is simply to ensure that the estimates are accurate so that the Department neither receives more nor less than the revenue that is going to the TAP discounts. The only costs in the TAP Rider are the actual historic amount and the projected future amount of the TAP discounts so every dollar that goes into the rates and any additional dollars that go into the rates of non-TAP-R customers are the same dollars that are removed, dollar for dollar, from the rates of the TAP customers. The purpose of this Proceeding is to have a reconciliation of those numbers on an annual basis. Based on those parameters, Mr. Popowsky thinks the Hearing Officer conducted the Proceeding well.

e. Mr. Popowsky recounted that there had been a virtual Public Hearing with significant attendance, which covered the issues that needed to be addressed within the narrow purpose of this Proceeding. Mr. Popowsky agreed with the comments made by Ms. McCarty regarding the operations of the Water Department in implementing the enrollment, and said the goal here is to ensure that the discounted rates will be reflected in the TAP Reconciliation in light of the customers that were enrolled.

Mr. Popowsky noted that, with regard to the Exceptions concerning the Public Advocate, they have been addressed on numerous occasions and the Public Advocate has vigorously represented the interests of the Water Department's small customers. Mr. Popowsky also agreed with the Hearing Officer's treatment with respect to the information Mr. Skiendzielewski sought to put into the record.

Mr. Popowsky opened the meeting to any further Board members' comments. Hearing none, Mr. Popowsky asked the Board for a motion to either accept or reject the recommendations and determinations contained in the Hearing Officer's Report and to set the rates for the TAP-R Surcharge in accordance with that Report. Ms. McCarty introduced such a motion, which was seconded by Ms. Pozefsky. The Board voted 5-0 in favor of adopting the Hearing Officer's Report to set the rates for the TAP-R Surcharge in accordance with that Report.

4. Mr. Popowsky asked if there were any other matters to be brought by Board Members before the Board. None were offered. Mr. Popowsky stated that, consistent with the vote, a written order will be presented to the Board for a public vote at the Board's next meeting, a special meeting, to held on June 26, 2024.

5. Mr. Popowsky opened the meeting to comments from all attendees.

a. Mr. Skiendzielewski asked about the "best practices" referenced by former City Solicitor Tulante regarding open issues for regular hearings. Mr. Popowsky stated that the referenced letter was written by the City Solicitor in the context of a request from the Water Rate Board about issues that could be considered in a general rate proceeding. Mr. Skiendzielewski described an issue involving a sewer lateral near his residence. Mr. Popowsky stated that, in a rate proceeding, the best practices that are involved are those that affect the prospective rates considered in those proceedings. Mr. Popowsky said he recognized that Mr. Skiendzielewski had a concern regarding a matter that was not resolved to his satisfaction several years ago but that does not affect the prospective rates in a general rate proceeding.

b. Mr. Haver asked when the Public Advocate's contract ends. Mr. Cantú-Hertzler answered that the Public Advocate's contract term runs through December 1, 2024. Mr. Haver asked the Board what its intentions are for issuing a new contract once the current term has ended. Mr. Popowsky stated that the contract can be renewed on an annual basis for up to 4 years. Mr. Haver asked why the Public Advocate's contract was not posted to the Water Rate Board website. Mr. Popowsky informed Mr. Haver that the Water Rate Board's contracts are part of the public record and can be accessed upon request to the City. Mr. Cantú-Hertzler commented that City contracts are not usually posted online.

c. Mr. Haver asked whether there will be an opportunity for public input when the decision is made whether to renew the Public Advocate's contract. Mr. Popowsky responded that the Board will consider this at a public meeting but that the City's contracting process does not generally involve public hearings. Mr. Haver asked whether there will be a public hearing as to this contract, and Mr. Popowsky stated that the Board will follow the guidance of legal counsel.

d. Mr. Popowsky cited an example in which the Public Advocate took the Board to the Pennsylvania Supreme Court, three rate cases ago, because they were not satisfied with the result. Mr. Haver commented that this Board is the only regulatory body in the Commonwealth that still conducts virtual meetings. Ms. McCarty replied that the Zoning Board of Adjustment meets virtually. Ms. McCarty also pointed out that the virtual hearings were better attended than those held in-person and that they afford people the opportunity to participate. Mr. Haver said the Zoning Board of Adjustment allows participants to attend in-person. Ms. McCarty responded that participants attended the Water Rate Board's virtual hearings and their voices were heard, including on issues not directly related to the TAP-R Reconciliation. There were some customer service issues that were handled by Mr. Dasent and others in the Department. Ms. McCarty concluded by saying that the virtual hearings were an improvement over sparsely attended in-person hearings.

e. In response to criticisms by Mr. Haver, Mr. Popowsky clarified that Ms. Pozefsky and Ms. McCarty are no longer affiliated with the Water Department or the Philadelphia Gas Works, and serve on the Board on a non-paid basis and pointed out their years of service to the Board.

f. Mr. Dasent commented that he wanted to thank the Board for its service and note that the proceedings were well attended and, having gone to many in-person meetings that were not as well attended, feels there is a clear advantage to the current approach. Mr. Dasent stated that, going forward, he believes the Board will find a hybrid way of proceeding or other ways to facilitate public participation. He added that the Water Department wants to hear from the public.

g. Mr. Ballenger commented that this process, unlike the PUC process, also accepts public input by email and by letter. This is not permissible at PUC proceedings because witnesses must be sworn in to put any statement on the record. The Board's process is a more inclusive means of getting public participation because it allows public input in multiple forms without having to swear in and potentially cross-examine members of the public who want to speak.

6. The Board voted 5-0 to approve Ms. Pozefsky's motion to adjourn, which had been seconded by Ms. McCarty. The meeting was adjourned at 3:40 PM.