

MEMORANDUM

TO: Jeanne Reedy, Administrative Services Director, Records Department

FROM: Bernard Brunwasser, Chair of the Water, Sewer and Storm Water Rate Board

DATE: December 4, 2015

SUBJECT: Promulgation by the Water, Sewer and Storm Water Rate Board of Regulations

BB
by JRB

On October 23, 2015, pursuant to Section 8-407(a) of the Philadelphia Home Rule Charter, the Water, Sewer, and Storm Water Rate Board filed regulations to govern the Board's proceedings as authorized by Philadelphia Code § 13-101(3)(e). In accordance with Section 8-407(b) of the Charter, a hearing was requested and, pursuant to Section 8-407(c) of the Charter, a hearing was held on December 3, 2015. 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, the regulations as revised by the Board at the conclusion of that Hearing, and the memorandum of approval by the Law Department.

DEPARTMENT OF RECORDS
2015 DEC -4 PM 12:27

**CITY OF PHILADELPHIA
LAW DEPARTMENT**

MEMORANDUM


TO: Bernard Brunwasser, Chair, Water, Sewer and Storm Water Rate Board

FROM: Frances Ruml Beckley, Senior Attorney

DATE: December 4, 2015

SUBJECT: Written Report prepared and Amended Water, Sewer and Storm Water Rate Board Regulations, as a result of the public hearing held before the Water, Sewer and Storm Water Rate Board on December 3, 2015 with respect to the proposed Regulations

I have reviewed the attached report dated December 4, 2015 on the public hearing held on December 3, 2015 with respect to proposed regulations to govern the Water, Sewer, and Storm Water Rate Board's proceedings as authorized by Philadelphia Code § 13-101(3)(e), and the modified regulations reflecting, inter alia, suggestions made at that hearing. I find the report and amended regulations to be legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may now forward these amended regulations to the Department of Records where they will be made available for public inspection.


Frances Ruml Beckley
Senior Attorney, Legislation and Appeals

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

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(8) of the Code and Section II.2(b) of the Regulations of any proposed change in rates and charges.

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

(j) **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.

(k) **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.

(l) **Participant:** Any individual, corporation or other entity affected by the Department's proposed rates and charges who timely notifies [the Department of Records and] 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 [with the Department of Records]. Both the Department and, if one is appointed, the Public Advocate will be deemed to be Participants without notification to [City Council and] the Board.

(m) **Rate Change Proceeding:** The process described in the Regulations governing the evaluation and determination of a proposed change in rates, charges, rate structure and/or tariff.

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

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

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

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, the Rate Proceeding shall be conducted within 120 days of the filing of the Formal Notice and shall address only rates and charges and topics directly related thereto. If the Board is unable to act on proposed rates and charges within 120 days of the filing of the Formal Notice, 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.

Nothing herein shall preclude the Board from relying on additional documents and other evidence in its Rate Determination.

(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 the 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.

3. Hearing Officer.

(a) A 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) Make rulings on any requests for information submitted by a Participant in conjunction with the Rate Change Proceeding;

(6) In conjunction with Department staff, post on the Board's website all written information submitted during the Rate Change Proceeding and any other documents the Board believes are relevant; and

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

(c) The Hearing Officer shall be paid reasonable compensation as negotiated with the Board, pursuant to the formal City contract.

4. Public Advocate.

(a) A Public Advocate may be appointed by the Board, which appointment shall take effect, pursuant to a formal City contract with the Board or the Public Advocate's employment with the City, on or after the date of the Advance Notice.

(b) If appointed, the Public Advocate shall be a Participant to the Rate Change Proceeding and shall have the responsibility of ensuring that the Board understands the interests of all Small User Customers in the Rate Change Proceeding.

(c) Unless he or she is already a City employee, 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 reimbursed for reasonable expenses of hiring experts to analyze and to comment on the Department's proposed rates and charges and on issues directly related to those rates and charges. If the Public Advocate is a City employee, the Department shall fund such a budget in an amount acceptable to the Board.

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 Department personnel available to answer relevant questions about the proposed changes in rate 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) The public hearings shall be held at least ten (10) days and no more than sixty (60) days after the Formal Notice.

(c) 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 [by the Board] on [its] 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 [and, at its discretion, by other means] at least [seven (7)] three (3) days prior to any such hearing[s].

(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 submission is to be entered into the record. Members of the public also may make written submissions at any time before the seventy (70) days after Formal Notice when the record will be closed. 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 Hearings.

(a) Procedure.

(1) The Hearing Officer shall schedule and conduct any technical review hearings that may be required in order for the Hearing Officer Report to be submitted to the Board within ninety (90) days from the Formal Notice.

(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) Within fifteen (15) days of the Formal Notice, the Department shall present a representative or representatives for questioning by the Board and the Participants. Such representative or representatives shall be fully familiar with the proposed changes in rates and charges and shall be able to respond to questions regarding such proposed changes.

(4) After the conclusion of questioning of Department representatives by Participants other than the Board, such other Participants shall file their position papers with the Hearing Officer, including all supporting documents to the extent practicable. This filing with the Hearing Officer shall be made within thirty (30) days of the opportunity to question Department representatives pursuant to Section 7(a)(3) of these Regulations and shall become part of the Hearing Record.

(5) The Hearing Officer may schedule one or more additional technical review hearings, for example to permit questioning by the Board, the Department and other Participants of the position papers and supporting documents filed by Participants pursuant to Section 7(a)(4) of these Regulations. The Hearing Officer shall schedule any additional hearings requested by the Board.

(6) Presentations at the technical review hearings shall not be under oath or affirmation.

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

(b) Information Exchange.

(1) Participants shall be granted reasonable information gathering rights so as to permit development of a complete hearing record. There shall be a presumption that any information already existing should be exchanged by the Participants [; there shall be a counterbalancing presumption that no Participant shall be required to create information or to gather data solely to respond to the request of another Participant. The Hearing Officer may rule in an appropriate case that either presumption has been overcome]. The Hearing Officer shall balance the interests of the requesting and responding participants, mindful of (i) the time constraints of the Rate Proceeding, (ii) the relevance of the requested information to rates and charges, and (iii) the burden on the responding party.

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

(3) Responses to requests for information by any Participant shall be submitted to the Board and shall be 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) Responses to information requests shall be provided as agreed by the Participants or, in the absence of such agreement, as directed by the Hearing Officer. 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 except as the Hearing Officer has determined and has ruled are appropriate for the purpose of compiling a full record.

8. Hearing Record.

(a) Completion of Hearing Record:

(1) All hearings shall be completed and the record shall be closed no later than seventy[-five] ([75] 70) days after the Department's filing of [proposed changes on rates and charges with the Philadelphia Department of Records] Formal Notice.

(2) Within fourteen days of the close of the hearing record, any Participant wishing to do so may file a post-hearing summary. Within seven days of the deadline for filing Participant post-hearing summaries, the Hearing Officer shall file a Hearing Officer Report with the Board [and any Participant wishing to do so may file a post-hearing summary]. The Hearing Officer Report and any post-hearing summaries received by the Board shall be posted on the Board's website and shall become part of the Hearing Record. After that date, no further filings will be permitted and no further information will be received unless pursuant to subsection (3) below or unless specifically requested by the Board.

(3) Within seven (7) days of the Hearing Officer Report, any participant may file a letter with the Board to indicate that its position has been misstated, that a false impression was created, or that an error or omission has been made, in which case such letter 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.

(2) Evidence of proper advertising and posting as required by these 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.

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

9. 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 make reference to sections of the Hearing Record 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.

10. 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.

11. 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.

12. 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.

[] Brackets denote deleted matter

___ Underlining denotes new matter

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

December 4, 2015

On October 23, 2015, 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 regulations to govern the Board's proceedings as authorized by Philadelphia Code § 13-101(3)(e).

Public notice of the filing of the proposed regulations was published and two written requests for a public hearing were made on behalf of Community Legal Services and Food and Water Watch. A public hearing was scheduled and held on Thursday, December 3, 2015 at 3:00 at One Parkway, Philadelphia Pennsylvania.

Community Legal Services and counsel to the Board had worked together to draft several revisions to the regulations as originally filed, and, upon their joint recommendation, the Board adopted those revisions.

Robert Ballenger, from Community Legal Services, provided testimony in support of further revisions to the regulations; that testimony and the proposed revisions are attached. The Board voted 3-1 not to adopt the revisions that would make the position of Public Advocate mandatory in future proceedings. Sonny Popowsky moved to adopt the revisions to require the Hearing Officer report to include recommendations but that motion was not seconded so no vote was taken.

Ann Dixon, from Food and Water Watch, provided testimony requesting further changes to the regulations; that testimony is attached. In response to that testimony, the Board voted unanimously to add a sentence to section 6 (Public Hearings) clarifying that members of the public may continue to submit written comments until the record is closed, seventy days after Formal Notice.

Kay Laker, from Northeast Philly Peace and Justice, provided testimony that did not request specific changes to the regulations; that testimony is attached.

Lance Haver, from the City Council President's office, spoke in favor of Community Legal Service's request to make the position of Public Advocate mandatory in future proceedings.

Steve Hershey, formerly from Community Legal Services and the Public Advocate in some prior rate cases, spoke in favor of Community Legal Service's request to make the position of Public Advocate mandatory in future proceedings.

Nancy Brockway, whom the Board had selected to serve as Hearing Officer in the first Rate Proceeding, spoke requesting a revision to Section 8 (Hearing Record) to provide that Participants would file their post-hearing summaries seven days before the Hearing Officer Report is due, so that the Hearing Officer would have the benefit of those summaries. The Board voted unanimously to make that change.

Accordingly, revised regulations to govern the Board's proceedings as authorized by Philadelphia Code § 13-101(3)(e) are hereby filed with the changes adopted by the Board.



COMMUNITY LEGAL SERVICES OF PHILADELPHIA

PHILADELPHIA WATER, SEWER AND STORMWATER RATE BOARD PROPOSED REGULATIONS

December 3, 2015

TESTIMONY OF ROBERT W. BALLENGER

The Philadelphia Water, Sewer and Stormwater Rate Board (Board) filed its proposed regulations with the Philadelphia Department of Records on October 23, 2015. On November 5, on behalf of residential customers of the Philadelphia Water Department, Community Legal Services (CLS) requested that hearings be scheduled regarding the proposed regulations.

Our initial review of the proposed regulations raised a substantial number of concerns, some minor and some substantial. Between November 5 and November 24, CLS had several productive conversations with the Board's counsel, culminating in a set of recommended revisions to the proposed regulations which have been posted on the Board's website. We appreciate that the Board's counsel dedicated her time and attention to addressing many concerns initially raised by the draft regulations.

There were two issues, however, which we could not resolve. We seek two further revisions, to ensure that the Board's rate change proceeding is conducted according to procedural and substantive standards that are fair and robust, satisfying the requirements of law and

instilling public confidence in PWD rates. We respectfully submit that the Board's proposed regulations should be further amended as set forth in Appendix A hereto.

The Public Must Be Guaranteed Representation

PWD rates are a matter of concern for every residential customer and small user in the City of Philadelphia. Yet none of these customers can be expected to take on the heavy burden of deciphering PWD's proposed changes in rates and charges and mounting a sound and thorough argument that PWD's proposed changes should be modified. For these reasons, PWD's regulations have guaranteed customers that a Public Advocate would be appointed, and provided with adequate resources, to represent the interests of the nearly half-million residential customers. See PWD Regulation § 301.4 ("A Public Advocate shall be appointed by the Mayor, the President of City Council and the City Controller....")

The Board's proposed regulations would jeopardize a fundamental protection that PWD residential customers have enjoyed for many years. The Board's proposed regulations are clear: these customers may very well not have an appointed representative in future PWD rate change proceedings. See Sections I(l) (definition of "Participant"), II.4 (regarding potential appointment and role of Public Advocate). The Board should recognize that the interests of residential customers are significant enough to require the appointment of a Public Advocate to participate in any and all PWD rate change requests. Such watchful participation is vital to ensuring customer confidence in PWD rates and the Board's process for determining them.

CLS strongly urges the Board to revise the proposed regulations to ensure that residential customers will be able to continue to rely, as they have in the past, upon an appointed Public Advocate, charged with representing their interests. There is no source in the legislative history establishing the Board that suggests that customers' protections should be diminished. In fact, to

the contrary, City Council established the Board to oversee a more protective and fair rate change proceeding. While the Board must include a member with consumer advocate experience, the presence of such voluntary member should not be construed as an adequate substitute for an appointed Public Advocate, which would be provided with the resources to work with experts to conduct a robust review of the rate filing that ratepayers deserve. Guaranteed representation is the only means to ensure that customers' interests are adequately represented in scrutinizing the analyses and legal arguments put forth by the Water Department and its consultants and attorneys.¹ Enacting a regulation that would authorize the diminution in customer protections would be a first step in deviating from the Board's purpose.

Hearing Officer Proposed Findings and Conclusions

As currently drafted, the Board's proposed regulations define "Hearing Officer Report" to be a "summary of all written information submitted and all testimony presented in both public hearings and technical review hearings." See Section I(j). CLS submits that the definition of Hearing Officer Report should be clarified to include proposed findings of fact and conclusions of law for the Board's consideration. Although the existing definition might not preclude proposed findings of fact and conclusions of law, the scope of the Hearing Officer's duties should be more clearly defined. The omission of findings of fact and conclusions of law from the Hearing Officer's Report would seriously harm the transparency and credibility of the rate change process, and place into question whether the Board's rate decision was supported by adequate reasons and evidence.

¹ The Board is an "independent rate-making body... responsible for fixing and regulating rates and charges for water and sewer services" (Home Rule Charter §5-801) and is charged with balancing the interests of customers and the City; it cannot be independent if it represents (or purports to represent) the interests of customers or the City. Thus, the Board cannot serve the function historically reserved to the Public Advocate any more than it could represent the Water Department.

The appointment of a Hearing Officer is a practical necessity in a PWD rate proceeding. The role of the Hearing Officer includes presiding over public hearings and technical review proceedings, making of procedural rulings, making rulings on requests for information, and submitting the Hearing Officer Report. See Section II.3(b). Although members of the Board may attend public and technical review proceedings and remain apprised of the Hearing Officer's rulings, the Board has delegated these essential functions to a Hearing Officer. Under its proposed framework, the Board does not oversee the public or technical review proceedings, and may not be present or in public session as these events transpire. As a consequence, the proposed process requires the participants to express their contrasting viewpoints directly to the Hearing Officer, but it is not clear either that the Hearing Officer weighs these viewpoints, or suggests to the Board how it should reconcile them. Moreover, without this clarification, the Board's proposed regulations, requiring the Board to give substantial weight to the Hearing Officer Report, are inconsistent. The Board cannot give substantial weight to a mere summary of opposing viewpoints.

Hearing Officer proposed findings of fact and conclusions of law ensure that participants who have presented testimony, examined witnesses, entered evidence, and made arguments before the Hearing Officer, see how those contributions to the record are evaluated – whether the Hearing Officer found one witness more credible than another witness, or found the evidence in support of one position more persuasive than evidence in support of another position. This more defined Hearing Officer role allows participants to raise any errors or objections to those findings and/or conclusions, in order to ensure that the Board is aware of any disagreement with the Hearing Officer before making its decision.

A Hearing Officer Report that could function solely as a summary of the record fails to satisfy the basic requirements of fairness and ensure openness and transparency in the conduct of PWD rate proceedings. It is also inconsistent with the substantial weight the Board is supposed to give to the Hearing Officer Report. Failing to require the Hearing Officer Report to include proposed findings of fact and conclusions of law threatens the transparency necessary to promote the Board's credibility and public understanding of the Board's rate decisions.

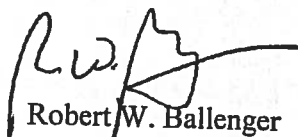
Conclusion

For the reasons set forth herein, we urge the Board to revise its proposed regulations to:

- Guarantee that residential customers shall have a designated representative, provided with sufficient resources to represent their interests in a PWD rate change proceeding; and
- Require the Hearing Officer Report to include proposed findings of fact and conclusions of law, in order to ensure openness and transparency in establishing future rates and charges.

Thank you for your consideration of this testimony.

Respectfully submitted,


Robert W. Ballenger

Community Legal Services of Philadelphia
1424 Chestnut Street
Philadelphia, PA 19102

Tel: 215.981.3788

APPENDIX A

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

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.

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

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

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, the Rate Proceeding shall be conducted within 120 days of the filing of the Formal Notice and shall address only rates and charges and topics directly related thereto. *If the Board is unable to act on proposed rates and charges within 120 days of the filing of the Formal Notice, 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.

Nothing herein shall preclude the Board from relying on additional documents and other evidence in its Rate Determination.

(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 the 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.

3. Hearing Officer.

(a) A 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) Make rulings on any requests for information submitted by a Participant in conjunction with the Rate Change Proceeding;
- (6) In conjunction with Department staff, post on the Board's website all written information submitted during the Rate Change Proceeding and any other documents the Board believes are relevant; and
- (7) Prepare and submit the Hearing Officer Report to the Board and all Participants.

(c) The Hearing Officer shall be paid reasonable compensation as negotiated with the Board, pursuant to the formal City contract.

4. Public Advocate.

(a) A Public Advocate ~~may~~shall be appointed by the Board, which appointment shall take effect, pursuant to a formal City contract with the Board or the Public Advocate's employment with the City, on or after the date of the Advance Notice.

(b) ~~If appointed,~~ The Public Advocate shall be a Participant to the Rate Change Proceeding and shall have the responsibility of ensuring that the Board understands the interests of all Small User Customers in the Rate Change Proceeding.

(c) Unless he or she is already a City employee, 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 reimbursed for reasonable expenses of hiring experts to analyze and to comment on the Department's proposed rates and charges and on issues directly related to those rates and charges. If the Public Advocate is a City employee, the Department shall fund such a budget in an amount acceptable to the Board.

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 Department personnel available to answer relevant questions about the proposed changes in rate 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) The public hearings shall be held at least ten (10) days and no more than sixty (60) days after the Formal Notice.

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) Within fifteen (15) days of the Formal Notice, the Department shall present a representative or representatives for questioning by the Board and the Participants. Such representative or representatives shall be fully familiar with the proposed changes in rates and charges and shall be able to respond to questions regarding such proposed changes.

(4) After the conclusion of questioning of Department representatives by Participants other than the Board, such other Participants shall file their position papers with the Hearing Officer, including all supporting documents to the extent practicable. This filing with the Hearing Officer shall be made within thirty (30) days of the opportunity to question Department representatives pursuant to Section 7(a)(3) of these Regulations *and shall become part of the Hearing Record.*

(5) The Hearing Officer may schedule one or more additional technical review hearings, for example to permit questioning by the Board, the Department and other Participants of the position papers and supporting documents filed by Participants pursuant to Section 7(a)(4) of these Regulations. The Hearing Officer shall schedule any additional hearings requested by the Board.

(6) Presentations at the technical review hearings shall not be under oath or affirmation.

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

(b) Information Exchange.

(1) Participants shall be granted reasonable information gathering rights so as to permit development of a complete hearing record. There shall be a presumption that any information already existing should be exchanged by the Participants [; there shall be a counterbalancing presumption that no Participant shall be required to create information or to gather data solely to respond to the request of another Participant. The Hearing Officer may rule in an appropriate case that either presumption has been overcome]. *The Hearing Officer shall balance the interests of the requesting and responding participants, mindful of (i) the time constraints of the Rate Proceeding, (ii) the relevance of the requested information to rates and charges, and (iii) the burden on the responding party.*

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

(c) 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 [by the Board] on [its] *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* [and, at its discretion, by other means] at least [seven (7)] *three (3)* days prior to any such hearing[s].

(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 submission is to be entered into 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 Hearings.

(a) **Procedure.**

(1) The Hearing Officer shall schedule and conduct any technical review hearings that may be required in order for the Hearing Officer Report to be submitted to the Board within ninety (90) days from the Formal Notice.

(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

(2) Evidence of proper advertising and posting as required by these 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.

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

9. 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 make reference to sections of the Hearing Record 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.

10. 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.

11. 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.

12. 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.

(3) Responses to requests for information by any Participant shall be submitted to the Board and shall be 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) Responses to information requests shall be provided as agreed by the Participants or, in the absence of such agreement, as directed by the Hearing Officer. 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 except as the Hearing Officer has determined and has ruled are appropriate for the purpose of compiling a full record.

8. Hearing Record.

(a) Completion of Hearing Record:

(1) All hearings shall be completed and the record shall be closed no later than seventy-five (75) days after the Department's filing of [proposed changes on rates and charges with the Philadelphia Department of Records] *Formal Notice*.

(2) Within fourteen days of the close of the hearing record, the Hearing Officer shall file a Hearing Officer Report with the Board and any Participant wishing to do so may file a post-hearing summary. The Hearing Officer Report and any post-hearing summaries received by the Board shall be posted on the Board's website *and shall become part of the Hearing Record*. After that date, no further filings will be permitted and no further information will be received unless *pursuant to subsection (3) below or unless specifically requested by the Board*.

(3) *Within seven (7) days of the Hearing Officer Report, any participant may file a letter with the Board to indicate that its position has been misstated, that a false impression was created, or that an error or omission has been made, in which case such letter 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.

December 3, 2015

Bernard Brunwasser

Chairman, Philadelphia Water, Sewer and Storm Water Rate Board
Philadelphia Water, Sewer and Storm Water Rate Board Members

Dear Philadelphia Water Rate Board- Bernard Brunwasser, Michael Chapman, Lee Huang, Sonny Popowsky, and Nancy Winkler,

We, the undersigned organizations, ask that you change the draft Water Rate Board regulations to help ensure adequate public protections before rate changes.

Water is a human right. All Philadelphians should have access to safe, affordable water. Striving to achieve this principle entails a robust and transparent process for setting water rates. Unfortunately, the draft regulations for the Water Rate Board fall short of this goal and fail to fully protect Philadelphians.

The regulations contain several glaring shortcomings that you must address, including:

Accountability: The regulations contain no guarantee of a public advocate, the position that has historically worked to ensure consumers are getting a fair deal. Because as members of the Water Rate Board, you are appointed officials who are not directly accountable to the public, it is essential that you change the regulations to require the presence of an entity charged with protecting ratepayers, especially low-income residents.

Transparency: The regulations do not adequately guarantee the transfer of information between consumers, the water department and the Water Rate Board. The regulations do not clearly require the parties to provide information they can readily generate, leaving consumers, experts and advocates subject to potential delay while seeking an order from the Hearing Officer. The regulations should establish firm rights of participants to request and receive new information and data.

Accessibility: The regulations create unnecessary obstacles to public input. As drafted, written submissions must be submitted at or before the public hearing at which they are to be entered into the record. Many members of the public may not be able to prepare adequately given the three-day advance notice provided in the regulations. The regulations must allow Philadelphians who cannot attend hearings because they work or have other commitments to send in written testimony, regardless of the dates of public hearings. Such submissions should be accepted at any time during the rate proceeding, and placed on the record for the Board.

As drafted, these regulations would create an environment in which water rates could be raised injudiciously, squeezing Philadelphia's low-income population. We urge you to correct these aspects of the regulation regime immediately.

Action United
Craig Robbins, Executive Director

Corporate Accountability International
Lauren DeRusha, National Campaign Organizer

Elder-Activists
Lynne Iser, Founder

Food & Water Watch
Sam Bernhardt, Pennsylvania Organizer

North of Washington Avenue Coalition
Madeline Shikomba, President

Northeast Philly For Peace and Justice
Evelyn Haas, Executive Committee Member

Philly Electric Wheels
Meenal Raval, Owner

Protecting Our Waters
Iris Marie Bloom, Director

Statement To: Philadelphia Water Rate Board

By: Kay Laker speaking for N E Philly Peace & Justice

December 3, 2015

Thank you for permitting me to speak this afternoon. My name is Kay Laker and I represent some of my neighbors in NE Philadelphia. Our organization (NE Philly Peace & Justice) consists mostly of senior citizens living on limited fixed incomes. In our organizational activities we like to emphasize justice for all –including for limited income residence. That means the modern amenities available today to society – such as clean water should be accessible and affordable to everyone. I am sure you are aware that Philadelphia houses more poor people than any other large city in the country. And that NE Philadelphia has traditionally been consider an ideal retirement community for local residents.

We appreciate that the Water Department in the past has made provision for resident with limited incomes – such as offering 25% discount for qualifying senior citizens- and this has helped make it possible for us to continue living in the city we love.

I am speaking today to remind you that we are here so that when you are cooking up procedures and regulations you remember to give realistic consideration for all the inhabitation of our city. That includes affordable water rates and an accessible open dialog between the residents and the Department. Imposing limitation on communications can sometimes present unsurpassable barriers that some citizen cannot penetrate. . (Requiring a three day advanced notice to speak, and written submissions at public hearings.)

In looking over the Philadelphia Water Department web site I noticed a heading “Causes of Increased Funding Needs” There are nine items listed and four of those nine (debt servicing, financing and investing) have a relationship to large international banks. This relationship has generated high costs for these services. These high costs are a significant contributor to the Water Department budget so reducing these costs could be a better alternative to increase rates.

We also noticed that the Department has made serious effort to renegotiate and refinance some of the debt and this has resulted in significant saving. We want to encourage the Department along this path and suggest it seek other alternatives to achieve affordable financing for future projects. One possibility could be a Philadelphia Public Bank.

Thank you

Kay Laker
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