



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA

March 9, 2009

Harris T. Bock, Esquire
Hearing Officer
Dispute Resolution Institute
Two Logan Square, Suite 660
Eighteenth and Arch Streets
Philadelphia, PA 19102

In Re: Philadelphia Water Department Water and Wastewater Rate Increase Proceeding (Part II)

Public Advocate's Letter Sur-Reply Brief

Dear Hearing Officer Bock:

The Public Advocate hereby submits this Letter Sur-Reply Brief pursuant to Hearing Officer Order No. 26SW issued on February 20, 2009.

In its Reply Brief, Sunoco repeats the themes set forth in its Initial Brief in a more exaggerated form, without offering further support either in terms of reference to record based factual support or in terms of legal argument. Sunoco's Reply Brief is based on the false assumption that the SWMS charge proposed to be imposed is the gross charge, not the net charge after determinations have been made regarding Sunoco's eligibility for SWMS credits.

As the Public Advocate explained in the Advocate's Reply Brief, Sunoco's premise that it may treat the gross SWMS charge as the rate to be authorized in this proceeding – and then attack it as unjust, unreasonable and discriminatory– is incorrect. PA R.B., at 11-13. In other words, the Philadelphia Water Department (PWD) is not proposing rates in this proceeding that would result in a 2300% increase Sunoco's stormwater charges for its South Philadelphia facilities "after full implementation" of the proposed regulations. Sunoco R.B., at 11. Rather, it has proposed standards for determining what an appropriate preliminary stormwater charge would be for those facilities, and a process for applying those standards which is respectful of the due process rights of Sunoco and all other non-residential customers who have taken or will take measures to manage the stormwater that falls on their property.

Sunoco has received the same notice of these proceedings as every other PWD customer and/or Philadelphia property owner. There is no evidence in this proceeding that the PWD has been anything but cooperative in trying to facilitate Sunoco's understanding of the nature and amount of its potential liabilities for stormwater service to its South Philadelphia facilities. The Advocate recognizes that Sunoco may have an increased liability under the proposed SWMS

program. However, considering that fact, the Company gives every appearance of having been slow to react to the PWD's filing, reluctant to concede that the PWD has the authority to impose a net SWMS charge upon Sunoco's properties, and not particularly eager to work with the PWD in the exchanges of information necessary to determine the amount of the net charge, or at least to identify the relevant issues regarding the determination of that charge. Nonetheless, the PWD proposes to defer implementation of the SWMS until July 1, 2010, allowing Sunoco more than two years from the initial filing date to develop and document its claims for SWMS credits.

In its Reply Brief, the PWD first ignored the very existence of a system of SWMS credits in the PWD's proposed SWMS program. Next, in the same Reply, Sunoco then changed course and protests that the system of SWMS credits which the PWD has proposed "does not provide an adequate remedy to Sunoco...." Sunoco, R.B. at 10-11.

Such a claim, one might reasonably expect, would be accompanied by a demonstration that the standards for determining the amount of the SWMS credits associated with the four BRT parcels at issue somehow are flawed, and do not sufficiently recognize the value of the stormwater management conducted by Sunoco on its own properties.

In fact, however, Sunoco's claims are totally different, and basically amount to a denial of the PWD's legal authority to impose any SWMS charges at all on properties that are not directly serviced by the PWD's subterranean sewer mains – *i.e.*, all parcels except the Schuylkill River Tank Farm (SRTF). *Id.* As a fallback argument, Sunoco further states that even if the PWD does have the authority to grant Sunoco SWMS credits, the remedy would not be adequate because the SWMS credits must be renewed every four years. However, that claim must fail, because it is in the nature of utility rates to be adjusted from time to time. Just because a SWMS rate is subject to future adjustment does not somehow render it unjust, unreasonable and discriminatory.¹

Finally, Sunoco complains that the PWD has blurred the line between "stormwater management, sewage disposal services, flood protection activities and water quality impacts of stormwater on major waterways." Sunoco R.B., at 6. The Advocate submits that when viewed in terms of the PWD's responsibilities under city, state and federal law, these aspects of managing and mitigating the multiple deleterious effects of stormwater, both in quantity and in quality, form an integral whole. Sunoco's precious distinctions are really just distinctions without a practical difference. Notwithstanding Sunoco's claim that "stormwater *per se*, which has not mixed with sewage, does not constitute 'sewage,'" (Sunoco R.B., at 3), there is no denying the truth of PWD's witness Ms. Dahme that as soon as stormwater hits the surface in Philadelphia, it


¹ Yet another example of Sunoco's exaggerated claims is the statement that under the PWD's definition of stormwater impact, the "PWD could impose charges on every property owner in the Wissahickon Creek watershed in upstream Montgomery County – or for that matter, all of the property owners in the entire Delaware River and Schuylkill River watersheds that lie upgradient of the City – based on the rationale that water that flows through the City at one point fell on such properties." Sunoco R.B., at 6. This wild claim totally ignores the fact that the PWD's focus is not on adjoining counties or watersheds existing outside of Philadelphia County – but on addressing the problem of managing and mitigating stormwater harms experienced within this county, and only this county.

mixes with harmful and noxious material and is cumulatively transformed into sewage. Tr. 935.

In its Reply Brief, Sunoco has renewed its request for oral argument in this Part II of the PWD's rate increase proceeding. While the parties may have reached the point where there is nothing new to say, the Public Advocate does not oppose this request. Whether to have oral argument is for the Hearing Officer to decide, depending on whether he has determined whether his understanding of certain issues might benefit from the give and take of oral argument.

For all these reasons, the Public Advocate requests that the Hearing Officer make the recommendations set forth in the Advocate's previous Briefs, including but not limited to the recommendation that the objections put forth by Sunoco to the imposition of SWMS charges upon it be rejected.

Very truly yours,



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Community Legal Services, Inc.

For the Public Advocate

cc: Service List