

March 26, 2009

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**Via E-mail and FedEx**

Hon. Harris T. Bock  
Hearing Officer  
Dispute Resolution Institute  
660 Two Logan Square  
18th and Arch Streets  
Philadelphia, PA 19103

Re: In the Matter of the Philadelphia Water Department's Proposed Increase in Rates for Water, Sewer and Wastewater Utility Services (Phase II).  
FY 2009-2012

Dear Hearing Officer Bock:

Sunoco, Inc. (R&M) ("Sunoco") files this letter reply to the Philadelphia Water Department's ("PWD") response to Sunoco's objection to the affidavit of Deputy Commissioner David A. Katz. PWD had attached as Appendix B to its reply brief Mr. Katz's affidavit addressing the issue of whether there is sewage contained in PWD's separate stormwater system. Sunoco objected to PWD's attempt to introduce the affidavit into the record of the proceeding at that late point on pages 9-10 of its sur-reply brief. Sunoco contends that the affidavit is in effect additional testimony of Mr. Katz which should have been included as part of PWD's presentation at the January 13, 2009 technical hearing. PWD's response argues that Sunoco raised the legal argument that the Department lacked authority to bill for stormwater charges late in the proceeding and that Mr. Katz's affidavit should be admitted as a response to that argument.

Contrary to PWD's assertion, Sunoco's arguments concerning the Department's authority to impose stormwater charges were not raised late, since the initial brief was the first opportunity Sunoco had in this proceeding to present its legal arguments. More importantly, as the party with the burden of proving the requisite authority under the City Charter and Philadelphia Code to promulgate the regulations at issue, the new information contained in Mr. Katz's affidavit should have been presented as part of the PWD's direct case in this proceeding. Because PWD failed to demonstrate its authority, or offer any evidence contained within Mr.

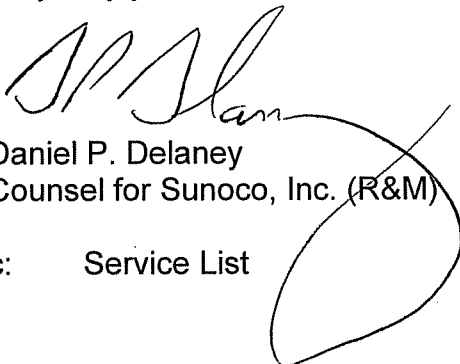
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Katz's affidavit previously, PWD should be precluded from doing so at this late stage of the proceeding. As explained in Sunoco's sur-reply brief, no party has had an opportunity to conduct discovery on the issues addressed in this new testimony or cross-examine the Deputy Commissioner on the content of the testimony. It is simply too late in this proceeding to supplement the Department's testimony.

For the reasons stated on pages 9-10 of its sur-reply brief, Sunoco objects to this testimony/affidavit and requests the Hearing Officer to deny its admission into the record.

Thank you for your consideration of this reply.

Very truly yours,



Daniel P. Delaney  
Counsel for Sunoco, Inc. (R&M)

c: Service List

**BEFORE THE CITY OF PHILADELPHIA WATER DEPARTMENT  
HEARING OFFICER HARRIS T. BOCK PRESIDING**

In the Matter of the Philadelphia :  
Water Department's Proposed :  
Increase in Rates for Water and :                   FY2009-2012 Rates  
Wastewater Utility Services :  
(Phase II). :

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**CERTIFICATE OF SERVICE**

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I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed, in the manner identified;

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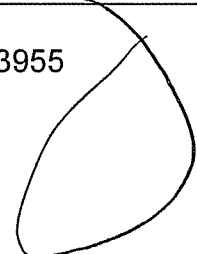
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Dated: March 26, 2009