

February 23, 2009

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Via E-mail

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 and Wastewater Services (Phase II). FY2009-2012

Dear Hearing Officer Bock:

On or about February 20, 2009, Sunoco, Inc.(R&M) ("Sunoco") received the Philadelphia Water Department's ("PWD") Response to Sunoco's Motion for Admission of a Late Filed Exhibit in Phase II of the above-referenced rate proceeding. Sunoco files this letter in response and to correct certain factual errors contained in PWD's response.

Briefly, Sunoco filed the motion with its Initial Brief requesting the admission of a schedule attached to the motion as a Late Filed Exhibit G to its testimony Sunoco Statement No. 1. Sunoco filed Exhibit G in support of the statements in its testimony that Sunoco has made capital improvements and major upgrades to its storm water management system over the years at its Philadelphia Refinery property (paragraph 2 of Sunoco's motion). In particular, on page 12, lines 250-259 of its testimony, Sunoco offered the following testimony:

- Q. HAS SUNOCO MADE CAPITAL EXPENDITURES RELATED TO STORMWATER MANAGEMENT AT THE PHILADELPHIA REFINERY?
- A. Yes. Sunoco has made several capital improvements and major upgrades to the stormwater management system over the years, including maintenance and upgrades to the WWTPs, the construction of tank dikes/containment, the addition of new stormwater tanks, and retrofitting air diffuser systems, among other capital improvements, repairs and expenses.

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First, evident from the above, Sunoco explicitly raised the issue of repairs, maintenance and expenses associated with operation of its WWTPs in the testimony that was timely served upon PWD before the January 13th hearing. As such, PWD had notice and an opportunity to cross-examine Sunoco witnesses on the subject at the hearing but chose not to do so. Through its Exhibit G filing, Sunoco was merely supplementing the record with specific cost information for fiscal year 2008 as further support for its previously submitted testimony. Specifically, Exhibit G identifies the actual 2008 costs of operating the wastewater treatment plants and other costs related to the storm water management program which are identified in its direct testimony. Sunoco estimated that approximately 5% of the prior year's costs identified on Exhibit G, or approximately \$650,000, were incurred for storm water management for the Point Breeze, Girard Point and West Yard parcels of the Refinery property. Now, because Exhibit G quantifies in dollars how much Sunoco has spent in the immediate preceding year on operation of the WWTPs - costs which are reflective of the on-site management practices and which activities undeniably provide relief to PWD - PWD objects.

Secondly, PWD's papers attempt to highlight purported ambiguity in the headings of Exhibit G by claiming not to know what "Certain Facilities REF-ID PH" and "Count" refer to. However, these are red herrings which PWD is raising to somehow show that Exhibit G is unclear and in need of explanation. Yet, these are simply references to the facility to which the amounts relate - namely the Philadelphia Refinery and the number of entries that appear for a given description of the expense, respectively. There is no ambiguity in Exhibit G.

Lastly, in the course of opposing Sunoco's Motion, PWD makes misstatements. Sunoco would like to correct the following statements.

- Page 1 of the Department's response incorrectly suggests that the amounts listed on Sunoco's Exhibit G are budgeted amounts. As stated in Paragraph 3 of Sunoco's Motion, the schedule identifies the **actual** prior year's costs of operating the wastewater treatment plants and other costs related to the storm water management program for the properties which are identified in the Direct Testimony. The amounts identified on Exhibit G have actually been incurred and paid by Sunoco.

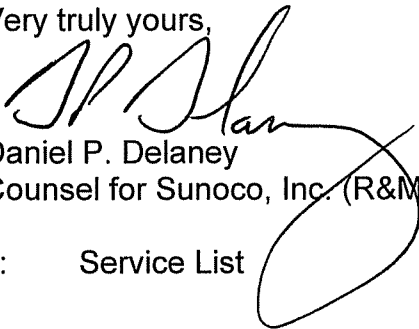
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- PWD's response misstates the argument concerning Exhibit G contained on Page 50 of Sunoco's Brief. The response states that operating costs related to storm water management of \$650,000 identified in the exhibit exceeds the gross storm water management system charges proposed by the Department for the identified refinery parcels. A careful reading of page 50 of Sunoco's Brief, however, reveals that the opposite is actually true. As stated on that page, Sunoco's actual storm water expenses for the Point Breeze, Girard Point and West Yard parcels of the Refinery property as identified in Exhibit G are approximately \$650,000/year, rather than the estimated \$4,845,956/year proposed by the Department for stormwater charges for these parcels. In other words, this information supports Sunoco's contention that the proposed stormwater charges are unjust, unreasonable, and not equitably apportioned.

The very essence of the proposed regulation presumes that square footage of a property, without exclusion of any private property, is rationally related to the service provided and PWD intends to calculate and assess charges against property owners (in Sunoco's case, \$4,845,956/year) based upon this. However, in order for PWD to charge Sunoco \$4,845,956 in the first place, the Home Rule Charter and the Code require those charges to be just and reasonable. Although the proposed regulation contemplates credits being offered to non-residential property owners, entities such as Sunoco must prove their eligibility for such credits after the estimated charges have already been calculated and requires the property owner to qualify for such credits every four years thereafter. The very fact that Sunoco is managing the storm water on-site for a fraction of the estimated charges that PWD intends to charge Sunoco after full implementation of the regulation is substantial proof that such charges are not just and reasonable or equitably apportioned.

Sunoco respectfully requests this Hearing Officer to consider these corrections to the PWD's Response and permit the admission into the record of Sunoco's Late Filed Exhibit G.

Very truly yours,


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

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