

**RULES GOVERNING APPEALS TO THE BOARD OF COMMISSIONERS
UNDER SECTION 9(b) OF THE USER CHARGE ORDINANCE OF THE
METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER
CHICAGO, (“DISTRICT”)*¹**

I. Referral by the Board of Commissioners of a User’s Petition for Appeal to One of its Designees

Where a User files a petition for appeal to the Board of Commissioners, (“Board”), which complies with the requirements of Section 9(b) of the User Charge Ordinance, and the Board subsequently refers that User’s petition to one of its designees, the District’s Law Department will schedule a Preliminary User Charge Hearing to take place within 60 days of the Board’s referral.

II. Notice of Preliminary User Charge Hearing

a. Upon receipt of the Board’s referral of a User’s petition for appeal to one of its designees, the Law Department shall prepare and issue a Notice of Preliminary User Charge Hearing. The Notice of Preliminary User Charge Hearing sets forth the date, time and place of the Preliminary User Charge Hearing, provides the name, address, phone number, and fax number of both the designated Hearing Officer and the District’s Attorney assigned to the Appeal, and includes a copy of these Rules.

b. The Notice of Preliminary User Charge Hearing may be served via personal delivery at the User’s facility or by certified mail, return receipt requested, upon an officer, agent, or responsible corporate official of the User. The Preliminary User Charge Hearing must be scheduled for a date no sooner than 20 business days from the date of service of the Notice of Preliminary User Charge Hearing.

c. The Notice of Preliminary User Charge Hearing designates the District as Appellee, and the User as Appellant, hereinafter referred to as the “parties”.

¹ The definitions of the terms used in these rules are the same as those set forth in Section 2 of the User Charge Ordinance.

d. All parties and their representatives must be present at the Preliminary User Charge Hearing at which time the parties will have the opportunity to resolve the appeal informally by conducting off-the-record settlement negotiations. The User's representative attending the Preliminary User Charge Hearing must have authority to enter into a binding settlement agreement on behalf of the User.

III. Preliminary User Charge Hearing

a. A Preliminary User Charge Hearing shall be held at the date, time and place set forth in the Notice. The parties may enter into a written settlement agreement, subject to the approval of both the assigned Hearing Officer and the District's Board of Commissioners and/or General Superintendent. A written settlement agreement can be presented to the assigned Hearing Officer at any mutually agreed upon date.

b. If either party is unable to attend the scheduled Preliminary User Charge Hearing, that party must notify both the Hearing Officer and the opposing party in writing at least 5 working days prior to the Hearing date and provide dates within the following 30 days, absent a showing of good cause, when the unavailable party can attend a Preliminary User Charge Hearing. The District's Attorney assigned to the appeal shall then schedule the Preliminary User Charge Hearing to take place within the next 30 days, unless either party has shown good cause as to why the Hearing cannot take place in the next 30 days. The District's Attorney shall then prepare a Notice indicating the re-scheduled date of the Preliminary User Charge Hearing, which must be served upon the User and the Hearing Officer. The User is allowed one (1) rescheduling of the Preliminary User Charge Hearing. Where a User fails to attend the Preliminary User Charge Hearing or a re-scheduled Preliminary User Charge Hearing, the Hearing Officer shall note the User's failure to appear on the record and the District's Attorney shall schedule the Appeal for a Formal User Charge Hearing following the procedures identified below in subsection d.

c. The Hearing Officer designated for the Appeal and a court reporter must be present at the Preliminary User Charge Hearing. The Hearing Officer may be present during the settlement discussions between the parties, unless either party objects to the Hearing Officer's presence.

d. In the event that the Preliminary User Charge Hearing does not resolve the Appeal, prior to adjournment, the parties and the Hearing Officer are required to schedule a Formal User Charge Hearing and establish deadlines for the exchange of exhibits between the parties and the identification of witnesses each party intends to use at the Formal User Charge Hearing. Prior to adjournment of the Preliminary User Charge Hearing, the date(s) of the Formal User Charge Hearing and the deadlines for the exchange of exhibits and identification of witnesses must be stated on the record.

e. The parties and the Hearing Officer shall normally schedule the Formal User Charge Hearing to be held on a date within 50 business days after the Preliminary User Charge Hearing, unless one party has a conflict and both parties and the Hearing Officer agree to a later date. If a Hearing Officer becomes unavailable to conduct a scheduled Formal User Charge Hearing, the next available Hearing Officer will be appointed to replace the unavailable Hearing Officer. At the Formal User Charge Hearing, the designated Hearing Officer will be present for the express purpose of taking testimony under oath.

f. Any admissions or declarations against interest, written or oral, made by either party during or in the course of the Preliminary User Charge Hearing are not binding and are not admissible for any purpose at the Formal User Charge Hearing, unless they are stated on the record or reduced to written stipulation.

IV. Notice of Formal User Charge Hearing

Where the Preliminary User Charge Hearing concludes without a resolution of the Appeal, the District's Attorney will then prepare and file with the Clerk of the District,

("Clerk"), a Notice of Formal User Charge Hearing, which is served upon the Hearing Officer and the User either personally or by certified mail, no later than 15 business days after the Preliminary User Charge Hearing. The Notice of Formal User Charge Hearing will specify the assigned Hearing Officer and the date(s), time(s), and place of the Formal User Charge Hearing. The Notice of Formal User Charge Hearing must also state the cut-off dates for (1) exchange of exhibits between the parties; and (2) identification of witnesses each party intends to use at the Formal User Charge Hearing.

V. Filing of Documents

- a. The Notice of Preliminary User Charge Hearing, any Notice of Rescheduling of the Preliminary User Charge Hearing, the transcript from the Preliminary User Charge Hearing, and the Notice of Formal User Charge Hearing shall be filed with the Clerk.

- b. Appearances, notices, motions, transcripts, orders, and all other such documents permitted or required to be filed in a Formal User Charge Hearing must be filed with the Clerk during normal business hours at 100 East Erie Street, Chicago, Illinois, 60601. Exhibits exchanged between the parties shall not be filed by the parties at the time of exchange. The Hearing Officer for each Formal User Charge Hearing shall file exhibits that have been admitted into evidence or sought to be admitted via a proper offer of proof with the Clerk upon the issuance of his/her Report to the Board.

- c. User Charge Board Appeal files maintained by the Clerk are open to inspection during normal business hours upon 48 hours advance written request. Copies of documents contained in the User Charge Board Appeal files maintained by the Clerk are available upon payment of reasonable copying costs as determined by the Clerk.

- d. Documents may be filed with the Clerk by certified, registered, or first-class mail, by messenger service, or personally at the Clerk's office. Filing by

electronic submission will not be accepted unless expressly authorized by the Clerk.

e. The number assigned to the appeal must appear on the first page of all documents filed with the Clerk.

f. Each document filed with the Clerk must be accompanied by a certificate of service verifying that the Hearing Officer and all parties of record have been served and the date they have been served.

VI. Hearing Officers

a. The Board shall establish a panel of independent Hearing Officers to oversee all Preliminary User Charge Hearings, conduct all Formal User Charge Hearings and approve all settlement agreements related to issues involving Section 9(b) of the User Charge Ordinance. The Hearing Officers must be attorneys licensed to practice law in the State of Illinois.

b. Hearing Officers are required to disclose to the parties any matter that could be considered a conflict of interest with their duty to render fair and impartial recommendations to the Board of Commissioners. If the Hearing Officer has a conflict of interest, the Hearing Officer must disqualify himself or herself from continued participation in the Formal User Charge Hearing and another Hearing Officer will be appointed.

c. The Hearing Officer must refrain from engaging in any ex-parte communication with either party or their counsel, except by express agreement of the parties or for non-substantive communication involving scheduling or procedure.

d. Hearing Officers are assigned to Board Appeals on a rotational basis by the District's Law Department. Whenever a Hearing Officer is unable to serve in this

position, the Hearing Officer will be replaced by the next available Hearing Officer in the rotational order of selection.

VII. Formal User Charge Hearing Motions

a. All Formal User Charge Hearing motions are to be in writing, filed with the Clerk and served upon the non-moving party and the Hearing Officer. All motions must include a “Notice of Motion” indicating the time, place, and/or manner in which the motion will be heard. If the motion is an “Agreed” or “Routine” motion, the caption of the motion shall so indicate. The moving party may schedule an “Agreed” or “Routine” motion for hearing by telephone conference with the non-moving party and the Hearing Officer. All other Formal User Charge Hearing motions and those which require argument, and/or a briefing schedule, shall be scheduled for hearing at a designated Conference Room in the District’s Main Office Building located at 100 East Erie Street, Chicago, Illinois. The moving party is required to contact the non-moving party to establish an agreed upon briefing schedule for the motion and, if necessary, the time and place for hearing of the motion. The parties shall then report the agreed upon briefing schedule and hearing date for the motion to the Hearing Officer, who shall file an order with the Clerk reflecting the agreement, which shall be served upon both parties. Either party may schedule a Court Reporter at its own cost, to attend any hearing on a motion; however, if either party does so, they must inform the opposing party. Where the parties are unable to agree to a briefing schedule and/or hearing date for the motion, either party may file a separate motion with the Clerk, requesting the Hearing Officer to order a briefing schedule and/or hearing date. After a motion is heard by the Hearing Officer, he or she shall file an order with the Clerk granting or denying the motion, which shall also be served upon both parties.

b. Every motion must clearly state the reasons for and grounds upon which the motion is made and also contain a statement of the relief sought.

c. Motions for continuance of the Formal User Charge Hearing must be in writing, state the grounds for the motion, and list dates within the following 30 business days, absent a showing of exceptional circumstances, when the moving party is available to attend a Formal User Charge Hearing. Motions for continuance of the Formal User Charge Hearing must be filed with the Clerk and served upon the non-moving party and the Hearing Officer at least 5 business days prior to the scheduled beginning of the Hearing. If the motion is granted, the Hearing Officer shall re-schedule the hearing and serve an order upon both parties which reflects the rescheduled hearing date(s).

d. Unless good cause is shown by the moving party, motions for continuance of the Formal User Charge Hearing made less than 5 business days prior to the scheduled hearing date, and all subsequent requests for a continuance after an a party's initial request for a continuance has been granted, must be made in person before the Hearing Officer at the scheduled Formal User Charge Hearing. If the motion for a continuance is granted by the Hearing Officer, but the Hearing Officer determines that the moving party has not shown good cause in its motion for continuance under this subsection, the party necessitating the continuance must pay all reasonable costs of the Hearing that are caused by the continuance, including court reporter and Attorney and Hearing Officer fees, unless otherwise waived by the non-moving party. The Hearing Officer may enter an order regarding the payment of costs under this subsection.

e. The Hearing Officer must rule upon all pending motions either on the record or in writing prior to the Formal User Charge Hearing, at the Formal User Charge Hearing, or in the Hearing Officer's report to the Board of Commissioners.

VIII. Formal User Charge Hearing

a. All Formal User Charge Hearings must be conducted on the record and all testimony must be under oath and recorded stenographically. All parties shall be

given the opportunity to present and respond to evidence and argument. Hearing transcripts are available to either party or any member of the public upon payment of the usual charges for transcripts as designated by the court reporting service. The User has the burden of proof regarding the correctness of the Determination made by the District's Director of Research and Development, ("Director"), under Section 9(a) of the User Charge Ordinance and is required to present its case to the Hearing Officer first. The scope of the Formal User Charge Hearing shall be limited to the issues raised by the User in its appeal to the Director under Section 9(a) of the User Charge Ordinance. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of Illinois shall be followed, however, evidence not admissible under court rules may be admitted if it is the type commonly relied upon by reasonably prudent persons in conducting their affairs. The Hearing Officer may take judicial notice of matters of which the Circuit Courts of Illinois take judicial notice.

b. The User's Counsel, duly licensed to practice law in the State of Illinois, the User's consultant, or other Agent of the User, shall file an Appearance with the Clerk no later than the deadline established for the exchange of exhibits between the parties and the identification of witnesses each party intends to use at the Formal User Charge Hearing.

c. Where a User fails to attend the Formal User Charge Hearing, the Hearing Officer shall note the User's failure to attend on the record, and on the admission into evidence of proof of service of the Notice of Formal User Charge Hearing upon the User, shall dismiss the User's appeal to the Board under Section 9(b) of the User Charge Ordinance and thereafter issue a Report to the Board following the guidelines set forth in subsection f below.

d. The Hearing Officer may issue, in the name of the Board, Notices requesting the attendance and testimony of witnesses and the production of evidence relevant

to any matter involved in the Hearing. Any such Notice must be filed with the Clerk and served upon the parties. The Hearing Officer may examine witnesses.

e. The Hearing Officer has the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order and insure the development of a clear, complete and concise record. The Hearing Officer shall give each party the opportunity to present evidence and to cross-examine the witnesses of the other party. The Hearing Officer may require the submission of post-hearing written statements or proposed findings and conclusions of law by each party. The Hearing Officer may establish reasonable limits on the duration of the testimony and questioning of any witness and may limit repetitious or cumulative testimony and questioning. The Hearing Officer may recess or continue the Formal User Charge Hearing as may be necessary.

f. The Hearing Officer shall file a Report with the Clerk and serve copies upon the parties, within 40 days of the conclusion of the Hearing. The Hearing Officer's Report must state (1) the User's classification, wherein the User has appealed its classification as determined by the Director; and/or (2) both the total net User Charge and either the amount of User Charge owed by the User or the amount of User Charge the District must refund the User for each year upon which the appeal is based, wherein the User has appealed the amount of User Charge billed by the District. The User's classification or the total net User Charge and the amount of User Charge to be owed or refunded shall be based upon the preponderance of evidence in the record and may include penalties and interest, if applicable. The Hearing Officer's Report shall also include findings of fact, conclusions of law, and, if necessary, orders. If the Hearing Officer is unable to file a Report with the Clerk within 40 days of the conclusion of the Hearing, he/she shall notify the parties regarding the expected completion date and explain the reason for the delay. The District's Attorney assigned to the appeal shall transmit the Hearing Officer's Report to the Board within 30 days of his/her receipt of the Report.

g. If the Hearing Officer is unable to file a Report, upon notice to the parties, the Board may reassign the matter to another Hearing Officer who must either reconvene the Hearing or file a Report with the Clerk based upon the record of the hearing. A Report may be based on the record if there was no issue in the Hearing regarding the credibility of witnesses and the new Hearing Officer states that fact in the Report. The new Hearing Officer will be the next available Hearing Officer who will be selected on a rotational basis from the panel of Hearing Officers.

IX. Review by the Board of Commissioners

a. The Board shall either approve or disapprove of the following matters contained in the Hearing Officer's Report: the User's classification, wherein the User has appealed its classification as determined by the Director; the total net User Charge; the amount of User Charge to be owed by or refunded to the User; findings of fact; conclusions of law; and, if necessary, orders. If the User's classification, total net User Charge, amount of User Charge to be owed/refunded, findings of fact, conclusions of law, and orders are rejected, the Board shall remand the matter to the Hearing Officer for further proceedings. If the Hearing Officer's report is accepted by the Board, it shall constitute the final order of the Board. The person(s) who filed an Appearance with the Clerk on behalf of the User, shall be notified either personally or by certified mail of any final order issued by the Board under these Rules. If the Board does not accept or reject a Hearing Officer's Report within 40 days of its receipt of the Report, the Report will be deemed rejected and remanded to the Hearing Officer for further proceedings.

b. If a Report is remanded to a Hearing Officer, the record compiled in the Formal User Charge Hearing shall be reviewed by the Hearing Officer who shall then file with the Clerk a revised Report within 40 days of the date the matter was remanded. Upon remand, the Hearing Officer shall also have the right to

reconvene the hearing for the purpose of taking further evidence. If a hearing is reconvened, the Hearing Officer must file a revised Report with the Clerk within 40 days of the conclusion of the reconvened hearing. Revised Reports are subject to the procedures stated in subsection a of this Section.

c. Any User Charge amounts owed by the User or to be refunded to the User as ordered by the Board must be paid within 35 days after the User or the District receives a written copy of the order of the Board, unless the party to whom the order is issued seeks judicial review under Section X of these Rules.

d. If the User fails to pay amounts owed or the District fails to pay refunds owed as specified by the Board within the time specified herein, the offending party will be assessed interest at the rate of 9 per cent per annum from the final due date for payment of the amounts owed or refund.

X. Judicial Review

The Administrative Review Law, 735 ILCS 5/3-101 et seq., and the rules adopted under that Law, govern all proceedings for the judicial review of final orders of the Board issued under these Rules.

XI. Savings Clause

If the provisions of any paragraph or section of these Rules are declared unconstitutional or invalid by the final decision of any court of competent jurisdiction, the provisions of the remaining paragraphs and sections shall continue in full force and effect.

XII. Effective Date

These Rules shall take effect immediately upon passage by the Board.

Dated: This 10th day of August, 2000.

Approved as to Form and Legality:

Approved:

Senior Assistant Attorney

Terrence J. O'Brien, President
Board of Commissioners
Metropolitan Water Reclamation
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Attorney