

**HEARING EXAMINER'S  
REPORT AND RECOMMENDATIONS**

**REGARDING  
SEPTA'S PROPOSED  
FISCAL YEAR 2012 OPERATING BUDGET  
AND  
FIVE-YEAR FINANCIAL PLAN**

Robert M. Waller, Esquire  
Hearing Examiner

April 29, 2011

## **I. SEPTA HISTORY AND ORGANIZATIONAL STRUCTURE**

The Southeastern Pennsylvania Transportation Authority (SEPTA) was created in 1964 by the Pennsylvania General Assembly, charged with the responsibility to provide public transportation in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties. The transportation services include services that over the years were provided by numerous entities, including the Philadelphia Transportation Company, the Red Arrow Line, Philadelphia Suburban Transportation Company, The Pennsylvania Railroad, and the Reading Railroad.

SEPTA currently operates in these five counties and in the States of Delaware and New Jersey. Its transportation modes include bus, trolley, trackless trolley, subway/elevated, commuter rail, and paratransit services. The result has been a consolidated transportation system covering in excess of 2,000 square miles, with connections to other transportation systems such as Amtrak, New Jersey Transit, PATCO, and systems operating in New Jersey and Delaware.

The fact that SEPTA's system is so widespread, multi-modal, and inter-connected, is one of its great strengths. It also creates substantial challenges with respect to infrastructure, scheduling, and general operations. Exacerbating these challenges is the fact that much of the infrastructure transferred into SEPTA from its numerous predecessors, especially the bankrupt railroads, was near, at, or past its expected useful life. The management and maintenance of such a system are truly challenges of the highest order.

During the period of July 1, 2010 through March 31, 2011, an average of 822,000 people used some form or forms of SEPTA service every weekday. SEPTA anticipates an operating budget for the upcoming fiscal year of \$1.23 billion, and expects to have in excess of 9,000 employees. It is clear that SEPTA, as a provider of transportation, purchaser of goods and services, and as an employer, is a critical component of the economy of Southeastern Pennsylvania.

## **II. THE HEARING EXAMINER**

Pasquale T. Deon, Sr. appointed me Hearing Examiner on March 17, 2011, in accordance with Section 4.02 of the Regulations Governing Tariffs, Emergency Services, Special Services, Promotions and Public Hearings, effective March 1, 2010, for the purpose of considering whether or not the SEPTA Fiscal Year 2012 Operating Budget should be adopted by the SEPTA Board. The appointment is found in the record at SEPTA Exhibit 1.

A request was made at one of the public hearings that I include in my report a description of my professional background. I have resided in Philadelphia since 1971 (with the exception of three years residing in Washington, DC and Boston, Massachusetts), attending college, law school and working in a variety of jobs. As an attorney, I have been a prosecutor with the United States Department of Justice, Organized Crime and Racketeering Section; a civil litigation associate in a private law firm; a sole practitioner with a general law practice, including litigation, transactional, corporate, and family law matters; and a litigation attorney in SEPTA's Legal Division. While I maintain an active license to practice law in Pennsylvania and federal courts, I am as of February 1, 2011, retired from the regular practice of law. I have been and remain a regular user of SEPTA's public transportation services.

### **III. PUBLIC HEARINGS**

The following public hearings were held with regard to the proposed budget for fiscal year 2012 and five-year financial plan:

April 18, 2011, 2:00 p.m.,  
Montgomery County Human Services Center  
Community Room – Main Floor  
1430 DeKalb Pike  
Norristown, Pennsylvania 19404;

April 19, 2011, 11:00 a.m.,  
SEPTA Headquarters  
1234 Market Street  
Philadelphia, Pennsylvania 19107;

April 19, 2011, 5:00 p.m.,  
SEPTA Headquarters  
1234 Market Street  
Philadelphia, Pennsylvania 19107;

April 20, 2011, 2:00 p.m.,  
Delaware County Court House  
County Council Meeting Room, 1<sup>st</sup> Floor  
201 West Front Street  
Media, Pennsylvania 19063;

April 21, 2011, 10:00 a.m.,  
Bucks County Free Library  
Pearl Buck Meeting Room  
150 South Pine Street  
Doylestown, Pennsylvania 18901;

April 21, 2011, 2:00 p.m.,  
West Chester Borough Hall  
Council Chambers  
401 East Gay Street  
West Chester, Pennsylvania 19380.

I find that all of these locations are physically accessible to people with disabilities.

Notifications of these hearings were published in the following publications:

Bucks County Courier Times, on March 18, 2011 and April 1, 2011;

The Intelligencer, published in Doylestown, Pennsylvania, on March 18, 2011 and April 1, 2011;

Delaware County Daily Times, on March 18, 2011 and April 1, 2011;

Metro Philadelphia, on March 18, 2011 and April 1, 2011;

The Philadelphia Inquirer, on March 18, 2011 and April 1, 2011;

Philadelphia Daily News, on March 18, 2011 and April 1, 2011;

The Philadelphia Tribune, on March 18, 2011 and April 1, 2011;

The Times Herald, published in Norristown, Pennsylvania, on April 14, 2011;

The Reporter, published in Lansdale, Pennsylvania, on March 18, 2011 and April 1, 2011;

Daily Local News, published in West Chester, Pennsylvania, on March 18, 2011 and April 1, 2011; and

Al Dia, published in Philadelphia, Pennsylvania, in issues dated March 20-26, 2011, and April 3-9, 2011 (in Spanish).

Affidavits documenting these publications are identified in the record as SEPTA Exhibits 2(a)-(j). The text of the Notice is set forth in SEPTA Exhibit 3.

Notifications of these hearings were posted on or before March 18, 2011, at the following locations:

- SEPTA 15<sup>th</sup> Street Sales Office, Philadelphia, Pennsylvania;
- Chester Transportation Center, Chester, Pennsylvania (6 locations);
- Norristown Transportation Center, Norristown, Pennsylvania (8 locations);
- 30<sup>th</sup> Street Train Station, Philadelphia, Pennsylvania;
- Suburban Train Station, Philadelphia, Pennsylvania;
- Market East Train Station, Philadelphia, Pennsylvania;
- 69<sup>th</sup> Street Terminal, Upper Darby, Pennsylvania (10 locations);
- Olney Transportation Center, Philadelphia, Pennsylvania (5 locations);
- Frankford Transportation Center, Philadelphia, Pennsylvania (14 locations);
- 1234 Market Street, Philadelphia, Pennsylvania (2 locations); and
- Broad Street Subway, Walnut-Locust Station, Philadelphia, Pennsylvania.

Verifications of these postings are found at SEPTA Exhibit 4.

The text of the notice of hearings and proposed budget and five-year plan were read onto 4-track audio cassettes and distributed to the Philadelphia Library for the Blind, and were made available on the website of Associated Services for the Blind and through

the National Federation of the Blind Newsline toll-free telephone service. (SEPTA Exhibits 5(a) and (b).)

I find that the text and publications of these notices meet and far exceed the requirements of Section 4.03 of the Regulations that SEPTA must follow in connection with public hearings.

The following SEPTA Exhibits were admitted into the record:

- SEPTA Exhibit No. 1: Appointment of Hearing Examiner Robert Waller, Esquire.
- SEPTA Exhibit No. 2(a-j): Proofs of publication of Hearing Notice in local newspapers.
- SEPTA Exhibit No. 3: Text of Hearing Notice.
- SEPTA Exhibit No. 4: Proofs of posting Hearing Notice at various SEPTA locations.
- SEPTA Exhibit No. 5(a): Affidavit that Hearing Notice and proposed budget and financial plan were read onto 4-track cassettes, distributed to Philadelphia Library for the Blind, and made available through Associates Service for the Blind (ASB), ASB website, and through the National Federation of the Blind Newsline toll-free telephone service.
- SEPTA Exhibit No. 5(b): Discs identical to those described in 5(a).
- SEPTA Exhibit No. 6: FY 2012 Operating Budget and Five-Year Financial Plan.
- SEPTA Exhibit No. 7: SEPTA's Testimony concerning FY 2012 Operating Budget and Five-Year Financial Plan.
- SEPTA Exhibit No. 8 - 24: Public Hearings Testimony Forms (PHTF) for Doris Freeman, Douglas Dichl, Charles Bode, Ed O'Donnell, Anne Croisier, Alfred Achert,

Jr.; Matthew Mitchell, Lance Haver, Eddie Glover, Bernice Hall, Thaddeus Robinson, Andy Sharpe, Letitia Jeavons, Tom Dorricott, Francis Miller, John Pawson and Casey Policastro.

SEPTA Exhibit No. 25: April 25, 2011 letter from Frank Gormley, Director, Operations Budget to Robert Waller, Esquire re: SEPTA's Service Stabilization Fund Balance.

SEPTA Exhibit No. 26: April 29, 2011 letter from Frank P. Gormley to Hearing Examiner addressing points raised in written submission of City of Philadelphia, Mayor's Office of Consumer Affairs.

The following Public Exhibits were admitted into the record:

Public Exhibit No. 1: April 11, 2011 Memorandum from Tom Dorricott, Brotherhood of Locomotive Engineers and Trainmen, to SEPTA's Budget Department.

Public Exhibit No. 2: Written statement from Charles Bode, Tri-State Citizen's Council on Transportation.

Public Exhibit No. 3: Written statement from Anne Croisier.

Public Exhibit No. 4: Written statement from Delaware Valley Association of Rail Passengers, Inc., dated April 18, 2011.

Public Exhibit No. 5: Written statement from S. Perzan.

Public Exhibit No. 6: April 14, 2011 letter from Delaware County Planning Department, John E. Pickett, Director, to SEPTA General Manager.

Public Exhibit No. 7: April 23, 2011 e-mail from John Pawson to SEPTA Operating Budget.

- Public Exhibit No. 8: Submission from City of Philadelphia, Mayor's Office of Consumer Affairs, Lance S. Haver, Director.
- Public Exhibit No. 9: Submission from Pennsylvania Transit Expansion Coalition.
- Public Exhibit No. 10: Statement of Brotherhood of Locomotive Engineers and Trainmen.
- Public Exhibit No. 11: April 28, 2011 letter from Rina Cutler, City of Philadelphia, Deputy Mayor for Transportation and Utilities.

For the most part, the hearings were sparsely attended. SEPTA staff from various departments were present to answer questions from the public. It is likely that this limited attendance is attributable to the fact that the proposed budget includes no fare increase and no service reductions, which is consistent with the attendance history of prior hearings. One individual (see Public Exhibit 7) suggested that hearings be held in what he described as "more centrally located hearing locations," as opposed to the county seats. Identifying "central" locations in the 2,000 plus square miles service area would be no easy task, and any consideration of increasing the number of locations would have to be mindful of the requirement that all locations must be accessible to people with disabilities.

Much of the testimony at the various hearings addressed service, as opposed to budgetary considerations. For the most part, I allowed this testimony despite the fact that it was not relevant to the subject of the hearings, and I will not address those matters in this report. I do note that SEPTA personnel who were present at the hearing did engage in off-the-record discussions with some of the witnesses in an attempt to further understand the concerns and to answer questions. Given the limited amount of testimony or comments directed to the proposed budget, the irrelevant testimony did not obstruct or delay the hearings, and allowed for meaningful dialogue between the public and SEPTA personnel.

Much of the relevant testimony and evidence supported the proposed budget. The following individuals and organizations endorsed, with minor reservations, the proposed budget:



- Tom Dorricott, Brotherhood of Locomotive Engineers and Trainmen (Public Exhibit 1; Testimony, April 20, 2011, p. 22; Public Exhibit 10);
- Delaware Valley Association of Rail Passengers, Inc. (Public Exhibit 4; Testimony, April 20, 2011, p. 16 and April 19, 2011, p. 36-37); and
- Delaware Valley County Planning Department (Public Exhibit 6).

Several individuals and organizations expressed their concerns that the five-year financial plan understates the future costs associated with items such as fuel, electric power, and employee benefits. There is also concern that future subsidies will not keep pace with increased costs. All of these concerns are legitimate. There has been no evidence presented, however, to demonstrate that the proposed budget and five-year plan are incorrect in their projections.

Some very specific comments and criticisms were submitted by the City of Philadelphia, Mayor's Office of Consumer Affairs, through its Director, Mr. Lance S. Haver (Public Exhibit 8). I will address them in the order presented:

1. "SEPTA errors [sic] in failing to reveal the amount of money in its Service Stabilization Fund and ignores a directive of the Hearing Examiner to make the amount known before the close of the record." This is incorrect. SEPTA has submitted SEPTA Exhibit 25, which states that the Fund balance at the end of Fiscal Year 2011 will be between \$85 million and \$110 million, and explains to my satisfaction why a more precise figure cannot be determined. SEPTA, in SEPTA Exhibit 26, also notes that the funds are invested in an AAA-rated Institutional Government Money Market Fund.

2. SEPTA's plan to increase revenues from sources other than riders and subsidies is insufficient. Mr. Haver criticizes SEPTA for giving "little or no thought as to how to generate new revenues." SEPTA has identified its expectation that increased revenues will be received through advertising ventures (SEPTA Exhibit 7). Mr. Haver states that "perhaps" members of the "creative community" will find ways to use SEPTA's infrastructure, and "perhaps" SEPTA facilities will have value to those wishing to establish "wi-fi hot spots." Perhaps this is true. Perhaps it is not. Mr. Haver has presented no evidence or suggestion as to specific proposals, individuals, or organizations that could be explored in these regards. He suggests that I "assume" a revenue amount that "should" be earned from alternative sources, and deduct that amount from SEPTA's fare proposal. I find that to make such assumptions would be an irresponsible way to

approach a proposed budget, and I decline to do so. Furthermore, SEPTA has provided additional detail as to its advertising and real estate rental plans in SEPTA Exhibit 26.

3. SEPTA has not done enough to protect itself from projected rising electric rates. Mr. Haver again criticizes SEPTA without offering any documentation as to its deficiencies and without providing any evidence or information that suggests alternatives, and he again requests me to assume amounts that "should have been saved." I again decline to do so. SEPTA has given more detailed information regarding its efforts in this regard in SEPTA Exhibit 26.

4. The current share of local funding is not "fair and just." Mr. Haver concedes that this comment may have no impact on SEPTA's operating budget. I agree. I express no opinion as to the percentage of local subsidy or the City's representation on SEPTA's Board.

5. The "affect" [sic] of SEPTA's elimination of off-peak day rates on the regional rail. This speaks to a change in the regional rail line rates structure that was made last year. I recommend that SEPTA staff analyze the effects of this change at the appropriate time. SEPTA Exhibit 26 describes the analyses performed on rail ridership on a bi-annual basis, and the results of a recent study for the period ending March, 2011. I see no reason for the Board to delay its review of the proposed budget because of this item.

6. SEPTA should do more to grow its ridership. While it is true that SEPTA should always be mindful of ways to market its services, I do not believe that the failure to include a marketing plan in the proposed budget warrants any delay on the part of the Board in considering the proposed budget. SEPTA Exhibit 26 contains details about SEPTA's marketing efforts.

7. "SEPTA errors" [sic] in not informing riders of pending risks. I believe it is outside the scope of my appointment as Hearing Examiner to advise the SEPTA Board and staff as to what steps should be taken to alert the public and elected officials as to the needs of public transportation and the negative economic, health and social consequences that would flow from any significant diminution of these services. Once again, SEPTA Exhibit 26 describes SEPTA's efforts in this regard.

I also note that the official statement from the City of Philadelphia, signed by Rina Cutler, Deputy Mayor for Transportation and Utilities, compliments SEPTA on its strides in several areas, including increasing revenue through alternative sources, and states its support of the Service Stabilization Fund (Public Exhibit 11).

#### IV. DISCUSSION AND RECOMMENDATION

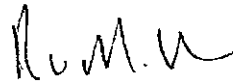
I have considered the relevant testimony and exhibits presented in these hearings, and recommend that the SEPTA Board adopt the proposed budget.

The proposed budget is a balanced budget, in which expected operating revenues and subsidies equal expected operating expenses, and therefore satisfies the statutory requirement of a balanced budget for each fiscal year. SEPTA follows Generally Accepted Accounting Principles, and its budget for the fiscal year beginning July 1, 2010, was awarded a Distinguished Budget Presentation Award by the Government Finance Officers Association of the United States and Canada (FY 2012 Operating Budget Proposal, page i).

The proposed budget, like any budget, relies on estimates of income and expenses. Several of the items that must be predicted have been, and remain extremely volatile, most notably fuel, electric power, and fringe benefit costs. While several witnesses expressed concern about the validity of the estimates in the budget and five-year plan, no credible evidence was presented that demonstrates that the estimates are not sound. The proposed budget and five-year plan recognize continued uncertainty in the amounts to be received from the Public Transportation Trust Fund, and further recognize that projected increases in ridership, by themselves, will not produce additional revenue equal to projected increases in expenses. The financial projections prudently anticipate the need for fare increases in Fiscal Years 2014 and 2017.

In my opinion, the SEPTA Board can feel confident in the methodology employed in developing the proposed operating budget and financial projections and the projections and estimates set forth therein. Once again, I recommend to the Board that it adopt the Fiscal Year 2012 Operating Budget Proposal and Fiscal Years 2013-2017 Financial Projections.

Respectfully submitted,



Robert M. Waller, Esquire