

BEFORE THE  
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD

In the Matter of the Philadelphia Water Department's Proposed Changes in Water, Wastewater and Stormwater Rates and Charges	Fiscal Years 2022-2023
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**ANSWER OF THE PHILADELPHIA WATER DEPARTMENT TO  
THE APPEAL BY LANCE HAVER**

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**Introduction**

The Philadelphia Water Department (“PWD” or “Water Department”) submits this Answer to the Appeal (dated April 5, 2021) by Lance Haver (hereinafter the “Haver Appeal”) to the Philadelphia Water, Sewer and Storm Water Rate Board (“Rate Board” or “Board”). The Haver Appeal arises from his Motion for Continuance (“Motion”) in the above referenced rate proceeding. This Motion was proffered on March 15, 2021 and seeks to delay the PWD rate case because federal legislation enacted since the rate filing (including prominently the American Rescue Plan Act or “ARPA”) that would allocate billions of dollars in relief to states, local governments, schools, colleges, businesses, restaurants and individuals. Mr. Haver contends that such relief, coming to Philadelphia, will negate the need for the proposed rate increase.

Hearing Officer Marlane Chestnut, on March 21, 2021, indicated that she would hold the Motion in abeyance. She also requested that the Department provide confirmation of any relief that it would receive under ARPA or related federal legislation. In response to the Hearing

Officer's request (and the concerns of rate case participants), the Department asked the City Administration to respond to this inquiry. The Administration's response was provided via correspondence from the Director of Finance to Melissa LaBuda, dated March 26, 2021.<sup>1</sup> This letter indicated that federal assistance received by the City through ARPA would not be allocated to PWD (Water Fund), as the General Fund had its own substantial needs. Please note that the substantive content of this letter renders the factual basis for Mr. Haver's Motion moot. No ARPA relief (through the City) is designated for PWD. Also, please recall that the Motion has not been decided as of this date. It is within this context the Haver Appeal was filed (in the form of an electronic petition in numbered paragraphs). The Department's answer to the same is provided below.

#### **Answer to Appeal**

**1 to 4.** Paragraphs 1 to 4 of the Haver Appeal are admitted consistent with Section X of PWD Rebuttal Statement 1.

**5 to 8.** Paragraphs 5 to 8 of the Haver Appeal are denied consistent with Section X of PWD Rebuttal Statement 1 and PWD Schedule ML-10. No response is required to Mr. Haver's legal interpretations and conclusions.

By way of further response, Section X of PWD Rebuttal Statement 1 and PWD Schedule ML-10 address the availability of funds under ARPA. Important points from those documents are summarized as follows:

- PWD does not expect to receive direct stimulus payments through the City. The scope of relief to be provided to the Department is described in the memorandum

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<sup>1</sup> This letter was provided for the record and marked as Schedule ML-10 (appended to PWD Rebuttal Statement 1).

from the City's Finance Director, Rob Dubow, to the Department, dated March 26, 2021. (Schedule ML-10.).

- It is clear, based on the federal legislation, that the stimulus funds being distributed by the U.S. Department of Health and Human Services (HHS) will be limited to certain households. The amount and timing of those funds remains unclear.

9. It is admitted that Mr. Haver filed a motion<sup>2</sup> requesting that the Rate Board delay the 2021 Rate Proceeding pending determinations regarding the distribution of funds under the Consolidated Appropriations Act of 2021, enacted on December 27, 2020,<sup>3</sup> and the American Rescue Plan Act,<sup>4</sup> enacted on March 11, 2021 (collectively, the "federal legislation"). By way of further response, the Department filed an Answer<sup>5</sup> to that Motion on March 18, 2021. PWD's Answer is incorporated herein by reference.

Important points from PWD's Answer to Mr. Haver's Motion include:

- The Rate Board lacks the requisite statutory authority to grant the relief sought by Mr. Haver (delay or extend the statutory period for rate-setting). See Section II.A of PWD Answer to the Motion for Continuance.
- Nothing in the Philadelphia Code or the Rate Board's Regulations authorize the Board to extend the statutory period or otherwise hold in abeyance its decision on proposed rates and charges. As explained in Section II of PWD's Answer to the Motion for Continuance, the federal legislation does not render the Rate Board unable to act on the Department's rate request.
- Section 5-801 of the Philadelphia Home Rule Charter ("Charter") establishes that the water and wastewater systems shall be self-sustaining. Specifically, the

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<sup>2</sup> <https://www.phila.gov/media/20210318160110/Lance-Haver-PWD-Continuance-Motion-1st.pdf>

<sup>3</sup> 116 P.L. 260; 134 Stat. 1182. *See, e.g.*, 15 USC § 9058a.

<sup>4</sup> Public Law No: 117-2.

<sup>5</sup> <https://www.phila.gov/media/20210319161321/RESPONSE-TO-MOTION-FOR-CONTINUANCE.pdf>

Charter mandates that rates and charges shall be fixed so as to yield at least an amount equal to operating expenses and debt incurred or about to be incurred by the Department.<sup>6</sup> The Charter intends for the fixing and regulating of the Department's rates and charges be removed from political pressures.<sup>7</sup>

- The requested delay in the timely implementation of rate increases (from the projected effective date of September 1, 2021) is in contravention to the Philadelphia Code and may cause harm to the utility and its customers.

**10 to 11.** Paragraphs 10 to 11 of the Haver Appeal contain a description of actions by the Hearing Officer.<sup>8</sup> Those actions are memorialized in the record and any factual allegation in the Haver Appeal contrary to and/or not corroborated by the record, are specifically denied. No response is required to Mr. Haver's legal interpretations and conclusions.

By way of further response, it should be noted that the actions by the Hearing Officer described in the Haver Appeal are non-final. The actions, as described, do not finally dispose of any claims of any party. The Rate Board's Regulations do not provide for appeals of non-final actions of the Hearing Officer.

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<sup>6</sup> "The standards pursuant to which rates and charges shall be fixed shall be such as to yield to the City at least an amount equal to operating expenses and interest and sinking fund charges on any debt incurred or about to be incurred for water supply, sewage and sewage disposal purposes." Section 5-801 of the Charter. "In computing operating expenses, proportionate charges for all services performed for the Department by all departments, boards or commissions of the City are also included." *Id.*

<sup>7</sup> See, Annotation to Section 5-801. In November 2012, Philadelphia voters approved an amendment to the Charter to allow City Council to establish, by ordinance, an independent ratemaking board responsible for fixing and regulating rates and charges for water, sanitary sewer and stormwater services. Under the Rate Ordinance adopted by the Council, the Board replaces the Department as the entity responsible for setting water, wastewater and storm water rates. The Rate Ordinance, which is Rate Ordinance is Chapter 13-100 of the Philadelphia Code, became effective January 20, 2014. The Board's first rate proceeding was completed in 2016.

<sup>8</sup> Hearing Officer's Determination Re: Haver Motion for Continuance, <https://www.phila.gov/media/20210325171439/Hearing-Officer-Decision-on-Haver-Motion.pdf>

**12.** Paragraph 12 of the Haver Appeal contains a description of the letter from the City's Director of Finance (Schedule ML-10). That document speaks for itself, and any factual allegations in the Haver Appeal contrary to and/or not corroborated by the Finance Director's Letter, are specifically denied. No response is required to Mr. Haver's legal interpretations and conclusions.

WHEREFORE, on the basis of the foregoing, the Department respectfully requests that the Rate Board (a) deny any and all relief requested by Mr. Haver in the Haver Appeal; and (b) grant relief in favor of the Department as may be just and reasonable under the circumstances.

Respectfully submitted,

/s/ Andre C. Dasent

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ANDRE C. DASENT, ESQUIRE  
Attorney for Philadelphia Water Department

Centre Square – East Tower  
1500 Market Street, 12th Floor  
Philadelphia, Pennsylvania 19102

Dated: April 9, 2021