

BEFORE THE
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD

Philadelphia Water Department Proposed	:	
Changes in Water, Wastewater and	:	FY 2022-2023
Stormwater Rates and Charges	:	

ANSWER OF THE PUBLIC ADVOCATE
IN OPPOSITION TO MAY 3 MOTION TO COMPEL

I. Introduction

On May 3, 2021, Lance Haver submitted a writing styled “Motion to Compel the Public Advocate to put on the record the name, email address, physical address, and phone number of every Civic Group, Community Group, Labor Union, Elected Official and Individual it contacted regarding the Proposed Water Rate Increase” (Motion to Compel). In numbered paragraphs, the Motion to Compel sets forth a number of statements arguably purporting to be “facts.”¹

As Mr. Haver is aware, on April 30, 2021, Hearing Officer Marlane Chestnut entered an order setting forth the contents of the record of the above-captioned rate proceeding. In so doing, the Hearing Officer recognized that the record of the rate proceeding had closed, with certain exceptions. Mr. Haver’s Motion to Compel and the documentation sought thereby is not among the exceptions recognized. Accordingly, Mr. Haver’s Motion to Compel is as untimely as it is improper. Nonetheless, as a courtesy to Mr. Haver, the Public Advocate provides as Appendix I a list of pre-Public Input Hearing direct outreach contacts.

The Hearing Officer should note that the Public Advocate has utilized its website and social media to disseminate information about the Public Input Hearings. This information is publicly available. Furthermore, communications with individual customers were conducted informally, in response to questions posed to Community Legal Services. Because it is not always clear in those instances whether the individual is seeking legal advice or assistance, Community Legal Services takes the position that such contacts are confidential. Additionally, as Public Advocate, Community Legal Services has on occasion provided updates to City Council staff members (including the offices of Councilmembers Gilmore Richardson, Gym and Sanchez) due to ongoing related and unrelated collaboration with those offices.

For nearly three decades, Community Legal Services has served as the Public Advocate in Philadelphia Water Department (Department) rate proceedings. In that time, the Public Advocate has zealously represented the interests of the Department’s residential and small user customers. As a result of its advocacy, the Public Advocate has saved the Department’s customers millions of dollars in rates and contributed to the establishment of a first-in-the-nation

¹ The majority of statements constitute accusations, rather than factual averments.

water assistance program that calculates bills of low-income customers based on an affordable percentage of household income. The Public Advocate takes seriously its obligation to protect small users from unjust and unreasonable rate increases and to determine whether the interests of these customers is best advanced through litigation or settlement. In contrast, Mr. Haver's Motion to Compel appears intended to stir up opposition to the proposed settlement and undermine public confidence in the rate proceeding.

For the reasons set forth in this Answer, the Public Advocate urges the Hearing Officer to reject Mr. Haver's motion as untimely and improper.

II. Answer

1. Denied. The premise of Mr. Haver's assertion is incorrect; the Public Advocate is not required to solicit feedback from members of the public in the context of settlement negotiations which, by their nature, are confidential. By way of further response, prior to the conclusion of the discovery period, which occurred on April 9, 2021, every participant in the proceeding had an opportunity to conduct discovery regarding the Public Advocate's decisions and positions. Any participant desiring to understand the Public Advocate's positions could have sought discovery in the normal course of the proceeding. In addition, all participants had an opportunity to engage in appropriate cross-examination of the Public Advocate's witnesses at the Technical Hearing in this matter. To aid small user customers in participating in this proceeding, the Public Advocate prepared and disseminated a participation guide, which was made available on the Public Advocate's website on March 3, 2021. The guide provided information on how to formally participate in the case and how to provide public input.

2. Admitted in Part; Denied in Part. By way of further response, the Public Advocate's contract sets forth the specific services the Public Advocate provides, which include outreach to provide information to reach small user customers and assisting small user customers in sharing their views and concerns in the public input hearings.

3. Denied. The Public Advocate denies that the majority of Community and Civic groups, individuals and elected officials testified at public input hearings. The Public Advocate submits that the majority of those individuals who testified at public input hearings opposed increases in rates and charges.

4. Denied. By way of further response, the proposed partial settlement is not secret. See April 30, 2021 Tr. at 19:15-16. Moreover, Mr. Haver's assertion mischaracterizes the process by which rate case settlements are routinely negotiated in Pennsylvania. In Pennsylvania, statutorily appointed advocates routinely represent the interests of customer classes and enter into settlement agreements informed by both public input and testimony of expert witnesses. Mr. Haver's characterization of the settlement negotiations in this proceeding as being "in secret" appears intended to mislead members of the public.

5. Denied. See response to Paragraph 4, *supra*. By way of further response, the Public Advocate will submit a Statement in Support of Partial Settlement, detailing the Public Advocate's reasons for supporting the proposed Partial Settlement.

6. Denied. By way of further response, Mr. Lafayette Morgan, Jr., testified on behalf of the Public Advocate as follows:

Because of the significant amount of stimulus funding the Department is likely to receive, I first recommend separate reporting and accounting for these funds, to reduce the rate impact on customers over the rate period and in future rate proceedings. I have reviewed the Department's rate increase filing, reviewed, and analyzed the responses to the data requests that were served on the Department, and examined the electronic spreadsheets supporting its claim for a rate increase. Based upon my review, I recommend that the Board not approve the increase in rates as filed by the Department. Instead, I am recommending adjustments to the cost of service, as presented by the Department, to reduce costs that appeared to be excessive and to reflect certain costs at a more reasonable level. As a result of these adjustments, my analyses show that the Department's request to increase rates is unnecessary and the Department can manage its coverage requirements by utilizing Rate Stabilization Fund transfers while maintaining adequate reserves.

PA St.-1 at 5:20-6:7.

7. Denied as Stated. The incorrect premise for the statement is that members of the public should provide their opinions to the Public Advocate in confidential settlement negotiations. This disregards the framework of the rate proceeding which, pursuant to City Council Ordinance and the Board's regulations, entails a process for the public to provide input **to the Board** and a separate technical review process by/among registered participants.

8. Denied.

9. Denied as Stated. The incorrect premise for this statement is that witnesses for the Department, the Public Advocate or other participants should possess information regarding traffic to the independent Rate Board's website.

10. Denied. This statement expresses the subjective opinion of Mr. Haver, premised upon a hypothetical lack of knowledge among the "Public," rather than a discernible fact.

11. Denied. By way of further response, the Public Advocate serves pursuant to a contract with the Rate Board to represent the interests of small user customers of the Department, which it has zealously done at all times.

12. Denied. See response to Paragraphs 7 and 11, *supra*.

13. Denied as Stated. See response to Paragraph 7, *supra*.

14. Denied. The proposed partial settlement is not secret. See April 30, 2021 Tr. at 19:15-16. By way of further response, the Public Advocate is providing the outreach list it compiled of direct contacts made in advance of the Public Input Hearings as Appendix I hereto as a courtesy to Mr. Haver who belatedly seeks this information after the conclusion of the discovery period and technical hearing in this proceeding. The Public Advocate has not tracked the names, emails, and phone numbers of any individuals contacted via this outreach (conducted by multiple CLS attorneys) and it would be unreasonably burdensome and potentially violative of confidentiality obligations to require the Public Advocate to undertake additional efforts and expense to assemble such information.

III. Conclusion

For all of the foregoing reasons, the Public Advocate submits that the Motion to Compel should be denied as untimely and improper.

Respectfully submitted,

Robert W. Ballenger
Josie B. H. Pickens

For the Public Advocate

APPENDIX I - Water Rate Increase Public Input Outreach

Date	Person/Entity Receiving Outreach
3/3/2021	CLS legal management (for distribution to groups)
3/3/2021	Staff of CM Sanchez
3/3/2021	ESWA
3/3/2021	CM Gilmore Richardson Water Subcommittee
3/3/2021	Drexel Law Community Justice Center
3/3/2021	Reclaim Philadelphia
3/4/2021	Debt Collective
3/4/2021	POWER
3/4/2021	ECA
3/4/2021	Movement Alliance Project
3/4/2021	Earth Quaker Action Team
3/5/2021	Alliance for a Just Philadelphia
3/9/2021	Community Redevelopment Legal Assistance listserve
3/9/2021	CM Gilmore Richardson Energy Subcommittee
3/9/21	Email to 43 consumer and environmental advocacy organizations
3/10/21	Email to legislative staff for: Sen. Haywood, Sen. Saval, Sen. Street, Rep. Kinsey, Rep. Fiedler, Rep. Krajewski, Rep. Rabb, Councilmember Brooks, Councilmember Gym, Councilmember Gauthier, Councilmember Gilmore Richardson
3/15/21	Email to HERE4CJ Coalition email list