

**BEFORE THE  
PHILADELPHIA WATER, SEWER, AND STORM WATER RATE BOARD**

**In the Matter of the Philadelphia Water Department's Proposed Change in Water, Wastewater, and Stormwater Rates and Related Charges**      **Fiscal Years 2022 – 2023  
Rates and Charges to Become Effective  
: September 1, 2021 and September 1, 2022**

*Objection to Both the Process and Terms  
Of the Proposed Settlement.*

Overview:

Federal, Pennsylvania Case Law and Common Law all place the burden of a petition on the moving party. In this instant case the Petitioners for the Proposed Settlement have the burden of proving that the proposed settlement is legal in the Public Interest, reasonable and supported by the record. The Proposed Settlement fails each of the tests as outlined below.

**The Process used to arrive at the proposed settlement violates Pennsylvania Case Law and well-established principles of due process. Pulitzer Prize and National Humanities Medal winner Gordon Woods, in his seminal book, The Radicalism of the American Revolution exposed the fallacy of the Public Advocates position, that the privileged well-educated class can speak for everyone.**

*The Public Advocate mandate is to represent the Public  
To Do That It Must Seek Public Input  
The Public Advocate is no more the Public than Louis XIV was the State*

1. The Philadelphia Home Rule Charter requires hearings be held before any rate increase can be granted. The proposed settlement fails to meet that requirement. Since the passage of the American Recovery Plan Act, the amount of money that the Philadelphia Water Department (PWD) requires is unknown.
2. In uncontroverted testimony, and in the rulings by the Hearing Examiner, it is acknowledged that it is unclear how much, if any, funds the PWD will receive from the Act and therefore unclear how much, if any, additional revenue PWD requires.
3. The fraudulent evidence, a letter misstating the process by which the City uses to enacted a budget, was introduced into the record by PWD's Counsel(s)
4. At the time the letter was introduced, it was known to include misleading, incorrect and fraudulent information by the PWD Counsel(s)
5. On the Record, Councilmember Maria Quiones -Sanchez stated *"Let's not only say it after the social unrest and the COVID recovery, a bump that we've had in the road as of the vaccination and access, let us put a pause button on this particular action and use the political will that exists in the City of Philadelphia to ensure that we're prioritizing capital improvement and not use a class A rating as an excuse to over burden the residents at this time."*
6. It is uncontroverted that Council is still debating how the City's revenues will be distributed; how the funds from the Recovery Act will be distributed and to what extent, if any, additional funds will be allocated for PWD potentially making any rate increase unnecessary
7. It is uncontroverted that this fact was accepted by the Hearing Examiner in her statement regarding the motion to continue the hearing until such time as the amount allocated to PWD was known: *"Mr. Haver is correct that this {allocations from the Act} may be a significant factor in evaluating the need for any rate relief from PWD's customers."*
8. It was impossible for the Public to know the amount of money being sought in the rate increase in clear violation of Pennsylvania Case Law, which unequivocally states that for hearing to meet the legal requirements, the amount sought must be known, stated and available to the public. **(550 A.2d 274 (Pa.Cmwlt. 1988) 121 Pa.Cmwlt. 139**
9. The proposed settlement compounds the illegality of the hearing by shutting the public out of its right to be notified about the terms of the settlement; the Public's right to inform the Public Advocates of the Public's concerns; and the Public's right to be represented by the Public Advocate

10. It is uncontroverted that on the record both the Hearing Examiner and the Public Advocate have stressed how important Public Input is:” *Should the Water Department raise your rates during a pandemic or should it look for other ways to lower costs? What about the estimated \$1.1 billion in local government recovery funds that Philadelphia is going to get? Shouldn't the City use that money to support the Water Department instead of increasing your rates? What would it mean to your family to have to pay significantly more money for water right now* “ The Public Advocate at the Public Hearing explaining why it is so important for the Public to testify. . . . *The reason we have these public hearings, is to hear how it impacts people to put a face to the impact of the decisions. I find it sometimes easy to forget that real people are affected by these decisions and by these utilities. “. . .” So that should help you keep in touch in terms of what's going on, because we do try to keep everyone notified, okay?* Statement of the Hearing Examiner at the Public Hearing.
11. It is uncontroverted that a Public Advocate is appointed to represent the interest of the Public
12. Ex se intellegitur ,it is impossible for a Public Advocate to represent the Public without creating structures to allow for the Public to participate in the rate making process, to have input into the Public Advocate’s positions and to shape the concerns and needs that the Public Advocate advances
13. Ex se intellegitur allowing the Public Advocate to decide what is best for the Public, without Public Input deprives the Public of representation
14. It is Uncontroverted that over 100 people provided testimony, with only one person supporting the rate increase.
15. It is uncontroverted that not a single member of the Public who provided testimony urged the Public Advocate to enter “private” negotiations with PWD, and agree to give the PWD 57 million more than the Public Advocate’s witness stated on the record was needed.
16. It is uncontroverted that the Public Advocate’s statement on the record “*And we're going to be taking some different positions from the Department in this case about what should happen next.*” (from the notes of the Public Testimony hearing) did not inform the Public that the Public Advocate would fail to advance the Public’s well stated position “do not raise rates”; and instead agree to allow PWD to get every cent of a rate increase PWD sought through the settlement; and do it without providing any notice to the public before agreeing to the terms of the settlement

17. It is uncontroverted that the well-established principals in any settlement discussion is representatives meet, reach a tentative agreement and then seek their clients input into the agreement before any agreement is signed.
18. It is uncontroverted that PWD's counsel (s) followed that well established procedure, talking with parties and then seeking its client's approval to settle
19. It is uncontroverted that the Public Advocate did not follow those well-established procedures.
20. Unlike every other lawyer participating in the "private discussions" regarding the settlement, The Public Advocate sought no input, before agreeing to the settlement terms. Its decision to turn its back on the very people who are paying his salary, the Public Advocate makes a mockery of his own on the record statement that that public input is important and must be listened to.
21. The failure of the Public Advocate to notify the people who participated in the hearing, community and civic groups, labor unions, advocacy organizations and elected officials of what the proposed terms of the settlement were; its failure to seek input from any member of the Public is hubris; The Public Advocate is no more the Public than Louis the XIV was the State.
22. Pulitzer Prize and National Humanities Medal winner in his seminal book, The Radicalism of the American Revolution" exposed the fallacy of the Pubic Advocates position, that it, and it alone, knew what was best for everyone. Dr. Woods writes that the wealthy slave owners claimed that because they had no financial need they were the only ones able to judge what was best for all of the people. The elite, many of them lawyers, were dismayed to find out that the women, working people, people of color and slaves did not agree with the decisions the wealthy slave owners made. According to Woods, those who had been shut out were successful at showing that the privileged had a vested interest, that they did not want to lose their privileged positions of wealth, status and the ability to have the government pay them for their service and were therefore unable to be unbiased.
23. Because the the amount PWD will need is still unknown, because the Pubic has been shut out, not given an opportunity to shape the position and/or agreements reach by the Public Advocate, the hearings fail to meet the legal requirements.

## The Proposed Settlement Is Not In the Public Interest

*The proposed settlement is not in the public interest; if it is approved PWD will not have to seek any additional funds from the recovery act, it will not require PWD to add a single family into its low income plan, the operations of PWD will not improve, no local jobs will be created, no new businesses will be recruited into the City; PWD's infrastructure will not be used to advance renewable energy and reduce the City's carbon foot print; and the proposed settlement fails to make it easier for local, minority owned businesses to win bids and create living wage jobs in the City of Philadelphia*

24. The proposed Settlement gives provides PWD with every penny it wants without requiring PWD to seek and receive any money from the Recovery Plan Act
25. The Proposed Settlement instead of estimating how much PWD should receive from the Act, assumes PWD will receive nothing.
26. The proposed "true up" relinquishes the requirement for PWD to seek and receive any additional funding as it reaches into the rate payers' pocket to cover every expense PWD wants covered.
27. It is not in the public interest to reach a settlement that absolves PWD from any responsibility for seeking and receiving funds from the Act and/or other parts of the stimulus packages
28. The settlement does nothing to force PWD to enroll additional people into the low-income plan. The record shows that in a City where the poverty rate is over 25% PWD has only enrolled 3.8% of its consumers. One fourth the number enrolled in PGW's low income plan, despite both municipal utilities serving the same community.
29. The settlement does not require PWD to increase its outreach, study why it has failed to enroll more families or take any other affirmative action to correct its failure to enroll economically disadvantaged families in the plan.
30. The proposed settlement does not require PWD to look for operational cost savings
31. The proposed settlement does not require PWD to open its operations to advances in renewable energy
32. The proposed settlement does not require PWD to open its doors to engineering advances that may lower costs in the years to come.

33. The settlement does not force PWD to take advantage of the buying co-op that was presented during the hearings and save ratepayers a minimum of 14 million dollars
34. The proposed settlement does not require PWD to market the “excess water” allocation it has to bring water intensive industry into the City thereby creating living wage jobs
35. The settlement does not force PWD to seek local and/or minority owned businesses as vendors. Currently PWD buys from and contracts out to firms outside of the City of Philadelphia, with firms that post no data on the number of people of color hired and/or in management positions
36. The proposed settlement does not require PWD to list what it buys regularly, well ahead of when it seeks bids, thus making it much harder for smaller, local businesses to prepare bids, compared with multi-national corporations who have lobbyist and “expeditors” on staff
37. The proposed settlement, if accepted would force consumers to pay more than what the Public Advocates expert said was needed
38. The proposed settlement does not require PWD to correct its faulty projections listed in the “5 Year Plan” which create a false sense that a rate increase is needed.
39. The proposed settlement is not in the public interest; if it is approved PWD will not have to seek any additional funds from the recovery act, it fails to require PWD to increase the number of people in its low income plan, the operations of PWD will not improve, no local jobs will be created, no new businesses will be recruited into the City; PWD’s infrastructure will not be used to advance renewable energy and reduce the City’s carbon foot print; and it will not make it easier for local, minority owned businesses to win bids and create living wage jobs in the City of Philadelphia

### The Proposed Settlement Is Not Reasonable

*It is not reasonable for a settlement to allow PWD to collect what it wants from ratepayers and then hope that it finds money elsewhere, and hope that PWD refunds money to ratepayers if it over collects, when PWD’s history of refusing to refund its overcollection instead placing the overcollection in the rate stabilization fund is well documented by the record*

40. It is not reasonable to force the public to pay for the Public Advocate's testimony for it to be ignored
41. It is not reasonable for a proposed settlement to require ratepayers to pay more without first seeking operational savings
42. It is not reasonable for a settlement to allow PWD to collect what it wants from ratepayers and then hope that it finds money elsewhere, and hope that PWD refunds money to rate payers if it over collects, when PWD's history of refusing to refund its overcollection instead placing the overcollection in the rate stabilization fund is well documented by the record
43. It is not reasonable to make a decision before the facts are known
44. It is not reasonable to go behind the back of City Council and accept the proposed settlement when the Council has said, numerous times, and on the record that it will seek funds so that no rate increase is needed.
45. It is not reasonable to accept the proposed settlement as in the Public Interest based on the decision of one person, who in no way is average, and on the record has made it clear that he sought no public input in making his decision to give the PWD every cent it wants through the settlement
46. It is not reasonable to accept the proposed settlement because participants have vacation and or family obligations that might be interfered with if meaningful hearings are held

#### The Proposed Settlement Is Not Supported By Record

*By refusing to disclose the proposed settlement to City Council Members during hearings, by refusing to inform civic and community groups of the proposed settlement in a timely fashion, the record cannot show that there is any support, other than those paid to participate in the process for the settlement. And those paid to participate cannot be consider unbiased.*

47. The record clearly states the importance of public input in reaching an equitable adjudication

48. There is not a single member of the Public, who has not been well paid for its testimony or representation that has supported the proposed settlement
49. The Public Advocate, whose mandate is and is compensated for representing the Public, failed, despite entreaties, to seek Public comment on the proposed settlement, before agreeing to it
50. If the Public Advocate had wanted to represent the Public, rather than itself, it would have set up, at the very least, an advisory committee that would have offered guidance and feedback
51. The record proves the Public Advocate believes feedback from the public is/was not only unnecessary but burdensome, much like monarchs in the past found constitutional monarchies burdensome
52. The Public Advocate's claim that it could not get input from the public is not supported by the record. There is nothing on the record that suggests that the Public Advocate was prohibited from seeking guidance from a coalition of community and civic groups before it agreed to give PWD what it sought
53. There is nothing on the record that suggests PWD did any outreach to City Council Members before proposing this settlement
54. In fact, the terms of the settlement are so favorable to PWD and so unfavorable to the rate payers, that the Water Commissioner testifying before City Council after the Public Advocate agreed to support giving PWD the rate increase it wanted, did not disclose that the Public Advocate had agreed to stop fighting the rate increase
55. By refusing to disclose the proposed settlement to City Council Members during hearings, by refusing to inform civic and community groups of the proposed settlement, the record cannot show that there is any support, other than those paid to participate in the process for the settlement.
56. The Record cannot justify the acceptance of the proposed settlement



I, Lance Haver, certify that I served via email all the parties on the service list.

Lance Haver, Pro Se