

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

In the Matter of the Philadelphia Water :  
Department’s Proposed Changes in Water, : For: Fiscal Years 2022-2023  
Wastewater and Stormwater Rates and Related :  
Charges :

**ORDER DENYING MOTION TO STRIKE EXHIBIT: HAVER**

On May 10, 2021, Lance Haver, a participant in this proceeding, filed a Motion to Remove Fraudulent Exhibits from the Record (I will refer to this as a Motion to Strike Exhibit) claiming that the March 26, 2021 letter sent from City Finance Dubow to Water Commission Hayman<sup>1</sup> is “fraudulent” because it contains statements concerning the allocation of the federal stimulus funds expected to be received by the City before the budget had been acted on by the Philadelphia City Council, and requesting that I “strike the exhibit and all arguments using the exhibit from the record; and report the attorney(s) responsible for entering the fraudulent document into the record and/or using the fraudulent exhibit in any and all arguments to the Disciplinary Committee of the Pennsylvania Bar.” The Philadelphia Water Department (PWD or the department) responded with a Memorandum in Opposition to Lance Haver’s Motion for Removal of Schedule MI-10 (PWD response) on May 12, 2021 pursuant to the response period I established.

The substance of Mr. haver’s argument is found in ¶9, which states: “The fraudulent statement, claiming that the City of Philadelphia has already decided how to allocate the money to be received from the Act, is false on its face as City Council has yet to pass a budget that may or may not allocate funds to the Water Department; that the Mayor has yet to sign a budget that may or may not contain additional funds for the Water Department and PWD counsel(s) know that the Mayor does not and cannot unilaterally make decisions regarding the City Budget.”

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<sup>1</sup> This letter was included in the record as Sch. ML-10, attached to the rebuttal testimony of Assistant Water Commissioner LaBuda, PWD Rebuttal St. 1.

The potential availability of funds from the American Rescue Plan Act (ARPA) and other federal stimulus legislation was an issue that arose during the pendency of the proceeding, well after it had been commenced. It was the subject of much of the testimony presented at the public hearings and the comments received directly by the Philadelphia Water, Sewer and Storm Water Rate Board (Rate Board or Board) so I asked the Department to seek further information from the City Administration, which it did. This led to the issuance of Finance Director Dubow's letter (and other correspondence) which appears to be a good faith effort to address this issue in light of the information available at the time. The fact that the amount of funding, if any, is unknown is specifically addressed in the Proposed Partial Settlement Agreement, which contains a mechanism for ensuring that federal funds received, if any, would be used to reduce the FY 2023 Base Rate Revenue Increase up to a potential \$34.011 million, assuming certain conditions were satisfied.

With specific reference to Schedule ML-10 (the March 26, 2021 letter), there is nothing incorrect or misleading, much less fraudulent. PWD states in its Response at 4 (footnotes omitted) that it "indicates that the Department should not expect to receive funds under ARPA through the City. Consistent with Schedule ML-10, the Mayor proposed a budget to City Council, on April 15, 2021, that did not allocate any funds under the federal legislation to the Department. The Budget, as presented, indicates that the City anticipates receiving \$1.4 billion in FY 2021 and FY 2022 under ARPA. It further indicates that none of the ARPA funds are allocated to the Department, since those funds will be used to 'fill shortfalls for City operations.'"

Even if Council were to add Grants Revenue Funds to the Water Department's Fiscal Year 2022 budget, enabling the Department to spend grant funds should it receive them, that would not guarantee that the federal government would make such funds available. Moreover, City Council does not have line-item authority over the City's operating budget. See Phila. Home Rule Charter, Section 2-300(2):

. . . All [operating budget] appropriations shall be made in lump sum amounts and according to the following classes of expenditures for each office, department, board or commission:

- (a) Personal services;
- (b) Materials, supplies and equipment;
- (c) Debt service;
- (d) Such additional classes as the Mayor shall recommend in his proposed annual operating budget ordinance.

It is thus my understanding that Council would have no authority to compel the City Administration to utilize grant funding for the Water Department's operating budget if the terms of the grant and available appropriations permitted the City to direct the spending elsewhere.

Mr. Dubow's letter does not answer all questions, but it is pertinent information and not at all "fraudulent." It will not be stricken.<sup>2</sup>

Finally, there is no basis whatsoever to support Mr. Haver's request that I "report the attorney(s) responsible for entering the fraudulent document into the record and/or using the fraudulent exhibit in any and all arguments to the Disciplinary Committee of the Pennsylvania Bar."

Therefore, the Motion is DENIED.

Marlane R. Chestnut  
Hearing Officer

May 14, 2021

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<sup>2</sup> Since I am denying the Motion to Strike for the reasons discussed above, it is not necessary to determine which "arguments using the exhibit" Mr. Haver may have wanted stricken.