

**BEFORE THE
CITY OF 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 Related Charges :
: For: Fiscal Years 2022-2023
:

Exceptions to the Hearing Examiner Report

**Lance Haver, Pro Se
May 20, 2021**

**There Can Be No Mistaking the Facts –
The Only Parties Supporting the Settlement are
The Parties Paid By the Philadelphia Water Department--**

**The Settlement Agreement, Has At the Very Least the
Appearance of a “Quid Pro Quo Agreement Where in Exchange for Agreeing to
A Multi Million Dollar Rate Water Rate Increase,
the Entity Hired by the Water Rate Board
To Represent the Public Appears to Be Guaranteed Future Work,
Without Having to Win a Contract**

*It is difficult to get a man to understand something
when his salary depends upon his not understanding it.—
Upton Sinclair*

“A culture that does not grasp the vital interplay between morality and power, which mistakes management techniques for wisdom, and fails to understand that the measure of a civilization is its compassion, not its speed or ability to consume, condemns itself to death.”
— Chris Hedges, [Empire of Illusion: The End of Literacy and the Triumph of Spectacle](#)

I. INTRODUCTION

The Hearing Examiner's report fails to illustrate that the "proposed settlement", at best, has the appearance of a quid pro quo agreement between the Philadelphia Water Department and the entity hired by the Philadelphia Water Rate Board (PWRB) and paid by the Philadelphia Water Department (PWD) to represent the public (referred to as the "Public Advocate" but in this exception called the entity) where in exchange for agreeing to give PWD every penny it sought in the settlement agreement the entity is given continual work as described in "section 2. Reconciliation Adjustment to FY 2023 section a. Reconciliation Procedure" of the "Settlement Term Sheet"

"By approving the Settlement, the Rate Board is agreeing (in advance) to the use of the Special Rate Reconciliation Proceeding. Both the Department and the Public Advocate will be deemed to be Participants in the Special Rate Reconciliation Proceeding without notification to the Rate Board."

And in the worse case, the settlement is an actual quid pro quo, where the entity will be guaranteed the contract and revenue in exchange for agreeing to grant PWD a rate increase no member of the Public supports and its own experts, on the record stated, was unwarranted and unneeded.

The Hearing Examiner's report, fails to expose the drastic limits of the "true up" provision, which in a small printed foot notes says that most money available to PWD from any of the stimuli package will be exclude from the "true up" formula. (Foot note 2 page 4 of the Settlement Term Sheet)

"For this purpose, "Stimulus Funding" excludes: (i) any amounts received directly by PWD from the City, 2HHS, PHDC or other state or local agencies administering federal funds for infrastructure or capital projects;(ii) any amounts allocated and/or received directly by PWD customers under the federal legislation, or other state or federal action, to alleviate potential or actual financial hardship of PWD's customers; (iii) any amounts allocated and/or received directly by PWD from Utility Emergency Services Fund ("UESF") in connection with UESF's locally funded programs including the Utility Grant Program, Water Conservation Housing Stabilization Program, and the Customer Assistance Program for Water; and (iv) any amounts adopted by City Council through the budget process and/or received directly by PWD, beyond the Receipt Period"

By removing all those sources of funding, the "true up" loses all meaning and value.

The Hearing Examiner confused the role the entity was given by the adjudicatory body with the role of the State's Public Advocate. The entity, the Hearing Examiner mistakenly calls "the Public Advocate" is not hired by an independent person or body, not confirmed by an elected body and can only be removed by the rate making body. The entity to which the Hearing Examiner refers to as the "Public Advocate, is in reality acting as the PUC's bifurcated trial staff acts. The entity, like the PUC's trial staff is hired by the rate making body, serving the rate making body, not appointed by an independent person and/or elected official and not confirmed by any elected representative of the people of Philadelphia.

Had the Hearing Examiner not, on the record, explained her years spent as an Administrative Law Judge for Pennsylvania's Public Utility, such a mistake could be construed as being caused by a lack of knowledge or the failure to understand why the bifurcation of the PUC's trial staff was found by the Commonwealth of Pennsylvania to not be an adequate representative of the Public Interest. Because of the Hearing Examiner many years of employment by the PA PUC, she was/is well aware that the PUC's bifurcated trial staff was found to be deficient as a public advocate. The Hearing Examiner's report suggesting that a counsel hired by the adjudicatory body, without any independent oversight can serve as a public advocate is in direct opposition to the findings and laws of the Commonwealth of Pennsylvania and a violation of the basic tenet of American Democracy, that checks and balances must be created to stop power from corrupting.

In the decision which seems oblivious to those basic tenets, the Hearing examiner allowed the entity paid to represent the public to ignore the Public's testimony and ignore the testimony of every member of City Council. Not a single party, other than those paid by the Philadelphia Water Department has gone on record supporting the settlement.

The Hearing Examiner, allowed the entity to "privately" (I would say secretly as no one was allowed to know about the terms) negotiate a settlement that provides the PWD with every cent it sought in the settlement and continual employment for the entity, without requiring PWD to seek and gain any money from any of the various Federal and State Programs that have been created to help recover from the COVID shutdowns.

The Hearing Examiner, counsel for PWD and the entity paid by the PWD to represent the public, refused to inform the public of the terms of the settlement in similar ways which they used to notified the public of the hearings on the

proposed rate increase; and refused to support hearings so that members of the public could testify in support or opposition to the settlement.

On the record, the entity stated, it has no need to hear from the public before deciding if a settlement is in the Public interest. The Hearing Examiner in her report defending the Louis XIV, "I am the State", position of the entity paid to represent the public fails to recall that the State's Public Advocate is confirmed by elected officials and can be removed for failing to represent the Public. There are no similar checks and balances on the power of the entity paid to represent the public.

In previous years, Community Legal Services sought input and guidance from Community and Civic Groups. While an imperfect model, it created a way for the Public to be represented. The Hearing Examiner's decision to allow the entity to refuse to allow the public to guide its position, materially means the Public has no representation, the entity has no check nor balance on its power. It is free to and has claimed to be the Public. A statement that at best is hubris and at worse is an attempt to undercut the Public's on the record position, of no rate increase.

The Hearing Examiner ignores the, on record, fact that the PWD admitted its projections listed in the five year plan were faulty and could not be counted upon. Worse than ignoring the admitted failure, the Hearing Examiner inexplicably contravenes PWD's admitted statement of failure and claims, in direct opposition to an undisputed, on the record fact, that no such failure exists so there is no reason to question PWD's ability.

The proposed settlement is not in the Public Interest. It does not require the Philadelphia Water Department to seek Federal, State or City Funds, does not require it to compete with other utilities for funds set aside to assist families who find themselves behind in their bills. And the Hearing Examiner's report fails to consider the myriad of revenue sources that the settlement excludes when saying a "true up" provision will protect the public from PWD double dipping.

The proposed settlement does not require PWD to improve serveries, to make use of cost savings opportunities, like the buying co op that was offered during the Public Hearings. The settlement does not require PWD to stop outsourcing jobs to out of state and out of country businesses, does not require PWD to attempt to buy locally, attempt to recruit water intensive businesses into the the City of

Philadelphia to both sell more water so that rates can be lowered and create living wage jobs so that more people can keep up with their utility bills. The Settlement fails to mandate the Water Department increase the number of people in its TAP program, and fails to require PWD to even try to recruit and keep more families in the TAP program. On the record, PWD's own experts say only 3.8% of PWD low income families are enrolled in the TAP program. The meaningless and unenforceable statement that PWD "will evaluate new approaches" (Section C 1 b) does not and cannot replace a requirement that is both measurable and enforceable. And everyone knows this.

2. The Settlement is or has the appearance of a "Quid Pro Quo" Deal Between the entity which the PWD pays to be the Public Advocate and the Philadelphia Water Department, where the PWD gets an unwarranted rate increase and the entity receives continual employment.

- A. The words speak for themselves. *" By approving the Settlement, the Rate Board is agreeing (in advance) to the use of the Special Rate Reconciliation Proceeding. Both the Department and the Public Advocate will be deemed to be Participants in the Special Rate Reconciliation Proceeding without notification to the Rate Board."* **From Section 2 a of the proposed settlement agreement.**
- B. There can be no misinterpreting these words. By agreeing to the rate increase, the entity described in the passage as the Public Advocate will be deemed a participant in on going proceedings.
- C. A reasonable interpretation of those words is that the entity will be allowed to participate in other proceedings and allowed to bill for its time.
- D. If some other entity was going to be consider as the guaranteed participant, the agreement would have specified how that entity would be hired
- E. If the entity was going to donate its time and work without being paid, as a volunteer, that would have also been stated
- F. Because all negotiations were done "in private" the public cannot know if there is another valid interpretation of these words
- G. Nor can the Public know if the entity demanded it be given the expended role before agreeing to the large rate increase.
- H. If, as most would expect, the entity demanded it be retained and if as most would expect the entity expects to be compensated for its time, than the proposed agreement does not just have the appearance of a "quid pro quo" agreement but is, in reality a quid pro quo agreement where in exchange for future work the entity paid by the Water Department to represent the Public has agreed to use the Public's money to guarantee the PWD a large rate increase.

3. The proposed settlement does not require or even expect PWD to seek and received stimulus dollars. Every penny PWD needs is collected by the rate increase. The only provision in the proposed agreement is that PWD will “make good faith efforts” to seek those funds.
 - A. Was not PWD making good faith efforts before the entity it pays agreed to the rate increase? How does this term, which only requires an effort, add value, if PWD was already doing so? And if PWD is unable to seek and receive the funds, how is an agreement that mandates it make a good faith effort of any value.
 - B. The problem is a cultural one at the PWD which first seeks fund from rate payers and then seeks funds from elsewhere. Requiring it to make a good faith effort allows that culture of consumers money first and every other source later to continue as the settlement assumes nothing will be received.
 - C. As will be outlined below, the promise of a “true up” might have some value if there were a cultural shift at the PWD, if PWD were required by need to seek stimulus dollars, and if there were not many many exclusion of revenue sources that might have an impact.

4. Faulty Process

A. Unlike the State Public Advocate which is appointed by an independent person and confirmed by the legislative representatives of the people, the entity paid by the Water Department to represent the public is hired by the adjudicatory body, the Philadelphia Water Rate Board which is stated as follows in the Hearing Examiner’s report:

Following requests for competitive proposals, the Rate Board contracted with Community Legal Services (CLS) to act as Public Advocate to represent the concerns of residential consumers and other small users in the rate proceeding;

B. As described above, the hiring of counsel by the adjudicatory body is model

the PA PUC uses when it hires its trial staff. The PUC's trial staff does not represent the public as the Hearing Examiner is well aware based on the number of years she served as Administrative Law Judge for the Public Utility Commission.

C. The entity hired by the PWRB to represent the public refused to do many of the things the State Consumer Advocate does to ensure that the Public's voice is heard.

D. The Acting State Consumer Advocate explains the steps the advocate takes to receive public input in her testimony before the Pennsylvania Senate:

"My name is Tanya McCloskey and I am the Acting Consumer Advocate for the Office of Consumer Advocate. Let me first introduce the Members of the Committee to the Pennsylvania Office of Consumer Advocate (OCA). The OCA was established by the General Assembly in 1976 to fill a gap that had long existed in the representation of utility consumers – particularly residential consumers – before the Pennsylvania Public Utility Commission (PUC) and other state and federal agencies and courts that regulate the activities of Pennsylvania's public utilities. Traditionally, utilities have always been well-represented at the PUC by lawyers and expert witnesses who could advocate for utility investors in matters such as rate increase requests for utility services. Our Office was created so that the consumers who have to pay those utility bills would be represented by professional attorneys and experts who could advocate for the consumer interest.

In addition to our litigation activities, the OCA helps to educate consumers on matters involving their utility services. The Consumer Liaison and other members of the OCA staff help to plan and participate in consumer presentations, round tables, and forums across the Commonwealth to help educate consumers about changes in the utility industry and to advise them

about cases that affect them. The OCA has an active social media presence to provide consumers with helpful information about their utility service and we have a small staff of consumer service representatives who can assist individual consumers with utility problems.”

E. The entity paid for by the Water Department to represent the Public failed to take any of the steps outlined by the State Consumer Advocate before agreeing to the settlement that, if accepted, guarantees it more employment.

- a. The entity refused repeated requests to inform civic and community groups about the proposed settlement.
- b. The entity refused to inform the members of the public who testified at the public hearing that a proposed settlement was before the Hearing Examiner
- c. The Hearing Examiner knows full well that the entity hired did not inform consumers about the proposed settlement, did not hold a single “round table discussion” with consumers explaining the terms of the proposed settlement so it could seek input and guidance. Instead the entity paid by PWD was allowed to ignore all requests to inform the public of the proposed settlement before it signed the agreement and after it signed the agreement with the apparent Quid Pro Quo terms.

F. The suggestion that the Public was represented in anyway is at best wishful thinking and at worse part of a cover up that allows the PWD and the entity it pays to enter “private negotiations” and agree to settlement terms, without making any attempt to inform the public as Ms. McCloskey states the State Public Advocate does.

G. Despite the Hearing Examiner writing how important listening to the Public is: *“I also want to thank the dozens of customers who took the time to provide their thoughts on the proposed rate increase, either by attending the public hearings or by sending comments to the Rate Board (all of which I have read). These comments were thoughtful, sincere and helpful in putting a human face on the matters discussed, a reminder that decisions made in this proceeding directly impact the lives of real, individual people, not just “customers” as a group.* The Hearing Examiner ruled against motions to inform the Public, unilaterally decided no one who had attended the Public Hearings was to be informed and decided it was not important to inform the elected officials who objected to the rate increase that there was a proposed settlement that would grant PWD literally 10s of millions of dollars in increases.

H. According to the Hearing Examiner “The Rate Board, the Department and the Public

Advocate worked together to ensure that outreach and notice were provided to provide maximum awareness of the scheduled hearings was provided to the public. In addition to notices and guidelines about participation posted on the various websites (Rate Board, PWD and CLS/Public Advocate) and social media, there were flyers, newspaper notices, blast emails to various groups of customers and interested parties such as community energy agencies and political offices.

- a. None of the Parties listed above undertook any of the initiatives to inform the public of the proposed settlement which were used to inform the public of the rate case.
- b. Instead, despite the motion to do so, the Hearing Examiner, the entity paid by the PWD to represent the Public and the PWD chose to only inform the Public of the proposed settlement by placing the information on the PWRB's web page, without any knowledge of how many people visit the web page.

I. The listing of the proposed settlement on the obscure web page of the PWRB is not sufficient public notice

- c. This fact is made apparent by the record. Over 100 people and/or organizations attended and/or commented on the proposed rate increase.
- d. Not a single member of the Public nor a single elected official commented upon the proposed settlement.
- e. The only entities to support the settlement were those paid by the Philadelphia Water Department and those who benefited by the settlement with additional funds and/or additional employment. The other parties, not paid by PWD either were neutral or opposed the settlement,

J. The Hearing Examiner chose not to allow the Public to be informed about the proposed settlement and therefore gave the Public no opportunity to make their voices heard, despite her on the record statements that hearing from the Public is critical.

K. The decision to not notify the public of the proposed settlement and preclude the public's voice from being heard is a clear violation of the Philadelphia Code "To fulfill the mandate in the Rate Ordinance, that an "open and transparent process for public input and comment on proposed water rates and charges" be used, the ordinance requires that "prior to fixing and regulating rates, the Board shall hold public hearings." Philadelphia Code

§§ 13-101(3)(e) and (f). To accomplish that, the Rate Board's regulations at Section II(B)(a)-(h)91

4. *Public Hearings.*

The Board, or a designated member or Hearing Officer on its behalf, shall hold public hearings for the following purposes: (1) to ensure an open transparent Rate

Proceeding; (2) to make Departmental personnel available to answer relevant questions about the proposed changes in rates and charges; (3) to permit the Department and any person or entity affected by the proposed rates charges to provide information to the Board regarding any change in rates and charges as proposed by the Department; and (4) to assist the Board in the collection of information relevant to the Department's proposed changes in rates and charges.

L. Without informing the Public, without holding the legally required hearings, which could not be conducted if the Public was not informed, the Hearing Examiner should not support the proposed settlement.

5. The Hearing Examiner at times made decisions based on things not on the record and/or prejudged the case. In her statement: *"At each public and technical hearing, I reminded the participants and customers that in my opinion, developed after many years of experience, that this does not have to be adversarial process, that both the Department and its customers want the same thing: rates that are sufficient to allow PWD the necessary resources to provide safe and adequate service but that are also affordable for customers so they can pay for this essential service without it being a hardship.19"*

A. The Hearing Examiner finding the hearings to be of any nature based on experiences not on the record is inappropriate

B. In other statements : *"I cannot imagine PWD as a city department is not already subject to vendor requirements."* The Hearing Examiner continues to show that she allowed facts not on the record, in this example, her imagination to guide her decision.

C. The Hearing Examiner errors in using facts or supposed facts not on the record to reach any recommendation.

6. The Hearing Examiner refused to consider the drastic limitations outlined in a small print footnote in the Settlement agreement, of what revenues will be considered in the "True Up" process and the majority that will be excluded.

A. By not calling attention to the exclusions, the Hearing Examiner fails the members of the Public and the Members of the Rate Board. Such exclusions are real, overwhelming, meaningful and show, beyond the preponderance of evidence that the "True Up" is unenforceable.

B. It is unenforceable, based on the ruling the Hearing Examiner made in Haver's motion to remove fraudulent testimony, where the Hearing Examiner found that the Water Department, through the City Administration could unilaterally allocate money in whichever line items it desires.

C. If the Hearing Examiner found that the Administration had large latitudes in line item allocations, than the Hearing Examiner should know that the exclusions in the "true up" agreement provide a way for the PWD to collect more funds, but not have them counted as additional revenues for the "True Up" process thus depriving PWD consumers the benefits of the Federal, State and Local stimuli packages.

7. The Hearing Examiner Relies Upon "Straw Man" arguments and ad homonym attacks rather than facts and logic in her attempt to discredit opposition to the settlement by parties.

A. The Statement below by the Hearing Examiner exposes her biases and her attempt to use a "straw man" argument as a defense of the indefensible.

"Initially, it needs to be noted that although he is a member of the public, Mr Haver cannot speak for "the Public." He is participating in this proceeding as an individual, and I will evaluate his statements as such"

B. No where on the record did Haver ever suggest he spoke for the Public.

C. The statement serves no purpose other than to create a diversion

D. The statement cannot be construed to be neutral

E. The statement cannot be consider germane to the issues, unless Mr. Haver had claimed he represented the public

F. The statement exposes the Hearing Examiner biases.

8. The Hearing Examiner errors when writing *"I will address each of these.*

Several are simply incorrect (there was no showing of "faulty projections" in the Five Year Plan, the proposed agreement has commitments regarding TAP outreach and enrollment, the proposed agreement requires PWD to use its best efforts to obtain stimulus funding, PWD did not receive "every penny it wants" but actually

accepted a substantial reduction in its rate request) while virtually all of the others are outside the Rate Board's jurisdiction and could not have been achieved had the matter proceeded to full litigation. In addition, I cannot imagine PWD as a city department is not already subject to vendor requirements. There is simply no basis for accepting these proposals –no matter how attractive they sound in terms of job creation or environmental impact –based on the record. There is no evidence as to how to implement these broad suggestions, or the costs involved. Certainly, the fact that these suggestions were not included provides no reason to reject the proposed partial settlement.”

A. The record is uncontroverted both by exhibits and through cross examination, the PWD admits and agrees that the projections in its 5 year plan have been wrong. For the Hearing Examiner to say differently goes beyond a misinterpretation. It raises questions as to how any independent hearing examiner, after reviewing the documents prepared the Water Department which show the incorrect projections and reviewing Haver's cross examination of PWD's witlessness, who stated on the record that the projections were faulty.

B. The importance of accepting the fact that PWD's projections over many years have been significantly wrong can only be understood in valuing the importance of the the revenue needs of the Water Department and how valuable or not a true up mechanism, which excludes a multitude of revenue streams is to the Public

C. As the record reflects, PWD's inability to correctly project the amount in the rate stabilization fund in the 5 year plan, shows the very limited value of the “true up, with all the exemptions and exclusions and prove that the settlement is not in the public interest.

D. The Hearing Examiner states that the “ *proposed agreement has commitments regarding TAP outreach and enrollment*”. The actual wording

of the agreement proves differently. All it requires is that PWD will evaluate new approaches to inform PWD customers of this program and other assistance programs that PWD offer (C 1 b of the settlement sheet). This does not committed PWD to do anything other than evaluate “new approaches”. It does not mandate anything and fails to required PWD to enroll even 1 additional family into its TAP program. Because there are not benchmarks and nothing other than an evaluation is required, the Hearing Examiner errors when writing “*proposed agreement has commitments regarding TAP outreach*” A meaningless non material agreement that cannot be enforced because as there are no benchmarks, should never be accepted by any rational person as a commitment to change a material deficiency. If this term is deemed important because PWD never evaluates its outreach, never looks at new approaches it condemns the work of PWD and shows the cultural biases against enrolling people in TAP. As the terms fails to require anything other than a review, it is unenforceable and has no value. To the extent that PWD was already taking such action than this term adds no value, as the action is already being taken. The only value this term has is to demonstrate how easy it was for PWD to get support for a worthless term.

E. The Hearing Examiner states the PWD did not receive the revenues it wanted in the proposed agreement in contradiction to Haver’s statement. She suggests that because PWD sought more than when it filed, this is not the amount it wanted. This is Ipso Facto incorrect. A party agrees to a settlement because it is getting the terms it wants. It really is that simple. The entity PWD pays to represent the Public in the “private negotiations” agreed to the terms PWD wanted. If not, PWD would not have settled. No amount of creative word smithing can change that fact. If the amount the

entity agreed to allow PWD to collect from rate payers was not what PWD wanted, PWD would not have settled. The only reason to deny this fact is to attempt to discredit Haver's opposition through the use of a "straw man" argument.

F. The Hearing Examiner contravenes her own reason for supporting the settlement when she attacks Haver's opposition in writing *"There is simply no basis for accepting these proposals –no matter how attractive they sound in terms of job creation or environmental impact –based on the record. There is no evidence as to how to implement these broad suggestions, or the costs involved. Certainly, the fact that these suggestions were not included provides no reason to reject the proposed partial settlement."*

G. The Hearing Examiner in supporting the settlement writes in her report *"it must be remembered that the proposed partial settlement contains numerous and substantial commitments on the part of PWD that will benefit the Department's customers. These are commitments that could not have been obtained from the Rate Board."* (Page 29 hearing examiner's report)

H. The written statement shows the fallacy in the Hearing Examiner's argument. If having clauses in a settlement that could not be obtained from the Rate Board is a reason to support a settlement than reviewing what could have, and should have, been included in a settlement, but were not, should be weighed.

I. The Hearing Examiner fails to do so.

J. The Hearing Examiner claims that *"There is no evidence as to how to implement these broad suggestions, or the costs involved"* in addressing Haver's pointed opposition based on what the proposed settlement fails to include. Once again, the double standard is clear. There are no facts on record of how much any of the "commitments that could not have been

obtained from the Rate Board” would cost nor how they could be implemented. The Hearing Examiner should not be allowed to infer the cost doesn’t matter so that she can support a settlement and then say cost matters when she attempts to discredit an opponent of the settlement. Such double standards have no place in equitable proceedings.

CONCLUSION

(1) The Rate Board should find, that the entity it hired and that was paid by the PWD to represent the Public failed to make an effort to include the public or even allow the Public to provide guidance or even comment on the proposed settlement.

(2) The Rate Board should find the actions and choices the entity it hired made that the entity serve in the role the PUC’s bifurcated trail staff serves, with no one other than the rate making body hiring and confirming it not a public advocate that informs and includes the Public

(3) Because the Hearing Examiner did not require and the entity did not want to take the time to hear the from the public, the outreach that was done for the hearing was not done to inform the Public of the proposed settlement.

(4) The failure to do outreach, to create structures to allow the Public to give guidance, as is done by the State Consumer Advocate, effectively means the Public was not represented.

(5) The lack of outreach and notice of the proposed settlement, the lack of actual numbers presented in the PWD original filing, creates a hearing that does not pass the case law test for legal hearings.

(6) Because the Philadelphia Code requires actual public hearings, and there were not actual hearings on the proposed settlement, the proposed settlement cannot be legally accepted.

(7) The appearance of or actual Quid Pro Quo agreement between the entity the Water Department pays and the Water Department requires the proposed settlement be rejected. It

is simply unacceptable for a party to reach a settlement that gives a utility a large rate increase and in return one of the terms is continual participation for the entity. The Rate Board should not reject a settlement that has the appearance and perhaps actual quid pro quo as one of its terms.

(8) The Rate Board should never accept unenforceable terms such as best efforts or the promise of future evaluations in lieu of real, meaningful actions and programs.

(9) The proposed settlement does not require PWD to seek or receive one single cent of Federal, State or Local stimulus money

(10) Only a settlement that requires PWD to seek and receive such funds should be accepted

(11) Even if one were to believe that a “good faith” effort were sufficient, one could not, based on the record and the small printed foot note believe that receiving such funds would guarantee a reduction in the large rate increase.

(12) The record, despite the misstatement of the Hearing Examiner shows that PWD projections have fallen far short of reality.

(13) The Hearing Examiner has found that the PWD and administration have complete, unilateral control over how funds are allocated to the PWD from the City.

(14) The exclusions outlined in the small printed foot note show how the PWD placing the funds it receives in different categories would allow it avoid the funds be considered as part of the “true up”. For example all the City would have to do, is take money from the general fund, route it through UESF to the water department to avoid those funds being used to lower rates.

(15) Any settlement that rewards deception should not be approved.

(16) The Rate Board should view the settlement in its totality, not just what it does, but also what it fails to do.

(17) It is uncontroverted that the Settlement fails to require PWD to enroll additional families in the TAP program. Instead of requiring real, meaningful steps that can be enforced the settlement uses words that have no material value. The term only requires PWD to review other ways of doing outreach. (Doesn't one hope PWD has been doing that all along making the wording in settlement moot; or in the alternative if they were

not trying to improve, requiring an evaluation of better practices, and not better practices themselves, will not change the culture

(18) It is uncontroverted that the Settlement fails to require PWD to seek any Federal, State, or Local Stimulus money, instead replacing the requirement of real meaningful action, the settlement requires PWD to make its best efforts. Again to the extent that we would all hope that PWD is already doing it, the term in the settlement adds no value. To the extent that PWD is not doing so, simply adding the term has no value. It is unenforceable. The Settlement by providing PWD with every penny it needs, releases PWD from the need to seek and find stimulus money and replaces it with the requirement that PWD make an effort. es.

(19) The proposed settlement fails to require operational improvements; fails to require procurement improvements, fails to require the marketing of services to businesses in an attempt to recruit businesses to Philadelphia to increase the number of living wage jobs; fails to require PWD to help local businesses bid on and win contracts; fails to prohibit PWD from outsourcing jobs out of state and out of the country stopping Philadelphia rate payers dollars from re circulating in our City; fails to create opportunities to utilize PWD's infrastructure for renewable energy projects; fails to create a pipeline from local schools and universities to employment at PWD; And fails to encourage technological advances that would lower operational costs.

20. For those reasons the Rate Board should reject the Hearing Examiners misleading report and reject the proposed settlement. While no doubt it is hard for the PWRB to find that the entity it hired failed to take the necessary steps to represent the public, it must recognize that the entity served as a trail staff for the adjudicatory body and made no attempt to gain input, comments or advice before agreeing to the rate increase enumerated in the 10s of millions in the terms of the proposal.