

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

**In Re: Philadelphia Water Department** :  
**2022 Special Rate Proceeding** : **Advance Notice Filed January 21, 2022**

---

**ANSWER IN OPPOSITION TO LANCE HAVER'S  
MOTION TO REMOVE FOR CAUSE THE ACTING PUBLIC ADVOCATE**

---

TO HEARING OFFICER MARLANE R. CHESTNUT:

The Public Advocate, by and through its attorneys, hereby files this Answer to Lance Haver's Motion to Remove for Cause the Acting Public Advocate (Motion). The Motion is premised upon fundamentally erroneous characterizations of the Public Advocate, the Joint Petition for Partial Settlement in the 2021 Rate Proceeding, the Water Rate Board's authority and procedures, and the ethical considerations governing attorney conduct in adversarial proceedings. The Motion also contains inappropriate and unjustified *ad hominem* attacks on counsel for the Public Advocate.<sup>1</sup>

The Public Advocate answers as follows:

1. Admitted in part, denied in part. Admitted that Bill No. 130251-A was signed by the Mayor on January 20, 2014 amending Chapters 13-100 and 13-200 of the Philadelphia Code. It is denied that the Philadelphia Water, Sewer and Storm Water Rate Board (Board) imposes the obligations in the quoted passage. Rather, those obligations are imposed upon the Board by Bill No. 130251-A.
2. Denied. It is a matter of public record that Community Legal Services, Inc. (CLS), serves as Public Advocate pursuant to a contract with the Board. At its publicly held August 11, 2021 Special Meeting, the Board authorized the extension of CLS's contract

---

<sup>1</sup> See Motion ¶¶6-9, 12-15, 17.

in anticipation of this Special Rate Proceeding, as reflected in the notes available on the Board's website.<sup>2</sup> Accordingly, the contract term was extended to December 1, 2022.<sup>3</sup>

3. Denied. The Board's regulations, available on its publicly-accessible website, govern the appointment of the Public Advocate, "[a] qualified firm, organization or individual(s) appointed to represent the interests of Small User Customers pursuant to a formal City Contract."<sup>4</sup>
4. Denied. The averment implies that provisions of Bill No. 130251-A, governing the Board's "open and transparent" process for setting rates and charges, apply to the appointment of a Public Advocate. To the contrary, Bill No. 130251-A does not apply to the process for selecting a Public Advocate. The Board appointed CLS to serve as Public Advocate after issuing a Request for Proposals inviting any qualified individuals or firms to bid for the contract opportunity.<sup>5</sup> Renewal of the Public Advocate's appointment was authorized at the Board's public meeting on August 11, 2021.
5. Denied. The Board's appointment of the Public Advocate and extension of its contract was fully compliant with all legal requirements, whether under the Board's regulations, the Philadelphia Code, the Pennsylvania Constitution or the United States Constitution.
6. Denied. Counsel for the Public Advocate diligently performed its contractual obligations to represent the interests of the Small User Customers in the 2021 Rate Proceeding. With absolute loyalty to the public trust, and pursuant to the provisions of its contract requiring the Public Advocate to engage in settlement discussions, the Public Advocate

---

<sup>2</sup> August 11, 2021 Board Meeting Notes, available at: <https://www.phila.gov/media/20210903133415/Special-Meeting-Minutes-2021-08-11.pdf>

<sup>3</sup> Notice of renewal of CLS's contract is available at: <https://philawx.phila.gov/ECONTRACT/default.aspx>

<sup>4</sup> The Board's regulations are available at:

<https://www.phila.gov/media/20220204155914/WRBRegulationsAmended20210908reaffirmed20211013.pdf>

<sup>5</sup> See 2021 Rate Determination at 21-22 (describing appointment of Public Advocate).

aggressively negotiated and entered into the Joint Petition for Partial Settlement in the 2021 Rate Proceeding.<sup>6</sup> The Joint Petition served the public interest in multiple ways, including, but not limited to, a reduction of the Water Department's requested rate increase of at least \$83,538,000 over Fiscal Years 2022 and 2023. This reduction, unprecedented since the establishment of the Board, was the result of on the record evidence and expert testimony assembled by the Public Advocate in opposition to the Water Department's request for an incremental \$140,960,000 rate increase over the two-year rate period. It is denied that counsel for the Public Advocate failed to consult with elected officials; to the contrary, the Public Advocate did in fact consult with multiple elected officials and their staff, as well as neighborhood groups and other stakeholders during that proceeding.<sup>7</sup> Moreover, the Public Advocate dedicated significant resources to obtaining public input from individuals, groups and elected officials and took that input into account throughout the 2021 Rate Proceeding.<sup>8</sup>

7. Denied. Public Advocate incorporates its answer to paragraph 6 above herein.
8. Denied. Public Advocate dedicated significant resources to obtaining public input from individuals, groups and elected officials and took that input into account throughout the 2021 Rate Proceeding. Counsel serving the Public Advocate are not in an attorney-client relationship with the public at large, and so deny that, in the context of negotiations, potential settlement terms should or could have been shared with individuals or groups who did not choose to formally participate in the 2021 Rate Proceeding. Publicly

---

<sup>6</sup> The Joint Petition for Partial Settlement was filed with the Board and is available at: <https://www.phila.gov/media/20210505154832/Joint-Petition-for-Partial-Settlement.pdf>.

<sup>7</sup> See Public Advocate's Answer to Haver's May 3 Motion in the 2021 Rate Proceeding, available at <https://www.phila.gov/media/20210505154834/PA-Answer-to-LH-Motion-to-Compel.pdf>.

<sup>8</sup> See *Id.* at Appendix I; see also 2021 Rate Proceeding, Hearing Officer Report at 9-10 (describing outreach and public input efforts), available at <https://www.phila.gov/media/20210524104346/2021-Hearing-Report-May-18-final.pdf>.

divulging information obtained in settlement negotiations is typically prohibited in adversarial proceedings<sup>9</sup> and could violate ethical rules applicable to attorneys.<sup>10</sup> On April 19, 2021, the term sheet setting forth the agreements reached by the Water Department and Public Advocate was published on the Board's website, and was subsequently widely distributed by the City and the Public Advocate in order to permit public comment. After the term sheet was posted, 31 members of the public did in fact comment, setting forth a range of opinions, some of which supported the Settlement.<sup>11</sup>

9. Denied. Public Advocate incorporates its answer to paragraph 6 above herein. Counsel for the Public Advocate intends to continue to fulfill the duty to vigorously and professionally represent the interests of the Small User Customers.

10. Denied. Monthly TAP enrollment has increased from 15,811 customers in February 2021 to 17,029 in November 2021, an approximate 8% increase in a 9-month period.<sup>12</sup> By way of further answer, the Settlement terms require monthly reporting concerning the Water Department's obligations to consider extending TAP recertification deadlines and

---

<sup>9</sup> Sound public policy favors the free and confidential exchange of proposals and offers of settlement, in the interest of reaching compromise, preserving resources, and maintaining judicial economy. The Pennsylvania Public Utility Commission (PUC), having analogous rate setting authority, has explicitly recognized that settlement negotiations are privileged, confidential and inadmissible into evidence, even in the absence of express language to that effect in a procedural order. See Pa. PUC v. Pa. Elec. Co., No. C-80072106, 1980 WL 140974, at \*7 (Dec. 4, 1980). Likewise, the General Rules of Administrative Practice and Procedure applicable to Commonwealth agencies effectuate public policy favoring settlement and protecting the confidentiality of information divulged in settlement negotiations. See, e.g., 1 Pa. Code §§35.111, 35.115. The same policy bases apply to rate proceedings before the Board, which has implemented regulations adopting procedural standards analogous to those utilized by the PUC. See Board Reg. §II.B.5(b)(5). Public Advocate notes that it may serve all parties' interests for the Board, through the Hearing Officer, to adopt a standing order explicitly recognizing that settlement negotiations are confidential.

<sup>10</sup> Ethical rules limit an attorney's ability to make statements publicly where disclosure could undermine the integrity of an adversarial proceeding. See, e.g., Pa. R. Prof'l. Conduct 3.6.<sup>10</sup>

<sup>11</sup> The record of the 2021 Rate Proceeding indicates 31 individuals provided written comments after the term sheet was posted. See Written Public Comments, available at: <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#public-input>.

<sup>12</sup> See 2022 TAP-R Reconciliation Proceeding, Advance Notice, Schedule RFC-3 at 14-15, available at: <https://www.phila.gov/media/20220124130703/TAP-R-2022-ADVANCE-NOTICE-2022-01-21.pdf>

conducting outreach regarding the availability of assistance, laying the groundwork for continued improved access to TAP.<sup>13</sup>

11. Denied. The record, so far, in the Special Rate Proceeding reveals that the Water Department received a \$2,078,942 reimbursement from the Coronavirus Relief Fund and \$1,160,336 in Emergency Rental Assistance Program funds.<sup>14</sup> Furthermore, the Water Department has been awarded capital assistance under the Water Infrastructure Finance and Innovation Act.<sup>15</sup> The Water Department is not, in this Special Rate Proceeding, seeking another rate increase. As set forth in the 2021 Rate Determination, this Special Rate Proceeding can only result in a downward adjustment to FY 2023 rates and charges.<sup>16</sup>
12. Denied. The Water Department is not scheduling shut offs for nonpayment and has extended the current moratorium through June 30, 2022.<sup>17</sup> Pursuant to Settlement Paragraph II.D(3), the Water Department remains obligated to consult with stakeholders regarding “the feasibility of extending the moratorium evaluating, among other considerations, public health guidance and economic conditions.”

---

<sup>13</sup> The Water Department’s monthly reports are available at: <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#reports-from-the-water-department>.

<sup>14</sup> See, e.g., Water Department responses to PA-I-5 and PA-I-14 available at: <https://www.phila.gov/media/20220216171303/PWD-Special-Rate-Proceeding-Responses-to-PA-Discovery-Set-1.pdf>.

<sup>15</sup> See, e.g., Water Department January Monthly Report at 15, available at: <https://www.phila.gov/media/20220119134132/Rate-Case-Settlement-Progress-Report-January-2022.pdf>.

<sup>16</sup> See, e.g., 2021 Rate Determination at 22-23 (describing “innovative mechanism” that could result in a decrease in the FY 2023 rate increase).

<sup>17</sup> Water Department February 14 Press Release, available at: <https://water.phila.gov/drops/city-extends-residential-shutoff-freeze-to-june-30/>.

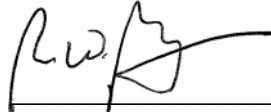
13. Denied. This Special Rate Proceeding can only result in a downward adjustment to FY 2023 rates and charges. The Water Department is actively engaged in helping customers obtain financial assistance.<sup>18</sup>
14. Denied. The Public Advocate's positions were fully informed by its expert witnesses, information from other parties, and public input in the 2021 Rate Proceeding. Communications between counsel for the Public Advocate and its witnesses during settlement negotiations are privileged. The Board-approved Settlement served the public interest.
15. Denied. Public Advocate incorporates its answer to paragraphs 6 and 8 above herein.
16. Paragraph 16 of the Motion contains a prayer for relief to which no response is required. Nonetheless, by way of further response, the Public Advocate incorporates its answers to Paragraphs 2-5 herein and submits that because the Hearing Officer is not a party to CLS's contract to serve as Public Advocate she lacks legal capacity to grant the relief requested.
17. Denied. In all matters concerning the 2021 Rate Proceeding, CLS performed its Public Advocate duties in compliance with all applicable legal and ethical standards.

---

<sup>18</sup> See February 17, 2022 Monthly Report to the Rate Board, Appendices A-D, available at: <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/#reports-from-the-water-department>

WHEREFORE, on the basis of the foregoing, the Public Advocate requests that the Hearing Officer deny the Motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'RW Ballenger', written over a horizontal line.

Robert W. Ballenger  
Kintéshia S. Scott

For the Public Advocate

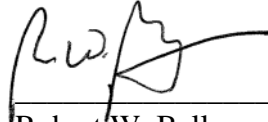
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
(215) 981-3788  
[rballenger@clsphila.org](mailto:rballenger@clsphila.org)

February 22, 2022

VERIFICATION

I, Robert W. Ballenger, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities)

February 22, 2022

A handwritten signature in black ink, appearing to read 'R.W. Ballenger', written over a horizontal line.

Robert W. Ballenger



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

**In Re: Philadelphia Water Department** :  
**2022 Special Rate Proceeding** : **Advance Notice Filed January 21, 2022**

---

**MEMORANDUM OF LAW IN SUPPORT OF PUBLIC ADVOCATE’S  
ANSWER IN OPPOSITION TO LANCE HAVER’S  
MOTION TO REMOVE FOR CAUSE THE ACTING PUBLIC ADVOCATE**

---

The Public Advocate hereby submits this memorandum of law in support of its Answer In Opposition to Lance Haver’s Motion to Remove for Cause the Acting Public Advocate (Motion) in the above captioned proceeding.

**I. Introduction**

After extensive negotiations, the Water Department and the Public Advocate submitted a Joint Petition for Partial Settlement (Settlement) addressing the majority of the substantive issues raised in PWD’s 2021 Rate Proceeding (concerning rates and charges for FY 2022 and 2023). Included among the proposed settlement terms was an agreement to utilize a special rate reconciliation proceeding to reduce the FY 2023 rate increase approved by the Board, if certain conditions are met. Lance Haver, *pro se*, opposed the Settlement and now seeks to remove counsel for the Public Advocate from this Special Rate Proceeding.

The Motion is rife with falsehoods and mischaracterizations. The Motion provides no basis for removal of counsel for the Public Advocate, and requests relief that the Hearing Officer has no ability to provide. More than half of the numbered paragraphs in the Motion include *ad hominem* attacks on counsel for the Public Advocate, and include accusations of incompetence, hubris, betrayal, arrogance, tyranny and corruption which are improper and not founded in reality. The impropriety of these allegations only serves to underscore the Motion’s total lack of

foundation in law and fact. In other circumstances, with time permitting, a motion to strike would be an appropriate response.<sup>1</sup> The Motion must be denied.

## **II. The Motion is Rife with Falsehoods and Mischaracterizations.**

The Motion is presented in numbered paragraphs and accompanied by a verification made subject to penalties that its statements are factually true and correct to the best of the movant's knowledge, information and belief. The averments containing matters of law are simply incorrect. The averments of fact are easily rebutted with irrefutable, publicly-available evidence.

The Motion sets forth averments concerning: (1) the law governing the Board (Motion ¶¶1,4); (2) the appointment, functions, work product and services of the Public Advocate (Motion ¶¶2-4,14-17); (3) the Joint Petition for Partial Settlement in the 2021 Rate Proceeding (Motion ¶¶6,9,11,13); (4) the nature of this Special Rate Proceeding (Motion ¶¶11,13); (5) the Water Department's receipt of operating revenues and capital funding (Motion ¶11); (6) the public record of the 2021 Rate Proceeding (Motion ¶8); and (7) the status of TAP enrollment and the ongoing moratorium on water shut offs (Motion ¶¶10,12). In each case, as set forth in the Public Advocate's Answer, statements in the Motion are incorrect or false. With a minimal amount of due diligence, movant would know that the statements in the Motion are not true and correct.

---

<sup>1</sup> The striking of offensive material is appropriate when factual averments consist of incomprehensible forays into personal invective, acerbic asides, caustic commentaries, disgruntled digressions and *ad hominem* observations. Dougherty v. Advanced Wings, LLC, No. 1:13-CV-447, 2013 WL 12178169, at \*5 (M.D. Pa. June 7, 2013), report and recommendation adopted, No. 1:13-CV-447, 2013 WL 12180759 (M.D. Pa. July 12, 2013).

### **III. Removal of the Public Advocate is Unwarranted.**

Community Legal Services, Inc. (CLS), serves as Public Advocate pursuant to a contract entered into with the Board after an open and public procurement process. As set forth in Exhibit PA-1 to CLS's contract, the Public Advocate is required to participate in good faith settlement discussions, whenever appropriate. That exhibit provides:

Of course, if any issues presented in PWD's rate request or other proposals identified in the course of the rate review proceeding are amenable to settlement, CLS will participate in settlement discussions with the goal of advancing the interests of small user customers as a group.

In full compliance with its obligations to faithfully represent the interests of Small User Customers, counsel for the Public Advocate successfully negotiated a settlement in the 2021 Rate Proceeding that was approved by the Board. Subsequently, at the Board's August 11, 2021 public meeting, the Board voted to authorize the extension of CLS's contract to serve as Public Advocate in anticipation of this Special Rate Proceeding. The contract's term was extended to December 1, 2022. Given the unprecedented benefit to the public interest served by the Settlement, and the high quality of the Public Advocate's past performance, there is simply no basis to remove counsel for the Public Advocate. Indeed, counsel for the Public Advocate is obligated to continue to perform the scope of services set forth in its contract.

In light of the importance of the Public Advocate function in Board rate determinations, the Public Advocate's Answer and Memorandum has focused on the plain lack of merit to all of movant's claims. However, ultimately the Hearing Officer lacks legal capacity to grant the relief requested in the Motion. The Hearing Officer is not a party to the contract between CLS and the Board and so cannot cancel or modify that contract.

**IV. Conclusion**

The Public Advocate respectfully requests the Hearing Officer deny the Motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R.W. Ballenger', with a long horizontal flourish extending to the right.

Robert W. Ballenger  
Kintéshia S. Scott

*For the Public Advocate*

Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
215-981-3700

February 22, 2022