

BEFORE THE  
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD

In the Matter of the Philadelphia Water  
Department’s 2022 Special Rate Proceeding

Fiscal Year 2023

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**ANSWER OF THE PHILADELPHIA WATER DEPARTMENT TO  
THE APPEAL BY LANCE HAVER**

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The Philadelphia Water Department (“PWD” or “Water Department”) submits this Answer to the Appeal (dated March 22, 2022) by Lance Haver (hereinafter the “Haver Appeal”) to the Philadelphia Water, Sewer and Storm Water Rate Board (“Rate Board” or “Board”). The Haver Appeal arises from his Motion to Remove Public Advocate<sup>1</sup> (“Motion”) in the above referenced rate proceeding. The Motion was proffered on February 16, 2022, and the Public Advocate responded<sup>2</sup> on February 22, 2022. The Motion was denied by the Hearing Officer in an Order<sup>3</sup> entered February 25, 2022.

In the Haver Appeal, Mr. Haver seeks to have Robert Ballenger, removed from the role of Public Advocate in this Special Rate Proceeding.<sup>4</sup> Mr. Haver asserts that removal is warranted

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<sup>1</sup> <https://www.phila.gov/media/20220217171233/Motion-to-Remove-Public-Advocate.pdf>.

<sup>2</sup> <https://www.phila.gov/media/20220224112951/Answer-to-LH-Motion-to-Remove-PA.pdf>.

<sup>3</sup> <https://www.phila.gov/media/20220225145815/2022-TAP-R-LH-motion-final.pdf>. The Order speaks for itself, and any factual allegation in the Haver Appeal that is contrary to and/or not corroborated by said Order should be denied. *Cf.* the Order *with* Paragraphs 3 and 6 of the Haver Appeal.

<sup>4</sup> *See, e.g.*, Haver Appeal at ¶¶ 3, 7, 19, 23, 24, 25, 26, 27, 28.

because the Partial Settlement<sup>5</sup> of the 2021 General Rate Proceeding<sup>6</sup> contains a *quid pro quo*<sup>7</sup> in the form of future employment.<sup>8</sup> Specifically, Mr. Haver argues that the Partial Settlement guarantees that the Rate Board will continue to use Mr. Ballenger as Public Advocate.<sup>9</sup>

Mr. Haver is wrong, since nothing in the Partial Settlement guarantees that the Rate Board will use Mr. Ballenger to act as Public Advocate. The position of Public Advocate is a temporary position filled by the Rate Board,<sup>10</sup> not by the Department and not by the Water Commissioner.<sup>11</sup> The Partial Settlement provides, *inter alia*, that Public Advocate will be deemed to be a Participant in the Special Rate Reconciliation Proceeding.<sup>12</sup> That provision merely provides for participation by the “Public Advocate.” It does not specifically require that the Rate

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<sup>5</sup> <https://www.phila.gov/media/20210505154832/Joint-Petition-for-Partial-Settlement.pdf>. The Partial Settlement speaks for itself, and any factual allegation in the Haver Appeal that is contrary to and/or not corroborated by the Partial Settlement should be denied.

<sup>6</sup> <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2021-rate-proceeding/>.

<sup>7</sup> Haver Appeal at ¶¶ 6, 19, 22, 23, 26 (*quid pro quo*). The phrase *quid pro quo* is defined as “what for what” or “something for something” and signifies a bargained-for-exchange.

<sup>8</sup> *See, e.g.*, Haver Appeal at ¶¶ 3, 5, 6, 7, 15, 16, 18, 21, 22, 23, 24, 25, 26, 27, 28.

<sup>9</sup> Haver Appeal at ¶¶ 7, 8, 15, 16, 22, 23 (settlement). These allegations are similar to allegations made by Mr. Haver in his Exceptions (<https://www.phila.gov/media/20210526131220/exceptions-to-hearing-examiner-report.pdf>) to the Hearing Officer Report (<https://www.phila.gov/media/20210524104346/2021-Hearing-Report-May-18-final.pdf>) in the 2021 General Rate Proceeding. The Rate Board denied Mr. Haver’s Exceptions in the 2021 General Rate Determination (<https://www.phila.gov/media/20210618105014/2021-General-Rate-Determination-as-filed-with-Records-Dept-20210616.pdf>). Mr. Haver did not file an appeal from the 2021 General Rate Determination.

<sup>10</sup> Rate Board Regulations at II.B.2.(a). The Public Advocate shall be paid reasonable compensation as negotiated with the Board, pursuant to the formal City contract. Rate Board Regulations at II.B.2.(b). The Rate Board Regulations speak for themselves, and any factual allegation in the Haver Appeal that is contrary to and/or not corroborated by the above should be denied. *Cf.* the Rate Board Regulations *with* Paragraphs 1, 9, 10, 11, 14 and 19 of the Haver Appeal.

<sup>11</sup> Paragraphs 20 and 23 of the Haver Appeal improperly allege that the Water Commissioner is “complicit in the *quid pro quo* agreement.” The Haver Appeal contains no allegations describing the role of the Water Commissioner or the Department in the selection of the Public Advocate. Nor should it, see footnote 9.

<sup>12</sup> Partial Settlement at ¶ II.A.(2)(a).

Board use CLS as the Public Advocate. Nor does that provision create an expectation or a bargained-for-exchange regarding the Rate Board's use of Mr. Ballenger as the Public Advocate.

Finally, Mr. Haver overlooks the fact that the City of Philadelphia procurement rules require open and public process in the selection of firms for professional services (like the Public Advocate). The selection process is subject to Section 17-1400, *et seq.* of the Philadelphia Code. The contract, in this instance, was awarded to Community Legal Services of Philadelphia — not Robert Ballenger. Mr. Ballenger is one attorney in the Energy Unit at CLS. In that capacity, he is paid a salary, the calculation of which is unrelated to any specific engagement by the Rate Board. There is no *quid pro quo* as alleged by Mr. Haver.

WHEREFORE, on the basis of the foregoing, the Department respectfully requests that the Rate Board deny any and all relief requested by Mr. Haver in the Haver Appeal.

Respectfully submitted,

/s/ Andre Dasent

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