

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

In the Matter of Philadelphia Water Department's Special Rate Proceeding	: : : : : : :	Fiscal Year 2023
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OPPOSITION TO STIPULATION

Lance Haver, a party to the proceeding hereby objects to the proposed stipulation. Haver's opposition are based on an inadequate notice of the "special rate proceeding"; the non-disclosed conflict of interests of the Public Advocate's law firm has; the failure of the Public Advocate, the managing partners of his law firm and the Hearing Examiner to file financial disclosure forms; the failure of Mr. Ballenger to adequately represent the public and;

Ballenger's failure to understand the critical distinction between serving as the public advocate, as would be appropriate and being the public advocate which places him in the category of Louis XIV, King of France, who declared "I am the State" in explaining why he did not need advisors. In the same vain, Mr. Ballenger declares he doesn't need advisors.

Mr. Ballenger's confusion has led to his decisions not to create a committee of the public to advise the public advocate on positions, not to spend the necessary resources to engage the public, as can be seen by the lack of participation in the public hearings; and the failure of Mr. Ballenger to challenge the wording of the notice of this hearing which incorrectly states it is a hearing "regarding the reconciliation and **potential downward adjustment of water, sewer and stormwater rates** and charges approved in the 2021 Rate Proceeding"

Had the wording been accurate it would have stated that these hearings are to examine if PWD should be allowed to raise its rates by 7%, for a second rate increase in two years.

It should not go unnoticed that during the Public Hearing on this matter, the attorney for the PWD, which is seeking the rate increase lauded Mr. Ballenger's efforts in agreeing to the rate increase.

1. The Hearing Examiner, at the very least, has the appearance of a conflict of interest.
 - A. The Hearing Examiner has refused to place on the record a financial disclosure form.
 - B. The Hearing Examiner has refused to place on the record a conflict of interest

statement.

- c. The Hearing Examiner has, without an objection made, stopped party Haver from asking questions.
- d. The Hearing Examiner has, on several occasions, allows the attorneys for both parties to testify, over ruling party Haver's objections that Lawyers cannot testify if they are representing parties.
- e. The Hearing Examiner, on several occasions, has without a motion before her, told party Haver how he must make his case.
- f. The Hearing Examiner has, after Haver appealed her decision, taken control over the appeal, despite her ruling showing she is prejudiced against Haver, and despite the cannon of ethics that do not allow prejudicial hearing examiners or judges to rule on appeals.
- g. The Hearing Examiner has held ex parte meetings with the appellate board in her attempt to control the appeal of her decision.
- h. The process used to hire the hearing examiner allows the PWD and the Philadelphia Water Rate Board to have undue influence over the hearing examiner
 - a. The Hearing Examiner's contract is not made part of the record.
 - b. The hearing examiner appears to be hired case by case, without a contract to serve for a set amount of time.
 - c. The hearing examiner is not prohibited from hearing case after case.
 - d. If PWD or the Philadelphia Water Rate Board opposes the hearing examiner's decisions or written decisions, either the PWD or the

Philadelphia Water Rate Board can exercise its power to end the hearing examiners future employment.

- e. This undue influence, the ability to reward a hearing examiner with another contract or punish a hearing examiner by refusing future employment is systematically corrupt.
- f. For those reasons, this proposed stipulation should be rejected, a new hearing examiner, either with a contract for a set amount of time or an agreement as to the number of cases that the hearing examiner will hear, should be appointed to protect the public against the corrupting influence of possible future employment for a ruling that pleases the water department and the Water Rate Board.

2. Mr. Ballenger has and continues to fail to serve the public, confusing serving as the Public Advocate with being the Public Advocate.

- A. Mr. Ballenger has refused to form a committee of water rate payers to advise and provide guidance as to the positions the public advocate should take.
- B. Instead of serving the public, Mr. Ballenger has decided, like Louis XVI that he is the public and either made little to no effort to engage the public as shown by the lack of public participation at the public hearings; or in the alternative, if Mr. Ballenger did exert significant time and resources to engaging the public, he has shown that he does not understand the public and is incapable of engaging us.
- C. Mr. Ballenger failed to object to the wording of these proceedings which mislead the public. ““regarding the reconciliation and **potential downward adjustment of**

- water, sewer and stormwater rates** and charges approved in the 2021 Rate Proceeding”. These proceedings have never projected to and do not now project to lower the water rates. The question these hearings are designated to answer is how much more will rates go up. The difference is stark and the decision to allow the misleading announcement is shameful.
- D. Mr. Ballenger has repeatedly claimed that his law firm did not receive a no bid contract. It did and bearing false witness, in an attempt to cover up a pertinent fact, should be reason for dismissal. Mr. Ballenger might have defended his law firm’s no bid contract by saying that is the way of the world, lawyers, unlike others, don’t bid on contracts. While that would be objectionable on many levels, it might be true, what he has repeatedly said is not.
 - E. There is little doubt, as Mr. Ballenger believes He is the Public Advocate, not a servant of the public, that he will characterize these accurate and truthful criticisms as personal attacks. It appears that Mr. Ballenger believes any criticism of his representation is a personal attack, as it appears he does not understand that criticizing his performance, challenging his competency, questioning his integrity, are issues of how he serves the public and not personal.
 - F. Mr. Ballenger has failed to allow the public to know of his law firm’s conflict of interests and its collective failure to have its attorneys who are supposed to represent the public file financial disclosure forms.
 - a. The Chairman of Mr. Ballenger’s Law Firm failed to disclosed that his “key client” is US Bank, a bank that has no retail branches in the City, that has served as the bond agent for PWD and holds PWD’s 150 million dollar surplus
 - b. Mr. Ballenger has failed to address the question of why he has not advocated for the 150 million surplus account to be moved to a local bank or a credit union that would help the Philadelphia Economy.
 - c. Another Board Member of Mr. Ballenger’s law firm represents Vanguard Investment, the 2nd largest stock holder of US Bank
 - d. Mr. Ballenger has failed to address the issue of why he has not put on the record how much money using a pubic bank, instead of US bank, would save rate payers.
 - e. Mr. Ballenger has failed to require the experts serving the public to file financial disclosure forms and conflict of interest statements.
 - f. Mr. Ballenger has refused to place on the record a financial disclosure form and a statement outlining any and all conflicts of interests he has representing the public.

Argument

Party Haver is under no illusion that either the hearing examiner nor the public advocate will see the mistakes they have made and address them by withdrawing from the proceedings. Haver recognizes through the actions of the hearing examiner that she is not independent of the Water Department.

Any objective review of the Hearing Examiner’s behavior will show that she attempted to, and succeed in stopping Haver from putting his case forward. Her interference and extra legal rulings prevented Haver from exposing the process by which the public advocate’s law firm received the no bid contract; prevented Haver from placing on the record that the there was an inducement offered and accepted by the public advocate for signing a settlement that agreed to rate hikes; the

awarding of a no bid contract for his law firm, the failure of the public advocate to engage the public in any meaningful way and the collusion between the PWD and the Public Advocate.

Nor does Haver believe that Mr. Ballenger will understand the difference between being the public advocate and serving as the public advocate. Mr. Ballenger continues to state that he has no obligation to form an advisory committee to help him decide which positions he should take, if agreeing to rate hikes are in the public interest and what issues the public would like raised. Mr. Ballenger acts and states that he has no need to seek the public's input before forming the public advocate's position. Instead, he repeatably says the public can testify, in opposition to his positions, but not help shape his positions in any institutional manner. This fundamental misunderstanding is unlikely to be corrected by this filing.

Water is the font of life. To allow decisions to be made, that harm the public with rate increase after rate increase, the failure of the PWD to innovate, win competitive grants, form alliances with other publicly owned water utilities and Mr. Ballenger's belief that he, and he alone knows what the public wants cannot go unchallenged.

It should not be necessary for Haver to state but it appears it is. Conflict of interests are serious issues that should not be ignored. Hidden financial interests should not be allowed, checks and balances on power, even the power of someone who believes that they are the Public Advocate are critical and the basis of American Government.

These proceedings, sadly, show that power corrupts and absolute power absolutely.