

LH-2: This seeks a “written document” related to how CLS “decides what position to take “regarding any and all proceedings before the Board.” Although objecting as to relevance, the Public Advocate did answer and provide a copy of its contract to Mr. Haver. Despite that, Mr. Haver maintains in his Exceptions that the answer is non-responsive and I should order the Public Advocate to state publicly whether such a document exists. This request is denied, and the Objection sustained. The decision-making process addressed to how CLS performs its role as Public Advocate is not relevant to the Water Department’s revenue needs and the proposed rates and charges, the only subject before the Rate Board.

LH-3: This information not only seeks the names of the CLS personnel assigned to this rate proceeding, but also how they are supervised: “Please identify how often the supervisor meets with the attorneys assigned to the contract with the rate board and any and all written documents describing what role and/or powers the supervisor has regarding decisions made by those assigned to the contract Community Legal Services has with the Rate Board.” While I would certainly have upheld an objection as to relevance, this information request was in fact fully answered by the Public Advocate. Despite that, Mr. Haver makes unfounded objections to the response. Further response is unnecessary. As he has stated on numerous occasions, as well as in the response to the information request itself, Mr. Ballenger is employed by CLS.

LH-4: This information request seeks the “number of and the names of any and all elected officials Community Legal Services has met with . . . to brief on the proposed water rate increase.” While again, I would have upheld an objection as to relevance, this information was answered by the Public Advocate. This answer is fully responsive, speaks for itself, and further response is unnecessary.

LH-8: This information request is directed to members of the CLS Board of Directors “. . . who have any business relationship, defined broadly as representing the company in any capacity, owning shares in any capacity, doing business in any capacity, with any business that does business with the Philadelphia Water Department.” The Public Advocate objected that the information request is unduly burdensome, overly broad and seeks information not relevant to the instant proceeding. It did, however, offer an assurance: “The Public Advocate has not, and will not, engage in any off-the-record discussions or information exchange with any members of CLS’s Board of Directors concerning the positions the Public Advocate may take regarding PWD’s

proposal in this rate proceeding.” Mr. Haver repeats his concern concerning possible conflicts of interest, and contends that responding would not be overly burdensome: “All Mr. Ballenger has to do is send out an email with a list of companies that do business with the Philadelphia Water Department to each board member and ask if that board member has any relationship with any of the businesses and if so, to disclose what the relationship is.”

This request is denied, and the Objection sustained. First, it is irrelevant with respect to the issue before the Rate Board, which is the Water Department’s proposed rates and charges. As the Public Advocate explained in its response to this information request, CLS staff members serving as Public Advocate do not report to, consult with, or obtain any non-public input from any CLS board members in determining what positions to take in rate proceedings, including any terms and conditions of any proposed settlement agreement.

Any position advanced by the Public Advocate will be evaluated on its merits by the Rate Board, which is mandated to make its determination on the basis of the record before it, regardless of any participant’s position (or the genesis of that position). Any concerns about any potential improper influence that may occur are addressed by the assurance offered by the Public Advocate.

In addition, it is clear that this information request is unreasonably burdensome. To expect CLS’s twenty-six volunteer Board members to search through their business transactions and relationships with the hundreds of companies that do business with the Water Department³ – and then for the Public Advocate to compile and disseminate that information - is unreasonable on its face.

LH-9: This information request asks the Public Advocate to provide “a list of any and all contracts and the amounts Community Legal Services has with the City of Philadelphia.” The Public Advocate objected, stating that the request is unduly burdensome and overly broad, and that the information sought is not relevant to the rate proceeding. It further responded that the only contract potentially relevant to this proceeding is the Public Advocate contract and noted that

³ In its [Objections and Responses](#) to this information request, the Public Advocate stated that based on the City of Philadelphia’s contract website, “as of March 13, 2023, there are 497 contracts reportedly renewed for services with the Water Department.”

“the amount CLS anticipates it will receive for its services pursuant to the Public Advocate contract in this rate proceeding constitutes less than 1% of CLS’s annual operating budget.” Mr. Haver’s response is that this request seeks relevant information, that the information is “public” and “if CLS is dependent on the owners of the Philadelphia Water Department for a significant amount of its annual operating budget, it should be disclosed. Transparency demands that CLS list how dependent it upon the owners of PWD, the City for CLS’s operating budget.”

Again, there is no question that the information sought is not relevant with respect to the rates and charges contained in PWD’s filing, which is the only subject before the Rate Board. CLS’s funding, as well as how it operates, simply is not relevant to the rate filing. The Rate Board will evaluate any position advanced by the Public Advocate on its own merits and on the basis of the record produced in this proceeding. The fact that these contracts may or may not be “public information” does not make them discoverable here, as the Rate Board’s regulations at II.B.5(b) permit discovery only of information “relevant to the proceeding” and not privileged,

To argue that the City of Philadelphia as the “owner” of the Water Department will use “influence” on CLS to force the Public Advocate to adopt a particular position in this proceeding strains belief, especially given the representation made by the Public Advocate that the Public Advocate contract constitutes less than 1% of CLS’s annual operating budget. The Rate Board is an independent City agency, and it will evaluate any position advanced by the Public Advocate on its own merits and on the basis of the record produced in this proceeding. CLS’s contract with the Rate Board itself has already been provided to Mr. Haver. This request for further information is denied, and the Objection sustained.

LH-10: This information request states: “Please provide any and all written correspondence between Community Legal Services and/or its employees and any and all members of the Rate Board.” The Public Advocate objected that this request is unduly burdensome, overly broad and the information sought is not relevant. Despite that, it provided an assurance: “The Public Advocate has not, and will not, engage in any off-the-record discussions or information exchange with any Rate Board member concerning the positions the Public Advocate may take regarding PWD’s proposal in this proceeding.” Despite that assurance, Mr. Haver says the objection should be overruled as “The contract for the Public Advocate to serve as an advisor to the Philadelphia Water Rate Board, is paid for with public dollars. The emails

constitute public documents and I have a right to review them,” citing the Federal Rules of Evidence, FRCP 34(a)(1)(A).”⁴

There are numerous problems with Mr. Haver’s statement. First, it is simply incorrect to say that the Public Advocate serves as an “advisor” to the Rate Board. The role of the Public Advocate has been explained **many** times to Mr. Haver, most recently in my [March 20, 2023](#) Order Denying Haver Motion To Disclose at 2: “Under Section I(n) of the Board’s Regulations, the Public Advocate is a “qualified firm, organization or individual(s) appointed to represent the interests of Small User Customers pursuant to a formal City contract. . . The purpose of this contract is to ensure that the Board understands and appreciates the interests of residential and small business customers when the Board makes its rate determinations.” The Public Advocate is a participant as of right, as set out the Rate Board’s regulations at I(m).

The fact that the contract is “paid for with public dollars” does not make it “relevant to the proceeding” as required by the Rate Board’s regulations at II.B.5(b). The Rate Board’s regulations at II.B.5(b) are clear that all information requests must seek information that is relevant and not privileged: “Participants shall be permitted to propound information requests regarding any matter, not privileged, that is relevant to the proceeding” and go on to provide additional grounds for limiting discovery: “The Board, or a designated member or Hearing Officer on its behalf, may limit discovery (i) as to subject matter that is privileged, (ii) to the extent the information request is unreasonably burdensome (e.g., because of time, extent or expense related to producing the information requested) and/or (iii) to the extent the request is otherwise objectionable.”

Here, the information sought is not relevant to the rate proceeding, and in addition is unreasonably burdensome. This request is denied, and the Objection sustained.

LH-11: This information request states: “please provide [any] and all written correspondences with the Rate Board’s attorney or attorneys.” The Public Advocate objected that it is overly broad, unduly burdensome and seeks information not relevant to the instant rate proceeding. Nevertheless, the public Advocate did in fact answer the information request, after a discussion with Mr. Haver that it was not (as written) intended to extend back decades but was

⁴ This is not a federal proceeding, and the Federal Rules of Evidence are inapplicable.

limited to whether “CLS received information from the Rate Board’s attorney regarding PWD’s proposed rate increase prior to January 24, 2023, the date of PWD’s advance notice filing.” The Public Advocate answered the revised information request, stating that CLS received no such communication and noting that the issue of the timing of the filing was discussed at the Rate Board’s January 11, 2023 meeting. It also presented an assurance: “The Public Advocate has not, and will not, engage in any off-the-record discussions or information exchange with any attorney serving the Rate Board concerning the positions the Public Advocate may take regarding PWD’s proposal in this proceeding.”

Despite that, Mr. Haver says that this objection should be overruled, repeating his prior, incorrect statement that: “The contract for the Public Advocate to serve as an advisor to the Philadelphia Water Rate Board, is paid for with public dollars. The emails constitute public documents and I have a right to review them,” citing the Federal Rules of Evidence, FRCP 34(a)(1)(A).”

Again, the Public Advocate is not an advisor to the Rate Board. The fact that CLS is paid with “public dollars” to serve as Public Advocate does not make this information “relevant to the proceeding” as required by the Rate Board’s regulations at II.B.5(b). Finally, the information request was fully answered by the Public Advocate and no further response is required. This request is denied, and the Objection sustained.

LH-12: This information request states: “Please provide the names of any and all people Community Legal Services will consult with prior to accepting any and all settlement offers from the Philadelphia Water Department.” The Public Advocate answered that it has not engaged in any settlement discussion with PWD and referred to its response to LH-3, in which it described the process by which it develops its positions. Mr. Haver maintains that the answer is non-responsive, and I should order the Public Advocate to disclose “who will Community Legal Services consult with before agreeing to a settlement agreement.”

This request is denied. The decision-making process addressed to how CLS performs its role as Public Advocate is not relevant to the rates and charges contained in PWD’s filing, which is the only subject before the Rate Board.

Finally, this statement is contained in the Public Advocate's March 21, 2023 [letter-response](#):

. . . this proceeding involves consideration of significant proposed increases in water rates and charges for Philadelphia families. The Public Advocate's witnesses have yet to file testimony submitting their recommendations to the Board. [Mr. Haver's] discovery requests do not seek information that would help [him] understand the proposed increases, nor provide information useful to the participants, hearing officer or the Board in considering the proposed increases. Rather, [these] discovery requests appear designed to harass and annoy at a time when the Public Advocate must remain focused on representing the interests of the small user customers.

I find myself forced to agree that these information requests are not designed to elicit substantive information with respect to the issues present in this proceeding, especially given that the Public Advocate has not even filed its testimony yet. They are simply an extension of Mr. Haver's continuing criticism of the performance of the Public Advocate, which he has raised on numerous occasions, and which has been considered and rejected numerous times by the Rate Board and on appeal. Such repetition serves only to divert resources that could more usefully be used to scrutinize the issues presented in this proceeding. I urge Mr. Haver to focus his attention on the Water Department's filing (and on the testimony when it is submitted by the Public Advocates and other participants) in order to provide useful, well-reasoned testimony that can be considered by the Rate Board when it addresses the substantive issues before it.

Marlane R. Chestnut
Hearing Officer

March 26, 2023