

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

In the Matter of the Philadelphia Water Department's Proposed Change in Water, Wastewater, and Stormwater Rates and Related Charges **Fiscal Years 2024 – 2025 Rates and Charges to Become Effective : September 1, 2023 and September 1, 2024**

DIRECT TESTIMONY OF LANCE HAVER, PRO SE

1. How large of a Rate Hike are you recommending?

Haver. The entire rate hike request should be denied. “Those who profess to favor freedom and yet deprecate agitation are men who want crops without plowing up the ground; they want rain without thunder and lightning. They want the ocean without the awful roar of its many waters. . . . Power concedes nothing without a demand. It never did and it never will. Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them, and these will continue till they are resisted with either words or blows, or with both. The limits of tyrants are prescribed by the endurance of those whom they oppress.” Fredrick Douglas. Unless PWD entire rate hike request is denied, PWD will continue to place greater importance of raising rates than finding ways to contain costs.

2. Doesn't PWD need more money?

Haver That cannot be the standard used to justify a rate hike. If it was, than water consumers would be forced to pay for bad decisions, lack of effort, subpar operations, no bid contracts, contracts award to friends and/or family members and outright malfeasance and theft.

3. What should be the standard then?

Haver The standard must be rate increases are the last resort and not a fall back revenue stream for PWD when it chooses not to focus on cost savings, increasing its customer base, finding revenue from other sources and using its consultants to find cost savings, not rate increases. PWD must prove it has made all reasonable efforts to

control costs, lower purchasing prices and grow its customer base, before any rate increase is granted. PWD has not done so.

4. Won't that make the bond rate agencies unhappy?

Haver Perhaps. One would think the bond rating agencies would be happier with a well-run utility than a poorly run one. But regardless of how happy or unhappy the bond rating agencies are, the role of the PWD and the City itself is to serve water consumers and citizens, not place the bond rating agencies comfort above the comfort of Philadelphians. The Water Board is established to protect the interest of water consumers, not bond holders. If the hearing examiner or the Water Board places the comfort of bond holders or bond rating agencies above the comfort of Philadelphia water consumers, they are violating the basic concept of democracy and would be showing who they serve.

5. If the bond agencies and bond holders are unhappy, won't that lead to higher borrowing costs and higher rates?

Haver Of course not. That is the proverbial "boogie man" that the high-priced consultants who also work for "for profit utilities" use to persuade rate boards to unnecessarily raise rates. If the PWD wants lower borrowing cost, it should support a public bank like the one in North Dakota, that allows a municipality to use its own on hand cash to fund bonds. City Council has passed the legislation to create a Public Bank. The Mayor who hires and fires the water commissioner, appoints the rate board and gives contracts to Community Legal Services has refused to appoint people to fill the board of the Public Bank.

PWD, rather than state on the record how much less of a rate increase would be needed if it could borrow from a public bank, is silent on the issue, but cries, as loud as it can that we must raise rates to keep the private profit-making bond rating agencies and banks selling the bonds happy.

If the PWD or PWD's public advocate had any integrity, at the very least they would put into their testimony wording that made it clear

that borrowing from a public bank would save literally 10's of millions of dollars for rate payers.

6. If a public bank would save water consumers so much money why doesn't the PWD's Public Advocate support the public bank as a way to lower borrowing costs?

Haver Here is where PWD's Public Advocates conflict of interest raises disturbing questions. First, PWD's Public Advocate is hired and paid for by the Mayor's appointees. 2nd, the PWD's public advocate's law firm is dependent upon contracts from the Mayor, the same Mayor who refuses to allow the Public Bank to be formed. And third, the executive board of Community Legal Services has, at the very least, the appearance of financial interests in bond rating agencies, bond counsels, bond banks and others that do business with PWD.

7. You say, at the very least the appearance of a conflict of interest, can't you prove it?

Haver Of course its provable, if the hearing examiner would require the board of Community Legal Services to answer discovery requests and disclose their financial interests in PWD's vendors and suppliers. But the Hearing Examiner upheld the objections PWD's public advocate had to disclosing its boards financial conflict of interest. As one will see, the hearing examiner has continually misled the public, helped both PWD's public advocate and PWD itself, escape public scrutiny, made statements on the record supporting the efforts of PWD, without hearing evidence and ruled out of order questions challenging the misstatements of PWD's public advocate and the Water Department.

8. What examples do you have of the Public Advocate and Hearing Examiner misleading the public?

Haver To start with, PWD's Public Advocate and the Hearing Examiner claim that the Public Advocate is "analogous" to the State Consumer Advocate. The PWD's Public Advocate, Hearing Examiner and Chair of the Water Rate Board, the former State Consumer Advocate, know

there are 3 very significant difference between the State Consumer Advocate and PWD's public advocate.

First the State Consumer Advocate is nominated, not by Public Utility Commission, which like the rate board sets rates, but by an independently elected Attorney General, who has no responsibility for the operation of the utility. The candidate nominated by the Attorney General must be confirmed by the Pennsylvania Senate.

PWD's public advocate is hired by Mayoral appointees and confirmed by no one. The only entity who can remove PWD's public advocate is the rate board itself, a board of 5 which contains two real estate developers, the former water commissioner and the former chief legal counsel for PGW. There is no independent confirmation or evaluation of PWD's public advocate, even after it supported two consecutive rate hikes, refused to form a client committee and failed to do outreach to Philadelphia civic groups.

2nd, the State Consumer Advocate is required to "offer assistance and consumer education to the public." PWD's Public Advocate does not. On the record, PWD's Public Advocate admits that it met with only one group before the public hearings, held no community meetings, did no public outreach other than an email and made no attempt to contact any of Philadelphia's listed registered community organizations.

3rd the State Public Advocate has no conflict of interest. It is not part of a law firm that gets contracts from the owners of utilities or vendors of utilities. PWD's public advocate's law firm relies upon contracts from the Mayor, the person responsible for seeking the rate increases and members of PWD's public advocate law firm have business relationships with PWD's vendors.

PWD's public advocate, the hearing examiner and the Chair of the Water Rate Board, with many years of experience as the State's Consumer Advocate know these facts. They know there are checks and balances on the State Consumer Advocate and the only check on the power of PWD's public advocate are the Mayoral appointees. It is clear that the Mayor, who has direct control over the water department also has indirect control over the positions PWD's public

advocate takes, and yet that is being kept from the public during the public hearings.

9. Are you suggesting the Hearing Examiner is unjust?

Haver Yes, but I don't think that is strong enough. She is prejudice, in the definition of the word, meaning she has pre judged the case. The hearing examiner has stated on the record that before reviewing the facts she believes she knows what that what PWD wants. And on the record *"The other thing I wanted to say was -- and this kind of flows out of my background and my experience -- is that don't think of this as an adversarial proceeding. You may see yourself on a on a river where you're on one side and the Water Department is on the other. And you want one thing, which is low rates, and the Water Department wants another thing, which is high rates, so they have lots of money. But that's not the way it is. There's a bridge between you, and I'd like you to think about that. We all want the same thing. But believe me, the Water Department does not want to have rates so high that you can't pay them. Nobody wants to cut off anybody's service. Nobody wants to have to deal with people who really are trying to pay their bills but can't."* (Philadelphia Water Public Input Hearing, 3.22/2023 3 pm, page 23 lines 4-17)

The Hearing Examiner, without waiting for the parties to file testimony, without waiting for cross examination, has decided that PWD doesn't want "high rates" and that "we all want the same thing.". There is no record as of the date of this statement that would allow anyone to come to any conclusion about what the public or the PWD wants.

For example as we will see in later public testimony, not even the hearing examiner believes this is true, as she states on the record she believes the decision are "political" and depend on what the Mayor wants. But yet the hearing examiner pre judges the facts, makes finding of facts, inconsistent with her own words and attempts to lead the public to believe the water department wants the same thing the public wants.

The record will show this is not true. The public wants, as the record shows, PWD to cut costs not raise rates. The public wants PWD to use funds sent to the City from the American Recovery Plan Act. The Mayor's water department does not want to use the ARPA money to avoid the rate increase. The hearing examiner acknowledges these facts, yet says on the record, as a finding of fact that PWD and rate payers want the same thing despite the public testimony stating this isn't true. From the Public Testimony:

“The public deserves to know why Mayor Kenney feels it is appropriate to ask residents to bear higher costs when the City is sitting on billions of dollars that could wipe out the need for a 20 percent increase for water bills. The public deserves to know what obstacles may exist in allocating money from the City's General Fund to PWD, and why no effort has been made to remove these obstacles to spare residents from higher costs.” (Ibid page 34 lines 17-34)

10. You say even the hearing examiner knows when she says PWD and consumers want the same thing, that she knows she is misleading the public, why do you say that?

Haver To start with, after the testimony quoted above, the hearing examiner, in her attempt to help the water department get the rate increase it seeks, allowed the lawyer for the water department to testify and put on the record, unsubstantiated statements. The hearing examiner knows, it is impermissible for a lawyer to answer the statements of the public testifiers. Her own ruling was *“If you give a statement here and one of the participants wants to ask you questions about it, I will allow it for the purpose of clarification, but not to embarrass you or to cross-examine you.” (Ibid page 21 lines 16-19)*

In response to a member of the public asking if the hearings can be postponed until after everyone has a chance to lobby the Mayor ARPA dollars, the hearing examiner stated *“Well, Ms. Brown, I can answer -- I can answer that to some extent, which is that we really can't delay the hearings just because of the way the statute's written, but there are ways to deal with this” (PHILA WATER HEARING BOARD 3/22/2023 6:00 p.m. pages 40-41. Lines 22-2)*

This is not a true or accurate statement. The Water Department could legally withdraw the requested rate increase, and the Hearing

Examiner knows this. It is another example of how the hearing examiner misleads the public in her attempt to help PWD.

The hearing examiner further attempts to protect PWD by stating on the record-- *HEARING OFFICER CHESTNUT: Okay. Let's move on. Obviously, it's a complicated matter for the Mayor to allocate money in the budget process, and I think we all recognize that he has other factors to consider beside the Water Department, but we certainly expect the Water Department to aggressively present itself when there is money to be allocated. But of course, it's not as simple. (Ibid pg 43 lines 5-11)*

The hearing examiner would not allow participant Haver to point out the water commissioner is hired by the Mayor and cannot “aggressively present itself”. Again, the hearing examiner pre judged what the water department is doing or will do, without any evidence in an attempt to make it appear that the actions of PWD are reasonable, before any facts were presented.

The hearing examiner has refused to allow the quality of the work done by PWD’s public advocate to be an issue. PWD’s public advocate failed to do adequate outreach, failed to establish a client committee, failed to reach out to elected officials, and failed to organize a robust response to the requested rate hike. Had they done so, according to the Hearing Examiner, the turn out would have an impact on if there is a rate increase. *“But certainly, the more people who speak up, the more of an impact it will have on the Rate Board in reminding them of who was affected by these rates.”* (Ibid pg 64 lines 22-24) Understanding a poor turn out at the public hearings, which is what happened, leads to higher rates, the refusal of the hearing examiner to allow the public to question the adequacy of PWD’s public advocate, protects PWD’s rate hike. In the past, these rate hikes were supported by PWD’s public advocate.

11. Is that all?

Haver No the hearing examiner exposed her prejudices to a greater extent in the two hearings on the following day, 3/23/23.

12. Can you quote from the transcripts to prove your points?

Haver **No, the transcripts from the 3/23/23 hearings as of the day before the filing deadline for testimony have not been posted. But as I remember, subject to check, a member of the public asked if PWD was paying millions to renovate its offices while at the same time seeking millions in rate increases. The hearing examiner, in an attempt to stop the participants at the public hearing to discover the truth, that part of the last rate increase was to pay for the renovations, allowed the Deputy Water Commissioner, whose offices are being renovated, to claim he did not know if the water department was renovating his office. The hearing examiner's cover up was so complete, she didn't ask the Deputy Commissioner how he could be unaware if his own office was being renovated.**

In addition, to the best of my recollection, in the hearings not posted, the hearing examiner explains that the rate increase is "political" again showing her bias, that it is not a question of if the water department can find the money elsewhere, but which politician has to be protected.

It could be a coincidence that then first two transcripts were posted on April 4th, 2023 and the more exposing transcripts could not be posted within 7 days of the first posting. But based on behavior of the hearing examiner, PWD's public advocate and the rate board itself, which gave 2 non bid contract renewals to PWD's public advocate, after the public advocate agreed to two consecutive rate hikes, it is reasonable to ask is really a coincidence?

13. Has PWD taken steps to keep its costs down?

Haver Not enough. The record is clear. PWD did not hire a single consultant to find cost saving measures, before it filed this rate increase. PWD did not seek lower cost office space, instead forcing consumers to pay higher rates so PWD executives could work in Center City. PWD did not try and combine services or office space with PGW. PWD failed to work with Council Members who asked PWD to withdraw the requested rate increase. PWD failed to work with the City to find ways to lower what it pays for supplies and services. PWD failed to use its resources, including the “rate stabilization fund” to help create local jobs. Among other examples, PWD uses US bank as its depository, a bank that has no retail branches in Philadelphia and thus doesn’t help Philadelphians find jobs in the banking industry that would help people pay their water bills. And PWD failed to appoint a single PWD employee to recruit water intensive industries into Philadelphia to utilized the additional water that PWD has a right to take from the rivers.

14. Isn’t it true that you are not a lawyer, graduated from a very small college, not known as a “better college”

Haver Yes, it is true. I am not a lawyer. I went to small public high school not a Philadelphia suburban high school or private “prep school”. The college I graduated from was not accredited when I began my studies. (I have never inquired as to its current status, so I don’t know if is or is not currently accredited.) I have never claimed my education came from a prestigious college or law school. To the best of my knowledge, no graduates from my college are among the wealthiest people in America. No fellow graduates have served as Mayors, Governors, U.S. Senators or President.

My knowledge comes from the picket lines, protests and struggles poor and working people have engage in for the last 50 years.

What credentials do you have that would suggest that your testimony has greater merit than those of PWD’s public advocate or PWD’s own witness?

Haver My testimony is the only testimony that has not been paid for by the Water Department, at the direction of the Mayor of Philadelphia or

major industries. I am the only person to submit testimony that has never supported a rate increase, never agreed to a rate increase or met in private to agree to a rate increase. In essence, my testimony is the only testimony that has not been purchased.

What is your recommendation?

Haver To acknowledge the obvious. PWD will never focus on lowering its operating costs, never pressure the Mayor for ARPA funds, if PWD's public advocate and hearing examiner continue to grant PWD successive rate increases. It is a simple question: Why would PWD change its behavior, if it is not forced to? Power is never conceded without a demand, behavior is never changed without a reason. The Mayor can offer tax cuts by using the ARPA funds rather than fund PWD and make a rate increase unnecessary if PWD's public advocate and the hearing examiner go along.

After the hearing examiner listed her years of experience and reading through the resumes of PWD's public advocate, it is impossible to believe they are so naive as to believe the Water Commissioner who is hired and serves at the pleasure of the Mayor will press the Mayor for anything. It should be clear to anyone examining what is happening just how much of a farce it is for the hearing examiner to suggest PWD's commissioner is pressing his boss for anything.

Will your testimony matter?

Haver In all honesty, at this level probably not. The hearing examiner has already shown her prejudice, PWD's public advocate, has settled rate cases in the past and received not one, but two contract extensions after agreeing to multiyear rate increases.

There is no reason to believe that either the hearing examiner or PWD's public advocate will change their behavior.

I expect there will be a small reduction in the size of the rate increase so PWD's public advocate, the hearing examiner and the rate board can claim they have done something for the rate payers. But of course PWD knows, politically, and the hearing examiner has already found that politics is what matters to her, they cannot be given all they ask for. So PWD asks for more than it needs. Much like the store that marks up the prices of goods before the sale, PWD asks for more

than it wants, knowing it will never get all it asks for. I do not believe my, or anyone's testimony will have impact on the size of the rate increase the Mayor and PWD really want. The charade of having everyone appointed directly and indirectly by the Mayor claiming to protect the public and not the Mayor and PWD would be funny, if the rising water/sewer rates were not such a burden to consumers.

Why bother then?

Haver It is critically important to create a record for the future. Someone, maybe a new Mayor or new Council President, maybe a Judge will review how PWD's public advocate, the hearing examiner and water rate board have forced consumers to pay for the failure of PWD to make cost cuttings and efficiencies more important than rate increases.

At some point people will realize that the water department is setting rates, not for the public's benefit, but for the comfort of the Mayor, bond rating agencies and bond holders and force the City to open a public bank.

The arc of history is long and having a prejudice hearing examiner and a public advocate that answers to the rate board, not the public, will more than likely make my efforts in the short term unsuccessful. In fact, I expect PWD's public advocate will once again call up the news service I work for and demand that I be taken off the air. I expect the hearing examiner and the rate board to insult and condemn me. I expect the rate board to do exactly what the Mayor wants them to do, approve the rate increase so the Mayor can use the ARPA surplus to fund business tax cuts.

At some point, the public will understand PWD's public advocate and the hearing examiner's collusion with the Mayor and PWD. At that point, the record I create may help chart a course for the future.