

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

**IN THE MATTER OF THE
PHILADELPHIA WATER
DEPARTMENT’S PROPOSED CHANGE IN
WATER, WASTEWATER AND
STORMWATER RATES AND RELATED
CHARGES**)
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Fiscal Years 2024-2025

**MOTION TO EXCLUDE FROM TECHNICAL REVIEW AND
DESIGNATE AS PUBLIC INPUT THE
DIRECT TESTIMONY OF PRO SE PARTICIPANT HAVER**

TO HEARING OFFICER MARLANE R. CHESTNUT:

The Public Advocate, by and through its attorneys, hereby files this Motion to Exclude from Technical Review and Designate as Public Input (Motion to Exclude), the April 12, 2023 testimony of *pro se* participant Lance Haver.

The testimony identified above should be excluded from the record of the technical review portion of this proceeding pursuant to the Hearing Officer’s authority set forth in Board Regulation Section II.B.1, because it consists of unsupported allegations regarding the credibility of other parties and provides no competent evidence bearing on the subject matter to be considered in technical review. In large part, the testimony reiterates or reframes previously lodged accusations, assertions, and opinions promoted by the *pro se* participant in public input hearings and other contexts, outside of technical review. For the reasons discussed below, the participant’s statements are not competent testimony and do not seek to provide information appropriate for the record in the technical review portion of this rate proceeding.

In support of its Motion to Exclude, the Public Advocate states as follows:

1. *Pro se* participant possesses no qualifications that could reasonably support his competency to testify concerning the ratemaking issues which are the subject of the

technical review portion of this general rate proceeding. Indeed, the participant avers that his knowledge “comes from the picket lines, protests and struggles poor and working people have engage [sic] in for the last 50 years.” *Pro se* participant makes no demonstration, on the basis of this body of knowledge, that he is qualified to provide testimony subject to cross-examination, regarding PWD’s revenue requirements, cost of service study, financial metrics, or other operations, concerning which PWD and the Public Advocate have made specific proposals to the Board.

2. Aside from his general opposition to rate increases, *pro se* participant’s testimony does not contain any recommendations, requests, adjustments, or other actions for the Board’s consideration. Indeed, his testimony does not respond in any way to the testimony of PWD’s witnesses, identify any feasible support for his proposal that the Board reject the rate increase entirely, nor does it identify any support on the evidentiary record, whether in responses to discovery requests, other party testimony, or otherwise. Rather, *pro se* participant’s testimony appears to be an unsupported effort to impugn the integrity and credibility of other participants and the Hearing Officer. The participant opines that his testimony is immaterial (averring that it probably won’t matter), yet he submits that it has more merit or importance than the testimony of others. These statements acknowledge that the participant’s testimony should not be considered evidence for the technical review portion of this general rate proceeding.

3. *Pro se* participant’s testimony repeats unsupported alleged conflicts of interest and improprieties regarding the conduct and services provided by the Public Advocate and Hearing Officer. *Pro se* participant has shared such allegations many times, including at public input hearings. They have been consistently rejected by the Hearing Officer, the

Board, and most recently the Philadelphia Court of Common Pleas. These repetitive and redundant statements continue to lack merit or foundation.

WHEREFORE, on the basis of the foregoing, the Public Advocate requests that Hearing Officer grant this Motion to Exclude. There is precedent for this approach, having been utilized in the 2018 General Rate Proceeding with respect to testimony proffered by the Philadelphia Fire Commissioner. In that proceeding, the Fire Commissioner, who had joined in submitting written testimony, was permitted to have his statement instead considered by the Board as public input without need to question his qualifications or subject him to cross-examination.¹ That same approach serves the best interests of all participants with regard to the conduct of a fair, impartial, and expeditious hearing process in the technical review portion of this rate proceeding. See Regulation §II.B.1(b)(4).

Respectfully submitted,

/s/ Robert W. Ballenger

For the Public Advocate

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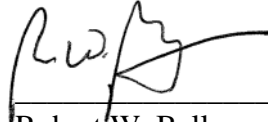
April 20, 2023

¹ See May 11, 2017 Tr. at 2 (accepting Fire Commissioner Thiel's testimony as a public input statement), available at <https://www.phila.gov/media/20180515141406/May11TechnicalHearingTranscript.pdf>

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).

April 20, 2023

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

Robert W. Ballenger

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Fiscal Years 2024-2025

**MEMORANDUM OF LAW
IN SUPPORT OF
MOTION TO EXCLUDE**

The Public Advocate hereby submits this memorandum of law in support of its Motion to Exclude the testimony of *pro se* participant Haver from the technical review portion of the above-captioned proceeding and designate such testimony as public input.

I. Introduction

The Philadelphia Water, Sewer and Storm Water Rate Board’s (Board) regulations provide for two separate hearing processes. “Public input” hearings and submissions are designed to provide the Board with information from members of the public. “Technical review” hearings involve the consideration of witness testimony concerning ratemaking issues, including revenue requirements, cost of service studies, rate design, and other operational issues affecting rates and charges submitted for approval by the Board. Regulation §§II.B.4, II.B.5. In this proceeding, *pro se* participant Haver is not competent to provide testimony concerning the ratemaking issues subject to consideration in the technical review portion of this proceeding. Furthermore, the participant acknowledges that his statements are not intended to provide specific recommendations to the Board for its consideration in entering a final determination regarding PWD rates and charges. Finally, the participant has expressed his unsupported

opinions in public input hearings and other venues and now seeks to provide redundant written witness testimony in the technical review process along the same lines. For these reasons, the participant's testimony should be excluded from the technical review record and designated as a public input statement.

II. The *Pro Se* Participant is Unqualified to Provide Competent Testimony in the Technical Review Phase of this Rate Proceeding.

As the *pro se* participant submits, his knowledge “comes from the picket lines, protests and struggles poor and working people have engage [sic] in for the last 50 years.” Although this experience is certainly valuable in some contexts, it fails to demonstrate adequate qualifications to support his overarching proposal to the Board: to reject the proposed rate increases in their entirety. Indeed, to the extent there exists support for this proposal, the *pro se* participant points only to public input statements which provide essential context and information for the Board, but are not a part of the technical review portion of this general rate proceeding. While it is not required that a witness in the technical review portion of a rate proceeding before the Board possess any particular educational or professional credentials, it is necessary that such witness be qualified to testify as to the subject matter presented for the Board's consideration. *Pro se* participant falls short of this standard.

The Board's regulations provide that, in the technical review portion of the rate proceeding, the Hearing Officer should “employ procedural standards analogous to those utilized in utility ratemaking proceedings at the Pennsylvania Public Utility Commission.” Regulation §II.B.5(b)(5). In Public Utility Commission (PUC) rate proceedings, the determination of whether to admit testimony is in the discretion of the Administrative Law Judge (ALJ), who may not act arbitrarily or capriciously. In considering such a motion to exclude or strike testimony, the PUC has been clear in articulating that “it would be absurd and self-defeating to require [an

ALJ] ... to either admit every witness put forward or reject all, without considering the relevancy of their testimony or their competency to testify.”² Thus the PUC largely follows the general rules regarding admissibility of testimony applicable to the trial courts, namely that “evidence that is incompetent, irrelevant, or immaterial may be stricken from the record on motion.”³ The Hearing Officer in this rate proceeding should proceed in similar fashion with respect to technical review hearings.

The Board’s regulations set forth a process by which affected stakeholders can provide information and receive information, namely the “public input” hearing process at Regulation §II.B.4. As the Hearing Officer explained, during the public input hearings, that aspect of the rate proceeding does not include some of the formalities associated with the technical review portion of the process. Indeed, individuals providing public input are not subject to cross-examination, but may be asked to clarify their statements and may be permitted to engage in further dialog with other participants, if necessary, to resolve a customer service issue. As such, stakeholders providing public input are not subject to scrutiny regarding competence, and the statements made need not be relevant and material to the technical examination of PWD proposed rates and charges.

In contrast, the technical review portion of the rate proceeding focuses on a detailed review of PWD’s voluminous filing, consisting of the complicated financial projections upon which PWD’s request for rate increases is premised. This review entails extensive written discovery, submission of expert witness testimony, and the on-the-record examination of witnesses for participants at technical review hearings. See Regulation §II.B.5. Historically, this portion of the process has included questions regarding the qualifications of the witnesses to

² Re Philadelphia Area Taxicab Self-Ins. Program, 71 Pa. P.U.C. 158 (Oct. 19, 1989).

³ 9 Standard Pennsylvania Practice 2d §56.21.

proffer certain statements in order to establish a clear record differentiating between (1) professional expertise of the witness, (2) information established through discovery, and (3) opinions that may be premised on the advice of counsel. In this proceeding, the *pro se* participant acknowledges he lacks the necessary professional expertise in ratemaking matters and fails to support his testimony with any evidence on the record or acquired through discovery.

The Hearing Officer is empowered to “[m]ake all procedural rulings necessary to conduct a fair, impartial and expeditious hearing process, including the exclusion of irrelevant or redundant testimony or evidence.” Regulation §II.B.1(b)(4). The Public Advocate submits that this regulation authorizes the Hearing Officer to exclude testimony submitted without requisite qualification or competence from technical review, and instead designate it as a public input statement. Indeed, this was the approach taken in the 2018 Rate Proceeding with respect to the testimony submitted by the Philadelphia Fire Commissioner.⁴ Furthermore, permitting the participant’s testimony to be considered in technical review would likely generate unnecessary and time-consuming cross-examination and/or discovery in order to complete the record, undermining the objective of conducting an expeditious and orderly proceeding. For this reason, the Public Advocate submits that the testimony should be excluded from technical review and designated as a public input statement governed by Regulation §II.B.4.

⁴ See May 11, 2017 Tr. at 2 (accepting Fire Commissioner Thiel’s testimony as a public input statement), available at <https://www.phila.gov/media/20180515141406/May11TechnicalHearingTranscript.pdf>

III. Aside from the General Statement Opposing Rate Increases, the *Pro Se* Participant's Testimony Does not Include Proposals for Board Action.

As discussed above, the only rate-related request apparent on the face of the *pro se* participant's testimony is that the Board reject the proposed rate increases in their entirety. However, this request appears premised solely on statements made at public input, and not on any analysis of how PWD might maintain its current level of service for the benefit of PWD customers if the rate increases are simply rejected. Indeed, despite the significant volume of information generated through the discovery process thus far, the *pro se* participant utilizes none of it, drawing his recommendation from thin air.

Rather than supporting his recommendation with an analysis, or utilizing the Board's publicly available rate model to demonstrate that PWD does not need a rate increase, the *pro se* participant's testimony relies on an unsupported effort to impugn the integrity and credibility of other participants and the Hearing Officer. The *pro se* participant suggests that the testimony of other witnesses is not valid or credible, and that the Hearing Officer is prejudiced, due to the compensation structure that ensures they are capable of performing all of the obligations imposed upon them. These assertions are unsupported and the *pro se* participant has not identified any basis for finding witnesses for PWD or the Public Advocate to lack credibility. More importantly, the participant admittedly does not seek Board endorsement of these allegations, acknowledging that his testimony is immaterial (averring that his testimony probably won't matter). As a result, the Hearing Officer should find his testimony to be irrelevant pursuant to Regulation §II.B.1(b). For this reason, the *pro se* participant's testimony should not be permitted as part of technical review, but should instead be designated as public input.

IV. *Pro Se* Participant’s Allegations of Conflict of Interest, Misleading Statements, and Purported Wrongdoing by the Public Advocate and Hearing Officer Are Not Appropriate Testimony.

As discussed above, during the technical review portion of the general rate proceeding, witness testimony is subject to cross-examination to ensure that the record is clear regarding the basis of testimonial statements. To the extent a witness may testify as to a legal, financial or operational requirement, for example, cross-examination provides other participants the opportunity to understand the basis for such testimony, including any legal, financial, or operational experience that may support or undermine the credibility of the witness. *Pro se* participant’s testimony, echoing his many statements in public input hearings and elsewhere, alleges conflicts of interest, misleading statements and other purported wrongdoing. These statements are repetitive and have been addressed repeatedly over the past two years. On each occasion, the Participant’s accusations have been heard, denied, and found to be without merit, most recently by the Philadelphia Court of Common Pleas.

Ultimately, as above, the participant’s lay opinions concerning allegations of impropriety are not submitted for Board approval, as the participant acknowledges. Indeed, his goal (“to create a record for the future”) is not a legitimate basis for testimony in this general rate proceeding. *Pro se* participant’s yearning for a future in which his opinions resonate with others does not constitute evidence for the Board’s consideration in evaluating PWD’s proposed rate increase.

V. **Conclusion**

For all the foregoing reasons, the Public Advocate respectfully requests the Hearing Officer grant its Motion to Exclude the *pro se* participant's testimony from technical review, and designate such testimony as a public input statement.

Respectfully submitted,

/s/ Robert W. Ballenger

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April 20, 2023