

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

In the Matter of the Philadelphia Water	:	
Department’s Proposed Changes in Water, Sewer	:	2023 General Rate Proceeding
and Storm Water Rates and Related Charges	:	
	:	

ORDER DENYING PA MOTION TO EXCLUDE

This Order addresses the Motion to Exclude from Technical Review and Designate as Public Input (Motion to Exclude) filed by the Public Advocate (PA) on April 20, 2023, addressed to the written testimony of pro se participant Lance Haver. The Motion was accompanied by a Memorandum of Law. The Philadelphia Water Department (PWD or Department) by email indicated its support for the Motion. Mr. Haver filed an Objection to the Motion on April 24, 2023.

Citing the treatment by the Philadelphia Water, Sewer and Storm Water Rate Board (Rate Board) of certain testimony in the [2018 General Rate Proceeding](#),¹ the Public Advocate maintains that Mr. Haver’s statement should be designated as public input (therefore avoiding the need to question Mr. Haver’s qualifications or subject him to cross-examination) and not be addressed at the scheduled technical hearings in this case.

The basis for the Motion is the Public Advocate’s contention that the testimony should be excluded from the technical review portion of the hearing 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.”

However, this contention goes to the probative weight to be afforded to Mr. Haver’s testimony, rather than the threshold issue of admissibility as testimony at a technical hearing. To

¹[Transcript](#) of the May 11, 2017 hearing at Tr. 2, <https://www.phila.gov/media/20180515141406/May11TechnicalHearingTranscript.pdf>

the extent that his testimony is competent, material and relevant, it will be considered. Where it is not, it will be given no weight. The fact is that Mr. Haver is a participant (unlike the Fire Commissioner in the 2018 proceeding) and his written testimony was submitted in accordance with the schedule established.

The Public Advocate, in its Memorandum of Law at 4, expressed concern that “. . . 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.” I agree that scarce administrative resources of time and money should not be spent on those portions of Mr. Haver’s testimony that are inappropriate, irrelevant or have been previously rejected. Nevertheless, discovery and cross-examination are left to the participants’ discretion.

In his Objection, Mr. Haver (again) accuses me of “malfeasance and prejudice,” says I should recuse myself from ruling on this motion, and continues his litany of unsupported and previously rejected, accusations against the Public Advocate. He further asserts that the instant Motion was filed “[T]o eliminate testimony that publicly embarrasses [the Public Advocate].”

While Mr. Haver relies on my statement made at one of the public hearings that “any participant can file whatever testimony with whatever suggestions they want to make” as evidence that the Public Advocate’s Motion was filed in bad faith, my comment (not a ruling) obviously included the necessary context that such testimony must be competent, material and relevant. Moreover, he fails to recognize that the Rate Board has stated² that it will no longer entertain for consideration these attacks, which are repeated in both the written testimony and his response to the Motion. Mr. Haver’s unsupported allegations against both the Public Advocate and me have been considered and rejected numerous times by the Rate Board and, and will not be addressed again in this proceeding.

Rather than being filed in bad faith, the Public Advocate’s Motion represented a moderate approach to testimony that on its face contains clearly irrelevant and inappropriate material. It could have filed a motion in limine or a motion to strike, but it did not. Instead, even

² See for example, the, 2021 General Rate Proceeding, [Rate Determination](#) at 17-29; , the 2022 TAP-R Adjustment, [Rate Determination](#) at 5.

were I to grant this Motion, the effect would be that Mr. Haver's entire statement would still be part of the record in this proceeding,

In my report, I will limit my consideration to those portions of Mr. Haver's testimony that actually address or are otherwise relevant to the proposed rates which are the subject of this proceeding. I assume the Rate Board will do the same, in accordance with its most recent pronouncements regarding these allegations in the 2022 Special Rate Proceeding, [Rate Determination](#)³ at 23 (footnotes omitted), where it said: "As we have found repeatedly, there is no basis for these unwarranted allegations, based on mischaracterized facts and false insinuations, directed to the Public Advocate and the Hearing Officer. Going forward, such baseless attacks will be dismissed."

THEREFORE, for the reasons as stated above, the Public Advocate's Motion to Exclude from Technical Review and Designate as Public Input is DENIED.

Marlane R. Chestnut
Hearing Officer

April 25, 2023

³ <https://www.phila.gov/media/20220622164351/2022-Special-Rate-determination-06-15.pdf>