

PHILADELPHIA WATER DEPARTMENT
REBUTTAL STATEMENT NO. 5

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	Fiscal Years 2024 - 2025
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Rebuttal Testimony
on behalf of
the Philadelphia Water Department
to
Lance Haver

Dated: April 26, 2023

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1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY**

2
3 **1. PLEASE STATE YOUR NAMES AND POSITIONS.**

4 1. My name is Glen Abrams. I serve as Deputy Water Commissioner for Communications
5 and Outreach.

6
7 Testifying with me is Gerald Leatherman, Brian Merritt and David Jagt. Mr. Leatherman
8 serves as Deputy Water Commissioner for Human Resources and Administrative
9 Services. Mr. Merritt and Mr. Jagt are Managers at Black & Veatch Management
10 Consulting LLC.

11
12 **2. HAVE ANY WITNESSES ON THIS PANEL PREVIOUSLY SUBMITTED**
13 **TESTIMONY IN THIS PROCEEDING?**

14 2. Yes. Mr. Abrams has provided testimony and schedules in PWD Statement 8. Mr. Merritt
15 and Mr. Jagt provided testimony and schedules in PWD Statement 7. Mr. Leatherman has
16 not previously provided testimony in this proceeding. His resume is attached as Schedule
17 GL-1.

18
19 **3. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

20 3. In this rebuttal, we provide the Department's response to recommendations and criticisms
21 of Mr. Lance Haver in his direct testimony (LH St. 1).

22
23 **4. PLEASE IDENTIFY THE SCHEDULES THAT ACCOMPANY THIS**
24 **REBUTTAL TESTIMONY.**

25 4. The following schedules accompany our rebuttal testimony:

1 Schedule GL-1: Resume of Gerald Leatherman
2 Schedule GA-1: April 24, 2023 Letter
3

4 **II. OVERALL POSITION**

5 **5. PLEASE DESCRIBE MR. HAVER’S OVERALL POSITION.**

6 5. Mr. Haver’s position is that there should be no rate increase for FY 2024 and FY 2025.
7 He contends that the *status quo* of existing rates can be maintained.¹
8

9 **6. WHAT IS THE DEPARTMENT’S RESPONSE?**

10 6. The Department rejects Mr. Haver’s position. Maintaining utility services over FY 2024
11 and FY 2025 at existing rate levels is unsustainable.² The Department explained that,
12 without sufficient rate relief, the Department will not satisfy the 90% test in FY 2024 or
13 in FY 2025 and could deplete the Rate Stabilization Fund (“RSF”) balance by the end of
14 FY 2025.³ Neither outcome is reasonable. The first outcome (violation of the 90% test)
15 would trigger a default under the General Bond Ordinance. The second outcome would
16 trigger a downgrade of the Department’s rating or outlook.⁴
17

18 Mr. Haver wrongly assumes that the Department can make withdrawals from the cash
19 balances (the RSF or RF) during the Rate Period without consequences. That is not true.
20 The credit rating agencies have been clear that pushing the RSF reserves below \$120
21 million will result in a downgrade to the utility.⁵ In fact, as noted above, the RSF would
22

23
24 ¹ Haver St. 1 at 9 (Q13). See Haver St. 1 at 1 (Q1-5).

² PWD Statement 2A; PWD Statement 7.

³ PWD Statement 2A at 6; PWD Statement 7.

⁴ PWD Statement 2A; PWD Schedule FP-1; Schedule FP-3; PWD Statement 2B.

⁵ Schedule FP-1; PWD Statement 2B at 4-5.

1 be depleted in FY 2025. That means the Department would have little or no flexibility to
2 respond to future emergencies (such as Hurricane Ida).

3 Mr. Haver also wrongly assumes that outperformance or costs savings or both are
4 sufficient to cover any increased costs in the Rate Period. Nothing in the record shows
5 that outperformance or cost savings could realistically cover the increased expenses
6 projected for FY 2024 and FY 2025.

7
8 **III. ARPA FUNDS FROM THE CITY**

9
10 **7. HAS THE DEPARTMENT SOUGHT ARPA FUNDS FROM THE CITY?**

11 7. Yes.

12
13 On February 14, 2023, fourteen members of City Council sent a letter⁶ to the Department
14 asking the Department to explore other options rather than a rate increase. That letter
15 specifically recommended utilization of the funds that the City received under the
16 American Rescue Plan Act (“ARPA”).⁷ The Department did not project that the City
17 would allocate any amounts under ARPA to PWD for FY 2024 or FY 2025.⁸

18
19 In response to the aforementioned February 14th letter, the Department reached out to the
20 City’s Director of Finance to request that funds from ARPA be allocated to the
21

22
23 ⁶ <https://www.phila.gov/media/20230315091559/Council-Water-Rate-Letter.pdf>

24 ⁷ *Id.* The City must use its ARPA funding before the December 31, 2024 deadline. <http://phlcouncil.com/wp-content/uploads/2023/03/budget-in-brief-FY2024-proposed.pdf>

25 ⁸ PWD Statement 2A at 25. The City’s adopted budgets for FY 2022 and FY 2023 did not allocate amounts under ARPA to PWD. Budgeted expenditures (including those supported by ARPA) are being used to support police, fire, health, recreation services. *Id.* The Mayor’s proposed budget for FY 2024 did not include allocating amounts under ARPA to PWD. <https://phlcouncil.com/budget2024/>

1 Department.⁹ The Department was informed that the ARPA funds are already allocated in
2 the General Fund for other uses.¹⁰ The Administration’s decision was formally
3 communicated in a letter from the Director of Finance, dated April 24, 2023. See
4 Schedule GA-1.

5
6 As of this date, the Department continues to project that the City will not allocate any
7 amounts under ARPA or the General Fund to PWD in the adopted operating budget for
8 FY 2024. Beyond its February 14th letter, City Council has not formally and explicitly
9 acted to actually allocate funds under ARPA to the Department. Both of the Department’s
10 budgets (operating and capital) for FY 2024 are being reviewed by City Council. The
11 Budget Hearings for the Department were held on April 25, 2023.¹¹ City Council is
12 expected to pass legislation approving the budget before the end of the fiscal year on June
13 30th.

14
15 **8. PLEASE SUMMARIZE MR. HAVER’S CRITICISMS OF THE DEPARTMENT**
16 **REGARDING EXTERNAL FUNDING.**

17 8. Mr. Haver does not believe that the Department has done enough to secure external
18 funding. He is specifically critical of the Department’s efforts to receive ARPA funds
19 from the City.¹²

20
21
22
23
24 ⁹ City Council Rate Update (March 2023), <https://www.phila.gov/media/20230324162200/City-Council-Briefing-March-2023.pdf>

25 ¹⁰ *Id.*

¹¹ <https://phlcouncil.com/budget2024/>

¹² Haver St. 1 at 10 (Q16).

1 **9. DO YOU HAVE AN OVERALL RESPONSE TO MR. HAVER’S CRITICISMS?**

2 9. Yes. As explained, above the Department has reached out to the City Administration to
3 seek additional support from ARPA or other sources. The City has plainly indicated that
4 ARPA funds are already allocated in the General Fund for other purposes. PWD has also
5 reached out to federal and state agencies seeking support for its capital program.
6 Specifically, the Department has sought out federal assistance and has received low-
7 interest loans for \$500 million. As noted in the record, PWD gratefully acknowledges
8 these loans but emphasizes the requirement to repay them.

9
10 Please recall that during President Biden’s visit to the Belmont Treatment Plant in
11 February 2023, the U.S. Environmental Protection Agency (EPA) announced a \$340
12 million financing commitment to upgrade the City of Philadelphia’s aging drinking water
13 infrastructure, including replacing customers’ lead service lines. These Water
14 Infrastructure Finance and Innovation Act (WIFIA) low-interest loans will jumpstart the
15 work to modernize the drinking water system with an initial investment of \$19 million.
16 All of the foregoing reflects PWD’s efforts to secure funding from external sources to
17 ease the burden of increased rates on our customers wherever possible.

18

19 **IV. COST SAVINGS**

20 **10. PLEASE DESCRIBE MR. HAVER’S RECOMMENDATIONS REGARDING**
21 **COST SAVINGS AND EFFICIENCIES.**

22 10. Mr. Haver believes that the Department has not done enough to reduce costs for the Rate
23 Period.¹³ He argues that the Department’s expenses in the Rate Period should be lower —
24 each by unspecified amounts — if the Department would (1) reduce its operating budget

25

¹³ Haver St. 1 at 9 (Q13), 10 (Q16), 11 (Q18).

1 through (a series of) unidentified budget cuts;¹⁴ (2) combine services with Philadelphia
2 Gas Works (“PGW”);¹⁵ (3) use cost saving “innovations”;¹⁶ (4) lower the cost of
3 purchasing supplies;¹⁷ (5) lower costs (rent) by moving offices to new location(s);¹⁸ (6)
4 use infrastructure to generate electricity;¹⁹ (7) use a public bank located in Philadelphia;²⁰
5 and, (8) create jobs in Philadelphia²¹ — by using consultants located in Philadelphia.²²
6

7 **11. WHAT IS THE DEPARTMENT’S RESPONSE?**

8 11. Mr. Haver’s recommendations are generalized and without record support. Any “cost-
9 saving” programs or measures must be implemented by the Department without
10 impacting the Department’s ability to provide safe and reliable service.²³ Certain costs,
11 such as those related to chemical purchases, energy costs (electricity and natural gas),
12 personnel (labor) and materials, are increasing.²⁴ In the aggregate, such “non-
13 discretionary” costs represent roughly 80% of the Department’s budgeted operating costs
14 for the Department’s water and wastewater treatment facilities.²⁵
15

16 Please also note that cost control (and associated savings) at PWD starts with budgeting.
17 PWD has a vigorous budget process through which all program managers submit and
18 justify their budget to senior management. During the year, PWD Finance produces
19 monthly budget monitoring reports that evaluate budget performance. See PWD
20

21 ¹⁴ *Id.*
¹⁵ Haver St. 1 at 9 (Q13)
¹⁶ *See*, Discovery Requests from Haver to PWD, LH-II-13 to LH-II-15.
22 ¹⁷ Haver St. 1 at 9 (Q13).
¹⁸ Haver St. 1 at 9 (Q13).
23 ¹⁹ *See*, Discovery Requests from Haver to PWD, LH-II-16 to LH-II-19.
²⁰ Haver St. 1 at 2 (Q5), 11 (Q18).
24 ²¹ Haver St. 1 at 9 (Q13).
²² *See*, Discovery Requests from Haver to PWD, LH-II-22 to LH-II-26.
²³ *See*, PWD Statement 2 at 9.
25 ²⁴ Schedule FP-1; PWD Statement. 4 at 9.
²⁵ PWD Statement. 4 at 9.

1 discovery response to PA-III-4.

2
3 PWD has also taken numerous steps to lower the cost of borrowing associated with its
4 capital program since the last general rate case in issuing its Series 2021B refunding
5 bonds (\$368.720 million generating significant present value savings); and in securing
6 \$500 million in low-interest loans from federal/state sources. Additional efforts to lessen
7 borrowing costs and other burdens associated with the capital program are ongoing (e.g.,
8 federal grant funding).

9
10 Further, as noted in PWD Statement 4, the Department has implemented operational
11 changes to achieve efficiencies and cost savings for our customers. See PWD Statement 4
12 at 20-21. Specific examples of ongoing operational savings and efficiencies include those
13 realized in connection with our Northeast Water Pollution Control Plant cogeneration
14 facility, bio-solids recycling center, and the ongoing implementation of Advanced
15 Metering Infrastructure. Other examples of programs designed to increase efficiency and
16 reduce the number of disruptive emergency main and sewer repairs include the Linear
17 Asset Management Program and Sewer Infrastructure Assessment Program (PWD
18 Exhibit 5 at 39-40).

19
20 Regarding office space, PWD is in a long-term lease (through 2032) for space at 1101
21 Market Street. The rate of that lease is favorable to PWD and ratepayers. Mr. Haver also
22 made inquiries regarding current PWD office renovations. The Department gave details
23 on the office renovations as part of an earlier public input response document.²⁶

24
25

²⁶ <https://www.phila.gov/media/20230413155908/PWD-Public-Input-Hearing-Responses-APR10.pdf>

V. ATTRACTING WATER-INTENSIVE INDUSTRIES TO THE CITY

12. PLEASE SUMMARIZE MR. HAVER’S CRITICISMS OF THE DEPARTMENT REGARDING ATTRACTING WATER-INTENSIVE INDUSTRIES TO THE CITY.

12. Mr. Haver argues that the Department should have done more to recruit “water intensive” industries to Philadelphia.²⁷

13. PLEASE RESPOND.

13. The Department believes that this criticism is misplaced. Other parts of local government are focused on attracting businesses to the City. That is, Philadelphia’s Department of Commerce works to (among other things) attract businesses to the City.²⁸ In addition, the Philadelphia Industrial Development Corporation (“PIDC”) is Philadelphia’s public-private economic development corporation. PIDC works to attract, manage, and invest public and private resources in the clients, communities, and markets that energize Philadelphia’s economy.²⁹

VI. CONCLUSION

14. DOES THIS CONCLUDE THIS REBUTTAL TESTIMONY?

14. Yes, it does.

²⁷ Haver St. 1 at 9 (Q13).

²⁸ <https://www.phila.gov/departments/department-of-commerce/>

²⁹ <https://www.pidcphila.com/who-we-are>

GERALD DAVID LEATHERMAN

Philadelphia, Pennsylvania 19130

EDUCATION: **Temple University School of Law**, Philadelphia, PA
Juris Doctor, May 1989, Class Rank: Top 1/3

American University, Washington, DC
Bachelor of Arts, International Relations, May 1980

EXPERIENCE: **City of Philadelphia Water Department**, Philadelphia, PA
Deputy Commissioner. 2013 to Present

Responsible for the Human Resources, Administrative Services and facilities Management Units of a water, wastewater and stormwater utility with 2100 employees.

City of Philadelphia Law Department, Philadelphia, PA
Divisional Deputy City Solicitor/General Counsel, 2008-2013

General Counsel to the Philadelphia Water Department overseeing a staff of three attorneys.

City of Philadelphia Law Department, Philadelphia, PA
Deputy City Solicitor/General Counsel, 2003-2008

Assigned to the Mayor's neighborhood Transformation Program to assist the Director, the Managing Director's Office and the Dept. of Licenses and Inspections with all legal matters.

Philadelphia Housing Development Corp., Philadelphia, PA
Staff Attorney, 2001-2003

Provided housing development agency with representation on all issues relating contracts, civil litigation, real estate transactions, and bankruptcy.

Sole Practitioner, Philadelphia, PA
Attorney, 1992-2001

General practitioner; personal bankruptcy and criminal law matters.

Morris & Adelman, Philadelphia, PA
Staff Attorney, 1989-1992

VOLUNTEER: Consumer Bankruptcy Assistance Program (1993-1996)



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ROB DUBOW
 Director of Finance

April 24, 2023

Randy E. Hayman, Esq.
 Commissioner and CEO
 Philadelphia Water Department
 1101 Market Street, 5th Floor
 Philadelphia, PA 19107

Dear Randy:

Thank you for your letter inquiring about General Fund support for the Water Fund to help with the rate case. Unfortunately, additional General Fund support may hurt the ratings of both the General Fund and the Water Fund and could create budget problems for the General Fund.

As you recall, by reallocating pension fund costs between funds, we have reduced costs for the Water Fund by over \$100 million over five years and increased costs on the General Fund side. As we inquired with bond counsel and financial advisors about the impact of further General Fund support, we became convinced that additional support could damage both of our ratings.

Providing General Fund support for the Water Fund would be seen as a credit negative by rating agencies and investors. It would be seen as an indication that the Water Fund is unable to support itself. At the same time, it would signal to the rating agencies and investors that the General Fund is assuming direct responsibility for the water fund's finances, thus linking the two ratings, and likely dragging them both down. Moody's Investor Service has recently described exactly this type of scenario as a textbook example of an inter-fund linkage that would damage the ratings of both credits involved.

While that market perception limits the benefits of providing General Fund support for the Water Fund, the support would come at a financial cost to the General Fund. While the current General Fund balance is higher than it has historically been, our reserves still lag those of peer cities and have been boosted in part by one-time revenues and American Rescue Plan (ARP) funds. This leaves the General Fund with fewer resources to respond to a future recession or address other needs in the city. In short, there would be costs without clear benefits.

I hope this letter was helpful. Let me know if you would like to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rob Dubow'.

Rob Dubow
 Director of Finance