

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

Brief of Lance Haver, Pro Se
In opposition to the Proposed Rate Increases,
Proposed both by the Philadelphia Water Department and
The Water Department's Public Advocate

Background:

The Philadelphia Water Department has failed to show that it has taken any meaning and reasonable steps to control costs, access funds from the American Recovery Plan Act and PENN VEST, increase water sales, contain water lost or use its resources to help create living wage jobs so that the costs associated with low income plans would diminished. The proposed rate increase, supported both by PWD and PWD's public advocated should be rejected in its entirety and PWD should be forced to make cost and operational savings priorities.

Controlling Costs

1. The Philadelphia Water Department (PWD) has failed to hire a single consultant to look for operational savings.
2. PWD has failed to put on the record that it has any bench marks for operations and service.
3. The only reference in the entire proceeding to cost savings were the repeated statements of the Water Commissioner that he tells his staff to "sharpen their pencils.
4. PWD own expert witness, Ms. Bui of Black and Vetch stated that management and/or operational audits can help utilities save money.

5. PWD own expert witness, Ms. Bui, stated that in her experience audits can lower operating costs.
6. Mr. Jewell, PWD operational witness states on Page 233 of the transcript lines 14-25
**“So I'm going to kind of
11 use your words here for a minute. So, I guess
12 to shortly answer your question, I personally
13 have not reviewed any proposals from
14 respondents to professional services request
15 for proposals to specifically evaluate
16 cost-saving measures at the Water Department.**
7. Mr. Jewell further states on page 235 lines 17-25
**17 MR. JEWELL: To my knowledge, we have
18 not issued -- and I have a panel of Operations
19 here, so Steven Junod, Brendan Reilly, Linda
20 Kramer, representing the vast majority of PWD
21 operations, as well as myself.
22 Please feel free to weigh in if you
23 have specific knowledge that I do not.
24 But to my knowledge, I'm not aware of
25 any specific contracts issued by PWD**
8. The Water Commissioner himself states that after being questioned he will “go back and evaluate” if an audit would help cut costs. He further said, that he has found audits to be helpful Page 12 lines 9-17:
**But I am a believer in having audits.
9 I grew up having audits. You may know I'm a
10 former general counsel for two major
11 utilities, and so I don't oppose going forward
12 and having an audit. I'll go back and we'll
13 evaluate that.
14 MR. HAVER: Would it be fair to say
15 that you've, from time to time, have found
16 audits to be helpful?
17 COMMISSIONER HAYMAN: I have, yes.**
9. PWD failed to make the escalating cost of chemicals and consumables a priority.
10. If it had been a priority the Water Commissioner himself would have been involved in talks with Mayor Kenney to see how the City could help the PWD save on purchasing costs. He was not: page 26-lines 3-21:

**MR. HAVER: So you yourself have not
4 met with anyone regarding finding ways of
5 lowering your consumable costs?**

**6 COMMISSIONER HAYMAN: I'm sure I've
7 had high-level conversations and comments, but
8 the actual rolling up the sleeves and looking
9 at the cost of individual chemicals, again, is
10 done at the staff and management level, is
11 done daily as we try to procure reasonable
12 costs for chemicals and other items that we
13 need to operate as a water utility.**

11.PWD has no internal program to reward workers for developing cost savings techniques and strategies as the Water Commissioner himself stated p 13 lines 7-16:

**MR. HAVER: Does the Philadelphia
8 Water Department have specific programs that
9 reward your workers for coming up with cost
10 savings?**

**11 COMMISSIONER HAYMAN: Not a specific
12 program, but we do evaluate and have
13 performance reviews**

12.The record is clear, there PWD did not attempt to use any consultant or examine a single cost cutting proposal before seeking a 21% rate hike, while hiring six consulting firms and two law firms in its attempt to raise Philadelphian's water bills.

Seeking Other Funding

13.PWD failed to use its resources to seek funding from ARPA and PENN Vest.

14.PWD admitted that in its testimony before Philadelphia's City Council it did not ask to help PWD find a way to use the ARPA funds.

15.PWD admitted that in its testimony before Philadelphia City Council that it did not ask Council's help in negotiating with PENNVEST to make PWD eligible for grants.

16.PWD admitted, under cross examination, that if failed to ask the Philadelphia's delegation to Harrisburg for help in its negotiations with PENNVEST to make PWD eligible for Grants.

17. In response to discovery requests, PWD admitted that it has no employee charged with recruiting water intensive industries into the City of Philadelphia and no such industry has been recruited in the last two years.
18. Under cross examination, PWD and its consultants admitted that it had never attempted to negotiate with the City of Philadelphia for payments for the excessive water lost.

PWD Fails to Adequately seek improvements

19. PWD does not set benchmarks for operations
20. The Hearing Examiner refused to allow participant Haver to put on the record the full scope of the lack of benchmarks Pg 82, line 5-

**HEARING OFFICER CHESTNUT: Yeah, I
6 think you've already tried to ask this, and
7 it's already been answered and responded to
8 and objected to. I know you want to show
9 that because it's in your testimony that you
10 feel that the department does an inadequate
11 job, but it doesn't matter what benchmarks
12 Commissioner Hayman uses.**

21. In undisputed testimony, the Water Department's Public Advocate's witness Roger Colton, stated: P231-232 Lines 20-1 2-17

**MR. HAVER: Do you believe such
21 targets are helpful as benchmarks at finding
22 out how a utility is doing in enrolling people
23 in its low-income plans?
24 MR. COLTON: I am a firm believer in
25 measuring outcomes. There is a federal law
1 called GPRA, the Government Performance and
2 Accountability -- GPRA.
3 Government Performance and Reporting Act,
4 perhaps.
5 And it establishes perform- -- it
6 establishes the principle of continuous
7 improvement through the adoption of
8 performance measurements, outcome performance
9 measurements.
10 You establish a goal, you measure the
11 extent to which you've achieved that goal, and**

12 if you have not achieved it, you can then
13 inquire as to what changes might be beneficial
14 in order to help you better achievement.
15 So, yes, I believe in establishing
16 outcome measurements, performance outcome
17 measurements.

21 MR. COLTON: To my knowledge, PWD
22 does not have internal outcome measurement --
23 performance measurement goals, and it does not
24 have an internal process -- continuous
25 improvement process to determine what should
1 occur if those goals were not met -- were not
2 achieved.

19 So specifically, what consequence is
20 there to the Philadelphia Water Department if
21 it fails to set a benchmark for enrollment in
22 its low-income plans and achieving those
23 goals?

24 MR. COLTON: There are a couple of
25 elements to the question you just asked. The

1 first question -- the first element is what
2 consequence is there if PWD fails to set a
3 benchmark.

4 And the answer to that is setting the
5 benchmark of the outcome performance isn't a
6 goal unto itself, isn't an action unto itself.

7 The significance of setting an
8 outcome performance benchmark is that that
9 outcome performance benchmark is then used in
10 a continuous improvement process by which the
11 desired performance is measured against the
12 actual performance, and if the actual
13 performance isn't at the benchmark, the
14 continuous improvement process would seek to

15 decide what, if anything, could and should be
16 modified in order to more fully meet that
17 performance benchmark

Granting a Rate Increase obviates the need for cost cutting, lowering purchasing prices or improving operations.

22. It is impossible for PWD to meet its social mission and serve the People of Philadelphia with continual improvements because it sets no benchmarks and cannot know if its actions create improvements, keep the status quo or make situations worse
23. If the rate increase is denied, PWD will be forced to make cost cutting, operational savings and lowering of purchasing costs priority
24. As the record shows P 85-lines 15-24:

Would you be in a position to direct
16 your staff to look for cost savings if you
17 were not able to receive every penny that you
18 have asked for in this rate increase?
19 COMMISSIONER HAYMAN: We would have
20 to look at cost savings; we'd have to look at
21 reductions.

**The Water Department's Public Advocate Support
For Two Years of Massive Rate Increases**

Is Also Unsubstantiated

**By the Record; And
In Opposition To the Public Testimony**

25. By the Water Department's Public Advocate's own expert, Roger Colton, it was established that: Page 254 line 2-21:

**2 On the other hand, is my testimony
3 strengthened because I have 40 years of
4 experience of working with utilities, with
5 service providers, and with grassroots
6 community organizations? Yes, I think my
7 testimony is strengthened by the fact that I
8 have worked with and been educated by people
9 who have been there.
10 Whether it's -- I think it's one
11 thing to read that people cut back on their
12 medicines because they can't afford to pay
13 their water bill. I think it's one thing to
14 read about people who don't participate in a
15 program because they're confused about the
16 eligibility requirements.
17 But over the last 40 years, I have
18 sat in meeting after meeting after meeting
19 with individual customers who have told me
20 that, and I think my testimony is stronger
21 because of that.**

26. Ms. Price, another of the Water Department's Public Advocate attorneys, question was answered by Mr. Colton that he had first-hand knowledge that Community Legal Service Attorneys have had direct interaction with their clients, with low income consumers, and are well aware of their issues.

27. Because the only people who can be clients of Community Legal Services and the only organizations Community Legal Services may legally represent are low income, the Water Department Public Advocate does not have clients or client groups with income ranging from 30,000 to 85,000. Page 259-260:

**MS. PRICE: To your knowledge, do the
25 CLS attorneys serving as Public Advocate**

1 represent hundreds of low-income

2 Philadelphians every year?

3 MR. COLTON: Yes. Yes, CLS is

4 Community Legal Services.

28. The PWD's Public Advocate's witness stated that all many consumers who do not qualify for any of PWD "low income plans" are burdened by the current rates and their burden will be exacerbated by the rate increase being recommended by PWD's Public Advocate: pages 225-226:

But I do want to ask you, do you

23 believe increasing rates by \$92.557 million

24 would add to the burden of ratepayers?

25 MS. PRICE: Objection, asked and

1 answered.

2 HEARING OFFICER CHESTNUT: I'll let

3 him answer it, but I'm not sure -- I don't --

4 is that something you could answer,

5 Mr. Colton?

6 MR. COLTON: I think the answer to

7 that question is that there's -- there is a

8 phrase for it. An increasing rate will --

9 your question is will increasing rates by the

10 dollar amount you said add to the burden.

11 Clearly, yes, the answer to that

12 question is yes, increasing the rates by half

13 of that amount would increase the burden.

14 Increasing the rates at all would, by

15 definition, increase the burden.

29. Low income households who are eligible and enrolled in one of PWD's low income plans have different interests than low to moderate income households who earnings are even one dollar above the cut off for eligibility of the programs. Page 223:

**MR. HAVER: Well, I'm asking you
10 specifically if the bills only went up by
11 92.557 million, would the bills be affordable
12 for low-income and working people?**

**13 MR. COLTON: The experience in
14 Philadelphia is that there are people facing
15 unaffordable bills prior to this rate case,
16 and there will be people -- and when I say
17 people, I mean households or customers, not
18 population -- there will be people facing
19 unaffordable bills after the rate increase,
20 should it be approved.**

30. Because Philadelphia Water Department's Public Advocate has refused to establish a client group, refused to meet with Community Groups, refused to meet with elected officials, PWD's Public Advocate is basing its representation of the public upon its low income clients, without the benefit of hearing from those above the poverty level.

31. To the extent that the Water Department's Public Advocate has heard from non low income households during the public hearings, it has ignored the public's testimony. There was not a single reference in any of the testimony filed on behalf of Water Department's Public Advocate referencing the public's comment on the proposed water rate case.

32. The Water Department's Public Advocate, by relying upon its limited experience of representing low-income households, and seeking no meetings with other groups, has shown that it is unfit to represent PWD consumers. As the Water Department's Public Advocate's own witness stated pgs 263-264:

**MR. HAVER: And one last thing, if I
23 may.
24 Is there a difference between
25 representing low-income groups and
representing an entire rate base?**

**2 MR. COLTON: Of -- yes. I would say
3 yes to that.**

33. The failure to understand the interests of all rate payers are diverse led to the failure the Water Department's Public Advocate failure to do the necessary outreach to make the public hearings meaningful.

34. This failure has dramatic consequences as the hearing examiner herself has stated on the record:

- a. *“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)
35. By refusing to set bench marks for itself, its efforts and its outcome the Water Department’s Public Advocate did not reveal its lack of effort and lack of effectiveness.
36. Based on the statements of the hearing examiner, that the more people who turn up, the larger the impact on the rate board, the lack of effort by the Water Department’s Public Advocate has allowed its experts to recommend two year’s of massive rate increases, in line with what PWD has requested.
37. The Water Department’s Public Advocate, despite hearing from the few members of the public that did attend the public hearing that the public wants cost savings before rate increases, did not file a single suggestion that would lead to or project any cost savings.
38. In fact, despite spending rate payers dollars, which is where the funds come from to retain the Water Department’s Public Advocate and its expert witnesses, PWD’s Public Advocate’s experts were not even asked to find and/or recommend cost saving strategies page 145- lines 8-17:
- MR. HAVER: I'll try and make it
9 simpler. I won't repeat it word-for-word.
10 Did Community Legal Services hire
11 your company to examine cost-cutting
12 strategies in this rate case for the
13 Philadelphia Water Department?
14 MR. MORGAN: Cost-cutting strategies
15 was not one of the issues that we as -- that
16 we looked at. And the reason is that that
17 goes beyond the scope of the rate case review.**
39. The argument advanced by the Water Department’s Public Advocate that savings are outside the scope of the rate case review is not just deeply insulting to the ever-growing number of people who are struggling to pay ever increasing water bills, but disingenuous at best. The Water Department’s Public Advocate’s witness put in his testimony issues that are outside of the control of the Water Department and therefor outside of the scope of “the rate case review”. Specifically, the expert’s testimony on the reallocation of storm water costs from the rate base to the City’s general fund.
40. This testimony is proof that the Water Department’s Public Advocate’s experts were not and are not limited to matter inside the scope of the rate review, nor should they be.

- 41.If the Water Department's Public Advocate had met with community groups throughout the City, it would have heard, and understood the public's demand, as evidenced by the few people who attended the public hearings, that those paying the bills want cost savings before rate increases.
- 42.The failure of the Water Department's Public Advocate to represent and advocate for that position, but to instead completely ignore the operational failures, high rents, office renovations of PWD, underscores just how ill-suited Mr. Ballenger and his team are to represent the public. They did not direct their own witness to look for or recommend cost savings. page 143, lines 1-9:
- Sir, are you satisfied with the
2 Philadelphia Water Department's efforts to cut
3 costs?
4 MR. MORGAN: I did not do an audit
5 that would give me the information to say that
6 I'm satisfied or not satisfied.**
- 43.Despite it being primary to the majority of people testifying, the Water Department's Public Advocate decided not to look at cost cutting strategies, the efforts of PWD to utilize ARPA and/or PENN Vest funds.
- 44.Had the Water Rate Board required or the Water Department's Public Advocate or had the Water Department's Public Advocate followed its own witness directive, the Water Department's public advocate would have met with community groups, as well as low income groups and individuals and included in its testimony the demands that PWD look to cut costs first before seeking rate increases.

AREGUMENT

- 45.The standard for awarding a rate increase that is shown with uncontested testimony to increase the burden on Philadelphians, cannot be the water department needs more money.
- 46.If that is the case, PWD will and is forcing rate payers to pay for office renovations, twice the average water leakage rate, the failure to institute programs that reward workers for cost savings strategies and the failure to use available resources to find cost savings strategies.
- 47.It is axiomatic that where an organization spends its money tells the public what is important to the organization.
- 48.PWD hired 6 firms of technical experts and 2 law firms to help it raise rates. All paid for by the rate payers dollars.
- 49.PWD hire not a single contractor to help it find cost savings and operations savings.

50. PWD failed to develop and/or have developed for it any plan that would help it find ways to save costs.
51. PWD failed to ask Philadelphia's City Council for help in accessing PENN Vest grants and ARPA funds, instead allowing the Mayor to keep the funds from offsetting the need for the rate increase. The Mayor may want to set aside money for tax breaks and special programs at the expense of water rate payers, but Council must approve the budget and can use the money differently.
52. City Council has resources it can and would use if asked to help PWD receive grants from PENN Vest. PWD failed to ask for help.
53. There are a multitude of simple steps PWD could take that would save money, that it is not forced to take, because the rate board, with the support of PWD's public advocate has always granted PWD the funds PWD needs to avoid the hard work of finding cost and operational savings.
54. Simple, obvious concepts, such as combing services with the City's other municipally owned utility, the Philadelphia Gas Works, are not examined, because there PWD is granted the money it needs to continue operating at the same efficiency levels.
55. PWD has not benchmarks to meet, no way to judge if it is meeting industry standards, no way to judge if it is as efficient as possible or increasing efficiency, and it does not have to, so long as the Rate Board continues to force rate payers to pay for PWD lack of efforts and expenditures to find cost and operational savings.
56. Unless the status quo, PWD seeks more money, without focusing on fundamental changes in operations, the Water Department's Public Advocate agrees to massive rate increases that are slightly less than what PWD sought and the hearing examiner and rate board split the difference granting PWD double digit rate increases, is disrupted, there will be no change in the operational system that continues to burden rate payers. In the Harvard Business review December 2015:
Incumbents' [focus on their existing customers](#) becomes institutionalized in internal processes that make it difficult for even senior managers to shift investment to disruptive innovations.

57. Consistence with other rulings of the Hearing Examiner, she will rule that these arguments are “outside the scope” of what is being considered.
58. If the Hearing Examiner does so she will be revealing the veracity of her statements at the public hearings: Phila Water Hearing Board 3/22/2023 3:00 p.m. Lines 5-12

HEARING OFFICER CHESTNUT: Well, I do want to thank you for your comments, but I do have to correct a misstatement you made, which I'm kind of surprised because you were informed of this earlier. I did -- the spreadsheet that Mr. Haver has been referring to is a model that calculates the impact on the revenue of any adjustments that are made. It doesn't prevent any party from proposing any adjustment whatsoever, and that's not the purpose, and that's not how it's used.

59. Under the current system, PWD chooses not to make cost savings and operational savings as much of a priority as increasing rates, as is evidenced by how PWD spends rate payers’ dollars on consultants. And this hearing examiner, the Water Department’s Public Advocate and the Philadelphia Rate Board all overlook this and agree to support massive rate increases, making the need for operational changes at PWD unnecessary.
60. Have the courage to stand up for the rate payers and demand constant improvements at PWD. There is no government or publicly owned utility that should not be continually striving to do better, bench mark their efforts so they can see where it has been effective and focus resources to improve where improvement is needed. Do not allow PWD to continue to operate without bench marks, without examining cost and operational savings, without utilizing experts to cut costs before hiring a multitude of consultants to raise rates.

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