

Before the
Philadelphia Water, Sewer & Storm Water Rate Board
Petition to Remove Hearing Examiner Chestnut
for Prejudicial Statements and Rulings

Filed by Participant Lance Haver

Whereas during the course of both the Public Input Hearings and the “Technical Hearings” Hearing Examiner Chestnut put into the records facts to aid the Water Department, statements that the rate increase is political and rulings based on her inexcusable belief that she knows what participants are thinking.

1. The Hearing Examiner’s prejudice is first evidenced at the Public Hearing on 3/23/2023 the 3 pm session pages 39 to 44 a member of the public asked, directly and without any equivocation: Is the Water Department renovating its offices. Ms. Chestnut refused to ask the deputy commissioner of communications, who works in the office involved in the question, and had just testified at the public input hearing, if the office was being renovated:

HEARING OFFICER CHESTNUT: Is your question, are	16
they renovating their office?	17
MR. HAVER: That was her question, yes.	18
MS. SHEDRICK: Yes. Well, I understand that the	19
offices are currently under renovation, and I was	20
wondering if there's been internal budget cuts to reduce	21
the cost, or, you know, how are those renovations being	22
paid for?	23
HEARING OFFICER CHESTNUT: Okay. Mr. Shultz,	24

maybe you could prepare a response for Ms. Shedrick about	1
that, and get back to her?	2
MR. HAVER: Couldn't we hear today whether they	3
--	4
HEARING OFFICER CHESTNUT: I'm not sure he's in	5
a position -- if he can answer, sure.	6
MR. HAVER: Are the offices being renovated?	7
HEARING OFFICER CHESTNUT: I'm not sure he's	8
able to answer that. Mr. -- can you, Mr. Shultz?	9
MR. SHULTZ: I do not know the answer to that	10
specific question.	11
MR. HAVER: And Mr. Dasent doesn't know either?	12
And no one from the Water Department who's on this hearing	13
knows?	14
HEARING OFFICER CHESTNUT: Well, that wasn't the	15
purpose of this hearing. It was to hear from people about	16
their -- their pending rate increase	.17
MR. HAVER: She asked a question..	

There is no question that the employees of the PWD who work in the offices being renovated knew and know that their offices are being renovated. And there is no question that some members of the public would be angered to discover that while PWD is raising rates, claiming they don't have the money they need, that they are spending millions renovating its offices.

2. The Hearing Examiner's cover up of the renovation is an example of how the Hearing Examiner has repeatedly helped PWD in its attempt to raise rates.
3. Hearing Examiner Chestnut repeatedly throughout the hearings stated that PWD was seeking funds, without allowing for participants to explore what efforts PWD made to seek the funds. Her prejudicial statements are on record at the 3/23/23 6:00 pm Public Input Hearing page 60:

HEARING OFFICER CHESTNUT: Well, don't forget 2
the Water Department is one of ten City departments, and 3
I'm sure there's a lot of competition for whatever money 4
is out there. So it's not always as simple as it seems on 5
the surface. But yeah, of course we expect the Water 6
Department to make every effort to seek out whatever 7
external funds are available. And let's face it, the 8
Mayor is political.. . HEARING OFFICER CHESTNUT: These are
political decisions, 12

AT this point in the proceeding, there was only evidence, a letter entered into the record by PWD, that PWD would not seek funding from the City of Philadelphia's surplus ARPA funds. Whoever the "we" in the statement referred to, could not be the we that included the hearing examiner, the participants and the water rate board itself as all knew PWD had decided not to seek ARPA funds.

4. At the March 23/2023 6:00 pm On Page 65, Hearing Examiner Chestnut answers for PWD:

The second question is, does the Water 2
Department have what would be considered, whatever kind of 3
words you want to use for it, a surplus? Meaning that if 4
they had money, just like any individual, you have a 5
budget, you have expenses, or you anticipate expenses, 6
sometimes you spend more, sometimes you spend less. So if 7
you didn't spend all the money that you thought you were 8
going to spend, whether it's cumulative or not, is there a 9
surplus that the Water Department has access to? If so, 10
how much is it? And if nobody knows, who does know? So 11
that's just the start of my questions. I have some other 12
ones, but I'm just, you know, I'm starting with - 13
HEARING OFFICER CHESTNUT: No. I'll take a 14
crack -- I'll take a crack at those two.

5. Hearing Examiner Chestnut attempted to help the Water Department's Public Advocate avoid scrutiny, by at first denying it agreed to the last two years of rate hikes: 3/23/23 6pm hearing pages 75, 76

- a. Did 3
the Public Advocate take the position of supporting 4
these 4
previous rate increase requests? 5

HEARING OFFICER CHESTNUT: That -- that's a kind of involved question -- 6
 MR. HAVER: The answer is yes. 7
 HEARING OFFICER CHESTNUT: -- Ms. Williams. No. 8
 She can talk to -- 9
 (CROSSTALK.) 10
 MR. HAVER: They settled the case -- 11
 HEARING OFFICER CHESTNUT: -- she can talk to -- 12
 MR. HAVER: -- and agreed -- and agreed to the 13
 rate increase. 14
 HEARING OFFICER CHESTNUT: -- she can talk to -- 15
 there was a settlement. 16
 MR. HAVER: Again, you're just being misled. 17
 HEARING OFFICER CHESTNUT: There was a -- okay. 18
 MR. HAVER: The Public Advocate agreed -- 19
 HEARING OFFICER CHESTNUT: Steven, you need to 20
 mute Mr. Haver so I can talk. 21

6. At the 3/22/23 3 pm hearing, the Hearing Examiner stated on the record that PWD does not want to turn off anyone's water knowing full well that the record does not reflex or establish such a statement. She suggests that PWD and consumers want the same things, when there is nothing on the record to suggest that such a statement is true. p 23: -lines 8-21

a. You may see yourself on a on a river where you're on 8
 one side and the Water Department is on the other. And 9
 you want one thing, which is low rates, and the Water 10
 Department wants another thing, which is high rates, so they have lots 11
 of money. But that's not the way it is. There's a bridge between 12
 you, and I'd like you to think about that. We all want the same 13
 thing. But believe me, the Water Department does not want to 14
 have rates so high that you can't pay them. **Nobody wants to cut 15**
off anybody's service. Nobody wants to have to deal 16
 with people who really are trying to pay their bills but can't. That's 17
 heartbreaking. 18
 So really, the Water Department wants you to be able 19

to afford your bills. And on the other side, you want
the Water Department to have enough money to give you the decent
service. You're entitled to safe service.

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7. The Hearing Examiner, purposely with forethought leaves out the issues of “the comfort of bond holders”, increasing amounts in the rate stabilization fund and cost cutting strategies when suggesting “we all want the same things”. By misleading the public with such statements that we all want the same thing, she has shown that she has prejudged the case.
8. The Hearing Examiner has prejudged what the public and participants want.
9. At the very least, the majority of the public and participant Haver, do not want what PWD wants. For the hearing examiner to decide that members of the public and all participants want before the public input testimony and before participants testimony is filed, means that she has prejudged what the public and participants want.
10. Had the Hearing Examiner not already decided on the facts of the case, what the public wants, before allowing the public to testify, much of the hearing would have been different and the hearing examiner would not have served an apologist for PWD and past rate increases.
11. The Hearing Examiner also refused to hold PWD’s public advocate accountable for the lack of outreach, meetings and involvement of the public.
12. The reason for the Hearing Examiner’s decision can be clearly seen in her statement on 3/22/23 at the 6 pm hearing, page 64:
 - a. HEARING OFFICER CHESTNUT: Well, I can't really answer that directly. It's not like it's a referendum or a vote. 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.

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Clearly, by not allowing the issue of how poorly the outreach was done for the public input hearings, the hearing examiner is protecting the Water Rate Board from the Public. Her own words, make that clear, “The more people who speak up, the more impact it will have on the rate board”.

13. There is nothing on the record that suggests the veracity of hearing examiners claim “The more people who speak up, the more impact it will

have on the rate board". This is still another example of her pre judging and helping the PWD's public advocate and the rate board escape public accountability by suggesting, if more people had come to the hearings, the outcome would have been different. As opposed to saying, neither the water department's public advocate nor the Rate Board itself has any obligation to represent the public' interest. The public's reaction to being told the truth, may well be very different than being misled into believing the number of people speaking up will change the impact of the public testimony on the rate board.

14. Assuming for the sake of argument, that the hearing examiner had some knowledge that her statement was true, then it explains why the rate board has continually extended PWD's public advocate, Mr. Ballenger's contract, as he has, on the record admitted his failure to meet with a single community group, in an attempt to increase the public's participation in the rate case.

15. On 3/22/23 at the 6 pm page 43 hearing the Hearing Examiner further revealed her prejudice saying:

HEARING OFFICER CHESTNUT: Okay. Let's move on.

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Obviously, it's a complicated matter for the Mayor to allocate

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money in the budget process, and I think we all recognize that he has other factors to consider beside the Water Department, but we

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certainly expect the Water Department to aggressively present

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itself when there is money to be allocated.

16. At the time of the hearing examiner made this statement, there was nothing introduced into the record pertaining to or proving that PWD had aggressively presented itself. The expectation that they will do so, when there was letter entered into the record by PWD explaining that they would not seek funds from the City's ARPA allocation is a prejudicial statement that is a clear attempt by the hearing examiner to cover for PWD.

17. The Hearing Examiner's prejudicial on the record statements, claiming an expectation that she knew was not a plausible one, serves only to stop the

public from pressing forward on its desire to see PWD seek and gain ARPA money.

18. The Hearing Examiner's continual attempt to discredit participant Haver's statements, testimony and questions fills the record. Here are her attempts to stop the public from listening to Haver. Hearing 3/22/23 at 3 pm pg 38:

Okay. Anybody's free to put -- you know, any participant can put on testimony. They're not supposed to be putting their case on for cross-examining people here. And I don't want to hear, you know -- I'm sorry. I apologize to everybody, but Mr. Haver does not seem to understand how to present his case. I mean, it's really a shame, but okay

The hearing examiner, if she were not prejudice would simply rule, what she believed was outside of the bounds of the hearing, out of order. But of course, that would not allow her continual attacks on Haver nor her attempt to stop the public from considering Haver's testimony and questions.

19. The hearing examiner biases and prejudice are also exposed in her attempts to stop participant Haver from exploring germane issues, Page 212 lines 8-18:

MR. HAVER: Okay. Have any of your 9 firms, the consultant firms, ever been hired 10 to oppose a rate increase?
11 MR. DASENT: Objection, irrelevant.
12 HEARING OFFICER CHESTNUT: It is 13 irrelevant. It's --
14 MR. HAVER: It goes absolutely to 15 the -- it goes absolutely to bias.
16 HEARING OFFICER CHESTNUT: I'll let 17 you ask it, but seriously, what a waste of 18 time, you know?

Hearing Examiner Chestnut expressly prohibited participant Haver from examining and exposing managerial impropriety. Page 33 lines 13-16:

HEARING OFFICER CHESTNUT: I said
14 that you could look at expenses, but I think
15 that any kind of managerial impropriety is
16 certainly outside the scope of this case.

Page 35 lines 2-11

MR. HAVER: And just to make sure the
3 record is clear, you have not given me an
4 opportunity to explain how it's relevant.
5 HEARING OFFICER CHESTNUT: I've read
6 your testimony. And, sure, I think -- you're
7 right, yes, I am assuming that it's consistent
8 with your testimony. But I think we're
9 wasting a lot of time here, frankly, and if
10 you have a proper question for the
11 commissioner, why don't you get on it.

Page 147 lines 10-16:

I don't
11 see -- well, I don't understand why -- well, I
12 guess I'm going to back up on that. But
13 Mr. Morgan has already answered your questions
14 about this. I know you want to establish your
15 case by using him as your expert, but it's not
16 appropriate and it's not going to be allowed.

20. Unbelievably the hearing examiner actually claims that she knows what participant Haver is interested in showing, because she can make judgements. This is the very definition of prejudice. She has pre judged participant Haver's cross examination claiming she knows what participant Haver wants. Any rational person would find such prejudicial behavior unacceptable.

21. Page 76 lines 9-25:

HEARING OFFICER CHESTNUT: Mr. Haver
10 is not interested in the information. He's
11 interested in showing that you don't know.
12 COMMISSIONER HAYMAN: And I'm not
13 saying I don't know. I'm saying I read a lot
14 and I study a lot, and I have an idea what
15 that number is, but to be accurate in a public

16 forum, we can look at the testimony of others
17 who are working on it on a daily basis.
18 HEARING OFFICER CHESTNUT: Okay.
19 He's answered your question. Move on.
20 **MR. HAVER: Madam Hearing Examiner,**
21 **how do you know what I want? Are you**
22 **clairvoyant?**
23 **HEARING OFFICER CHESTNUT: No, but I**
24 **can make judgments.**

The hearing examiner has proven that she is prejudice, protected PWD and PWD's public advocate from scrutiny, helped cover up the failure of PWD's public advocate to inform the public of the issues so that pressure she stated would exist based on the number of people who attend the hearings, on the rate board to rule against a rate increase would be minimized.

For those reasons, Participant Haver moves the hearing examiner be removed for cause.

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