

**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 Charges	Fiscal Years 2026-2027
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Proposed Settlement Violates the Sunshine Act;  
Disenfranchises the Public;  
Is Not In the Public Interest  
Objection by Lance Haver

Overview:

The Settlement stands outside of the rate making process. It contains clauses and conditions that the Hearing Examiner has repeatedly stated are not within the scope of the rate making process set out by City Council and The Philadelphia Water Rate Board.

The Settlement under II. TERMS AND CONDITIONS sets out 4 agreements, including a "black box settlement" and the promise of additional work and special treatment for the Rate Board's advocate for agreeing to the settlement. Terms that could not be given the Philadelphia Water Rate under the limitations the Hearing Examiner has set for the process of rate making.

Promise of additional work for Rate Board's Advocate

2. Customer Service, an un number bullet point

"To meet to discuss "Additional Subsidization" in workshop setting with PA and others. The timing for such meeting(s) and attendees to be mutually agreed upon between PWD and PA.

### Size of Rate Increase

The size of the rate increases agreed to by the Rate Board's Advocate far exceed the amount its own consultant stated are necessary.

The settlement must be judged on the process used to arrive at the settlement, what is in, and what is left out of the settlement, and the effect the settlement has on the public, now and in the future. The evaluation of the settlement cannot be limited to does it give both the PWD what it wants, flexibility and an increase in revenues over what the record recommends, additional work for the Rate Board's advocate, and easing the job of the Hearing Examiner and the Rate Board itself.

The Public should not be forced to give PWD more than what it needs, pay extra so the Rate Board's Advocate can have more work and accept the settlement to allow the Hearing Examiner and Rate Board to spend more time at the shore by not having to go through the record and make decisions.

#### **Objection 1. Process.**

Settlement violates the Sunshine Law, due process and the concept and meaning of public input hearings.

The announcement of the settlement agreement at 10:00 on the morning of the first technical hearing illustrates the disadvantage the public has in closed to the public zoom meetings. The public was not given advance notice of the settlement, none of the public testifiers were notified and because there was no public space for demonstrations or objections the Hearing Examiner, Rate Payer's Advocate and Philadelphia Water department's collusion to close the hearing to public attendance was successful at shielding the parties from the public's response. There was no public testimony that recommended giving PWD 97% of what it requested, \$25.44 million more than the Rate Board's advocate stated was needed. Not even Council Majority Leader Gilmore Richardson, in her letter suggested that was reasonable. Had the hearing room been open for the public to attend, there would have been objections and protests over the gift the Rate

Board's Advocate gave to PWD and the gift the PWD gave to the Rate Board's Advocate.

## **Sunshine Act Violation**

One of PWD's many, expensive, outside law firm, Eckert Seaman's writes:

On April 20, 2020, Act 15 became effective, providing authority for public meetings to be conducted virtually during the COVID-19 emergency declared by Pennsylvania Governor Tom Wolf. Act 15 allows an agency or the board of political subdivisions included in a declaration of disaster emergency to comply with the Pennsylvania Sunshine Act (65 Pa.C.S. §§ 701-716) by conducting its meetings through the use of an authorized telecommunications device during the public health crisis agencies to hold virtual meetings during the pendency of the COVID-19 emergency in the Commonwealth.

As the law firm and hopefully the Rate Board's many lawyers know, the Public health crisis emergency is no longer in effect. The legal permission to hold public meetings, without allowing citizens to watch, in person, in real life, so that they may object and seek redress for grievances without being censored by whomever controls the virtual space, no longer exists. The decision to exclude people from attending in person, in public was objected to, on the record and the objection stays in place and is actionable up to and including 30 days after any decision is made.

While the process the Hearing Examiner, the Rate Board's Advocate and PWD choose to force upon the public, may have protected those excluding the public from attending in person, it violates the law.

### **Objection 2: The impropriety of a black box settlement for a publicly owned utility.**

"A Black Box Settlement" prohibits the public from participating in the rate making process. "This Settlement is a "black box" settlement. Under a "black box" settlement, parties do not specifically identify adjustments to projected revenues and expenses."

It is not in the Public Interest for the owners of the utility, in this case the Citizens of Philadelphia, to be prohibited from knowing the terms of the settlement.

The amount does not include who pays for what, what expenses are being cut or which are being increased. A "black box" settlement allows for positions to purposely go unfilled, a decrease in service levels instead of operating efficiencies, without the knowledge of the owners of the utility. It should be shocking, but of course it is not, that any entity that claims to have the public interest at heart would agree to black box settlement purposely shutting the public out and denying the public information.

### **Objection 3: The Public has been shut out of commenting on the Settlement**

The Rate Board's advocate, the publicly owned PWD and the hearing examiner have colluded to use a bait and switch tactic in this settlement. The public was shown one set of numbers, strongly objected to the proposal, including the Majority Leader of the Philadelphia City's Council, and were promised advocacy on their behalf. Never once in the opening remarks did the Rate Board's Advocate tell the people who participated that it would settle the case for 97% of what PWD requested and receive the promise of future work, so those interested should continue to review the Rate Board's web page to see just how much was being settled on.

Despite requests that those who participated in the public hearing process be notified, the hearing examiner with the support of the Rate Board's advocate, refused to notify those that participated in the process that the Rate Board's Advocate had agreed to a "black box settlement" granting PWD, \$ 25 million more than the consultant recommended and continual employment. Had people been notified and a public hearing been held on the proposed settlement, the public would have been able to appraise the Rate Board's advocate, the hearing examiner and PWD what it thinks of the proposed settlement.

The Public is purposely misled into believing the opportunity to comment is closed. Here is a copy of the Rate Board's web page:

## **This is your chance for public input.**

Members of the public may attend and speak at the following public hearings:

- **Tuesday, April 22, 2025, 1-5 pm:** In-person hearing – [View Details →](#)
- **Tuesday, April 22, 2025, 6-9 pm:** Virtual hearing – [View Details →](#)
- **Wednesday, April 23, 2025, 1-5 pm:** Virtual hearing – [View Details →](#)
- **Wednesday, April 23, 2025, 6-9 pm:** In-person hearing – [View Details →](#)

The public may submit written comments by May 28, 2025, to [WaterRateBoard@phila.gov](mailto:WaterRateBoard@phila.gov)

If a member of the public were to read that, they would be led to believe the public comment period is closed, as the web page indicates. The notice of the settlement isn't a headline, isn't prominent, but instead purposely buried to make it almost impossible for any member of the public to find.

The only way a member of the public would know she could still comment is to ignore the statement by the Water Rate Board's web page, search the web page, see at the bottom there is a proposed settlement. That web page does not say public comment is still open and to ignore the dead line.

A member of the Public would have to know to go to the pre hearing conference order and search for the dead line to comment on the proposed settlement. Of course, this was all done purposely. No web page design is an act of God, and all web page designs are reviewed by the Rate Board's Public Advocate and lawyer to ensure the information is correct and informs the public. The intent is clear, do not tell people what is in the settlement. The reason is clear. The settlement gives PWD \$ 25 million more than what the Rate Board's advocate says is needed and the Rate Board's Advocate gets additional work, that it would not be able to get unless there is a settlement.

#### **Objection 4 What is not in the settlement**

The proposed settlement does nothing to change the operations of PWD. It guarantees full employment for the Rate Payer's advocate, PWD outside legal counsel, myriad of well paid consultants and continual rate hikes.

While the hearing examiner has continually ruled out of order any attempt to examine the operating efficacies of PWD, they are of critical importance to the people paying the bills. Even if one were to believe that the operations have no bearing on a rate hike, as the hearing examiner would have the public believe, they can and should be addressed in a settlement agreement. If a settlement agreement can guarantee additional work for the Rate Board's advocate, it can certainly create living wage job opportunities for Philadelphians who don't work for law firms.

Any settlement that gives PWD 97% of what it has asked, in a black box settlement and takes no steps to limit future rate hikes, **is not in the public interest.**

At the very least a settlement in the public interest would have these terms to protect against future rate hikes:

PWD would agree to undergo an operational audit, to find operational savings  
PWD would agree to undergo a management audit to find management savings  
PWD would agree to meet with Philadelphia Gas Works to find ways to combine services and save money.  
PWD would agree to develop programs for its workers to reward workers who find ways to save money  
PWD would agree to lobby City Council for the changes in law it needs to join the national buying cooperative so it can save money on its purchases.

At the very least a settlement in the public interest would have PWD agree to help develop living wage jobs by using PWD's buying power and surplus capacity. Every worker who was on TAP and moves to a living wage job, lowers the need for future rate hikes. A settlement in the public interest would have:

PWD bring living wage jobs into the City of Philadelphia by locally sourcing its purchases, supplies and consultants.

PWD develop marketing materials to recruit water intensive businesses into Philadelphia and work with the City's Commerce Department and PIDC to bring water intensive businesses into the City.

PWD issue requests for proposals to use the excess capacity it has for clean renewable energy production.

PWD issue RFPs for clean renewable instream energy production and the utilization of river based heat pumps for commercial corridors adjunct to rivers.

The proposed settlement gives PWD more than the Rate Payer's advocate's consultant says is needed, shuts the public of the process and actually prevents rate payers from knowing what their dollars will go to, as it a black box settlement, misses opportunities to find savings, create jobs and harness the City's right to control the water for clean renewable energy.

The fact that the settlement contains a term giving the Rate Board's advocate additional work, (To meet to discuss "Additional Subsidization" in workshop setting with PA and others. The timing for such meeting(s) and attendees to be mutually agreed upon between PWD and PA) is not enough to overcome all other issues, unless you are the entity getting the additional work.

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