

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

Re Philadelphia Water Department Proposed Changes in Water, Wastewater and Stormwater Rates and Charges	2026 TAP-R Proceeding
---	-----------------------

**RESPONSE OF THE PHILADELPHIA WATER DEPARTMENT
IN OPPOSITION TO THE MOTION OF LANCE HAVER
TO REVERSE THE HEARING OFFICER'S DECISION**

I. INTRODUCTION AND RELIEF SOUGHT

The Philadelphia Water Department (“Department” or "PWD"), by and through its undersigned counsel, respectfully submits this Response in Opposition to the "Motion of Lance Haver, to reverse decision by the Hearing Officer" ("Motion"), filed on or about April 6, 2026. Kathryn Sophy is the duly appointed hearing officer in the 2026 TAP-R proceeding (the “ Hearing Officer”). Mr. Haver is a Participant in the aforesaid proceeding.

The Motion asks the Philadelphia Water, Sewer and Storm Water Rate Board (“Rate Board” or “Board”) to reverse a routine procedural ruling by the Hearing Officer that would allow virtual participation in the 2026 TAP-R reconciliation proceedings. The aforementioned ruling is a sound exercise of discretion that promotes administrative efficiency and broad public access.

Mr. Haver’s Motion, conversely, is procedurally improper, relies on inflammatory and unsubstantiated allegations, and seeks to obstruct the orderly administration of this proceeding. The Motion also predates the Hearing Officer’s pre-hearing conference order permitting hybrid public input and technical hearings. As explained below, PWD respectfully requests that the Rate Board deny the Motion in its entirety and affirm the Hearing Officer's ruling.

II. MOTION NUMBERED PARAGRAPHS AND PWD RESPONSE

1. Whereas Participant Haver moved that all the proceedings be held in person, in public, and not virtually.

PWD Response: Admitted.

2. Whereas the Hearing Officer ruled that there was not to be a requirement that all of the parties paid with public dollars attend the hearings in person.

PWD Response: Denied. By way of further response, the Hearing Officer made no ruling regarding “parties paid with public dollars.” In the prehearing conference in this matter, held by Zoom Webinar on April 2, 2026, the Hearing Officer addressed a variety of procedural issues, including the full schedule for this proceeding, the dates and format for public input hearings, the schedule for technical hearings, and timelines for production of discovery and objections to discovery requests. At that Hearing Mr. Haver objected to holding any hearings virtually or on a hybrid basis. PWD and the Public Advocate argued that virtual or hybrid hearings allow for a greater opportunity for participation and save time and expenses by allowing technical witnesses to testify without traveling to Philadelphia. On April 6, 2026, the Hearing officer issued a Prehearing Conference Order, stating that the Public Input Hearing will be accessible as a hybrid hearing in order to provide the greatest level of accessibility for those who wish to attend. A copy of that Prehearing Conference Order is attached hereto as Exhibit A.

3. Whereas, in person proceedings allow the public to talk with, confront, and use their constitutionally protected right to seek redress for grievances and protest actions of the people who are paid with Public Dollars.

PWD Response: To the extent the averments in paragraph 3 constitute conclusions of law or ultimate facts, they are hereby denied.

4. Whereas, the Rate Board, without consultation with the public, without a public evaluation, without a public hearing on the selection of a public advocate, has used a no-bid contract to hire an entity that has engaged in what Governor Shapiro has said are not acceptable “black box settlements” over the objection of participants in previous rate cases.

PWD Response: To the extent the averments in paragraph 4 constitute conclusions of law or ultimate facts, they are hereby denied.

5. Whereas the Chair of the Rate Board has stated that it hires and is responsible for the actions of, and evaluation of its appointment, which it calls the public advocate; and that the rate board’s public advocate has no legal responsibility to represent the public, nor does it have any client, other than the Rate Board itself.

PWD Response: To the extent the averments in paragraph 5 constitute conclusions of law or ultimate facts, they are hereby denied. By way of further response, the Chair of the Rate Board is neither a party nor witness in this proceeding and Rate Board is an independent body established to set "fair, just and reasonable" rates for water, wastewater, and stormwater services in Philadelphia.

6. Whereas, the Rate Board refusal to require; what it has named the “public advocate” in an attempt to obfuscate the fact that the entity it rewarded for past behaviors and “black box” settlements does not legally represent the public; to meet with the public, meet with community and civic groups, meet with elected officials, meet with advocacy groups, the only way for members of the public to make it clear what position it wants the rate board’s advocate to take, is by confronting it in public, with words, signs and other protected speech.

PWD Response: To the extent the averments in paragraph 6 constitute conclusions of law or ultimate facts, they are hereby denied. By way of further response, Mr. Haver is simply wrong! In Pennsylvania, the Consumer Advocate and the Small Business Advocate “legally represent” customers of public utilities in a manner similar to the Public Advocate in this proceeding and all three faithfully, diligently and expertly represent the public in rate proceedings.

7. Whereas, the entity, hired through the no bid contract by the Rate Board, who has never issued a written review of its contractor’s work product, has never addressed why if Governor Shapiro blames “black box” settlements for rising rates, the Rate Board’s advocate has been allowed to force the public to pay for the black box settlements it reached in private (secret).

PWD Response: To the extent the averments in paragraph 7 constitute conclusions of law or ultimate facts, they are hereby denied.

8. Whereas the Rate Board’s advocate is paid for by the public.

PWD Response: Admitted.

9. Haver moves that the Hearing Officer’s decision to shield the rate board’s advocate from facing a protesting public is against the public interest and against Mayor Parker’s requirement that all public meetings take place in person.

PWD Response: To the extent the averments in paragraph 9 constitute conclusions of law or ultimate facts, they are hereby denied.

III. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

This matter arises from the TAP-R reconciliation proceeding initiated by the Department before the Rate Board concerning PWD proposed changes to annual TAP-R rates and charges to become effective September 1, 2026.

On April 2, 2026, during the pre-hearing conference convened in this matter, Mr. Haver made a verbal motion requesting that all proceedings be held exclusively in person, with no option for virtual participation. The basis for this request, as stated in his April 5, 2026 written Motion, was to allow the public to "confront," "protest," and seek "redress for grievances" from parties paid with public funds.

On April 6, 2026, the Hearing Officer issued a procedural ruling denying Mr. Haver's Motion. The Hearing Officer determined that there would not be a requirement for all parties to attend the hearings in person, thereby permitting a hybrid format that includes virtual participation. This ruling is consistent with modern administrative practice, which allows for broader and more convenient public access.

In effect, Mr. Haver's Motion of April 5, 2026 seeks an interlocutory review and reversal of the Hearing Officer's April 2, 2026 ruling, since the Hearing Officer's Prehearing Order was issued the next day, on April 6, 2026. Notwithstanding this procedural nuance in Mr. Haver's Motion, he incorrectly argues that the ruling shields the Public Advocate from public accountability and is contrary to the public interest. The Motion also raises a number of collateral and unsupported allegations regarding the Rate Board's selection and oversight of the Public Advocate, including references to a "no-bid contract" and "black box settlements," which are not germane to any of the procedural questions presented in this proceeding.

IV. LEGAL STANDARD

Under the Rate Board's regulations, a hearing officer is vested with broad discretion to manage the course of a proceeding, including rulings on procedural matters such as the format and conduct of hearings. Pennsylvania Code Section 21.24, also provides that a hearing officer has the power to schedule and conduct a hearing. 51 Pa. Code Section 21.24. Accordingly, the Rate Board should not overturn a hearing officer's procedural rule unless it constitutes a clear abuse of discretion. The party challenging the ruling—in this case, Mr. Haver—has not - and cannot demonstrate that such an abuse has occurred.

An abuse of discretion is not found simply because the Board might have decided the matter differently. Rather, an abuse of discretion occurs where the ruling is manifestly unreasonable or is the result of partiality, prejudice, bias, or ill will. The moving party must demonstrate that the Hearing Officer's decision overrides or misapplies the law, or that the judgment exercised is without a reasonable basis in the record. Therefore, the dispositive question is not whether the Rate Board agrees with the Hearing Officer's decision, but whether the decision to permit virtual participation was so unreasonable as to constitute an abuse of the discretion vested in the Hearing Officer.

V. ARGUMENT

Mr. Haver has failed to meet his burden to show that the Hearing Officer's procedural ruling was a manifest abuse of discretion. The Motion is predicated on a flawed legal premise: that the purpose of a rate hearing is to provide a forum for public protest and confrontation rather than the orderly adjudication of the matter at hand. The Motion's ancillary attacks on the Public Advocate are irrelevant, unsupported and provide no basis for reversing the Hearing Officer's sound procedural decision.

A. The Hearing Officer's Ruling to Permit Virtual Participation Was a Sound Exercise of Discretion That Promotes the Public Interest.

The Hearing Officer's April 2, 2026 ruling was a sound exercise of discretion. On April 6, 2026, the Hearing Officer issued a Prehearing Conference Order denying Mr. Haver's Motion. The Hearing Officer determined that there would not be a requirement for all parties to attend the hearings in person, thereby permitting a hybrid format that includes virtual participation. This ruling is consistent with modern administrative practice, which allows for broader and more convenient public access.

Contrary to the Motion's assertions, a hybrid hearing format serves the public interest by maximizing the opportunity for public access and participation. Allowing a virtual option enables members of the public, including ratepayers, who may be unable to attend in person due to work schedules, childcare, disability, or distance, to observe and participate (in this instance) in the TAP-R reconciliation process. Mandating exclusive in-person attendance, as Mr. Haver demands, would disenfranchise these individuals and narrow public involvement, which is the exact opposite of the public interest.

The Motion presents no evidence or legal authority suggesting that a hybrid hearing format is improper or that the Hearing Officer's decision was manifestly unreasonable. Mr. Haver's mere disagreement with the ruling is insufficient to establish an abuse of discretion. The decision to adopt a modern, flexible, and inclusive hearing format is well within the bounds of reasonable procedural management and should be affirmed.

B. The Motion Is Based on an Improper Premise that is Antithetical to the Orderly Conduct of Administrative Hearings.

The Motion openly states that its purpose is to force parties into a physical forum where they can be subjected to public confrontation, protest, signs, and chanting. Mr. Haver argues that the public's only recourse is to "confront" [it in public] and that the Hearing Officer should not "shield the advocate...from the protests and outrage of the public." This fundamentally misunderstands the nature and purpose of this administrative hearing.

That is, Rate Board proceedings are designed for the orderly presentation of evidence, testimony, and legal argument to create a clear and complete record upon which the Board can base a reasoned decision. They are not public rallies or forums for protest. The Hearing Officer is charged with maintaining order and decorum to ensure a fair and efficient process for all participants. Forcing all parties to appear in person for the explicit purpose of facilitating "confrontation" and "protests" would directly undermine the Hearing Officer's duty and authority to conduct an orderly hearing. Adopting Mr. Haver's position would invite disruption and chaos, impeding the Board's ability to discharge its statutory obligations. The Hearing Officer correctly rejected this improper objective.

C. The Motion's Unsubstantiated Allegations Against the Public Advocate Are Irrelevant and Procedurally Improper.

Much of the Motion is dedicated to a series of inflammatory and unsubstantiated allegations against the Public Advocate, including claims regarding a "no-bid contract" and "black box settlements." These allegations are entirely collateral to the procedural question before the Board: whether the Hearing Officer abused her discretion in permitting virtual participation.

Stated differently, whether the Public Advocate's contract was no-bid, or whether its past conduct in other cases was appropriate, has no logical bearing on the proper format for hearings in this proceeding. These are grievances that should be raised, if at all, in a proper forum and through proper procedure, not through a procedurally improper interlocutory appeal of a routine scheduling order.

Mr. Haver is attempting to use this Motion as a vehicle for a collateral attack against the Public Advocate and the Rate Board itself. This is an inappropriate use of motion practice designed to distract from the substantive issues of the rate case. The Board should disregard these irrelevant and scurrilous assertions and decide the Motion based on the single, narrow procedural issue properly before it. The Motion provides no legitimate basis to overturn the Hearing Officer's sound procedural ruling.

VI. REQUEST FOR RELIEF

WHEREFORE, for all of the foregoing reasons, the Philadelphia Water Department respectfully requests that the Philadelphia Water, Sewer and Storm Water Rate Board enter an Order:

1. Denying in its entirety the Motion of Lance Haver to Reverse the Hearing Officer's Decision;
2. Affirming the Hearing Officer's procedural ruling permitting hybrid virtual and physical participation in these proceedings; and

3. Granting such other and further relief as the Board deems just and proper.

Respectfully submitted,

/s/ Renardo L. Hicks

Of Counsel:
Laurice Smith, Esquire
Neal Sellers, Esquire
City of Philadelphia Law Department
1101 Market Street, 5th Floor
Philadelphia, PA 19107

Carl R. Shultz, Esq. (PA ID No. 70328)
Renardo L. Hicks, Esq. (PA ID No. 40404)
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101

Andre C. Dasent, Esquire (PA ID 23056)
Commerce Square
2001 Market Street, 25th Floor
Philadelphia, PA 19103

Brooke Darlington, Esquire
1950 Butler Pike, Suite 126-215
Conshohocken, PA 19428

Date: April 13, 2026

Counsel for the Philadelphia Water Department

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

In the Matter of the Philadelphia Water : 2026 TAP-R Reconciliation
 Department’s Proposed Changes in Water : Proceeding – FY 2026
 and Sewer Rates and Related Charges :

PREHEARING CONFERENCE ORDER

On March 19, 2026, the Philadelphia Water Department (the Department) filed its Formal Notice of proposed changes to its Tiered Assistance Program Rate Rider Surcharge (TAP-R) to become effective September 1, 2026.

A prehearing conference addressing preliminary procedural issues was held via Zoom Webinar on April 2, 2026. Participating either pro se or through counsel were the Department, the Public Advocate, the Philadelphia Water Revenue Bureau, the Philadelphia Large Users Group, and individual participant Lance Haver.

The following determinations were made:

1. SCHEDULE: After review and discussion, the following schedule was adopted for use in this proceeding:

Activity	Date
Advance Notice	February 17, 2026
Formal Notice	March 19, 2026
Participation Deadline	March 26, 2026
Prehearing Conference	April 2, 2026
Direct Testimony	April 17, 2026
Rebuttal Testimony	April 30, 2026
Last Day for Information Requests	May 5, 2026
Public Input Hearing (hybrid)	May 7, 2026

Technical Hearings (hybrid)	May 14, 2026 (& May 15, 2026 if needed)
Last Day for Transcript Responses	May 18, 2026
Briefs/Settlement Petition	May 22, 2026
Objections to Settlement Petition	May 26, 2026
Hearing Officer Report	June 10, 2026
Exceptions	June 15, 2026
Board Deliberation	June 24, 2026
Board Determination	July 1, 2026

To be considered timely, all submissions must be received no later than 5:00 p.m. on the day it is due. Hearings will be conducted on a hybrid (virtual/in-person) basis, as indicated below. The Department and the Public Advocate will each work to ensure that outreach is conducted in a manner to ensure maximum notice of the scheduled hearings is provided to the public.

Mr. Haver objected to holding any hearing virtually or on a hybrid basis. He argued that the Public Input and the Technical Hearings should be held solely as in-person hearings. The Department and the Public Advocate argued that virtual or hybrid hearings allow for a greater opportunity for participation and save time and expenses by allowing technical witnesses to testify without traveling to Philadelphia. Mr. Haver also objected to holding the Public Input Hearing immediately prior to the Technical Hearing. He argued that holding the hearings on the same day prevented any follow-up prior to the Technical Hearing.

To allow time to consider and address pertinent issues that may be raised during the Public Input Hearing, that hearing will be held a week prior to the Technical Hearing. However, the Public Input Hearing will be accessible as a hybrid hearing in order to provide the greatest level of accessibility for those who wish to attend. Individuals may decide to participate in person. By also allowing virtual access, however, more people will

have the opportunity to participate. Hybrid participation opens meetings to those with time, transportation, and mobility issues. For the same reasons, the Technical Hearings will be held on a hybrid basis as well.

2. INFORMATION REQUESTS: Participants will use their best efforts to be reasonable and accommodating when propounding or responding to information requests. Responses should be filed within seven (7) days, unless good cause is demonstrated. Objections to Information Requests should be raised within three (3) days. In the event that a Motion to Compel is filed, any responses must be filed within three (3) days.

3. SETTLEMENT: Participants are encouraged to settle or to stipulate to any matter on which a reasonable agreement can be reached.

Kathryn G. Sophy
Hearing Officer

April 6, 2026