

Kristine E. Marsilio
717.237.6037
kmarsilio@eckertseamans.com

September 10, 2019

Via Electronic Filing

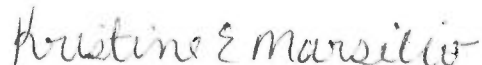
Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Regis Bonner v. Pittsburgh Water and Sewer Authority
C-2019-3012306 and F-2019-3011732

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Pittsburgh Water and Sewer Authority's Motion to Consolidate with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Kristine E. Marsilio

KEM/lww
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE


I hereby certify that this day I served a copy of PWSA's Motion to Consolidate upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via First Class Mail

Regis G. Bonner
223 Academy Ave.
Pittsburgh, PA 15228

Hon. Charles E. Rainey, Jr.,
Chief Administrative Law Judge
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: September 10, 2019



Kristine E. Marsilio, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Regis Bonner,		:	
	Complainant	:	Docket No. C-2019-3012306
		:	
v.		:	
		:	
The Pittsburgh Water and Sewer Authority,		:	
	Respondent	:	
Regis Bonner,		:	
	Complainant	:	Docket No. F-2019-3011732
		:	
v.		:	
		:	
The Pittsburgh Water and Sewer Authority,		:	
	Respondent	:	

NOTICE TO PLEAD

**To: Regis G. Bonner
223 Academy Ave
Pittsburgh, PA 15228**

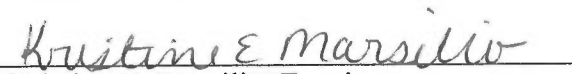
You are hereby notified that an Answer to the enclosed **Motion to Consolidate** of The Pittsburgh Water and Sewer Authority (“Authority”) must be filed within 20 days of the date of service. All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for the Authority and the Office of Administrative Law Judge.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility
Commission
PO Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Kristine E. Marsilio, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101



Kristine E. Marsilio, Esquire

Date: September 10, 2019

Attorney for
The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Regis Bonner, :
Complainant : Docket No. C-2019-3012306
v. :
The Pittsburgh Water and Sewer Authority, :
Respondent :

Regis Bonner, :
Complainant : Docket No. F-2019-3011732
v. :
The Pittsburgh Water and Sewer Authority, :
Respondent :

**PITTSBURGH WATER AND SEWER AUTHORITY'S
MOTION TO CONSOLIDATE**

Pursuant to 52 Pa. Code §5.81(a), The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority” or “the Company”) submits this Motion to Consolidate the above-captioned matters. In the alternative, PWSA requests that this Motion be treated as a Motion to Dismiss the Formal Complaint of Mr. Regis Bonner (“Mr. Bonner” or “Complainant”) at Docket No. C-2019-3012306, or to Direct Mr. Bonner to Amend his Complaint to Include Additional Information, pursuant to 52 Pa. Code § 5.103. In support of this Motion, PWSA avers as follows:

1. Mr. Bonner filed a Formal Complaint at Docket No. F-2019-3011732 against the PWSA with the Pennsylvania Public Utility Commission (“Commission”), which was served on PWSA on July 24, 2019 (“F-docket Complaint”). Mr. Bonner filed a second Formal Complaint at Docket No. C-2019-3012306 against the PWSA with the Commission, which was served on PWSA on August 20, 2019 (“C-docket Complaint”).

2. In the F-docket Complaint, Mr. Bonner alleged that he received incorrect charges on his bill. The F-docket Complaint identifies the service address as 433 Herschel St., Pittsburgh, PA 1522 and identifies the utility account number that corresponds to this address.

3. On August 13, 2019, the PWSA filed a timely Answer to the F-docket Complaint, in which it admitted to providing residential water and wastewater services to the subject property but denied any allegations that it had violated Pennsylvania law or the Commission's regulations, provided incorrect charges on Mr. Bonner's utility bills, or otherwise engaged in any wrongdoing.

4. The C-docket Complaint identifies Mr. Bonner's mailing address as 223 Academy Ave, Pittsburgh, PA 15228 and does not identify a separate service address.

5. For the following reasons, however, the Authority reasonably believes that Mr. Bonner may have intended for the C-docket Complaint to be directed to services provided at the address of 433 Herschel St., Pittsburgh, PA 15220 and may involve the same issues of facts and law as those in the F-docket Complaint.

- First, the Authority does not provide water or wastewater services to 223 Academy Ave., Pittsburgh, PA 15228.
- Second, both the C-docket and F-docket Complaints reference the same utility account number, which is the account number that corresponds to the Herschel Street address.
- Third, in both Formal Complaints, Mr. Bonner indicates that the complaints are an appeal from a Bureau of Consumer Services ("BCS") decision. There is only one BCS decision related to the utility account number provided by Mr. Bonner in both Formal Complaints.
- Finally, both Formal Complaints allege that Mr. Bonner received incorrect charges on his bill. Mr. Bonner's F-docket Complaint is clearly an appeal of the BCS decision, which addressed allegations of incorrect charges for water usage at the Herschel Street address.

In Paragraph 3 of Mr. Bonner's F-docket Complaint, Mr. Bonner alleges that he is disputing both water and wastewater services. When a customer files a complaint challenging both water and wastewater services, it is the Commission's practice to assign two docket numbers to said complaint. The Commission, however, only assigned an F-docket to Mr. Bonner's initial Complaint. It is the Authority's belief that Mr. Bonner filed the second complaint to preserve his challenges to the wastewater charges that correspond to the F-docket Complaint. Specifically, in Paragraph 3 of Mr. Bonner's C-docket Complaint, Mr. Bonner alleges that he is disputing wastewater services. Mr. Bonner also indicates in Paragraph 7 of his Complaint that his Complaint is an appeal from a BCS decision, but that the BCS decision related to water, not wastewater, services. While the F-docket Complaint contains some additional information related to Mr. Bonner's allegations and includes a request for relief, the C-docket Complaint is devoid of any additional information or request for relief. Based on all of the above, the PWSA reasonably believes that Mr. Bonner's C-docket and F-docket Complaints involve the same issues of facts and law.

6. Section 5.81(a) of the Commission's regulations states that "[t]he Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer [also] may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay." 52 Pa.Code § 5.81(a).

7. Other considerations in ruling on a consolidation include the following: (a) whether additional issues exist that could cloud the determination of common issues; (b) whether consolidation will reduce litigation costs and decision-making for the parties and the Commission; (c) whether the issues in one proceeding go to the heart of an issue in the other proceeding; (d)

whether consolidation will unduly protect a hearing or produce a disorderly or unwieldy record; (e) whether different statutory and legal issues are involved; (f) whether the party with the burden of proof differs in the proceedings; (7) whether consolidation will unduly delay the resolution of one of the proceedings; and (8) whether supporting data in both proceedings will be repetitive. *See PUC v. City of Lancaster Sewer Fund*, Docket No. R-2012-2310366, Second Prehearing Order at 3-4 (Nov. 26, 2012) (“*Lancaster Sewer Fund Prehearing Order*”). As stated in that order, no single consideration, nor group of these considerations, is dispositive of consolidation. Rather, all factors must be evaluated, and a balancing of those favoring and disfavoring consolidation is required. *Id.* at 3.

8. As discussed above, PWSA reasonably believes that both Formal Complaints involve the same set of facts, including: (a) the provision of water and/or wastewater conveyance service by PWSA to the same service address; and (b) the accuracy of charges on the bills rendered to Mr. Bonner for water/wastewater conveyance services at the Herschel Street address.

9. Both Complaints involve the same legal issue concerning the responsibility of Complainant to pay for water and wastewater conveyance services rendered by PWSA.

10. Additionally, a balancing of the other considerations referenced in the *Lancaster Sewer Fund Prehearing Order* support consolidation of these proceedings. Specifically, consolidation will reduce litigation costs and decision-making for the parties and the Commission; the issues in one proceeding go to the heart of the issues in the other proceeding; consolidation will produce an orderly record that can be used to adjudicate both complaints; the Complainant carries the burden of proof in both proceedings; consolidation will not unduly delay the resolution of either proceeding; and the supporting data in both proceedings will be identical.

11. Consolidating these proceedings would promote judicial economy and conserve valuable resources of the parties and the Commission. Since the proceedings appear to involve precisely the same issues of fact and law, no reason exists to have them litigated on separate paths. As such, PWSA respectfully requests that the Office of Administrative Law Judge (“OALJ”) consolidate the Complaints at Docket Nos. C-2019-3012306 and F-2019-3006939.

12. If Mr. Bonner disagrees with the Authority’s characterization of these Complaints, Mr. Bonner should indicate so in his responsive pleading.

13. Additionally, as noted, the Authority does not provide water or wastewater services to 223 Academy Ave., Pittsburgh, PA 15228. Further, the C-docket Complaint fails to provide any information demonstrating how or why the charges on any of Mr. Bonner’s bills (at any service address) were inaccurate, fails to demonstrate that PWSA violated Pennsylvania law or the Commission’s regulations, and does not include a request for relief. As such, if Mr. Bonner indicates that the F-docket and C-docket Complaints do not pertain to the same service property and/or involve the same issues of law of fact, the PWSA respectfully requests that the OALJ either: (1) treat this Motion as a Motion to Dismiss Mr. Bonner’s C-docket Complaint for failure to state a claim for which relief can be granted and/or insufficiency of pleading, and dismiss the Complaint accordingly; *or* (2) direct Mr. Bonner to amend his C-docket Complaint to provide additional information, and provide the Authority with an opportunity to respond to the Amended Complaint.

WHEREFORE, The Pittsburgh Water and Sewer Authority respectfully requests that the Office of Administrative Law Judge (“OALJ”) consolidate the Complaints at Docket Nos. C-2019-3012306 and F-2019-3006939. If Mr. Bonner indicates that the F-docket and C-docket Complaints do not pertain to the same service property and/or involve the same issues of law of fact, the PWSA respectfully requests that the OALJ either: (1) treat this Motion as a Motion to Dismiss Mr.

Bonner's C-docket Complaint for failure to state a claim for which relief can be granted and/or insufficiency of pleading, and dismiss the Complaint accordingly; *or* (2) direct Mr. Bonner to amend his C-docket Complaint to provide additional information, and provide the Authority with an opportunity to respond to the Amended Complaint.

Respectfully submitted,



Kristine E. Marsilio, Esquire

I.D. No. 316479

Eckert Seamans Cherin & Mellott, LLC

213 Market Street, 8th Floor

Harrisburg, PA 17101

Phone: (717) 237-7173

Fax: (717) 237-6019

Date: September 10, 2019

Counsel for The Pittsburgh Water and Sewer
Authority