

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Kerr Musgrave IV	:	
	:	
v.	:	C-2020-3020714
	:	
Pittsburgh Water and Sewer Authority	:	
	:	
Karen Toole	:	
	:	
v.	:	C-2020-3022232
	:	
Pittsburgh Water and Sewer Authority	:	

**INTERIM ORDER  
DENYING MOTION TO CONSOLIDATE**

Musgrave Complaint, Docket No. C-2020-3020714

On July 8, 2020, John Musgrave IV (Mr. Musgrave) filed a formal Complaint (Musgrave Complaint) against Pittsburgh Water and Sewer Authority (PWSA, Company, or Respondent) with the Pennsylvania Public Utility Commission (Commission) regarding his water service at his residence at 6059 Bunkerhill Street, Pittsburgh, PA (Musgrave service location). He alleges that the utility is failing to put enough chlorine in his water and that there had been five water main breaks on his street in the nine months preceding the filing of his Complaint. He alleges the Company is refusing to replace his water line, claiming, without proof, that it was a private line. As relief, Mr. Musgrave requests that the Commission order PWSA to provide “legal levels of chlorine” in his water and build new water lines.

On August 10, 2020, PWSA filed its Answer, New Matter, and Preliminary Objections to the Musgrave Complaint. The Company avers that Mr. Musgrave lives on a

private street and is served by a private party line that is shared with his neighbors. PWSA argues that it is not responsible for maintenance or repairs to the party line. Additionally, PWSA avers it has tested the water at the fire hydrant closet to the Musgrave service location numerous times and found the water to be in compliance with applicable water standards.

On August 20, 2020, Mr. Musgrave filed a response to the Preliminary Objections.

On August 29, 2020, Mr. Musgrave filed an Answer to the New Matter.

On September 18, 2020, a Motion Judge Assignment Notice was issued which indicated that the Musgrave Complaint was assigned to Administrative Law Judge Marta Guhl (ALJ Guhl).

On October 27, 2021, ALJ Guhl issued an Interim Order denying the Company's Preliminary Objections.

On October 28, 2020, the Commission issued a Hearing Notice and Prehearing Order, scheduling an evidentiary hearing for December 8, 2020.

On November 25, 2020, the Company filed a request to continue the hearing due to a scheduling conflict of one of its witnesses.

On November 30, 2020, ALJ Guhl issued an Interim Order granting the request to continue the hearing.

On December 4, 2020, the Commission issued a Hearing Notice rescheduling the hearing for January 12, 2021.

On January 10, 2021, Mr. Musgrave, via email to ALJ Guhl, requested a continuance of the January 12, 2021 hearing due to the fact that his mother was hospitalized and was going to participate as a witness. Respondent did not oppose the continuance request.

On January 11, 2021, ALJ Guhl issued an Interim Order granting Mr. Musgrave's request to continue, and the Commission issued a Hearing Notice rescheduling the hearing for February 9, 2021.

Docket No. C-2020-3022232 - Toole Complaint

On September 21, 2020, Karen Toole (Ms. Toole) filed a Formal Complaint (Musgrave Complaint) against Pittsburgh Water and Sewer Authority (Respondent, PWSA, or Company) alleging service and quality issues at her residence located at 6053 Bunker Hill Street, Pittsburgh, PA 15206 (Toole service location). She alleges she receives water service from the Company via a 6-inch main and a 2-inch lateral line. She avers, *inter alia*, that the 6-inch line has broken six times this past summer and the 2-inch line has broken several times in the last 10 years. She avers that the Company made repairs on the 2-inch line until 2018, at which time it refused to repair the line. Complainant explains that she and her neighbors were forced to pay for repairs in order to restore water service. Complainant avers that the Company claims that the 2-inch lateral line is a party line and not its responsibility. Complainant argues it is not a party line. As relief, Complainant requests that PWSA be required to replace the 2-inch line and hook her curb box to it.

On October 21, 2020, PWSA filed an Answer, New Matter, and Preliminary Objection. In its Answer, the Company avers the water lines at issue in the Complaint are private customer-owned lines that are not a part of PWSA's distribution system. PWSA avers that Complainant lives on a private street and is served by a private party line shared with two of her neighbors. PWSA avers that due to this section of Bunkerhill's Street private classification, it is not responsible for maintenance of or any necessary repairs to the private party line.

Furthermore, PWSA alleges it has tested the water at the fire hydrant closest to Bunkerhill Street and at the start of the dead-end, private-party line on numerous occasions, and it found that the water was in compliance with applicable water quality standards.

The Preliminary Objection contained a Notice to Plead, directing Complainant to file a response within 10 days of service. Complainant did not submit a response to the Preliminary Objection.

This matter was assigned to the undersigned via a Motion Judge Assignment notice issued November 30, 2020.

On December 23, 2020, the undersigned issued an Interim Order denying the Company's Preliminary Objections to the Toole Complaint.

On December 24, 2020, the Commission issued a Hearing Notice, and on December 29, 2021, the undersigned issued a Prehearing Order, both scheduling a hearing for February 3, 2021.

## DISCUSSION

### The Company's Motion to Consolidate

On January 28, 2021, the Company filed a Motion to Consolidate the Musgrave Complaint with the Toole Complaint (Motion) at both Docket Number C-2020-3020714 and C-2020-3022232. The Motion included a Notice to Plead, advising that responses must be filed within 20 days of service.

The Company argues the two Complaints should be consolidated because each relates to the same alleged private water service line, and, because PWSA replaced the line at issue as part of its lead service line replacement program, the quality of service issues appear to

have been resolved. The Company argues the two Complaints involve the same legal issues and substantially similar facts and consolidation will reduce costs and produce an orderly and consistent outcome. The Company avers that the supporting data in each of the proceedings will be substantially the same.

On January 29, 2021, the Commission issued a Hearing Cancellation and Judge Change Notice in Docket Number C-2020-3020714, cancelling the hearing scheduled for February 9, 2021, and reassigning the matter of the Musgrave Complaint to the undersigned.

On January 29, 2021, the Commission also issued a Hearing Cancellation Notice in Docket Number C-2020-3022232, cancelling the hearing scheduled for February 3, 2021.

Mr. Musgrave's Response to the Motion<sup>1</sup>

Mr. Musgraves submitted a response to the Motion dated February 17, 2021 by first class mail to the undersigned's Pittsburgh Office.<sup>2</sup> A copy of Mr. Musgrave's response is attached to this Order as Attachment A.

In his response to the Motion, Mr. Musgraves argues the Complaints should not be consolidated because his standing to bring his Complaint is in question, while Ms. Toole's standing to bring her Complaint is not. Furthermore, Mr. Musgraves argues Ms. Toole's Complaint involves allegations that the water has high lead levels, while his Complaint involves low chlorine levels.

He argues that since PWSA has replaced the water main, Ms. Toole's Complaint should be resolved at this time. He explains, however, that his Complaint is not. He avers that chlorine levels fluctuate with the weather. Therefore, he avers that his Complaint will not be able to be resolved until the water can be tested in warmer summer months. Finally, he explains

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1 Ms. Toole did not file a response to the Motion.

2 Due to the closure of the Commission's offices, and infrequent and irregular visits by Commission staff to the office, the undersigned did not receive a copy of Mr. Musgrave's response until February 23, 2021.

that he expects his mother, Judith Musgrave, to be a witness at the hearing, but she is still in a nursing home and taking pain medications after suffering from a fractured hip. He requests that his case be postponed until the “late fall” when chlorine measurements in the hot summer months can be taken.

### DISCUSSION

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.” 52 Pa. Code § 5.81(a). Considerations in ruling on a consolidation include: (a) whether the presence of additional issues would cloud the determination of common issues; (b) whether consolidation will reduce the costs of litigation 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 protract the 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; (g) whether consolidation will unduly delay the resolution of one of the proceedings; and (h) whether supporting data in both proceedings will be repetitive.<sup>3</sup> 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.<sup>4</sup>

Regarding these two Complaints, consolidation is not appropriate. While both Complaints involve claims regarding the public vs. private nature of the water lines serving the properties and aver water quality issues, the Complaints are substantially different. The Toole Complaint involves allegations regarding the water’s lead levels, and the Musgrave Complaint involves allegations regarding the water’s chlorine levels.

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<sup>3</sup> 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*).

<sup>4</sup> *Id.*

As PWSA and Mr. Musgrave aver, the water line at issue in the Complaints has been replaced. If this is in fact the case, it is possible that Mr. Toole's concerns have largely been resolved. As Mr. Musgrave points out, his Complaint involves chlorine levels, not lead levels, and the replacement of the line does not necessarily resolve his concerns.

Finally, Mr. Musgrave has indicated he would like to postpone his hearing until the late fall so the chlorine levels can be tested in warmer months and his mother is in a position to participate in the hearing as a witness. From the filings regarding the Toole Complaint, it does not appear that there is a similar need to postpone the hearing in that matter.

ORDER

THEREFORE,

IT IS ORDERED:

That the Motion to Consolidate filed by Pittsburgh Water and Sewer Authority requesting the consolidation of the Complaints filed at Docket No. C-2020-3022232 and C-2020-3020714 is hereby denied.

Date: March 16, 2021

\_\_\_\_\_  
/s/  
Emily I. DeVoe  
Administrative Law Judge

ATTACHMENT A

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

**JOHN MUSGRAVE IV**

**DOCKET NUMBER C-2020-3020714**

**Complainant**

**ANSWER TO MOTION TO CONSOLIDATE**

**vs.**

**THE PITTSBURGH WATER AND SEWER AUTHORITY**

**Counsel of Record For This Party:**

**Respondent**

**John K. Musgrave IV**  
**6059 Bunkerhill Street**  
**Pittsburgh, PA 15206**  
**(412)853-1666**  
**[jmusky@earthlink.net](mailto:jmusky@earthlink.net)**

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>JOHN MUSGRAVE IV</b>	)	<b>DOCKET NO. C-2020-3020714</b>
	)	
<b>Complainant</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>PITTSBURGH WATER AND SEWER AUTHORITY</b>	)	
	)	
<b>Respondent</b>	)	

**ANSWER TO MOTION TO CONSOLIDATE**

While Karen Toole’s and John Musgrave’s cases share the debate of private vs. public ownership of the water lines and will be using similar evidence to prove their points, the two cases should not be consolidated because there are some significant differences in the focus of the two cases which are as follows:

1) Standing

John Musgrave’s standing as the Customer of Record is in question whereas Karen Toole’s standing to present her case is not in question.

2) Quality and Safety of the Water

Karen Toole’s complaint about water quality seems to be mainly about the possibility of dangerously high lead concentrations in the water. The old galvanized lines that may have released lead in the drinking water on our street have been replaced with new lines, so the issue of high lead concentrations in our water we can pretty safely say has been resolved.

John Musgrave’s complaints about water quality has to do with dangerously low chlorine concentration in the drinking water. In an effort to improve the chlorine situation, PWSA has reconfigured the water lines on our street in several ways. One, they have eliminated a dead-end segment of piping where stagnation may have occurred. Two, they have increased the diameter of the main line on Bunkerhill to improve flow. Three, they have moved the location of where our laterals tap into the main line further up the street. Whether or not these changes will bring legal levels of chlorine to the houses at the end of Bunkerhill has yet to be determined. Chlorine concentration has never been a problem during the cooler weather months. Low chlorine levels only present themselves on our street during the warmer weather

months such as July, August, and September. Chlorine dissipates from water quicker in warm weather than cold weather. Because the new piping at the end of Bunkerhill was not completed until late fall of 2020, the capacity of the new water lines to transmit legal levels of chlorine to my house during warm weather has not been tested. Therefore, at this point in time I do not think that it is safe to say that water quality and safety issues have been resolved. PWSA should provide testing during the warm weather months to verify that the houses at the end of Bunkerhill are receiving adequate chlorine. PWSA engineers designed the piping configuration that brings water to my house so they should verify that their design can provide adequate chlorine.

**WHEREFORE**, John Musgrave respectfully requests that the Office of Administrative Law Judge not consolidate the two Formal Complaints docketed at C-2020-3020714 and C-2020-3022232 into one proceeding. Judith Musgrave, mother of John Musgrave and owner of the property at 6059 Bunkerhill Street, has not returned home yet and is still in a nursing home receiving therapy for a hip fracture while being weaned off of pain medications which could affect her cognition. She is a witness for John Musgrave's case. John Musgrave also respectfully requests the Judge to consider hearing his case in the late fall after chlorine measurements in the hot summer months could be taken.

Respectfully submitted,

A handwritten signature in cursive script that reads "John K. Musgrave IV". The signature is written in black ink and is positioned above a solid horizontal line.

John K. Musgrave IV  
6059 Bunkerhill Street  
Pittsburgh, Pennsylvania 15206  
(412)853-1666  
[jmusky@earthlink.net](mailto:jmusky@earthlink.net)

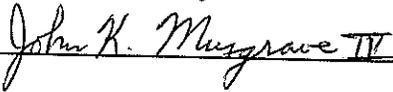
Date: February 17, 2021

Pro Se Complainant

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of 52 Pa. Code Section 1.54.

Dated this 17<sup>th</sup> day of February, 2020



John K. Musgrave IV

Pro Se Complainant John K. Musgrave IV agrees to serve as Pro Se counsel for himself:

John K. Musgrave IV  
6059 Bunkerhill Street  
Pittsburgh, PA 15206  
(412)853-1666  
[jmusky@earthlink.net](mailto:jmusky@earthlink.net)

Service by certified mail addressed as follows:

Hon. Marta Guhl  
Administrative Law Judge  
Pa Public Utility Commission  
Suite 4063  
801 Market Street  
Philadelphia, PA 19107

Service by certified mail addressed as follows:

Of counsel for  
Pittsburgh Water and Sewer Authority  
Lauren M. Burge, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219

Service by certified mail addressed as follows:

Of counsel for  
Pittsburgh Water and Sewer Authority  
Shannon F. Barkley, Esquire  
Penn Liberty Plaza I  
1200 Penn Avenue  
Pittsburgh, PA 15222

Service by certified mail addressed as follows:

Hon. Emily I. DeVoe  
Administrative Law Judge  
PA Public Utility Commission  
Piatt Place, Suite 220  
301 5<sup>th</sup> Avenue  
Pittsburgh, PA 15222

Service by certified mail addressed as follows:

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

Service by certified mail addressed as follows:

Karen Toole  
6053 Bunkerhill Street  
Pittsburgh, PA 15206

**C-2020-3020714 - JOHN KERR MUSGRAVE, IV v. THE PITTSBURGH WATER AND SEWER AUTHORITY**

JOHN KERR MUSGRAVE IV  
6059 BUNKERHILL STREET  
PITTSBURGH PA 15206-1155  
**412.661.2374**  
Accepts eService

SHANNON BARKLEY ESQUIRE  
PWSA  
PENN LIBERTY PLAZA I  
1200 PENN AVENUE 2ND FLOOR  
PITTSBURGH PA 15222  
**412.676.6685**  
Accepts eService

LAUREN M BURGE ESQUIRE  
ECKERT SEAMANS CHERIN & MELLOTT LLC  
600 GRANT STREET 44TH FLOOR  
PITTSBURGH PA 15219  
**412.566.2146**  
Accepts eService

**C-2020-3022232 - KAREN TOOLE v. THE PITTSBURGH WATER AND SEWER  
AUTHORITY**

KAREN TOOLE  
6053 BUNKERHILL STREET  
PITTSBURGH PA 15206  
**412.225.8300**  
[kktoole@icloud.com](mailto:kktoole@icloud.com)  
Accepts eService

SHANNON BARKLEY ESQUIRE  
PWSA  
PENN LIBERTY PLAZA I  
1200 PENN AVENUE 2ND FLOOR  
PITTSBURGH PA 15222  
**412.676.6685**  
[sbarkley@pgh2o.com](mailto:sbarkley@pgh2o.com)  
Accepts eService

LAUREN M BURGE ESQUIRE  
ECKERT SEAMANS CHERIN & MELLOTT LLC  
600 GRANT STREET 44TH FLOOR  
PITTSBURGH PA 15219  
**412.566.2146**  
Accepts eService