**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Kerr Musgrave IV :

: C-2020-3020714

v. :

:

Pittsburgh Water and Sewer Authority :

**INTERIM ORDER**

**PROVIDING NOTICE OF THE TAKING OF JUDICIAL NOTICE**

On July 8, 2020, John Musgrave IV (Complainant or Mr. Musgrave) filed an Initial Formal Complaint against Pittsburgh Water and Sewer Authority (PWSA, Company, or Respondent) alleging that the utility failed to provide reasonable and adequate service.

On August 10, 2020, PWSA filed its Answer along with a New Matter, as well as Preliminary Objections.

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

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

On September 18, 2020, the Commission issued a Motion Judge Assignment Notice, assigning the matter to Administrative Law Judge Marta Guhl (ALJ Guhl).

On October 27, 2020, ALJ Guhl entered an Interim Order addressing the Preliminary Objections.

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

On November 25, 2020, PWSA filed a Motion to Continue the evidentiary hearing.

On November 30, 2020, ALJ Guhl entered an Interim Order granting the Motion to Continue.

On December 4, 2020, the Commission issued a Hearing Cancellation/Reschedule Notice, rescheduling the hearing for January 12, 2012.

On January 10, 2021, the Complainant, via email to ALJ Guhl, requested a continuance of the hearing due to his mother’s recent hospitalization. Respondent did not oppose the continuance request. ALJ Guhl granted the continuance by Interim Order entered January 11, 2021.

On January 11, 2021, the Commission issued a Hearing Cancellation/Reschedule Notice, rescheduling the hearing for February 9, 2021.

On January 28, 2021, PWSA filed a Motion to Consolidate the above-captioned matter with a Formal Complaint filed by Karen O’Toole against PWSA at Docket Number

C-2020-3022232, which had been assigned to the undersigned.

On January 29, 2021, the Commission issued a Hearing Cancellation and Judge Change Notice, reassigning the above-captioned matter to the undersigned and cancelling the evidentiary hearing scheduled for February 9, 2021.

On March 16, 2021, the undersigned issued an Interim Order denying PWSA’s Motion to Consolidate.

On March 16, 2021, the Commission issued a Prehearing Conference Notice, scheduling a prehearing conference for April 7, 2021.

On March 31, 2021, Complainant emailed a Motion to Continue the Prehearing Conference to the undersigned. Counsel for the Company was copied on the email, but the Motion did not appear as filed with the Commission’s Secretary’s Bureau.

On April 1, 2021, the undersigned issued an Interim Order attaching Complainant’s Motion to Continue to the record and denying the Motion to Continue.

The prehearing conference was held on April 7, 2021, as scheduled. Complainant requested an evidentiary hearing be scheduled in late Fall 2021 so that he would have an opportunity to test the chlorine level in his water in the late summer months.[[1]](#footnote-1) The parties agreed to submit a status report by October 1, 2021.

On June 14, 2021, the undersigned issued an Interim Order, directing the parties to submit status reports by October 1, 2021.

Complainant filed a status report on September 28, 2021, and PWSA filed a status report on October 1, 2021.

On November 16, 2021, the Commission issued a Further Prehearing Conference Notice, scheduling a prehearing conference for December 2, 2021.

The prehearing conference scheduled for December 2, 2021, convened as scheduled. The parties discussed a variety of issues, focusing on identifying and narrowing Complainant’s claims. Notably, Complainant brought forth several claims which were not raised in his Initial Complaint.

The parties agreed Complainant would file an Amended Complaint by Wednesday, December 22, 2021, and PWSA would file an Answer to the Amended Complaint, along with any appropriate Preliminary Objections or Dispositive Motions by Wednesday January 12, 2022. An Interim Order was entered on December 3, 2021, memorializing these agreements.

On December 29, 2021, Complainant filed an Amended Complaint.

On January 12, 2022, the Company filed an Answer to the Amended Complaint, as well as a Motion to Dismiss.

On February 1, 2022, Complainant filed a reply to the Company’s Answer, as well as an Answer to the Motion to Dismiss.

The undersigned is preparing a ruling on the Motion to Dismiss and intends to take judicial notice of some facts.

Commission Regulations permit the Commission or the presiding office to take either “official notice” or “judicial notice.” Pursuant to 52 Pa.Code § 5.408. *See* *Ramos v. Pennsylvania Board of Probation and Parole*, 954 A.2d 107,110 (Pa.Cmwlth. 2008) (quoting *Falasco v.* *Pennsylvania Board of Probation and Parole*, 521 A.2d 991, 995, n.6 (Pa.Cmwlth. 1987).

Pennsylvania Rule of Evidence 2.01 governs taking judicial notice of adjudicative facts. Adjudicative facts are sometimes referred to as facts about the events, persons and places relevant to the matter before the court. The rule provides that a judicially noticed fact, which may be taken at any stage of the proceeding, must be one not subject to reasonable dispute as it is either generally known within the territorial jurisdiction of the court, or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. In addition, a party is entitled upon timely request, to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. The rule is not applicable to judicial notice of law. Judicial notice of law is regulated by decisional law and statute.

Official notice is the administrative counterpart of judicial notice, and permits an agency to take official notice of facts which are obvious and notorious to an expert in the agency’s field and those facts contained in reports and records in the agency’s files, in addition to those facts which are obvious and notorious to the average person. Official notice is a broader doctrine than judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics, and other data relevant to its work.

In order to prepare and issue a decision on the Motion to Dismiss that is easy for readers to follow and understand, the parties are hereby notified of the intent of the undersigned to take judicial notice of the following facts:

1. John Musgrave IV, Complainant, and his mother, Judith Musgrave, reside at 6059 Bunkerhill Street, Pittsburgh, PA.

2. Judith Musgrave is the owner of 6059 Bunkerhill Street.

3. Bunkerhill Street runs in an East-Southeasterly direction in the City of Pittsburgh.

4. Highland Park lies directly to the North of Bunkerhill Street.

5. Bunkerhill Street begins where Melon Street becomes One Wild Place and ultimately ends in a dead-end.

6. Towards the dead-end of Bunkerhill Street, there is a small group of about half a dozen homes, including the service location.

7. Bunkerhill Street starts as a public street, but at some point becomes a private street.

8. The group of homes toward the dead-end of Bunkerhill Street are located on the private portion of the street.

Furthermore, the parties are hereby notified of the intent of the undersigned to take judicial notice of the following documents:

9. PWSA Tariff Water – Pa. P.U.C. No. 1, filed February 28, 2019, at Docket No. R-2018-3002645.

10. PWSA’s “Rules and Regulations,” which can be found as Exhibit JAQ-5, part of “Tariffs Volume IV,” filed July 3, 2018, at Docket No. R-2018-3002645.

Under the circumstances, the following order will be entered.

THEREFORE,

IT IS ORDERED:

1. That if a party objects to the taking of judicial notice of the facts and documents identified above, the party must file a written objection with the Commission’s Secretary, setting forth the specific objection(s), not later than March 17, 2022.

1. That any objection(s) shall be filed with the Commission’s Secretary and copied to the undersigned presiding officer and the opposing party, or legal counsel if represented, not later than March 17, 2022.
2. That unless a party files an objection as outlined in ordering paragraphs 1 and 2, the facts and documents identified above will enter the hearing record and may be cited and/or referenced in written orders and decisions in this matter, including but not limited to a written decision on PWSA’s Motion to Dismiss.

Date: March 8, 2022 /s/

Emily I. DeVoe

Administrative Law Judge

**C-2020-3020714 - JOHN KERR MUSGRAVE IV v. THE PITTSBURGH WATER AND SEWER AUTHORITY**JOHN KERR MUSGRAVE IV 6059 BUNKERHILL STREETPITTSBURGH PA 15206-1155**412.661.2374**jmusky@earthlink.netAccepts eServiceSHANNON BARKLEY ESQUIREPWSAPENN LIBERTY PLAZA I1200 PENN AVENUE 2ND FLOORPITTSBURGH PA 15222**412.676.6685**sbarkley@pgh2o.comAccepts eServiceLAUREN M BURGE ESQUIREECKERT SEAMANS CHERIN & MELLOTT LLC600 GRANT STREET 44TH FLOORPITTSBURGH PA 15219**412.566.2146**lburge@eckertseamans.comAccepts eService  
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1. Tr. 30:7-13. [↑](#footnote-ref-1)