**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Kerr Musgrave IV :

: C-2020-3020714

v. :

:

Pittsburgh Water and Sewer Authority :

**INTERIM ORDER**

**GRANTING IN PART AND DISMISSING IN PART**

**PWSA’S MOTION TO DISMISS**

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 chorine 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.

On March 8, 2022, the undersigned issued an Interim Order, providing the parties notice she was intending to take judicial notice of certain facts. Mr. Musgrave filed an objection to the undersigned taking judicial notice of proposed fact number 10, due to being unable to locate the document. Therefore, the undersigned will not take judicial notice of that fact. The Company did not file any objection to taking of official notice.

It is now appropriate to rule on the Motion to Dismiss.

Bunkerhill Street[[2]](#footnote-2)

Complainant resides with his mother, Judith Musgrave (Ms. Musgrave), who owns the property at 6059 Bunkerhill Street (service location or subject property). Bunkerhill Street runs in an East-Southeasterly direction in the City of Pittsburgh and Highland Park lies directly to the North Bunkerhill Street. Bunkerhill Street begins where Melon Street becomes One Wild Place and ultimately ends in a dead-end. Towards the dead-end of Bunkerhill Street, there is a small group of about half-a dozen homes, including the service location. Bunkerhill Street starts as a public street, but at some point becomes a private street. The group of homes toward the dead-end of Bunkerhill Street are located on the private portion of the street.

Complainant’s Claims and Requests for Relief

With the understanding that Complainant is a *pro se* complainant, the undersigned has carefully reviewed all the claims, averments, and requests for relief expressly stated and implied in Complainant’s Initial and Amended Complaints. The undersigned has identified and complied the following list of issues/claims raised by Complainant[[3]](#footnote-3):

1. **As of November 11, 2020, PWSA has maintenance and repair responsibilities of the water line along Bunkerhill Street to the original location of Ms. Musgraves’ curb box. [[4]](#footnote-4)**

Complainant avers that his mother signed a Lead Service Line Replacement Agreement (LSLRA) with PWSA to have lead service lines replaced. Complainant submits that the signed LLRA was returned to PWSA on November 11, 2020. Complainant avers that the LLRA provides that Ms. Musgrave owns the portion of the service line from the curb box to her house, and PWSA owns the portion of the line running to the curb box.

Complainant admits, however, Ms. Musgrave signed a Temporary Easement Agreement (TEA) on November 16, 2020, granting PWSA and its contractor the right to install a new water line at the subject property. Complainant admits that the TEA identifies the portion of Ms. Musgraves’ line running along the private portion of Bunkerhill Street to the curb box as being privately owned. Complainant argues, however, the TEA is invalid because Ms. Musgraves signed the TEA “under duress.” He explains that Ms. Musgrave signed the TEA not because she agreed to its terms, but because she believed it was the only reasonable way for her to get water for bathing, toileting, laundry, cooking, dishwashing, and medical therapy treatments. Complainant submits that, at the time Ms. Musgrave signed the TEA, she and her neighbors at 6053 and 6055 Bunkerhill Street were getting water service via hoses run 200 to 275 feet from a fire hydrant. Complainant explains Ms. Musgrave feared entering the winter months with this arrangement due the possibility that the hose would freeze and eliminate her water supply. Complainant argues Ms. Musgrave signed the TEA out of fear that if she did not, she would be left without any water service at her home.

Alternatively, Complainant argues the TEA is invalid because PWSA failed to provide Ms. Musgrave with a copy of an “Exhibit A,” which is mentioned in the TEA; failed to pay Ms. Musgrave $1.00 for the sale of the easement; and failed to properly authorize and/or execute the TEA.

Complainant argues that because the TEA is invalid, the terms of the LSLRA should control, and the portion of the line running along the private portion of Bunkerhill Street to Ms. Musgraves’ curb box should be considered property of PWSA. As additional evidence supporting his position, Complainant avers that PWSA, in door knob hanger notices left at the service location on October 30, 2020, and November 19, 2020, identified the water lines to be replaced as a “public” lines.

Complainant notes that, at the time the LSLRA was signed, Ms. Musgrave’s curb box was located on the bank of her rock side garden, approximately 9 feet from the edge of her house. Complainant avers that when PWSA installed the new line, PWSA relocated Ms. Musgrave’s curb box to her neighbor’s yard at 6045 Bunkerhill Street, which is about 200 feet from Ms. Musgrave’s house. Complainant argues that since the LSLRA is controlling, PWSA should be deemed the owner of the line running along the private portion of Bunkerhill Street to the *spot where the curb box was located at the time the LSLRA was signed*.

2. **PWSA is responsible for** **repaving the trench dug along Bunkerhill Street and restoring the curb of Bunkerhill Street bordering Ms. Musgraves’ property.**

Complainant avers PWSA, when installing the new line, dug a single trench through the asphalt of the private portion of Bunkerhill Street starting in the vicinity of 6041 Bunkerhill Street, and ran three separate water lines to service 6053, 6055, and 6059 Bunkerhill Street. Complainant avers that Bunkerhill Street now has gravel cover, as opposed to asphalt, over a three-foot wide path which extends from 6049 Bunkerhill to 6055 Bunkerhill.

Complainant admits Bunkerhill Street is a private street from 6041 Bunkerhill Street to the dead end at 6055 Bunkerhill Street and that the owners of 6041, 6045, 6049, 6053, and 6055 Bunkerhilll Street own the portions of Bunkerhilll Street where their property boundaries overlap the street. He also admits that Ms. Musgraves’ deed provides she has the right of ingress and egress over this private portion of Bunkerhill Street, but she does not own any portion of it.

Complainant further admits the LSLRA provides PWSA is not responsible for restoring private property, such as lawns and driveways, which may be disturbed during water line replacement. He argues, however, the LSLRA does not expressly provide that homeowners are responsible for repaving private streets. Because the LSLRA is silent as to the responsibility for restoration of private streets, Complainant maintains that PWSA should be deemed responsible. He argues PWSA should be required to repave Bunker Hill Street from 6045 Bunkerhill to the end of the street at 6055 Bunkerhill “in a manner that allows for the weight of garbage trucks and provides excellent impermeability to salt” and reconstruct the approximately 12 feet of curb that borders Ms. Musgraves’ property which was “damaged during the water line replacement.”

3. **PWSA failed to comply with the LSLRA.**

Complainant avers that page 1 of the LSLRA provides, “The PWSA’s contractor or subcontractor, before any work is done, will examine the areas of the property that will be disturbed by construction an [*sic*] provide a list of related work that may need to be done by the property owner prior to or after the service line replacement.” Complainant avers neither he nor his mother were provided with a list of restoration responsibilities prior to construction, nor were they ever told that an approximately 12-foot section of the curb that separates Bunkerhill Street from the yard of 6059 Bunkerhill Street would be destroyed.

Complainant further avers that a construction contractor provided a verbal estimate of the cost per square foot for street paving prior to the construction, and after the construction was completed, the cost increased.

4. **PWSA is responsible for obtaining an easement for the portion of the line servicing Ms. Musgraves’ property that runs along Bunkerhill Street through her neighbors’ properties.**

Complainant avers the TEA requires Ms. Musgrave to obtain an easement for any portion of her water line that runs through her neighbors’ properties. Complainant argues, however, that since the TEA is invalid, and PWSA should be deemed the owner of the line from the location of the old curb box to the street, PWSA should be required to obtain “a permanent easement for where its water line” crosses the private property of Ms. Musgrave’s neighbors. Complainant maintains PWSA must pay for the necessary survey fees and attorney fees in order to create an “official easement.”

5. **To the extent the TEA is valid, PWSA failed to comply with it.**

To the extent the TEA is valid, Complainant avers PWSA failed to provide Ms. Musgrave with a copy of an “Exhibit A,” which is mentioned in the TEA and failed to pay Ms. Musgrave $1.00 for the sale of the easement.

6. **PWSA had maintenance/repair responsibilities over the service line running along the private portion of Bunkerhill Street prior to** **November 11, 2020, and failed to perform those maintenance/repair responsibilities, resulting in line breaks in January 2018, February 2020, and July 2020. [[5]](#footnote-5)**

In his Amended Complaint, Complainant requests that PWSA reimburse Ms. Musgrave for the $1,750.53 “which she spent to hire plumbers to repair the public portion of the water line when it broke on 1/22/18 near 6059 Bunkerhill, 2/13/18 at 6045 Bunkerhill, and 7/27/20 at 6041 Bunkerhill.” He also requests that PWSA reimburse Ms. Musgrave $397.64 for 200 feet of hose, reflectors, and insulation that she purchased to “run a hose from the fire hydrant to 6059 Bunkerhill to provide water to her home when the public water line broke on 7/27/2020 and was not able to be successfully repaired by the plumber.”

These requests for relief imply the argument that PWSA had maintenance/repair responsibilities over the service line(s) running along the private portion of Bunkerhill Street prior to November 11, 2020, and failed to perform those maintenance/repair responsibilities, resulting in the line breaks. Thus, the undersigned is separately listing this claim.

7. **PWSA should reimburse Ms. Musgrave for the amount she spent to repair water line breaks occurring in January 2018 and February 2020 and the amount she spent to establish water service to her home as a result of a line break in July 2020.**

As discussed in Claim 6, Complainant requests that PWSA reimburse Ms. Musgrave for $1,750.532, the amount Ms. Musgraves allegedly spent to repair breaks occurring in January 2018 and February 2020, as well as $397.64, the amount Ms. Musgraves allegedly spent for materials to establish service after a line break in July 2020.

8. **PWSA failed to consistently maintain proper levels of chlorine in its water between May 2018 through October 2020, in violation of 66 Pa. C.S. § 1501.**

Complainant avers PWSA failed to maintain proper levels of chlorine in the water it provided to Ms. Musgraves’ property. In his Initial Complaint, Complainant avers he was not getting enough chlorine in his water, and the chlorine levels in his water fell below “legal levels.”

In the Amended Complaint, Complainant avers he had to use chlorine test kits and tablets in order to determine whether the water was safe to drink. He further avers he took samples to the Department of Environmental Protection (DEP) on Washington’s Landing when “the free chlorine level of the drinking water was low” in order to determine whether the water was safe to drink. He avers he purchased bottled water and “clean ice” when the “free chlorine level in [his] drinking water was below legal limits making it possibly unsafe to drink.”

After Complainant filed his Initial Complaint, PWSA filed Preliminary Objections. These Preliminary Objections addressed, *inter alia*, the claims regarding Complainant’s chlorine levels. In the Interim Order issued October 27, 2021, the undersigned directed that Complainant’s claims, to the extent they alleged violations of the Pennsylvania Safe Drinking Water Act and/or the Federal Safe Drinking Water Act, were stricken from the Complaint. The Order also held that a hearing should be scheduled to address whether the company failed to provide safe service pursuant to Section 1501 with regard to the chlorine levels in Complainant’s water.

**9. PWSA should reimburse Complainant for the cost of the test kits, tablets, DEP samples, bottled water and ice that Complainant purchased as a result of PWSA violating Section 1501 with regard to its water quality between May 2018 and October 2020.**

PWSA’s Motion to Dismiss

PWSA makes several arguments regarding Complainant’s claims. PWSA argues: (1) the Commission lacks subject matter jurisdiction to decide the public vs. private nature of the service line; (2) the Complaint is legally insufficient because Complainant fails to show he is entitled to the requested relief, specifically the repair of private property; (3) the Commission lacks subject matter jurisdiction to decide private contractual matters; and (4) the Commission lacks jurisdiction to award monetary compensation or damages. As such, PWSA requests the Amended Complaint be dismissed.

Complainant’s Response to the Motion to Dismiss

Complainant argues the Commission has subject matter jurisdiction to decide the public versus the private nature of the service line, explaining, “The Public Utility Code empowers the PUC to determine the value of PWSA’s property (Section 505); to obtain records from PWSA 506 and 1506); to require PWSA to establish, provide, and maintain property records showing the location of property (Section 1702); and to change unjust contracts between PWSA and any person (Section 508).”

Complainant maintains that the Amended Complaint is legally sufficient. Complainant cites from PWSA’s Tariff, P.U.C. No. 1, Part III, Section B.11. “No connection shall be made to the Authority’s main, nor detachment from it, except under the direction and control of the Authority. All connections shall be the property of the Authority as shall be accessible to it and under its control. The Authority will furnish, install, and maintain all service lines from the main to and including the curb stop and box.” Complainant argues this section of the tariff requires PWSA to maintain the service line from the original location of the curb box, a location about 9 feet from Complainant’s house.

Complainant further argues Section 1503(b) of the Public Utility Code requires public utilities to personally contact a customer three days prior to a discontinuance of service in addition to providing written notice. Complainant avers PWSA did not contact him or his mother either in writing or in person that it would be discontinuing its maintenance of the line running along Bunkerhill Street. Complainant avers PWSA repaired three breaks to the line running along the private portion of Bunkerhill Street, but refused to repair the last three, requiring Ms. Musgraves and her neighbors to hire their own plumbers.

Complainant, citing Section 508 of the Public Utility Code, argues the Commission has subject matter jurisdiction to decide private contractual matters and has the power to “vary, reform, and revise unjust contracts between PWSA and any person.”

Complainant argues the Commission has jurisdiction to award monetary compensation or damages. Citing 66 Pa. C.S. § 1501, Complainant argues public utilities are required to provide adequate, efficient, safe, and reasonable service and facilities. He further argues “the service and facilities need to comply with the orders of the PUC.” Citing Section 1353 of the Public Utility Code, Complainant argues the PUC has “the authority to establish a distribution system improvement charge to provide timely recovery of the costs incurred to repair, improve, or replace eligible property in order to ensure efficient, safe, reliable, and reasonable service.” Citing Section 1351(3), Complainant explains that “eligible property” includes “(ii) mains and valves installed as replacements for existing facilities that have work out, are in deteriorated condition, or are required to be upgraded to meet under 52 Pa. Code Chapter 65 (relating to water service) and (iii) main extensions installed to eliminate dead ends and to implement solutions to regional water supply problems that present a significant health and safety concern for customers currently receiving service from the water utility.”

Complainant raises an additional matter for the first time in his Answer to the Motion to Dismiss. He argues PWSA altered a document which they are using to determine the public versus private nature of the water line in question and that this alteration constitutes “destruction of a record,” which is prohibited by Section 3308 of the Public Utility Code and can result in fines and/or imprisonment.

Discussion

In its Motion to Dismiss, PWSA makes various arguments as to why Complainant’s claims should be dismissed. The undersigned is treating them as preliminary objections. Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.[[6]](#footnote-6) In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.[[7]](#footnote-7) Any doubt must be resolved in favor of the non‑moving party by refusing to sustain the preliminary objections.[[8]](#footnote-8) All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections.[[9]](#footnote-9) Only those facts specifically admitted may be considered against the non-moving party.[[10]](#footnote-10) A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.[[11]](#footnote-11)

The undersigned will discuss each of the numbered claims identified and listed above.

1. **As of November 11, 2020, PWSA has maintenance and repair responsibilities of the water line along Bunkerhill Street to the original location of Ms. Musgraves’ curb box.**

Complainant avers that the LLRA provides that Ms. Musgrave owns the portion of the service line from the curb box to her house, and PWSA owns the portion of the line running to the curb box. Complainant admits that the TEA identifies the portion of Ms. Musgraves’ line running along the private portion of Bunkerhill Street to the curb box as being privately owned. Complainant argues the TEA should be deemed invalid for various reasons, the LSLRA should control, and PWSA should be deemed the owner of the line running down the private portion of Bunkerhill Street. Complainant further argues that since the LSLRA is controlling, PWSA should be deemed the owner of the line running along the private portion of Bunkerhill Street to the *spot where the curb box was located at the time the LSLRA was signed*.

Complainant’s arguments regarding why PWSA owns or should own the line running along the private portion of Bunkerhill Street to the original location of Ms. Musgraves’ curb box involve the applicability and interpretation of the LSLRA and the validity of the TEA, written contracts between Ms. Musgraves and PWSA.

Complainant cites Section 508 of Title 66 of the Pennsylvania Consolidated Statutes (Section 508) to support his argument that the Commission has subject matter jurisdiction to decide private contractual matters. He argues this statute grants the Commission the power to “vary, reform, and revise unjust contracts between PWSA and any person.”

Section 508 provides,

The commission shall have power and authority to vary, reform, or revise, upon a fair, reasonable, and equitable basis, any obligations, terms, or conditions of any contract heretofore or hereafter entered into between any public utility and any person, corporation, or municipal corporation, **which embrace or concern a public right, benefit, privilege, duty, or franchise, or the grant thereof, or are otherwise affected or concerned with the public interest and the general well-being of this Commonwealth**. Whenever the commission shall determine, after reasonable notice and hearing, upon its own motion or upon complaint, that any such obligations, terms, or conditions are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth, the commission shall determine and prescribe, by findings and order, the just, reasonable, and equitable obligations, terms, and conditions of such contract. Such contract, as modified by the order of the commission, shall become effective 30 days after service of such order upon the parties to such contract.[[12]](#footnote-12)

Complainant correctly cites the first half of the first sentence of this statute, but fails to consider the second half, which narrows the Commission’s authority in a substantive way. A complete reading of Section 508 grants the Commission authority to “vary, reform, or revise” contracts, but only contracts which “embrace or concern a **public** right, benefit, privilege, duty, or franchise, or the grant thereof, or are otherwise affected or concerned with the **public interest** and the **general well-being of this Commonwealth**.” The Commission’s authority over contracts extends only to contracts involving “public” rights, benefits, etc. or concern the “public interest” and “general well-being of the Commonwealth.”[[13]](#footnote-13) The LSLRA agreement between PWSA and Ms. Musgrave does not involve “public rights,” the “public interest” or the “general well-being of the Commonwealth.” Rather, it is a **private** contract involving **private** rights and obligations.

Furthermore, on November 11, 2020, a Commission-approved tariff for PWSA was in effect. This tariff addresses maintenance and repair responsibilities of both PWSA and its customers.

The Commission, as a creation of the General Assembly, only has the powers and authority granted to it by the General Assembly and contained in the Public Utility Code.[[14]](#footnote-14) The Commission must act within and cannot exceed, its jurisdiction.[[15]](#footnote-15) Jurisdiction may not be conferred by the parties where it does not exist.[[16]](#footnote-16) The Commission and Pennsylvania courts have previously and consistently held that the Commission lacks jurisdiction over private contractual disputes between a utility and its customers.[[17]](#footnote-17) Complainant’s arguments that PWSA owns the line running along the private portion of Bunkerhill Street to the original location of Ms. Musgraves’ curb box involve the applicability and interpretation of the LSLRA and the validity of the TEA, written contracts between Ms. Musgrave and PWSA, private contractual matters which lie outside the Commission’s jurisdiction.Additionally, to the extent the LSLRA and the TEA are valid agreements, there is a question as to whether the terms of those agreements supersede any applicable terms of PWSA’s tariff, which may also involve interpretation of the terms and applicability of the LSLRA and the TEA. Therefore, Complainant’s Claim 1 must be dismissed for lack of jurisdiction.

2. **PWSA is responsible for** **repaving the trench dug along Bunkerhill Street and restoring the curb of Bunkerhill Street bordering Ms. Musgraves’ property.**

There is no dispute that this portion of Bunkerhill Street is a private street. Complainant admits in the Amended Complaint that the LSLRA provides PWSA is not responsible for restoring private property, such as laws and driveways, and does not argue that this term of the LSLRA is invalid. His argument is that the LSLRA is silent as to the responsibility for restoration of private streets, and as such, PWSA should be deemed responsible. He argues PWSA should be required to repave Bunker Hill Street from 6045 Bunkerhill to the end of the street at 6055 Bunkerhill “in a manner that allows for the weight of garbage trucks and provides excellent impermeability to salt.”

Additionally, Complainant argues that PWSA failed to comply with the LSLRA by failing to have its contractor provide a list of restoration work Complainant and Ms. Musgrave may need to perform after the construction was complete.

Like Claim 1, Claim 2 involves the interpretation and applicability of the LSLRA, and may require a determination as to whether its terms may supersede PWSA’s tariff. As discussed above, the LSLRA is a private contractual matter over which the Commission lacks jurisdiction. Therefore, Claim 2 must be dismissed for lack of jurisdiction.

3. **PWSA failed to comply with the LSLRA.**

Complainant’s Claim 3 explicitly involves PWSA’s fulfillment (or non-fulfillment) of its alleged contractual obligations under the LSLRA. Specifically, Complainant argues PWSA failed to comply with a term of the LSLRA allegedly requiring PWSA’s contractor or subcontractor to provide, prior to construction, a list of restoration responsibilities. As discussed above, the LSLRA is a private contractual matter over which the Commission lacks jurisdiction. Therefore, Complainant’s Claim 3 must be dismissed for lack of jurisdiction.

4. **PWSA is responsible for obtaining an easement for the portion of the line servicing Ms. Musgraves’ property that runs along Bunkerhill Street through her neighbors’ properties.**

Complainant avers the TEA requires Ms. Musgrave to obtain an easement for any portion of her water line that runs through her neighbors’ properties. Complainant argues, however, that the TEA is invalid, and PWSA should be required to obtain and pay all costs for “a permanent easement for where its water line” crosses the private property of Ms. Musgrave’s neighbors. The resolution of Claim 4 is dependent upon the validity of the TEA, an issue which lies outside the jurisdiction of the Commission, as discussed in detail above. Therefore, Claim 4 must be dismissed for lack of jurisdiction.

5. **To the extent the TEA is valid, PWSA failed to comply with it.**

Complainant’s Claim 5 involves PWSA’s alleged non-fulfillment of its contractual obligations under the TEA. Specifically, Complainant argues PWSA failed to provide Ms. Musgrave with a copy of an “Exhibit A,” which is mentioned in the TEA and failed to pay Ms. Musgrave $1.00 for the sale of the easement. As explained above, the TEA is a private contractual matter, and the Commission lacks jurisdiction to decide its validity and the parties’ compliance with it. Therefore, Complainant’s claim that PWSA failed to comply with the TEA must be dismissed for lack of jurisdiction.

6. **PWSA had maintenance/repair responsibilities over the service line running along the private portion of Bunkerhill Street prior to** **November 11, 2020, and failed to perform those maintenance/repair responsibilities, resulting in line breaks in January 2018, February 2020, and July 2020.**

Complainant does not make any specific averments or arguments as to why he believes PWSA should be deemed to have maintenance/repair responsibilities of this portion of the line prior to November 11, 2020. The LSLRA and the TEA are not at issue in this Claim since these documents did not exist prior to November 2020. Complainant did not identify any other documents or purported agreements that relate to the rights and responsibilities of the parties in regard to this claim.

Regarding the alleged break in January 2018, Complainant may proceed with this claim to the extent he will have an opportunity to prove: (1) at the time the alleged break in January 2018 occurred, PWSA had a maintenance/repair responsibility over the line that broke, and (2) (a) the break was a direct result of PWSA failing to perform its responsibilities under the prior tariff, and/or (b) PWSA violated the prior tariff by failing to adequately repair the break.

At the time of the alleged breaks in February 2020 and July 2020, PWSA was under the Commission’s jurisdiction, and was required to comply with its Commission-approved tariff, as well as all statutes, rules, and orders, over which the Commission has authority, including Section 1501 of Title 66 of the Pennsylvania Consolidated Statutes (Section 1501). Section 1501 requires utility companies to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.”

The Commission has jurisdiction to hear matters alleging a utility failed to comply with its Commission-approved tariff and/or failed to comply with Section 1501.

Therefore, regarding the alleged breaks in February 2020 and July 2020, Complainant may proceed with this claim to the extent he will have an opportunity to prove: (1) at the time the of the alleged breaks in February 2020 and July 2020, PWSA had a maintenance/repair responsibility over the line(s) that broke, and (2) (a) the breaks were a direct result of PWSA failing to perform its responsibilities under its tariff and/or Section 1501, and/or (b) PWSA violated its tariff and/or Section 1501 by failing to properly repair the breaks.

**7. PWSA should reimburse Ms. Musgrave for the amount she spent to repair water line breaks occurring in January 2018 and February 2020 and the amount she spent to establish water service to her home as a result of a line break in July 2020.**

In its Motion to Dismiss, PWSA correctly recites the law regarding the Commission’s authority to award monetary damages. As discussed above, the Commission possesses only the authority that the General Assembly has specifically granted to it in the Public Utility Code. That is, the Commission has only the powers expressly conferred or necessarily implied by its enabling statute.[[18]](#footnote-18) Although the Commission has general jurisdiction over the rates and services of public utilities operating in Pennsylvania, the Public Utility Code simply does not grant the Commission the authority to award monetary damages.[[19]](#footnote-19)

Complainant may move forward with Claim 6, but even if he is successful in meeting his burden of proof, the Commission lacks the authority to award him monetary damages. If he is successful in proving Claim 6, the Commission has the authority to impose a civil penalty upon PWSA, which if imposed, would be payable to the Commission, not to Complainant or to Ms. Musgraves. Therefore, Claim 7 must be dismissed because the Commission lacks jurisdiction to award monetary damages.

8. **PWSA failed to maintain proper levels of chlorine in its water between May 2018 through October 2020, constituting a violation of 66 Pa. C.S. § 1501.**

As discussed above, the Interim Order issued October 27, 2021, directed that Complainant’s claims, to the extent they alleged violations of the Pennsylvania Safe Drinking Water Act and/or the Federal Safe Drinking Water Act, were stricken from the Complaint. The Order also held that a hearing should be scheduled to address whether the company failed to provide safe service pursuant to Section 1501.

The Motion to Dismiss does not address Complainant’s claims regarding low chlorine levels and that those low levels violate Section 1501. The ALJ Guhl’s decision in the October 27, 2021 order remains unchanged. Complainant may move forward with his claim that PWSA violated Section 1501 by providing unsafe water.

9. **PWSA should reimburse Complainant for the cost** **of the test kits, tablets, DEP samples, bottled water and ice that Complainant purchased as a result of PWSA violating Section 1501 with regard to its water quality between May 2018 and October 2020.**

As discussed in Claim 7, the Commission lacks authority to award monetary damages. If Complainant meets his burden of proving Claim 8, the Commission may impose a civil penalty, but that would be payable to the Commission not to Complainant or Ms. Musgraves. Therefore, Claim 9 must be dismissed for lack of jurisdiction.

Additional Discussion

As mentioned above, Complainant avers for the first time in his Answer to the Motion to Dismiss that PWSA altered a document which they are using to determine the public versus private nature of the water line. He argues this alteration constitutes “destruction of a record,” which is prohibited by Section 3308 of the Public Utility Code and can result in fines and/or imprisonment. This claim was not raised in either the Initial Complaint or the Amended Complaint, as such, the Company did not have any opportunity to respond to it. The extent Complainant intended to include this as a claim in this matter, it is dismissed for lack of due process to the Company.

Complainant made various arguments in response to PWSA’s Motion to Dismiss, as detailed above. Complainant citing from PWSA’s Tariff, P.U.C. No. 1, Part III, Section B.11, Complainant argues, “The Authority will furnish, install, and maintain all service lines from the main to and including the curb stop and box.” Complainant argues this section of the tariff requires PWSA to maintain the service line from the original location of the curb box, a location about 9 feet from Complainant’s house. Based on Complainant’s own filings, there is no dispute that the Company is assuming responsibility for the line from the main to the new location of the curb box. Therefore, the Company is not currently violating this tariff section.

Complainant further argues Section 1503(b) of the Public Utility Code requires public utilities to personally contact a customer three days prior to a discontinuance of service in addition to providing written notice. This section, however, pertains to discontinuance of *service*, not discontinuance of *maintenance* responsibilities.

Complainant, citing Section 508 of the Public Utility Code, argues the Commission has subject matter jurisdiction to decide private contractual matters and has the power to “vary, reform, and revise unjust contracts between PWSA and any person.”

Complainant’s arguments regarding Section 1353 of the Public Utility Code refer to the Commission’s authority to authorize a distribution system improvement charge and are not relevant to this proceeding.

As discussed above, the undersigned has dismissed all of Complainant’s Claims except for Claim 6 and Claim 8. Depending on whether Complainant intends to seek relief on the dismissed Claims in another venue, the parties may wish to request a stay of Claims 6 and 8.

THEREFORE,

IT IS ORDERED;

1. That the Pittsburgh Water and Sewer Authority’s Motion to Dismiss is granted such that John Musgrave’s Claim that, as of November 11, 2020, PWSA has maintenance and repair responsibilities of the water line along Bunkerhill Street to the original location of Ms. Musgraves’ curb box is dismissed for lack of jurisdiction.

2. That the Pittsburgh Water and Sewer Authority’s Motion to Dismiss is granted such that John Musgrave’s Claim that Pittsburgh Water and Sewer Authority is responsible for repaving the trench dug along Bunkerhill Street and restoring the curb of Bunkerhill Street bordering Ms. Musgraves’ property is dismissed for lack of jurisdiction.

3. That the Pittsburgh Water and Sewer Authority’s Motion to Dismiss is granted such that John Musgrave’s Claim that Pittsburgh Water and Sewer Authority failed to comply with the Lead Service Line Replacement Agreement is dismissed for lack of jurisdiction.

4. That the Pittsburgh Water and Sewer Authority’s Motion to Dismiss is granted such that John Musgrave’s Claim that Pittsburgh Water and Sewer Authority is responsible for obtaining an easement for the portion of the line servicing Ms. Musgraves’ property that runs along Bunkerhill Street through her neighbors’ properties is dismissed for lack of jurisdiction.

5. That the Pittsburgh Water and Sewer Authority’s Motion to Dismiss is granted such that John Musgrave’s Claim that, to the extent the Temporary Easement Agreement is valid, Pittsburgh Water and Sewer Authority failed to comply with it is dismissed for lack of jurisdiction.

6. That the Pittsburgh Water and Sewer Authority’s Motion to Dismiss is denied such that John Musgrave may proceed with his Claim that Pittsburgh Water and Sewer Authority had maintenance/repair responsibilities over the service line running along the private portion of Bunkerhill Street prior to November 11, 2020, and failed to perform those maintenance/repair responsibilities, resulting in line breaks in January 2018, February 2020, and July 2020.

7. That the Pittsburgh Water and Sewer Authority’s Motion to Dismiss is granted such that John Musgrave’s Claim that Pittsburgh Water and Sewer Authority should reimburse Ms. Musgrave for the amount she spent to repair water line breaks occurring in January 2018 and February 2020 and the amount she spent to establish water service to her home as a result of a line break in July 2020 is dismissed for lack of jurisdiction.

8. That the Pittsburgh Water and Sewer Authority’s Motion to Dismiss is denied such that John Musgrave may proceed with his Claim that Pittsburgh Water and Sewer Authority failed to maintain proper levels of chlorine in its water between May 2018 through October 2020, constituting a violation of 66 Pa. C.S. § 1501.

9. That the Pittsburgh Water and Sewer Authority’s Motion to Dismiss is granted such that John Musgrave’s Claim that Pittsburgh Water and Sewer Authority should reimburse Complainant for the cost of the test kits, tablets, DEP samples, bottled water and ice that Complainant purchased between May 2018 and October 2020 is dismissed for lack of jurisdiction.

10. That an evidentiary hearing shall be scheduled forthwith. If the parties wish to stay this proceeding, the parties shall notify the undersigned as soon as possible, but no later than 5 days prior to the scheduled hearing.

Date March 18, 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  
*Representing The Pittsburgh Water and Sewer Authority*KAREN O MOURY ESQUIREECKERT SEAMANS213 MARKET STREETHARRISBURG PA 17101**717.237.6036**kmoury@eckertseamans.comAccepts eService*Representing The Pittsburgh Water and Sewer Authority*

1. Tr. 30:7-13. [↑](#footnote-ref-1)
2. The information in this section was the basis of the judicial notice taken as a result of the Interim Order dated March 8, 2022. [↑](#footnote-ref-2)
3. This list has been created by the undersigned and is not found in any of Complainants’ filings. The list was created for ease of reference and analysis. These claims will be referenced throughout this Interim Order by the numbered paragraphs listed here. [↑](#footnote-ref-3)
4. Both Complainant and PWSA frame this issue as one of “ownership.” Specifically, Complainant argues PWSA should be considered the “owner” of the water line, and PWSA responds that the Commission lacks jurisdiction to determine issues of property “ownership.” Upon careful consideration, the undesigned believes the heart of Complainant’s argument is not *ownership*, but rather *maintenance and repair responsibilities.* As such, the undersigned is reframing this claim to match what appears to be Complainant’s intent. [↑](#footnote-ref-4)
5. Both Complainant and PWSA frame this issue as one of “ownership.” Specifically, Complainant argues PWSA should be considered the “owner” of the water line, and PWSA responds that the Commission lacks jurisdiction to determine issues of property “ownership.” Upon careful consideration, the undesigned believes the heart of Complainant’s argument is not *ownership*, but rather *maintenance and repair responsibilities.* As such, the undersigned is reframing this claim to match what appears to be Complainant’s intent. [↑](#footnote-ref-5)
6. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). [↑](#footnote-ref-6)
7. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm’n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). [↑](#footnote-ref-7)
8. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). [↑](#footnote-ref-8)
9. *County of Allegheny v. Commw. of Pa*., 490 A.2d 402 (Pa. 1985); Pennsylvania *State Lodge, Fraternal Order of Police v. Dept. of Conservation and Natural Resources*, 909 A.2d 413 (Pa.Cmwlth. 2006*), aff’d per curium,* 924 A.2d 1203 (Pa. 2007). [↑](#footnote-ref-9)
10. *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997). [↑](#footnote-ref-10)
11. *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Application of K&F Medical Transport, LLC*, Docket No. A-2008-2020353 (Final Order July 8, 2008). [↑](#footnote-ref-11)
12. 66 Pa. C.S. § 508 (emphasis added). [↑](#footnote-ref-12)
13. [↑](#footnote-ref-13)
14. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, Opinion and Order (May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). [↑](#footnote-ref-14)
15. *City of Pittsburgh v. PUC*, 43 A.2d 348 (Pa.Super. 1945). [↑](#footnote-ref-15)
16. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). [↑](#footnote-ref-16)
17. *See, e.g., Odesa McCastle v. Philadelphia Gas Works*, PUC Docket No. F-2013-2345223, Final Order entered May 1, 2013, adopting Initial Decision dated Mar. 21, 2013; *Allport Water Authority et al. v. Winburne Water Co.*, 393 A.2d 673, 675 (Pa. Super. 1978) (“…the PUC is not jurisdictionally empowered to decide private contractual disputes between a citizen and a utility.”); *Leveto v. National Fuel Gas Dist. Corp.*, 366 A.2d 270 (Pa. Super. 1976) (“Since the case at bar involves a private contractual dispute between a citizen and a utility, the PUC is not jurisdictionally empowered to decide it.”) [↑](#footnote-ref-17)
18. *Feingold v. Bell of Pa*., 383 A.2d 791 (Pa. 1977); *Allegheny County Port Authority v. Pa. P.U.C.*, 237 A.2d 602 (Pa. 1967). See also [*Department of Environmental Resources v. Butler County Mushroom Farm*, 454 A.2d 1, 4 (Pa. 1982),](https://www.lexis.com/research/buttonTFLink?_m=fb36d71eaa374be644e353b4fbc1863f&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2001%20E.H.B.%20542%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=7&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b454%20A.2d%201%2cat%204%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=6&_startdoc=1&wchp=dGLbVzS-zSkAW&_md5=e20f6886d0323b5ad633b815ecc72d47) and [*Pequea Township v. Department of Environmental Protection*, 716 A.2d 678, 686 (Pa.Cmwlth. 1998).](https://www.lexis.com/research/buttonTFLink?_m=fb36d71eaa374be644e353b4fbc1863f&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2001%20E.H.B.%20542%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=8&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b716%20A.2d%20678%2cat%20686%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=6&_startdoc=1&wchp=dGLbVzS-zSkAW&_md5=9fa7b1747ae10b93392092855f589b7b) [↑](#footnote-ref-18)
19. *See, e.g.*, *DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell Telephone Co. of Pa.*, 383 A.2d 791 (Pa. 1977). [↑](#footnote-ref-19)