

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOHN MUSGRAVE IV

DOCKET NUMBER C-2020-3020714

Complainant

REPLY TO MOTION IN LIMINE

vs.

THE PITTSBURGH WATER AND SEWER AUTHORITY

Counsel of Record For This Party

Respondent

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY TO MOTION IN LIMINE

Residents of the Last 6 Houses on Bunkerhill Are Relevant Witnesses

The testimony of Judith Musgrave, Dell and Kathy Ziegler, Brooke McCartney and Justin Crowley, Andrew McFarland and Rebecca Price, Karen Toole, Vivian Loftness and Volker Hartkopf, and John Musgrave is relevant for the following reasons:

- 1) If none of the six houses on the party line had any mention of private ownership of a water line on their deeds, this is evidence pointing to the party line being public. If the party line was public, PWSA would have maintenance and repair responsibilities for the water line. Six homes having no mention of a private water line on their deeds is better proof of the party line being public than only one house not having any mention of a private water line on their deed.
- 2) The Complainant is trying to establish that there is a precedence of PWSA repairing the party line for free (the first 3 breaks) and then suddenly changing their position and saying that the maintenance for the party line is on the homeowners (the last 3 breaks). This change in position occurred suddenly without any written or oral warning by PWSA to the 6059 Bunkerhill residence. To establish this precedence it is necessary to verify with the homeowners when breaks occurred on their property and who paid for the breaks, PWSA or homeowners. One homeowner could testify to all the water line breaks, but who is better qualified to testify about a date and location of a water line break than the homeowner on whose property the break occurred or a homeowner near the water line break.
- 3) The Complainant desires to establish the original and altered locations of curb stops not so he can represent his neighbors in this case, but rather to explain the overall configuration of the water supply to the last 6 houses on Bunkerhill. The location of curb stop is important because

documents sent to the Complainant's household by PWSA seem to indicate that the maintenance of a water line from the main to the curb stop is the responsibility of PWSA whereas the maintenance of the water line from the curb stop into the home is the responsibility of the homeowner. A letter, not a contract, sent to 6059 Bunkerhill Street from PWSA on 2/2/19 concerning "Results of Water Service Line Inspection" indicate the service line is PWSA owned from the water main to the curb box and publicly owned from the curb box to the water meter (See Exhibit 1).

Another reason why the locations of curb stops is important is that the meter crock is placed close to the curb stop. The curb stop for 6059 Bunkerhill was moved about 200 feet from a location about 9 feet from the house at 6059 Bunkerhill to a location on the property of 6045 Bunkerhill. The 6045 property now has on it the curb stop and meter crock for 6059 Bunkerhill which violates provisions of the July 2018 Volume IV Tariffs (Docket No. R-2018-3002645 and R-2018-3002647). Section 509.2 of this tariff states that the owner is responsible for protecting the meter from damage and from freezing and for protecting the remote reading device, located on the lid of the meter crock from damage. The household of 6059 Bunkerhill is unable to protect their meter and remote reading device from freezing and damage because they are located some 200 feet away, the view is blocked by trees and bushes, and because 6059 Bunkerhill has no agreement with 6045 Bunkerhill whereby they will protect the meter and remote reading device. Section 509.7 states that the Owner or Customer has the responsibility to maintain and replace the crock and crock cover as necessary for the proper operation and reading of the meter and for public safety. The household of 6059 Bunkerhill is unable to maintain and replace their crock and crock cover to ensure proper operation and public safety because their crock and crock cover are located some 200 feet away, their view is blocked by trees and bushes, and because there is no agreement in place whereby 6045 Bunkerhill would notify 6059 Bunkerhill of a cracked crock or crock cover that poses a public safety hazard. Section 509.9 states that when a meter or remote sensing device malfunctions due to failure to maintain the connected plumbing or is stolen, vandalized, or damaged by abuse or through neglect, a new meter and /or remote sensing device must be secured from PWSA and installed at the expense of the property owner. The household of 6059 Bunkerhill is unable to protect their meter or remote sensing device from being stolen, vandalized, or damaged by abuse or through neglect because the devices are located some 200 feet away, their view is blocked by trees and bushes, and because there is not a written or oral agreement with 6045 Bunkerhill whereby they will protect and watch over the devices of 6059 Bunkerhill. When PWSA moved the curb stop and accompanying crock for 6059 Bunkerhill in late fall of 2020, they placed these devices in a location that violates Section 509.2, 509.7, and 509.9 of the July 2018 Volume IV Tariffs (Docket No. R-2018-3002645 and R-2018-3002647) because the devices can't be adequately protected by 6059 Bunkerhill because the devices are out of view some 200 feet away on someone else's property with which they have no protection agreement.

4) Not for reimbursement does the Complainant desire to establish that the household of Judith Musgrave bought bottled water and ice, but to show there was enough concern that their drinking water may have been unsafe that the 6059 household partook of the inconvenience of buying clean water and ice. PWSA violated Section 1501 of the Public Utility

Code which requires PWSA to furnish safe and reasonable service for the convenience of its customers.

5) The purchasing of hoses to be run from the hydrant to homes of Karen Toole, Vivian Loftness and Volker Hartkopf, and John Musgrave is important to establish not for the sake of monetary reimbursement, but to demonstrate that PWSA violated Section 1501 of the Public Utility Code which requires PWSA to furnish reasonable service for the convenience of its patrons. Rick Obermeier, Director of Field Services for PWSA, told John Musgrave to acquire hoses and run them over 200 feet from the hydrant manifold to the hose bibs of 3 houses which he did.

6) The testimony of Vivian Loftness and Volker Hartkopf (6055 Bunkerhill) of reduced water consumption in the summer is important because their water usage affected the availability of fresh, properly chlorinated water to 6059 Bunkerhill. The summer months are traditionally the time of lowest chlorine concentration because the heat makes the chlorine degrade faster in the water supply. The last 6 houses on Bunkerhill received water from a party line. When 6041, 6045, and 6049 disconnected from the party line and built their own individual water lines to the main, the flow of water through the party line was reduced by approximately one-half. With the household of 6055 Bunkerhill having reduced water consumption during the summer, this reduced the water flow in the party line by approximately another sixth. When Karen Toole at 6035 Bunkerhill was on vacation away from her home, this left 6059 Bunkerhill as the only house drawing water from the party line. The fewer households drawing water from the party line meant less turnover of the water in the party line which meant there was more time for the water in the party line to stagnate in the summer heat and lose chlorine concentration. The party line had a 2-inch diameter and stretched about 224 feet to 6059 Bunkerhill which was at the end of the party line. In order to flush out the party line in its entirety and get fresh, more chlorinated water to 6059 Bunkerhill, it was calculated to take about 11 minutes and 54 seconds of running the cold water tap in the 3rd floor bathroom sink of 6059 Bunkerhill.

Department of Environmental Protection Employees Are Relevant Witnesses

Administrative Law Judge, Marta Guhl, ruled on 10/27/22 in her "Order Granting PWSA's Preliminary Objection in Part and Denying in Part" that a hearing needed to be scheduled to address the issues of whether PWSA provided the Complainant with adequate, efficient, safe, and reasonable service and whether the general water quality was safe service. The 8 water samples from 6059 Bunkerhill Street which the Complainant took to the PA Department of Environmental Protection (DEP) on Washington's Landing were not tested for chlorine concentration to the best of his knowledge, but rather for potability in terms of the amount of Total Coliforms and E. Coli present. Zachary Shoff, John Thomas, Renee Diehl, Tom McCaffrey,

and Alan Eichler all worked out of the PA DEP at Washington's Landing in Pittsburgh. Zachary Shoff was the Sanitarian to whom the Complainant e-mailed some of his chlorine test results. Renee Diehl, Environmental Program Manager for Safe Drinking Water, received a water sample from the Complainant to be tested for bacteria and was made aware of possible low chlorine concentrations at the end of Bunkerhill. Alan Eichler, Oil and Gas Program, said he would be contacting PWSA about the Complainant's concerns about low chlorine concentration at the end of Bunkerhill. John Thomas, Environmental Group Manager, can testify that he received chlorine test results from PWSA for the end of Bunkerhill, but that it was unclear from their documentation how long the hydrant had been left open when the samples were taken. Tom McCaffey, Source Water Protection Coordinator, can testify that bacteria can live in the lining of water pipes and enter the water supply in the absence of chlorine. Jeff Allgyer, Environmental Group Manager, worked out the PA DEP office in Harrisburg. He is able to testify to the laws dealing with safe chlorine levels in drinking water and how water quality must be maintained throughout the distribution system. He is also able to testify that he discussed with PWSA where they should be taking their water samples and the proper technique and equipment needed to acquire an accurate reading of chlorine concentration at the end of Bunkerhill. Just because the Complainant's allegations regarding specific chlorination levels as related to the PA Safe Drinking Water Act and Federal Safe Drinking Act were stricken from the Complaint, this does not mean that PWSA has the right to take inaccurate water samples as they pertain to chlorine concentration at the Complainant's home.

Allegheny County Health Department Employees Are Relevant Witnesses

The testimonies of Jeffrey Czochara, Plumbing Inspector for the Allegheny County Health Department, and Ivo Miller, Plumbing Program Manager for the Allegheny County Health Department, are relevant to whether PWSA violated Section 1501 of the Public Utility Code by failing to maintain proper levels of chlorine to the 6059 Bunkerhill property between May 2018 and October 2020. All plumbing plans made by PWSA within Allegheny County must be approved by the Allegheny County Health Department. Therefore, Jeff Czochara and Ivo Miller will know how the water line configuration to the end of Bunkerhill was changed in order to increase chlorine concentration to make the water safer to drink.

Contractors Are Relevant Witnesses

Michael Facchiano Contracting was hired by PWSA to install the new water main on Bunkerhill and to run individual water lines from the main to the houses of 6053, 6055, and 6059 Bunkerhill. Because Facchiano Contracting was the one who built the new piping configuration, they should be able to verify that the new piping configuration made improvements in order to raise the chlorine concentration to make the water safer to drink.

RDN Plumbing, LLC and Beverly Services are two plumbing contractors hired by homeowners to repair and build water lines at the end of Bunkerhill. Their testimony is relevant because they can verify where water line breaks occurred and whether they were paid by PWSA or homeowners to do the work. This testimony will help support the notion that there was a precedence of PWSA repairing breaks on the party line.

Residents at the End of Sheridan Avenue Are Relevant Witnesses

As explained to the Complainant by Frank Davis, Environmental Compliance Coordinator for PWSA, there is a flow of water from Sheridan up to Bunkerhill, and there is a flow of water toward the dead end of Bunkerhill. These two flows in opposite directions converge in the vicinity of the hydrant at the end of Bunkerhill and that seems to be why water stops moving and stagnates there. In other words, the water lines at the end of Sheridan and the end of Bunkerhill are interdependent and tied together. If the hydrant at the bottom of Sheridan is flushed, this will help bring fresher, more chlorinated water to the bottom of Sheridan and to the vicinity of the hydrant at the end of Bunkerhill where the last 6 houses on Bunkerhill draw their water. Therefore, the testimony of Tina Rhoades, Lloyd Steiner, and Lathe Haynes that the hydrant at the end of Sheridan was flushed is relevant because that was a tactic used to improve the chlorine concentration to the last 6 houses on Bunkerhill.

Pittsburgh Water and Sewer Authority Employees Are Relevant Witnesses

The Complainant should have the right to call PWSA employees as witnesses because the testimony of PWSA employees has relevance. Just because the burden of proof is on the Complainant, does not mean that he should be barred from using PWSA employees as witnesses if those witnesses are helpful to him establishing his case which they are. As professionals hired by a very large water, waste water and storm water business, it is part of their jobs as PWSA employees to attend hearings dealing with the quality of their service offered to their customers. The Musgrave family residing at 6059 Bunkerhill Street has been

paying their water bills to PWSA including the infrastructure maintenance fees for roughly 90 years. If PWSA believes sending their employees to testify at the hearing will be too big of a drain on their workforce, then perhaps the Judge should consider allowing additional time for discovery in this case. Rasheed Tunde Abraham, Associate Project Manager for PWSA; Sarah Bolenbaugh, PE, Senior Group Manager of Water Programs for PWSA; and Brent Lahaie, PE, Associate Project Manager for PWSA, can offer testimony about how the piping configuration on Bunkerhill was improved to increase chlorine concentration. Michael Czypinski, Water Quality Data Manager for PWSA, can testify that in response to the Complainant calling him numerous times about low chlorine levels on Bunkerhill, he had the hydrant at the end of Bunkerhill flushed numerous times to bring freshly chlorinated water to the end of Bunkerhill. He can also testify that he told the Complainant to flush his water 20 minutes each morning to ensure safe drinking water. Frank Davis, Environmental Compliance Coordinator for PWSA, can testify that he measured low chlorine concentrations at the end of Bunkerhill, was informed by the DEP about how to accurately sample the water at the end of Bunkerhill using a flow regulator, and that he did not always have the flow regulator with him when he took samples at the end of Bunkerhill. Kurt Fulmer, Department of Chemistry for PWSA, and Robert Gomez, Chemist 1-PWSA Water Quality Team, can testify that they took water samples at the end of Bunkerhill without using the recommended flow regulator. Robert Gomez can also testify that he found some low chlorine concentrations in some water samples that he took at 6059 Bunkerhill. Rich Obermeier, Director of Field Services for PWSA, can testify that at a meeting with street residents who live at the end of Bunkerhill, he told them that the only way they would get clean water would be to connect the water line from the Bunkerhill hydrant to the water line at the bottom of Heberton. Rich Obermeier can also testify that he told the Complainant to purchase and run hoses from the Bunkerhill hydrant to three homes. Diana Szuch, Water Production Administrator for PWSA; Julie Quigley, Director of Customer Service for PWSA; and PWSA Emergency Dispatch (Melissa, Debra, Shannon, etc.) can testify that they were called numerous times by the Complainant concerning low chlorine concentrations at the end of Bunkerhill. Julie Quigley can also testify that she was informed by the Complainant that the men from PWSA doing chlorine testing at the Bunkerhill hydrant were not always using the flow regulators so their results may have been inaccurate. The testimony of Tracy Smith, Open Records Officer for PWSA, is needed to verify documents that were sent to the Complainant pertaining to the public versus private nature of the water line at the end of Bunkerhill Street. Who owns the water lines is important because this will determine who has maintenance and repair responsibilities for the water lines.

CONCLUSION

Wherefore, the Complainant respectfully requests that Administrative Law Judge Emily I. DeVoe 1) not grant this Motion in Limine, 2) allow for additional time for discovery to prevent a strain on the PWSA workforce due to a potentially large number of them needing to attend the hearing as witnesses, and (3) allow additional time for discovery due to the inability of the Complainant to afford to pay for the testimony of his expert witnesses, and 4) grant any other relief deemed appropriate.

Respectfully submitted,

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

John K. Musgrave IV
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Date: July 27, 2022

Pro Se Complainant



February 21, 2019

*****AUTO**5-DIGIT 15206

365 S1 P11
RESIDENT/OWNER
6059 BUNKERHILL ST
PITTSBURGH, PA 15206-1155



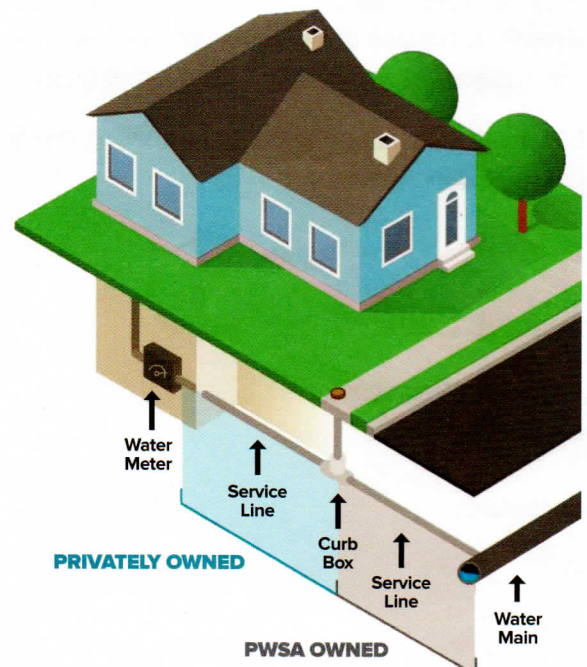
RE: Results of Water Service Line Inspection on Your Property

Location ID: 5028028
Location Address: 6059 BUNKERHILL ST
PITTSBURGH, PA 15206

Dear Valued Customer,

Our representatives from the Pittsburgh Water and Sewer Authority (PWSA) recently inspected your property's water service line to determine whether or not it is made of lead. The results of these inspections help us determine where we will replace lead service lines in the future.

As shown in the graphic to the right, we share ownership of the water service line with the homeowner. We own the portion from the water main up to your curb box, and you own the portion that connects the curb box to your home, on private property. See the included Inspection Results Guide for more information about the meaning of your results.



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THE RESULTS OF THE INSPECTION OF YOUR PROPERTY ARE AS FOLLOWS:

Homeowner's (private) portion of the service line:

NON-LEAD

PWSA's (public) portion of the service line:

UNKNOWN

Note: This inspection only evaluates the material types found at the curb box. Your curb box may have been previously replaced (with non-lead materials), or only a portion of the private side may have been previously repaired or replaced. For more accurate results, we recommend that you also determine the type of material used in the service line where it enters your house.

As a part of our Community Lead Response program, we are replacing a limited number of public lead service lines per year. You will be contacted directly if your property is selected for the replacement program. If you choose to replace the private side with your own plumber, contact the Lead Help Desk to coordinate and PWSA will replace the public side at the same time.

For more information about coordinating replacements, contact the PWSA Lead Help Desk at 412.255.8987 or at LeadHelp@pgh2o.com.

Sincerely,

A handwritten signature in black ink that reads 'Robert A. Weimar'.

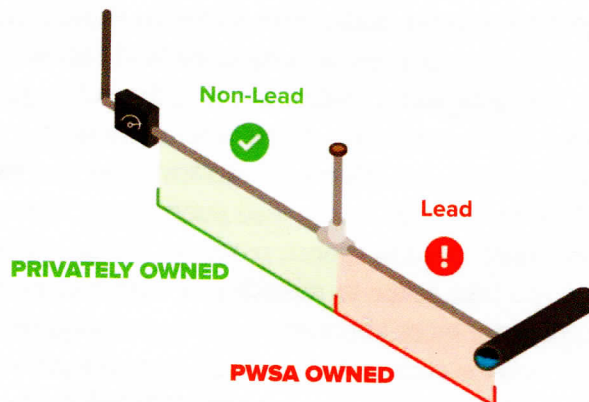
Robert A. Weimar
Executive Director

Enclosures

Inspection Results Guide

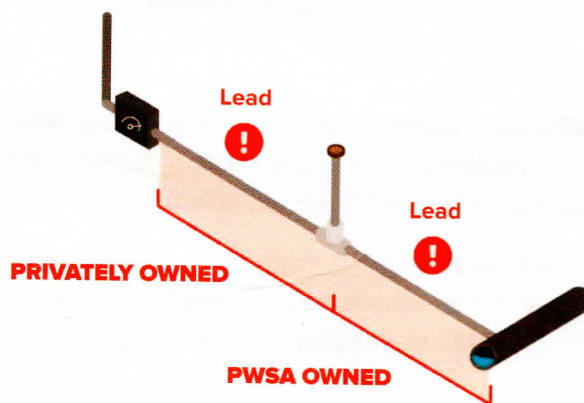
Lead on the Public Side, Non-Lead on the Private Side

This means that the portion of the water line between the water main and the curb box is made of lead. The portion of the water line that belongs to you is likely made of some other material, such as copper.



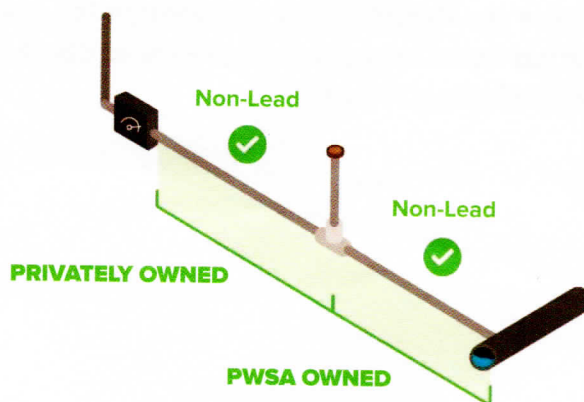
Lead on Both the Public and Private Side

This means that both portions of your water service line are made of lead, starting at the water main and continuing all the way up to your water meter. If you choose to replace the private side with your own plumber, contact the Lead Help Desk to coordinate and PWSA will replace the public side at the same time.



Non-Lead on Both the Public and Private Side

This means we did not find lead on either portion of your water service line. We will not be performing construction in this case. This does not necessarily mean that your plumbing is completely lead-free. Lead can enter your water through interior lead pipes, interior galvanized pipes (especially if there was a lead water service line running to the house in the past), interior copper pipes with lead soldered joints, or interior plumbing fixtures purchased or installed prior to January 2014. We encourage you to contact the Lead Help Desk to request a free lead water test kit. Contact a plumber for more information about replacing lead interior pipes and fixtures.

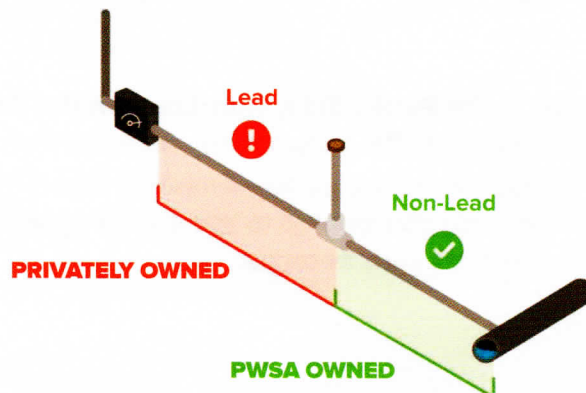




Pittsburgh
Water & Sewer
Authority

Lead on Private Side, Non-Lead on Public Side

This means that there is likely to be lead between your curb box and your water meter, and that the public portion of the water line is made from some other material, such as copper. Unfortunately, we will not be replacing the lead water line on homes that do not have a lead public water line as part of our Community Lead Response program. We do still recommend that you take action to replace your lead water line. Contact a plumber for more information about replacing your private lead water service line. The Urban Redevelopment Authority offers a low-interest loan program that helps City of Pittsburgh property owners replace their lead water service line. Call 412.255.6677 for information.



Unknown, Cannot Locate or Not Accessible

If you receive an inspection result that says "UNKNOWN," "CANNOT LOCATE," or "NOT ACCESSIBLE," this means that the contractors were not able to inspect your service line due to obstructions.

We will reschedule the inspection on your property for a future date. In the meantime, we encourage you to request a free lead test kit to determine if there is lead in your drinking water. You can request a kit by calling 412.255.8987 or emailing LeadHelp@pgh2o.com

Please see the attached information for answers to frequently asked questions. If you have any further questions, do not hesitate to contact the Lead Help Desk at 412.255.8987 or at LeadHelp@pgh2o.com.

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 27th day of July, 2022

John K. Musgrave IV

John K. Musgrave IV

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

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Accepts eService

Service by eService as follows:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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Accepts eService

Pittsburgh Water and Sewer Authority
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Hon. Emily I. DeVoe
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