

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CORRECTED INTERIM ORDER  
ADOPTING JOINT STIPULATIONS, GRANTING IN PART AND  
DENYING IN PART PWSA’S MOTION IN LIMINE  
AND SCHEDULING EVIDENTIARY HEARING**

On July 15, 2022, the Pittsburgh Water and Sewer Authority (PWSA, Company, or Respondent) filed a Motion in Limine, seeking to exclude witness testimony proposed by John Kerr Musgrave IV (Complainant or Mr. Musgrave). PWSA alleges the testimony it seeks to exclude lie outside the boundaries of the issues in this case and is cumulative and repetitious. PWSA argues Complainant’s witness list should be limited as so as to avoid confusion and wasting time, prohibit Complainant from representing the interests of other customers, and prohibit Complainant from calling PWSA employees as his witnesses.

On July 28, 2022, Mr. Musgrave filed a response to the Motion in Limine, essentially arguing that his proposed testimony was necessary and relevant.

On August 16, 2022, I directed Commission staff to issue a Notice, scheduling a status conference for September 1, 2022.

A status conference convened on September 1, 2022. The parties discussed a variety of topics, including the motion in limine and Mr. Musgraves’ proposed witness list. A second status conferenced was scheduled for September 14, 2022.

A second status conference was held on September 14, 2022. The parties advised they had made progress toward the agreement on a set of joint stipulations but needed more time. The parties agreed to have me set a deadline for the submission of a set of proposed stipulations and a status report.

On September 15, 2022, I issued an Interim Order continuing to hold the Motion in Limine in Abeyance and ordering the parties to meet and confer at least once prior to September 30, 2022, to discuss the possibility of agreeing to a set of factual stipulations, file a fully executed copy of any stipulations by September 30, 2022, and file status reports by September 30, 2022.

On September 30, 2022, the parties filed a Joint Stipulation of Facts. This Stipulation is attached to this Order as **Attachment A**.

Also on September 30, 2022, each party filed a status report. In his status report, Mr. Musgrave included a revised witness list, detailing the expected testimony for each witness.

It is now appropriate to rule on PWSA's Motion in Limine.

#### Prior Orders Limiting Issues in This Case

On October 27, 2022, Administrative Law Judge Marta Guhl, (ALJ Guhl) issued an Interim Order granting Preliminary Objections filed by PWSA. In granting the Preliminary Objections, ALJ Guhl held,

While the specific chlorine readings are not in the Commission's jurisdiction, in general water quality can be reviewed by the Commission. Further, whether the service line is within the jurisdiction of the PWSA and therefore would be their responsibility to repair is an issue that the Commission should consider, especially since the Complainant disputes the PWSA's factual contention that it is a private service line. Therefore, questions remain whether, pursuant to the Public Utility Code and applicable regulations, PWSA provided the Complainant with adequate,

efficient, safe, and reasonable service and whether civil penalties are warranted in this case.<sup>1</sup>

On March 18, 2022, I issued an Interim Order granting in part and dismissing in part a Motion to Dismiss filed by PWSA. In ruling on the Motion to Dismiss, I dismissed all of Complainant's claims except two.

I held that Complainant could proceed on his claim that 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. I explained,

[R]egarding 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.

I also reaffirmed ALJ Guhl's prior ruling that Complainant could proceed on his claim that PWSA failed to maintain proper levels of chlorine in its water between May 2018 through October 2020, such that it constitutes a violation of 66 Pa. C.S. § 1501.

### Discussion

In his September 30, 2022, status report, Mr. Musgrave included a detailed proposed witness list that includes twelve expert witnesses, seventeen lay witnesses, and twelve PWSA employees.

Section 5.401 of the PUC's regulations provides that relevant and material evidence is admissible subject to objections on other grounds. This provision further states that

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<sup>1</sup> *Interim Order*, C-2020-3020714, September 30, 2022.

evidence will be excluded if it is “repetitious or cumulative,” or if its probative value is outweighed by the “danger of unfair prejudice,” “[c]onfusion of the issues,” or “[c]onsiderations of undue delay or waste of time.”<sup>2</sup>

Section 5.403 authorizes the presiding officer to control the receipt of evidence, including ruling on the admissibility of evidence and confining the evidence to the issues in the proceeding. This provision further establishes the authority of the presiding officer to impose limitations on the number of witnesses, the time and scope of testimony, the production of further evidence and other necessary limitations. The regulation explains that these powers are necessary to direct and focus the proceedings consistent with due process.<sup>3</sup>

A motion in limine has been recognized as a valid means of requesting that the presiding officer control the receipt of evidence in the proceeding.<sup>4</sup> As a matter of policy, evidence that is irrelevant or immaterial to the issues presented in a proceeding must be excluded.<sup>5</sup> Information is relevant if it “logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable, or supports a reasonable inference or presumption regarding the existence of a material fact.”<sup>6</sup>

#### Mr. Musgrave’s Proposed Lay Witnesses

Mr. Musgrave lists multiple individuals he intends to call as lay/fact witnesses. Complainant lists himself and his mother, who resides with him at the service location. Mr. Musgrave and his mother will be permitted to testify at the evidentiary hearing on relevant

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<sup>2</sup> 52 Pa. Code § 5.401.

<sup>3</sup> 52 Pa. Code § 5.403.

<sup>4</sup> See e.g., *Pa. Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Sixth Prehearing Order dated July 14, 2015).

<sup>5</sup> 66 Pa. C.S. § 332(b); 52 Pa. Code § 5.401(a).

<sup>6</sup> *EQT Prod. Co. v. Borough of Jefferson Hills*, 208 A.3d 1010, 1025 (Pa. 2019), citing *Commonwealth v. Johnson*, 160 A.3d 127, 146 (2017); *Commonwealth v. DeJesus*, 880 A.2d 608, 614-15 (Pa. 2005).

issues, with relevance defined by the rulings of the October 27, 2022, and March 18, 2022, Interim Orders, subject to objection from PWSA.

Most, if not all, of the other proposed lay/fact witnesses appear to be his neighbors. In his status report/updated witness list submitted September 30, 2022, Mr. Musgrave includes detailed descriptions of the testimony he would solicit from these proposed witnesses. Much of the testimony appears to be redundant and cumulative, or redundant in light of the stipulations filed by the parties on September 30, 2022, and adopted by this Order. Please note, any of the proposed testimony described below is subject to any specific objections raised by PWSA at the evidentiary hearing. **Furthermore, to the extent I refer to a witness potentially testifying to a fact or facts, I am not finding that such testimony is admissible or will be given any substantive weight. The analysis that follows is strictly an analysis of the proposed topics of testimony for each proposed witness and how that testimony relates to the adopted stipulations and the testimony of the other proposed witnesses.**

In their stipulations, the parties stipulate that there were breaks in the shared water service line serving the 6059 Bunkerhill Street occurring on or around January 22 - January 24, 2018, and July 27, 2020. The parties also stipulate that when these breaks occurred, the property owners hired a private plumber to make repair to the water service line. The parties also stipulate that the 6-inch water main serving Bunkerhill Street experience breaks on April 26, 2020, June 2, 2020, June 28, 2020, July 13, 2020, and July 27, 2020. The parties further stipulate to the approximate curb box locations for properties along Bunkerhill Street both prior to and after the line replacement in November 2020. The parties also stipulate that as of March 14, 2018, the properties at 6041, 6045, and 6049 Bunkerhill Street separated themselves from the shared water service line.

For example, in his September 30, 2022, witness list, Complainant lists Dell and Kathy Zieger as potential witnesses who would testify that there was a water line break on or about March 20, 2017, which PWSA paid to repair, and a water line break on or about July 27, 2020, which the property owners paid to repair (basis of adopted stipulation); houses separated themselves from the shared water service line on March 14, 2018 (basis of adopted stipulation);

whether an expert was consulted prior to the houses breaking off from the shared line to assess whether water quality to the remaining houses would be affected; the location of their curb box before and after PWSA's work in late 2020 (basis of adopted stipulation); hydrants were opened and allowed to run (also listed in the anticipated testimony for Complainant). I note that Mr. Musgrave lists himself as providing testimony about the hydrants being left open for "days on end." It appears these witnesses could possibly provide very limited, if any, relevant, non-redundant testimony.

Complainant also lists Brooke McCartney and Justin Cowley as potential witnesses who would testify there was a water line break in March 20, 2017 (also listed as testimony for Dell and Kathy Zieger); a water line break on February 13, 2018, which was repaired at the expense of the property owners (also listed in the anticipated testimony for Mr. Musgrave's mother); houses separated themselves from the shared water service line on March 14, 2018 (basis of adopted stipulation); whether an expert was consulted prior to the houses breaking off from the shared line to assess whether water quality to the remaining houses would be affected; the location of their curb box before and after PWSA's work in late 2020 (basis of adopted stipulation); hydrants were opened and allowed to run (also listed in the anticipated testimony for Complainant); there are crocks of different properties next to her driveway; and the chlorine level sample taken by Complainant on August 24, 2019. Mr. Musgrave lists himself as testifying about the location of his own crock and undoubtedly would be able to testify about any samples he, himself, collected. It appears these witnesses could possibly provide very limited, if any, relevant, non-redundant testimony.

Complainant also lists Andrew McFarland and Rebecca Price as potential witnesses. Complainant avers these witnesses would testify there was a water line break in Spring 2015, which was repaired by PWSA; houses separated themselves from the shared water service line on March 14, 2018 (basis of adopted stipulation); whether an expert was consulted prior to the houses breaking off from the shared line to assess whether water quality to the remaining houses would be affected; the location of their curb box before and after PWSA's work in late 2020 (basis of adopted stipulation); and hydrants were opened and allowed to run

(also listed in the anticipated testimony for Complainant). It appears these witnesses could possibly provide very limited, if any, relevant, non-redundant testimony.

Complainant also lists Karen Toole as a potential witness. Complainant avers she would testify there was a water line break on or about January 22, 2018 (basis of adopted stipulation); hydrant was opened and allowed to run (also listed in the anticipated testimony for Complainant); the location of their curb box before and after PWSA's work in late 2020 (basis of adopted stipulation); Complainant met with Frank Davis multiple times to test the water from the hydrant (Complainant could provide testimony about this); she directed Complainant on how to dig a ditch on or about January 22, 2018 (Complainant could provide testimony about this); she had to purchase hoses for Complainant to run to her house from the hydrant. Therefore, it appears this witness could possibly provide very limited, if any, relevant, non-redundant testimony.

Complainant lists Vivian Loftness and Volker Hartkopf as providing testimony about a water line break on or about January 22, 2018 (basis of adopted stipulation); hydrant was opened and allowed to run (also listed in the anticipated testimony for Complainant); they had to purchase hoses for Complainant to run to their house from the hydrant; they are out of the country during the summer, which lessens usage along the line; they read documents supplied by PWSA regarding the private/public nature of the line; the location of their curb box before and after PWSA's work in late 2020 (basis of adopted stipulation). It appears these witnesses could possibly provide very limited, if any, relevant, non-redundant testimony.

Ann Massey is listed as providing testimony that she saw Complainant taking water samples from the hydrant (Complainant could provide testimony about any water samples he took); the hydrant was opened and allowed to run (also listed in the anticipated testimony for Complainant); she had her water quality tested by an independent water testing company; and Complainant took water a water sample on August 14, 2020. Complainant presumably could provide testimony about any water samples he took. Therefore, it appears this witness could possibly provide very limited, if any, relevant, non-redundant testimony.

Complainant lists Tina Rhoades and Lloyd Steiner as providing testimony that a hydrant on Sheridan was flushed and opened and that Complainant took a water sample on August 14, 2020. Complainant presumably could provide testimony about any water samples he took. It appears these witnesses could possibly provide very limited, if any, relevant, non-redundant testimony.

Complainant lists Lathe Haynes as providing testimony that a hydrant on Sheridan was flushed and opened and Complainant took a water sample on September 29, 2019. Complainant presumably could provide testimony about any water samples he took. It appears this witness could possibly provide very limited, if any, relevant, non-redundant testimony.

Howard Ames, as well as Red and Kathy Whittaker are all listed as providing testimony about multiple breaks on the main line; water was turned on and off when the repairs were made; heavy machinery was used during the repairs; and there may have been vibrations of the main line during repairs that may have vibrated the party line which was connected to it. It appears these witnesses could possibly provide very limited, if any, relevant, non-redundant testimony.

As discussed above, Mr. Musgrave and his mother will be permitted to testify at the evidentiary hearing on any relevant issue, with relevance defined by the rulings of the October 27, 2022, and March 18, 2022, Interim Orders, subject to objection from PWSA. **Other than Complainant and Ms. Musgrave, Complainant will be limited to presenting three witnesses who will testify as a lay or fact witness.**

#### Expert Witnesses

I have not received any applications for the issuance of subpoenas from Complainant for any witnesses of the date of this Order. I note discovery closed in this matter on July 8, 2022, as detailed in an Interim Order dated May 5, 2022. The May 5, 2022, Interim Order further provided detailed instructions regarding the Commission's rules for filing an application for the issuance of a subpoena.



To the extent Complainant files applications for the issuance of subpoenas for expert witnesses by the deadline set in the Ordering Paragraphs below, they will be subject to appropriate objections. Furthermore, PWSA's Motion in Limine is dismissed without prejudice with regard to any expert witnesses. Complainant should consider himself on notice that in addition to any objection raised by PWSA in response to any application for issuance of subpoena, I have the authority to impose limitations on the number of witnesses, and will do so if appropriate.

### PWSA Witnesses

In its Motion in Limine, PWSA argues that Complainant has the burden of proving the allegations made in his Complaint. PWSA explains that Complainant seeks to call as witnesses at least fourteen PWSA personnel purportedly to prove his allegations. PWSA argues Complainant is entitled to cross-examine the PWSA witnesses who present direct testimony, provided that the cross-examination is within the scope of that direct testimony, but he should not be permitted to rely on PWSA personnel in an effort to prove the allegations he has made. PWSA avers that, Complainant, by filing a Complaint with the Commission, assumed the burden of proving his allegations and should be prepared to do so without the assistance of PWSA's own employees.

Additionally, PWSA notes that it is a very large water, wastewater, and stormwater business, which provides essential services to customers on a daily basis. PWSA argues that having fourteen PWSA employees, some high-level with significant operational responsibilities into the evidentiary hearing, most of whom would have nothing of relevance to offer on the issues remaining at issue in this proceeding, and none of whom have been in contact with Complainant regarding potential testimony, would be disruptive of PWSA's operations.

In response, Complainant argues he should have the right to call PWSA employees as witnesses during his case-in-chief because the testimony they would provide would be relevant. He argues that just because he has the burden of proof, this does not mean that he

should be barred from using PWSA employees as witnesses if those witnesses would be helpful in establishing his case.

I have not received any subpoenas from Complainant for any PWSA personnel as of the date of this Order. I note discovery closed in this matter on July 8, 2022, as detailed in an Interim Order dated May 5, 2022. The May 5, 2022, Interim Order further provided detailed instructions regarding the Commission's rules for filing an application for the issuance of a subpoena.

I note that Rasheed Ibrahim, Sarah Bolenbaugh, and Brent Lahie are all listed by Complainant as providing identical testimony. Complainant avers they would testify that the piping configuration of the main water line at the end of Bunkerhill was changed in the Fall of 2020 to improve the chlorine concentration to the homes at the end of Bunkerhill, and they would explain the changes that occurred in the piping configuration and provide drawings.

I also note Complainant lists Diana Szuch, Julie Quigley, Rich Obermeier, and PWSA Emergency Dispatch as providing testimony that Complainant called several times regarding his concerns about chlorine levels in his water. Additionally, Complainant lists Julie Quigley, Robert Gomez and Kurt Fuller as providing testimony about PWSA performing chlorine level testing when a flow regulator was not available.

To the extent Complainant files applications for the issuance of subpoenas for PWSA personnel by the deadline set in the Ordering Paragraphs below, they will be subject to objection by PWSA. Furthermore, PWSA's Motion in Limine is dismissed without prejudice with regard to PWSA employees. Complainant should consider himself on notice that in addition to any objection raised by PWSA in response to any application for issuance of subpoena, I have the authority to impose limitations on the number of witnesses, and will do so if appropriate.

THEREFORE,

IT IS ORDERED:

1. That the Joint Stipulations filed on September 30, 2022, and attached to this Order as **Attachment A** are adopted.
2. Complainant and his mother, Judith Musgrave, may testify at the evidentiary hearing to any relevant matter, subject to objection from PWSA.
3. Notwithstanding Ordering Paragraph 2, the Motion in Limine is granted such that Complainant is limited to calling **three** lay or fact witnesses during the evidentiary hearing to testify on his behalf.
4. That the Motion in Limine filed by PWSA is denied without prejudice with respect to PWSA personnel and Complainant's proposed expert witnesses.
5. That any application for the issuance of a subpoena must be filed served consistent with 52 Pa. Code § 5.421 by 4:00 pm on **Monday, November 28, 2022**.
6. That any response or objection to any application for the issuance of a subpoena must be filed and served within ten days of service of the application, consistent with 52 Pa. Code § 5.421.
7. That an evidentiary hearing is scheduled for **Monday, January 9, 2023, and Tuesday, January 10, 2023**, starting at 10:00 a.m. each day.
8. That Complainant shall present his case in chief on **Monday, January 9, 2023**, and must conclude his case by 4:00 p.m., inclusive of any cross-examination of his witnesses by PWSA.

9. That PWSA shall present its case-in-chief on **Tuesday, January 10, 2023**, and must conclude its case by 4:00 p.m., inclusive of any cross-examination of its witnesses by Complainant.

Date: November 9, 2022

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



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September 30, 2022

**Via Electronic Filing**

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

Re: John Kerr Musgrave, IV v. Pittsburgh Water and Sewer Authority  
Docket No. C-2020-3020714

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Dear Secretary Chiavetta:

Enclosed for electronic filing please find a Joint Stipulation of Facts with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*/s/ Lauren M. Burge*

Lauren M. Burge

Enclosure

Cc: Cert. of Service w/enc.

## **CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the Joint Stipulation of Facts upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

### **Via Email Only**

John Kerr Musgrave, IV  
6059 Bunkerhill Street  
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Hon. Emily I. DeVoe  
Administrative Law Judge  
PA Public Utility Commission  
Piatt Place, Suite 220  
301 5<sup>th</sup> Avenue  
Pittsburgh, PA 15222  
[edevoe@pa.gov](mailto:edevoe@pa.gov)

Dated: September 30, 2022

/s/ *Lauren M. Burge*  
Lauren M. Burge, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Kerr Musgrave, IV,	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2020-3020714
	:	
The Pittsburgh Water and Sewer Authority,	:	
Respondent.	:	
	:	

**JOINT STIPULATION OF FACTS OF  
THE PITTSBURGH WATER AND SEWER AUTHORITY  
AND JOHN KERR MUSGRAVE, IV**

The Pittsburgh Water and Sewer Authority (“PWSA” or the “Authority”) and John Kerr Musgrave, IV (“Complainant”) hereby stipulate to the following facts in the above-referenced proceeding.

**I. Breaks in Water Service Line Serving 6059 Bunkerhill Street<sup>1</sup>**

- A. The parties stipulate that breaks in the shared water service line serving the 6059 Bunkerhill Street property occurred on the following dates:
  - 1. On or around January 22-January 24, 2018; and
  - 2. July 27, 2020.
- B. When the breaks identified in Section I.A occurred, the property owners hired a private plumber to make repairs to the water service line.
- C. The parties stipulate that the 6-inch water main serving Bunkerhill Street experienced breaks on the following dates:
  - 1. April 26, 2020;
  - 2. June 2, 2020;
  - 3. June 28, 2020;

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<sup>1</sup> The parties recognize that PWSA’s records are minimal and may be incomplete. From PWSA’s perspective, this is because the water line at issue is a private service line. The items agreed to here are supported by PWSA’s records.

4. July 13, 2020; and
5. July 27, 2020.

## **II. Curb Box Locations<sup>2</sup>**

The parties stipulate to the following facts regarding the location of curb boxes on Bunkerhill Street:

1. Attachment A shows the approximate curb box locations prior to the line replacement in November 2020, for properties except 6053, 6055 and 6059 Bunkerhill;
2. Attachment B shows approximate curb box locations prior to the line replacement in November 2020, specifically for the properties at 6053, 6055, and 6059 Bunkerhill Street (as a supplement to Attachment A); and
3. Attachment C shows the approximate current curb box and meter crock locations after the line replacement in November 2020.

## **III. Other Facts**

1. As of March 14, 2018, the properties at 6041, 6045, and 6049 Bunkerhill Street separated themselves from the shared water service line (or “party” line).

Respectfully submitted,

/s/ John Kerr Musgrave, IV  
John Kerr Musgrave, IV  
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*Complainant*

/s/ Lauren M. Burge  
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Dated: September 30, 2022

*Counsel for PWSA*

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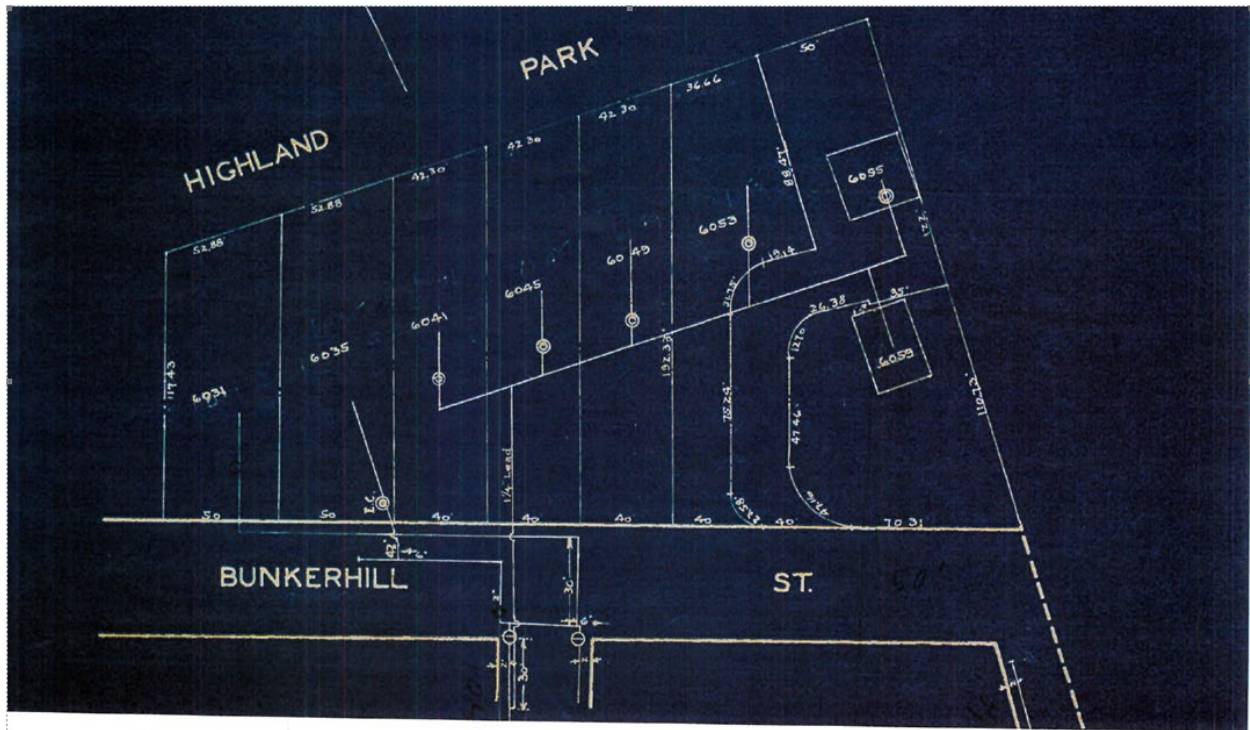
<sup>2</sup> The parties recognize that PWSA’s records are minimal and may be incomplete. From PWSA’s perspective, this is because the water line at issue is a private service line. The items agreed to here are supported by PWSA’s records.



**Joint Stipulation of Facts  
Attachment A**

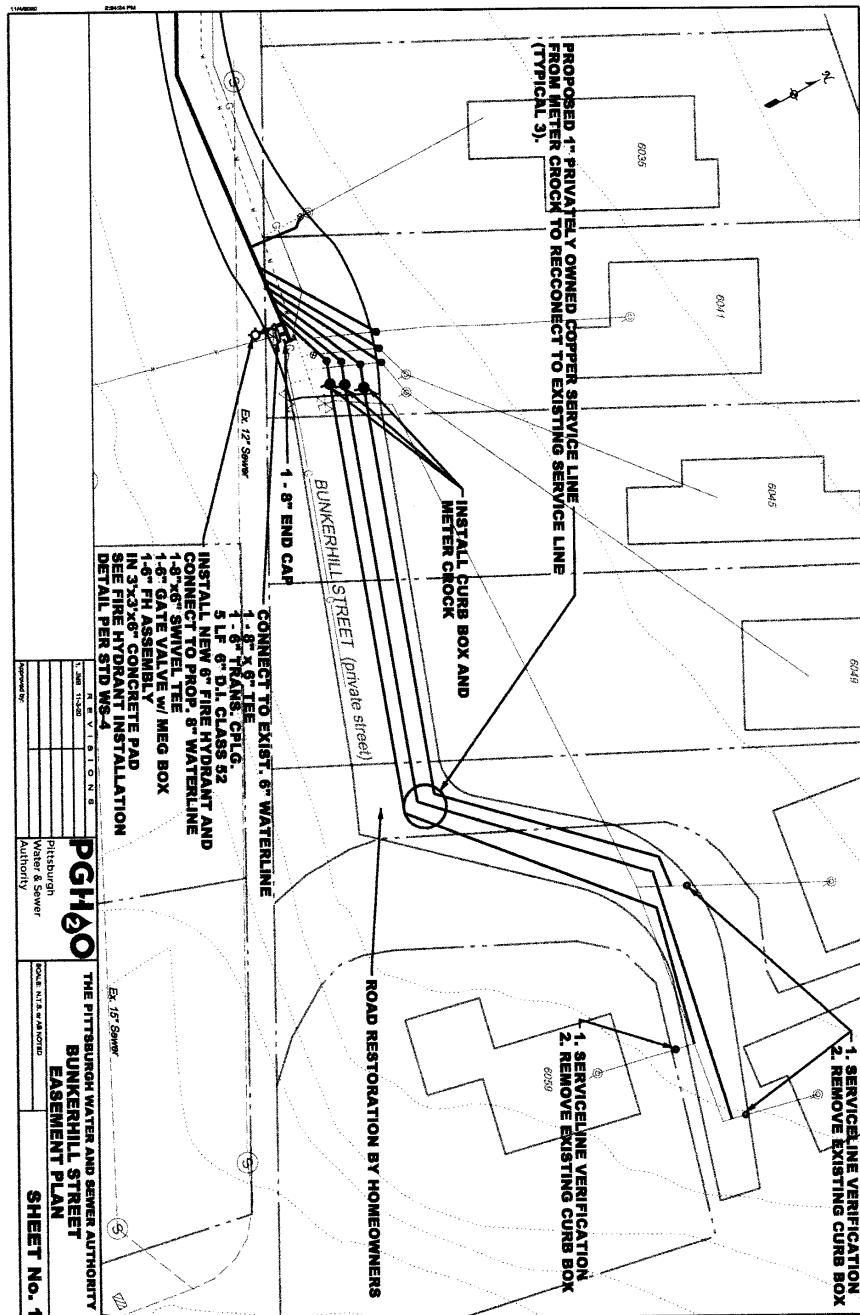
The map below shows approximate curb box locations on the shared water service line on Bunkerhill Street prior to the water line replacement in November 2020 for the properties except 6053, 6055, and 6059 Bunkerhill.

The circles shown on the map indicate approximate curb box locations. The parties note that this map is a rendering providing general locations of the curb boxes, not exact GPS locations. Additionally, PWSA's records may be incomplete. From PWSA's perspective, this is because the line at issue is a private water service line.



The map below shows approximate curb box locations on the shared water service line on Bunkerhill Street prior to the water line replacement in November 2020, specifically for the properties at 6053, 6055, and 6059 Bunkerhill Street (as a supplement to Attachment A above).

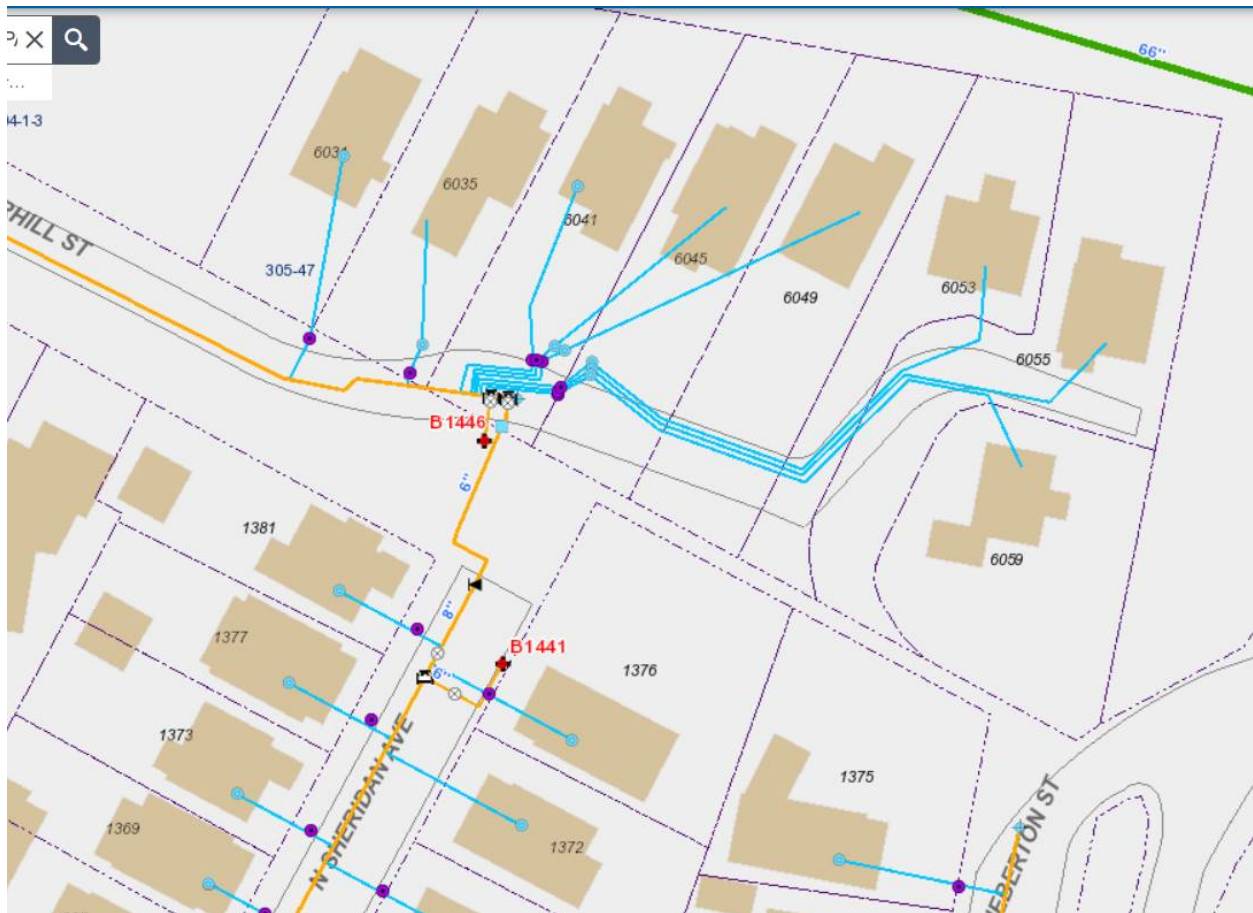
The black circles shown on the map indicate approximate curb box locations for these properties prior to November 2020. The parties note that this map is a rendering providing general locations of the curb boxes, not exact GPS locations. Additionally, PWSA's records may be incomplete. From PWSA's perspective, this is because the line at issue is a private water service line.



## Joint Stipulation of Facts Attachment C

The map below shows the approximate current curb box and meter crock locations on Bunkerhill Street after the shared water service line replacement in November 2020.

The purple circles shown on the map indicate approximate curb box locations, and the blue circles indicate approximate meter crock locations. The parties note that this map is a rendering providing general locations of the curb boxes and meter crocks, not exact GPS locations. Additionally, PWSA's records may be incomplete. From PWSA's perspective, this is because the line at issue is a private water service line.



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

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