



Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219

TEL: 412 566 6000  
FAX: 412 566 6099

Lauren M. Burge  
412.566.2146  
lburge@eckertseamans.com

December 8, 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 The Pittsburgh Water and Sewer Authority's Response to Subpoena Application of John Kerr Musgrave, IV 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 Response to Subpoena Application 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  
Pittsburgh, PA 15206-1155  
[jmusky@earthlink.net](mailto:jmusky@earthlink.net)

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: December 8, 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.	:	
	:	

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**THE PITTSBURGH WATER AND SEWER AUTHORITY’S  
RESPONSE TO SUBPOENA APPLICATION OF JOHN KERR MUSGRAVE, IV**

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Pursuant to 52 Pa. Code § 5.421(f) of the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) regulations and the Corrected Interim Order issued November 9, 2022, The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) submits this Response to the Application for Subpoenas (“Application”) of John Kerr Musgrave, IV (“Complainant”), which is dated November 28, 2022. For the reasons discussed herein, PWSA respectfully requests that the Complainant’s Application be denied.

**I. BACKGROUND**

A. Procedural History

On July 8, 2020, the original Formal Complaint of Mr. Musgrave was served on PWSA. On August 10, 2020, PWSA filed an Answer with New Matter and Preliminary Objections to the complaint.

The Complainant filed an Amended Formal Complaint on December 29, 2021. In response, on January 12, 2022, PWSA filed an Answer to the Amended Complaint as well as a Motion to Dismiss. On March 18, 2022, ALJ DeVoe issued an Interim Order granting PWSA’s Motion to Dismiss in part and denying it in part (“March 18, 2022 Interim Order”). A detailed

procedural history of this matter is included in the March 18, 2022 Interim Order. That procedural history is incorporated herein by reference.

By hearing notice dated March 21, 2022, a telephonic evidentiary hearing was scheduled regarding the remaining matters in this Complaint for April 21, 2022. PWSA filed a Motion for Continuance, which was granted, and the evidentiary hearing was rescheduled for May 25, 2022. A Prehearing Conference was held on April 28, 2022. After this conference, ALJ DeVoe issued an Interim Order dated May 5, 2022 cancelling the evidentiary hearing and establishing a litigation schedule (“May 5, 2022 Interim Order”).

On May 13, 2022, in accordance with the May 5, 2022 Interim Order, PWSA and Mr. Musgrave exchanged proposed Witness Lists and provided copies to ALJ DeVoe. On July 15, 2022, PWSA filed a Motion in Limine seeking to exclude certain testimony proposed by the Complainant. Mr. Musgrave filed a response to the Motion in Limine on July 28, 2022.

Status Conferences were held with ALJ DeVoe on September 1, 2022 and September 14, 2022. On September 30, 2022, the parties filed a Joint Stipulation of Facts as well as individual status reports.

On November 9, 2022, an Interim Order was issued that adopted the Joint Stipulations and ruled on PWSA’s Motion in Limine (“November 9, 2022 Interim Order”). Regarding fact/lay witnesses, the Interim Order provided that Mr. Musgrave could offer the testimony of himself and his mother, Judith Musgrave, as well as the testimony of up to three additional fact/lay witnesses. Additionally, to the extent the Complainant wished to call expert witnesses, he was directed to file applications for the issuance of subpoenas for expert witnesses which would be subject to PWSA’s objections.

On November 28, 2022, the Complainant filed an Application for Subpoenas requesting subpoenas for fact/lay witnesses as well as expert witnesses. PWSA now submits this response to the Application pursuant to 52 Pa. Code § 5.421(f) and the November 9, 2022 Interim Order. Evidentiary hearings in this matter are scheduled for January 9-10, 2023.

**B. Scope of the Proceeding**

Pursuant to the March 18, 2022 Interim Order, there are two issues remaining in this proceeding: (1) whether 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; and (2) whether 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.<sup>1</sup>

**II. RESPONSE**

**A. Fact/Lay Witnesses**

The Application requests subpoenas for fact/lay witnesses that are the Complainant's neighbors – Andrew McFarland and Rebecca Price, Brooke McCartney and Justin Crowley, and Dell and Kathy Ziegler. In general, PWSA does not oppose the Complainant calling these fact witnesses to testify during the evidentiary hearing. However, the November 9, 2022 Interim Order clearly states that the Complainant is limited to calling **three** lay or fact witnesses (in addition to himself and his mother, Judith Musgrave).<sup>2</sup> The Application appears to list three

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<sup>1</sup> March 18, 2022 Interim Order, Ordering Para. 6, 8.

<sup>2</sup> November 9, 2022 Interim Order, Ordering Para. 3.

couples (or six individuals), but this must be limited to *three individuals total* to be called as fact/lay witnesses.

Although PWSA does not oppose the Complainant calling these fact/lay witnesses at this time, PWSA does not concede that the testimony as described is relevant in this proceeding. As such, the Authority reserves the right to object to testimony and/or exhibits presented during the hearing.

**B. Tracy Smith, PWSA Open Records Officer**

The Application requests a subpoena for Tracy Smith, PWSA's Open Records Officer, to provide testimony that "[d]ocuments pertaining to the public vs. private nature of the water line at the end of Bunkerhill were mailed to John Musgrave in 2018." The Application further requests that Ms. Smith be directed to supply a variety of documents. PWSA opposes this subpoena on a number of grounds.

First, the Complainant appears to be using this subpoena application to inappropriately circumvent the discovery process in this proceeding. Mr. Musgrave was advised repeatedly during this proceeding that he could engage in discovery to obtain documents from PWSA. ALJ DeVoe specifically set a litigation schedule that included a discovery period,<sup>3</sup> but the Complainant chose not to issue a single discovery request on PWSA. Now, at this late date over two years after the Complaint was first filed, the Complainant is attempting to subpoena documents to be provided during the hearing, presumably to fish for information to support his

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<sup>3</sup> May 5, 2022 Interim Order; Nov. 9, 2022 Corrected Interim Order at 10 ("I note discovery closed in this matter on July 8, 2022, as detailed in an Interim Order dated May 5, 2022.").

claims. This is impermissible under the Commission's regulations<sup>4</sup> and would violate PWSA's due process rights.

Additionally, as Open Records Officer, Ms. Smith does not have substantive knowledge about the documents the Complainant seeks to obtain. There is no relevant information that would be gained by requiring Ms. Smith to testify beyond simply stating that PWSA previously provided copies of certain documents to the Complainant. Mr. Musgrave already has copies of these documents and can offer them into evidence himself. Any concerns about exhibits can be addressed during the hearing without the extremely limited testimony requested from Ms. Smith. Again, the purpose of this request appears to primarily be to obtain additional documents that should have been appropriately requested through the discovery process.

Finally, this request seeks information that is irrelevant to the limited scope of this proceeding. The Application seeks information and documents "pertaining to the private vs. public nature of the water line." However, as specified in the March 18, 2022 Interim Order, the specific question being addressed here is "whether PWSA had maintenance/repair responsibilities over the service line running along the private portion of Bunkerhill Street prior to November 11, 2020."<sup>5</sup> The subpoena request seeks information that is beyond the scope of this limited question and therefore irrelevant.

For these reasons, the subpoena application as it applies to Tracy Smith should be denied.

### **C. Rick Obermeier, former PWSA Chief of Operations**

The Application requests a subpoena for Rick Obermeier, PWSA's former Chief of Operations, to testify that "John Musgrave, upon [Mr. Obermeier's] request, bought and

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<sup>4</sup> See 52 Pa. Code § 5.331(b) ("A party shall initiate discovery as early in the proceedings as reasonably possible...").

<sup>5</sup> March 18, 2022 Interim Order, Ordering Para. 6.

connected hoses from the hydrant at the end of Bunkerhill...” This request should be denied as it seeks a subpoena for testimony that is unnecessary as it can be provided by Mr. Musgrave himself.

Mr. Musgrave can provide his own testimony regarding his purchase and use of any hoses, to the extent such testimony is relevant. It is unnecessary for Mr. Obermeier to be subpoenaed to provide this testimony. Further, while Mr. Obermeier retired from PWSA as of January 2022, the Authority intends to call its current Director of Operations – William “BJ” McFaddin – as a witness during the hearing. The Complainant will have the opportunity to cross-examine Mr. McFaddin as relevant and appropriate and can direct any necessary questions to him.

For these reasons, the subpoena application as it applies to Rick Obermeier should be denied.

**D. Jeffrey Czochara, Plumbing Inspector, Allegheny County Health Department**

The Application requests a subpoena for Jeffrey Czochara, Plumbing Inspector for the Allegheny County Health Department (“ACHD”) to provide testimony regarding his inspection of the party water line at 6059 Bunkerhill Street, and whether permits were filed and inspections completed by ACHD for work done on the water lines. The Application also requests that Mr. Czochara provide documentation concerning work performed on the water line in Bunkerhill Street from the year 1700 to present. This request should be denied, as requested testimony and documentation raise issues that are outside the Commission’s jurisdiction and that are irrelevant to this proceeding.



As a creation of the General Assembly, the Commission only has the power and authority granted to it by the General Assembly and contained in the Public Utility Code.<sup>6</sup> The Commission has no authority over ACHD or to enforce or interpret any ACHD regulations or other standards. Whether any ACHD permits or inspections were obtained and the results of any ACHD inspections are therefore irrelevant to this proceeding. Additionally, the request that Mr. Czochara bring to the hearing all records related to the water line *from the year 1700 to the present* is truly absurd, and presenting such records covering over three hundred years for the first time during the hearing would violate PWSA's due process rights.

For these reasons, the subpoena application as it applies to Jeffrey Czochara should be denied.

**E. Beverly Services (Plumbing)**

The Application generically requests a subpoena for Beverly Services (Plumbing) without specifying exactly who would provide the requested expert witness testimony. The Application states that an unidentified Beverly Services representative would testify that "they tried to repair the water line break under the street at 6041 Bunkerhill on 7/27/20, but that they had to abandon the project due to the deteriorated condition of the water line," as well as claims that repairs of prior breaks on the water main "may have hastened the demise of the party line." The Beverly Services subpoena request should be denied because: (1) the requested testimony has no relevance to the remaining limited issues in this proceeding; and (2) the expected testimony raises new claims that have not been previously raised at any other point in this proceeding.

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<sup>6</sup> *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, 2008 WL 8014593, at \*3 (Opinion and Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 794 (Pa. 1977) (citations omitted).

The Application implies that PWSA's repairs to the nearby water main in some way compromised the party service line. This allegation is not relevant to the question of whether PWSA had maintenance/repair responsibilities over the service line running along the private portion of Bunkerhill Street prior to November 11, 2020, or whether PWSA failed to maintain proper levels of chlorine in its water between May 2018 through October 2020. Since this testimony is not relevant to the remaining issues in this proceeding as identified in the March 18, 2022 Interim Order, the Application should be denied.

Further, the testimony described in the Application raises entirely new claims that have not previously been raised in this proceeding. Mr. Musgrave filed both his original Complaint and an Amended Complaint, but never previously included a claim that PWSA repairs on the water main in some way contributed to the deterioration of the party line serving the property. PWSA has not had an opportunity to fully investigate and respond to this claim, and to raise an entirely new issue at this late stage would violate PWSA's due process rights.

For these reasons, the subpoena application as it applies to Beverly Services should be denied.

**F. Steve Anderjack, Project Manager, Michael Facchiano Contracting**

The Application requests a subpoena for Steve Anderjack, Project Manager for Michael Facchiano Contracting, to provide testimony regarding alleged damage to the curb, street, and rock garden when the water service line serving the 6059 Bunkerhill Street property was replaced, and regarding costs to re-pave the street. Such issues have already been addressed and dismissed in this proceeding, and therefore this subpoena request should be denied.

The March 18, 2022 Interim Order granted PWSA's Motion to Dismiss "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.”<sup>7</sup> The testimony sought from Mr. Anderjack would only be relevant to address these claims that have already dismissed. Therefore, the subpoena application as it applies to Steve Anderjack should be denied.

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<sup>7</sup> March 18, 2022 Interim Order at 16, Ordering Para. 2.

#### IV. CONCLUSION

WHEREFORE, The Pittsburgh Water and Sewer Authority respectfully requests that Administrative Law Judge Emily I. DeVoe: (1) deny the Application for Subpoenas as it pertains to the identified “expert” witnesses consistent with the discussion above; (2) limit the testimony of any fact/lay witnesses to no more than three individuals; and (3) grant any other relief deemed to be appropriate.

Respectfully submitted,

/s/ *Lauren M. Burge*

Karen O. Moury, Esquire (I.D. No. 36879)  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
(717) 237-6036 (phone)  
(717) 237-6019 (fax)  
kmoury@eckertseamans.com

Lauren M. Burge, Esquire (I.D. No. 311570)  
Eckert Seamans Cherin & Mellott, LLC  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 566-2146 (phone)  
(412) 566-6099 (fax)  
lburge@eckertseamans.com

Date: December 8, 2022

Counsel for  
The Pittsburgh Water and Sewer Authority