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April 10, 2023

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

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 Main Brief with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*/s/ Karen O. Moury*

Karen O. Moury

Enclosure

Cc: Cert. of Service w/enc.

## **CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of PWSA's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

### **Via Email Only**

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Dated: April 10, 2023

/s/ *Karen O. Moury*  
Karen O. Moury, 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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**MAIN BRIEF OF  
THE PITTSBURGH WATER AND SEWER AUTHORITY**

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Pursuant to the Briefing Order dated March 20, 2023 and the instructions of Administrative Law Judge (“ALJ”) Emily DeVoe provided at the evidentiary hearing on February 9, 2023,<sup>1</sup> The Pittsburgh Water and Sewer Authority (“PWSA,” or “Authority”) hereby submits this Main Brief.

## **I. INTRODUCTION AND SUMMARY OF THE CASE**

The sole issue in this proceeding is whether PWSA had maintenance or repair responsibility over the water 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 alleged service line breaks in January 2018, February 2020 and July 2020. To the extent that PWSA had such responsibilities that it failed to perform, it would also be necessary to determine whether it violated its Tariffs or the Public Utility Code.

For the reasons discussed herein, the service line at issue was a **private** party service line serving customers on a **private** street, and was not part of PWSA’s water distribution system. As such, PWSA did not have maintenance or repair responsibility for the service line at issue. To the contrary, PWSA’s Tariffs clearly establish that Mr. Musgrave and his neighbors had the responsibility to repair, maintain and replace the private party service line at issue here prior to November 11, 2020. This conclusion is also supported by the available historical records. Mr. Musgrave has not presented any substantial evidence to prove otherwise.

Moreover, the obligation of public utilities under Section 1501 of the Public Utility Code to provide adequate service does not include a duty to repair or maintain private property or equipment that is not part of the public utility system. While PWSA may have assisted customers with repairs to this service line at times prior to coming under the jurisdiction of the

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<sup>1</sup> Tr. 419.



Pennsylvania Public Utility Commission (“Commission” or “PUC”) on April 1, 2018, the line was never part of PWSA’s water distribution system and the Authority was never obligated to make such repairs.

In his initial Formal Complaint and subsequent Amended Formal Complaint (“Complaint”), John Kerr Musgrave, IV (“Mr. Musgrave” or “Complainant”) raised a variety of issues related to the party water service line that served the property located at 6059 Bunkerhill Street prior to November 11, 2020.<sup>2</sup> The vast majority of these issues have either been resolved or have previously been addressed, dismissed and withdrawn from this proceeding.

As the Complainant, Mr. Musgrave has the burden of proving that PWSA violated laws, regulations or orders within the Commission’s jurisdiction. Mr. Musgrave has failed to prove any such violation. His arguments, which are based on conjecture or opinion, are not supported by substantial evidence. Importantly, the Commission does not have jurisdiction to grant the Complainant’s requested relief due to its lack of authority to interpret private contracts, to determine the validity of easements or to award monetary damages. Therefore, PWSA respectfully requests that this Complaint be dismissed in its entirety.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

### **A. PWSA**

PWSA is a municipal authority. It is a “body corporate and politic,”<sup>3</sup> organized and existing under the Pennsylvania Municipality Authorities Act (“MAA”).<sup>4</sup> It is an independent agency of the Commonwealth.<sup>5</sup> Since 2018, PWSA has been regulated as a public utility by the

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<sup>2</sup> The party water service line was replaced on November 11, 2020 as part of PWSA’s Commission-approved Lead Service Line replacement program.

<sup>3</sup> 53 Pa. C.S. § 5607(a).

<sup>4</sup> 53 Pa. C.S. § 5601, *et seq.*

<sup>5</sup> *Commonwealth v. Erie Metropolitan Transit Auth.*, 281 A.2d 882 (Pa. 1971) (“[t]his Court has consistently held that municipal authorities are not the creatures, agents, or representatives of the municipalities which organize

Commission.<sup>6</sup> Under Chapter 32 of the Public Utility Code,<sup>7</sup> the Commission has jurisdiction over the provision of water, wastewater conveyance, and stormwater service by the Authority. PWSA's operations became subject to regulation by the Commission beginning on April 1, 2018, pursuant to Chapter 32.<sup>8</sup> Further, as a municipal authority, PWSA has no shareholders and its funds come from rates paid by its ratepayers.

For purposes of this proceeding, the following two Tariffs are applicable: (1) PWSA's Official Prior Tariff; and (2) Tariff Water – Pa. P.U.C. No. 1 (collectively referred to as “Tariffs”). Prior to coming under PUC jurisdiction on April 1, 2018, PWSA had a set of Rules and Regulations that governed its operations. In March 2018, PWSA filed these Rules and Regulations with the Commission, at which time they became designated as PWSA's “Official Prior Tariff” and were in place until PWSA's Initial Tariff was approved by the Commission. PWSA's first tariff approved after coming under PUC jurisdiction, Tariff Water – Pa. P.U.C. No.

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them, but rather are ‘independent agencies of the Commonwealth, and part of its sovereignty,’” *quoting Whitmarsh Twp. Auth. v. Elwert*, 196 A.2d 843 (Pa. 1964)); *Application of Municipal Authority of Upper St. Clair Tp, Allegheny Township*, 184 A.2d 695 (Pa. 1962) (*citing Commonwealth ex rel. McCreary v. Major*, 22 A.2d 686 (Pa. 1941), it was held that a member of a board of a municipal authority created under the act of 1935 was a public official by reason of the fact that such entity is an independent agency of the Commonwealth and part of the sovereignty of the state); *Rhoads v. Lancaster Parking Auth.*, 520 A.2d 122, 126 (Pa. 1987) (“Municipal authorities are independent corporate agents of the Commonwealth, which exercise governmental, as well as private corporate power, in assisting the Commonwealth in meeting the needs of its citizens”); *Bristol Twp. Water Auth. v. Lower Bucks County Joint Mun. Auth.*, 567 A.2d 1110 1113, (Pa.Cmwlth. 1989) (“[h]owever, as noted above, an authority which has been incorporated under the Act becomes an independent Commonwealth agency not subject to the control of the incorporating township”); *White Rock Sewage Corp. v. PUC*, 578 A.2d 984, 987 (Pa.Cmwlth. 1990) (“[m]unicipal authorities are not creatures, agents, or representatives of municipalities, which organize them, but rather are independent agencies of the Commonwealth and a part of its sovereignty” *quoting Highland Sewer & Water Auth. v. Engelbach*, 220 A.2d 390 (Pa.Super. 1966); *Lehigh-Northampton Airport Auth. v. Lehigh County Bd. of Assessment Appeals*, 889 A.2d 1168, 1176 (Pa. 2005) (the “fundamental nature” of a municipal authority is that of “a corporate agency of the state, and not a child of a municipality”).

<sup>6</sup> See 66 Pa. C.S. §§ 102, 3201, 3202(a); *Implementation of Chapter 32 of the Public Utility Code*, Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater), Final Implementation Order entered March 15, 2018 (“FIO”).

<sup>7</sup> 66 Pa. C.S. § 3201, *et seq.* On December 21, 2017, Governor Wolf signed Act 65 of 2017 into law whereby the Pennsylvania Public Utility Code was amended to add new language to 66 Pa. C.S. § 1301 and to add a new Chapter 32 consisting of Sections 3201 through 3209, 66 Pa. C.S. § 3201, *et seq.* (“Act 65” or “Chapter 32”).

<sup>8</sup> 66 Pa. C.S. § 3202(a)(1); FIO at 6-8.

1, became effective on March 1, 2019. Tariff Water – Pa. P.U.C. No. 1 was in effect at the time that PWSA replaced the Complainant’s party line in November 2020.

**B. Procedural History**

On July 8, 2020, Mr. Musgrave’s original Complaint was served on PWSA. The Complaint raised concerns about water quality and requested that PWSA build a new water service line to the subject property at 6059 Bunkerhill Street. On August 10, 2020, PWSA filed an Answer with New Matter and Preliminary Objections to the Complaint. PWSA Exh. 1. PWSA’s Answer explained, *inter alia*, that the water line at issue was a private, customer-owned service line that was not part of PWSA’s water distribution system. The subject property is on a private street and was served by a private party water service line that was shared with the Complainant’s neighbors. *Id.*

In November 2020, while the Complaint was pending, in an effort to resolve the quality of service concerns raised by the Complainant, PWSA replaced the private service line that served three properties on Bunkerhill Street, including the Musgrave property, as part of PWSA’s LSLR Program. *See* PWSA Exh. 2 at 2. Despite that private service line replacement, the Complaint continued to proceed through litigation.

An evidentiary hearing was scheduled for January 12, 2021, which was continued at the Complainant’s request by Order Granting Motion for Continuance dated January 11, 2021. By Hearing Notice dated January 11, 2021, the evidentiary hearing was scheduled for February 9, 2021. By Notice dated January 29, 2021, the evidentiary hearing was cancelled. A prehearing conference was thereafter scheduled for April 7, 2021.

The prehearing conference was held on April 7, 2021, as scheduled. The Complainant clarified that his Complaint concerned two issues: (1) his concern that his water did not contain sufficient levels of chlorine, and (2) his opposition to assuming ownership and maintenance

responsibility of new service lines installed by PWSA. The Complainant requested that an evidentiary hearing be scheduled in late fall so that he would have an opportunity to test the chlorine level in his water in the late summer months. The parties agreed to submit a status report by October 1, 2021.<sup>9</sup>

Mr. Musgrave filed a Status Report on September 27, 2021 and PWSA filed a Status Report on October 1, 2021. As noted by PWSA's Status Report, the Complainant had indicated that his concerns regarding water quality have been resolved. Since quality of service was no longer at issue, the only remaining issue at that time related to the public versus private nature of the Complainant's service line and other property-related items.<sup>10</sup>

At a further prehearing conference that was held on December 2, 2021, the Complainant raised a variety of new issues related to the service line, many of which were raised for the first time more than a year after the private service line replacement was completed. Pursuant to the December 3, 2021 Interim Order issued after the prehearing conference, the Complainant filed an Amended Formal Complaint on December 22, 2021. In summary, the Amended Complaint asserts a variety of claims, which seek to have PWSA take ownership and maintenance responsibility for the private water service line serving the subject property and pay damages or reimbursement for a variety of expenses.

In response, on January 12, 2022, PWSA filed an Answer to the Amended Complaint as well as a Motion to Dismiss. PWSA Exh. 2. PWSA's Answer contends that these issues are outside the Commission's jurisdiction, and that further, because PWSA is a municipal authority, all such ownership and responsibility costs would unfairly fall to PWSA's other ratepayers while

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<sup>9</sup> Interim Order dated June 14, 2021.

<sup>10</sup> See the Complainant's Status Report dated September 27, 2021.

benefitting a private individual. In its Motion to Dismiss, PWSA explains that the water line at issue is a private, customer-owned service line that is not part of PWSA's water distribution system. Citing the Commission's lack of subject matter jurisdiction to decide the public versus private nature of the water service line, to resolve private contractual disputes, and to award monetary damages, PWSA seeks dismissal of the Amended Complaint.

On March 1, 2022, ALJ DeVoe issued an Interim Order taking judicial notice of certain facts. ALJ Exh. 1. Subsequently, 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"). The March 18, 2022 Interim Order limited the issues remaining in this proceeding to the following:

(1) Whether at the time the alleged break of the service line occurred in January 2018, (a) PWSA had a maintenance/repair responsibility over the line that broke, (b) the break was a direct result of PWSA failing to perform its responsibilities under the Official Prior Tariff, and (c) PWSA violated the Official Prior Tariff by failing to adequately repair the break;<sup>11</sup> and

(2) Whether at the time the alleged breaks occurred in February 2020 and July 2020, (a) PWSA had a maintenance/repair responsibility over the line(s) that broke, (b) the breaks were a direct result of PWSA failing to perform its responsibilities under its Commission-approved Tariff No. 1 and/or Section 1501 of the Public Utility Code,<sup>12</sup> and (c) PWSA violated Tariff No. 1 and/or Section 1501 by failing to properly repair the breaks.<sup>13</sup>

Further, the March 18, 2022 Interim Order concluded that the following issues are outside the Commission's jurisdiction: (1) the applicability and interpretation of the Lead Service

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<sup>11</sup> March 18, 2022 Interim Order at 18.

<sup>12</sup> 66 Pa. C.S. § 1501.

<sup>13</sup> March 18, 2022 Interim Order at 18.

Line Replacement Agreement (“LSLRA”);<sup>14</sup> (2) the validity of the Temporary Easement Agreement (“TEA”) and PWSA’s compliance with the TEA;<sup>15</sup> and (3) the ability to award monetary damages to the Complainant.<sup>16</sup>

A Prehearing Conference was held on April 28, 2022. After this conference, ALJ DeVoe issued an Interim Order on May 5, 2022 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. In the Motion in Limine, PWSA contended that through his Witness List, Mr. Musgrave had largely ignored the March 18, 2022 Interim Order regarding the issues that are properly before the Commission in this proceeding. In addition, PWSA argued that Mr. Musgrave was seeking to present repetitious and cumulative evidence and that any probative value of much of the proposed testimony was outweighed by confusion of the issue and a waste of the Commission’s resources, as well as those of PWSA. 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 Stipulation and ruled on PWSA’s Motion in Limine, by granting it in part and denying it in part. (“November 9,

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<sup>14</sup> March 18, 2022 Interim Order at 15-17.

<sup>15</sup> March 18, 2022 Interim Order at 17.

<sup>16</sup> March 18, 2022 Interim Order at 19-20.

2022 Interim Order”). ALJ Exh. 2. The November 9, 2022 Interim Order placed a limitation on the number of lay or fact witnesses that Mr. Musgrave could call to testify and noted that no subpoena applications had been filed for any expert witnesses identified by the Complainant. On November 28, 2022, the Complainant filed an Application for Subpoenas requesting the issuance of subpoenas to fact/lay witnesses as well as expert witnesses. On December 8, 2022, PWSA filed a response to the Application for Subpoenas. On January 4, 2023, ALJ DeVoe issued an Interim Order denying in part and granting in part the Subpoena Application. Subpoenas for certain witnesses were issued on January 9, 2023.

Evidentiary hearings were held in this matter on February 8 and 9, 2023 before ALJ DeVoe. Notably, during the February 8, 2023 hearing, the Complainant withdrew his complaint regarding water quality issues.<sup>17</sup> Mr. Musgrave, who lives at the subject property, testified on his own behalf and presented the testimony of his mother, Ms. Judith Musgrave, who also lives at the property and is the owner of the subject property. Additionally, Mr. Musgrave called three neighbors as witnesses, as well as a representative of the City of Pittsburgh Health Department. During the February 9, 2023 hearing, PWSA presented the testimony of the Authority’s Director of Operations, William J. McFaddin. Both parties submitted numerous exhibits that were admitted into the record.

### **III. LEGAL STANDARDS**

#### **A. Scope of the Proceeding**

The sole remaining issue in this proceeding is whether PWSA had maintenance or repair responsibility 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

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<sup>17</sup> Tr. 202.

line breaks in January 2018, February 2020 and July 2020, in violation of its Tariffs and/or the Public Utility Code.<sup>18</sup>

## **B. Jurisdiction**

To act on the Complaint, the Commission must have jurisdiction.<sup>19</sup> The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code.<sup>20</sup> The Commission must act within, and cannot exceed, its jurisdiction.<sup>21</sup> Jurisdiction may not be conferred by the parties where none exists.<sup>22</sup> Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.<sup>23</sup> Additionally, the courts have primary jurisdiction to adjudicate issues related to ownership and the dedication of property to the public use.<sup>24</sup> No power is conferred upon the Commission under the Public Utility Code to adjudicate property disputes.<sup>25</sup>

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<sup>18</sup> March 18, 2022 Interim Order, Ordering ¶ 6; *see, e.g.*, Tr. 42. Note that, during the February 8, 2023 hearing, the Complainant withdrew his complaint regarding water quality issues. Tr. 202.

<sup>19</sup> *See* 52 Pa. Code §§ 5.101(a)(1); 5.102.

<sup>20</sup> *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).

<sup>21</sup> *City of Pittsburgh v. PUC*, 43 A.2d 348 (Pa.Super. 1945).

<sup>22</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>23</sup> *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992), *appeal denied*, 637 A.2d 293 (Pa. 1993).

<sup>24</sup> Property disputes belong in a court of general jurisdiction. *See, e.g., Anne E. Perrige v. Metropolitan Edison Co.*, PUC Docket No. C-00004110, Order (July 11, 2003) (The Commission had no jurisdiction to interpret the meaning of a written right-of-way agreement.); *Lou Amati/Amati Service Station v. West Penn Power Co. and Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00945842, Order (October 25, 1995) (Real property issues such as trespass and whether utility facilities are located pursuant to valid easements are within the exclusive jurisdiction of the Courts of Common Pleas.); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. PUC Docket No. C-20066937, Order (May 28, 2008).

<sup>25</sup> *Id.*; *see also Overlook Development Co. v. Public Service Commission*, 158 A. 869 (1932); *see also In re Water Distribution Mains*, 466 A.2d 239 (Pa.Cmwlth. 1983).



### **C. Burden of Proof**

Mr. Musgrave has the burden of proof in this proceeding. As the proponent of a rule or order, the Complainant bears the burden of proof pursuant to Section 332(a) of the Public Utility Code.<sup>26</sup>

To satisfy this burden, Mr. Musgrave must demonstrate that PWSA violated either (a) the Public Utility Code or another statute administered by the Commission or (b) a regulation or order of the Commission.<sup>27</sup> This must be shown by a preponderance of the evidence.<sup>28</sup> Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party.<sup>29</sup>

In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient.<sup>30</sup> A customer cannot establish a case merely by stating his or her personal beliefs, since assertions, personal opinions or perceptions do not constitute evidence.<sup>31</sup>

### **D. Service Quality**

Public utility law seeks to advance the public interest.<sup>32</sup> Section 1501 of the Public Utility Code<sup>33</sup> provides the legal standard to be met by public utilities regarding quality of

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<sup>26</sup> 66 Pa. C.S. § 332(a).

<sup>27</sup> *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990).

<sup>28</sup> *Samuel J. Lansberry, Inc. v. PUC*, 578 A.2d 600 (Pa.Cmwlt. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

<sup>29</sup> *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>30</sup> *Norfolk and Western Railway Co. v. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

<sup>31</sup> *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

<sup>32</sup> *PUC v. Purolator Courier Corp.*, 355 A.2d 850 (Pa.Cmwlt. 1976); *Pittston Gas Co. v. PUC*, 154 A.2d 510 (Pa.Super. 1959).

<sup>33</sup> 66 Pa. C.S. § 1501.

service. It provides that a public utility must provide adequate, efficient, safe and reasonable service and facilities.<sup>34</sup> The term “service” is defined broadly under Section 102 of the Public Utility Code,<sup>35</sup> so as to include maintenance of public utility facilities.

Section 1501 only requires a public utility to furnish reasonable service.<sup>36</sup> It does not mandate perfect service, nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.<sup>37</sup>

Additionally, Section 1501 does not require PWSA to bear repair and maintenance responsibility for any and all water lines in the City, regardless of ownership. Neither Section 1501 nor any other provision of the Public Utility Code empowers the Commission to direct PWSA to use public utility funds to benefit private individual(s) by repairing, maintaining or replacing a privately-owned water service line or a privately owned street.<sup>38</sup>

#### **IV. SUMMARY OF THE ARGUMENT**

The Complainant has failed to carry his burden of proof to demonstrate that PWSA has violated the Public Utility Code, the Commission’s regulations, a Commission order, or PWSA’s Tariffs. Therefore, PWSA respectfully requests that the Complaint be dismissed.

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<sup>34</sup> See 66 Pa. C.S. § 1501.

<sup>35</sup> 66 Pa. C.S. § 102.

<sup>36</sup> 66 Pa. C.S. § 1501.

<sup>37</sup> See, e.g., *Deidra Alston v. National Fuel Gas Distribution Corporation*, F-2011-2236871, Initial Decision dated March 12, 2013 (citing cases), <http://www.puc.state.pa.us/pcdocs/1220406.docx>, which became final by operation of law (as noted in the Opinion and Order entered Sept. 26, 2013 denying Alston’s Petition for Reconsideration, <http://www.puc.state.pa.us/pcdocs/1248491.docx>).

<sup>38</sup> 53 Pa. C.S. § 5612; *Price v. Philadelphia Parking Authority*, 221 A.2d 138 (Pa. 1966) (A public corporation, exercises public powers and its engagements are public in nature, and its facilities are public property. Empowered to act only for the public benefit, a public corporation may not employ its resources for the primary and paramount benefit of a private endeavor. An engagement essentially private in nature may not be justified on the theory that the public will be incidentally benefitted.)

PWSA's Tariffs, including its Official Prior Tariff and its Tariff Water – Pa. P.U.C. No. 1, clearly establish that Mr. Musgrave and his neighbors had the responsibility to repair, maintain and replace the private party service line at issue here prior to November 2020. This conclusion is also supported by the available historical records. Mr. Musgrave has not presented any substantial evidence to prove otherwise. Moreover, the obligation of public utilities under Section 1501 of the Public Utility Code to provide adequate service does not include a duty to repair or maintain private property or equipment that is not part of the public utility system.

Additionally, the Commission cannot grant the Complainant's requested relief. The relief Mr. Musgrave is seeking is outside the Commission's jurisdiction and/or outside the limited scope of this proceeding. As ALJ DeVoe ruled in the March 18, 2022 Interim Order, the Commission does not have jurisdiction to rule on a private contractual dispute between PWSA and the Complainant or to determine the validity of an easement agreement entered into by a customer with PWSA. Finally, the Complainant's request for monetary damages is outside the jurisdiction of the Commission to award. Dismissal of the Complaint is warranted.

## **V. ARGUMENT**

### **A. Party Water Service Line on Bunkerhill Street**

The Complainant's property at 6059 Bunkerhill Street is one of a group of homes located on the private portion of Bunkerhill Street. ALJ Exh. 1 at 6. Prior to 2018, six homes on the private portion of Bunkerhill Street were served by a single shared or "party" water service line. This included the properties at 6041, 6045, 6049, 6053, 6055, and 6059 Bunkerhill Street. PWSA Exh. 5; Tr. 368, 373-374.

A party water service line is a private service line that is shared by more than one customer. As explained by Mr. McFaddin, it is not uncommon in Pittsburgh for multiple parties to share a private service line. These lines are typically quite old and are usually found in locations where properties do not front a public street, as is the case for this private portion of Bunkerhill Street. Tr. 374-375. This is not a current best practice, and customers are now required to install separate water service lines so that each line only serves a single property.<sup>39</sup> Tr. 375.

As of March 14, 2018, the customers at 6041, 6045 and 6049 Bunkerhill Street separated themselves from the private party line. ALJ Exh. 2, Attach. A at ¶ III.1. These three property owners installed new water service lines connecting to their homes (which were installed by private plumbers at the customers' expense), and PWSA installed three new lines from its water main to these new private service lines and made the connection. Tr. 379; *see also* PWSA Exh. 1 at 5. Mr. McFaddin testified that although PWSA offered at that time to work with the three remaining customers in the private portion of Bunkerhill Street in a similar way if they separated from the private party line and installed separate service lines, they refused to do so. This

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<sup>39</sup> PWSA Exh. 8, Section 504.1; PWSA Exh. 9, Original Page No. 36, Part III, Section B.13.

included the customers at 6053, 6055, and the Musgrave property at 6059 Bunkerhill Street. Tr. 379.

Mr. McFaddin's testimony further demonstrates that in November 2020, PWSA replaced the party service line that served three remaining properties on Bunkerhill Street, including the Musgrave property. This work was performed as part of PWSA's Lead Service Line replacement ("LSLR") program, a Commission-approved program that allows PWSA to replace private water service lines under certain conditions, including when the private line is made of lead or galvanized steel, as was the case with the private service line here. Tr. 380; *see also* PWSA Exh. 2 at 2.

**B. PWSA's Tariffs Establish that the Party Line was a Private Service Line**

A tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers.<sup>40</sup> Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations and practices so that the public may inspect its contents.<sup>41</sup> Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers.<sup>42</sup>

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<sup>40</sup> *PPL Electric Utilities Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386 (Pa.Cmwlth. 2006).

<sup>41</sup> 66 Pa. C.S. § 1302; 52 Pa. Code § 53.25; *Philadelphia Suburban Water Co. v. Pa. Pub. Util. Comm'n*, 808 A.2d 1044 (Pa.Cmwlth. 2002).

<sup>42</sup> *Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa.Cmwlth. 1995).

The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest.<sup>43</sup> A public utility may not charge a rate other than the rates set forth in its tariff.<sup>44</sup>

PWSA's Tariffs that were in effect during the relevant time period clearly establish that the Complainant and his neighbors were responsible for the maintenance and repair of the party service line prior to its replacement in November 2020. PWSA complied with these Tariffs, and Mr. Musgrave has failed to present evidence to the contrary.

1. Official Prior Tariff

Prior to coming under PUC jurisdiction on April 1, 2018, PWSA had a set of Rules and Regulations that governed its operations. In March 2018, PWSA filed these Rules and Regulations with the Commission, at which time they became designated as PWSA's "Official Prior Tariff" and were in place until PWSA's Initial Tariff was approved by the Commission. A copy of the Official Prior Tariff, which was provided as PWSA Exh. 8, defines a "party water service line" as "a single Water Service Line that connects to the Authority's Water Main and that delivers water from the Water Main to more than one building." PWSA Exh. 8 at Section 102.38.

The party water service line serving the Musgrave property was a 2-inch line. *See* Musgrave Exhs. 18-20; Tr. 164. Section 506.2 of the Official Prior Tariff provided as follows regarding water services lines greater than 1-inch in diameter:

**...ownership and maintenance responsibility for the entire Water Service Line**, from the Premises being served with Authority water up to and including the connection of the Water Service Line to the Authority Water Main, including

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<sup>43</sup> *Philadelphia Suburban Water Co. v. Pa. Pub. Util. Comm'n*, 808 A.2d 1044 (Pa.Cmwlth. 2002).

<sup>44</sup> 66 Pa. C.S. § 1303.

the Curb Stop and Curb Box and the Corporation Stop or mechanical joint tee, **lies with the property Owner.**

PWSA Exh. 8 at Section 506.2 (emphasis added).

PWSA's Official Prior Tariff also required that party water service lines be replaced by the property owner. Section 504.1 states that:

Within 6 months of receiving a directive from the Authority to do so, Residential Property Owners whose properties are served by a Party Water Service Line, either metered or flat . . . are required to have an individual Water Service Line installed, and to obtain and have installed an individual Meter of a size, type, and setting approved by the Authority. Installation and the cost of installation of the Water Service Line from the residence to the Curb Stop is the responsibility of the property Owner. Installation and the cost of installation of the Water Service Line from the Water Main to and including the Curb Stop is the responsibility of the Authority...

PWSA Exh. 8 at Section 504.1. These provisions clearly establish that the Complainant and his neighbors had maintenance and repair responsibility for the party service line serving their properties. Further, by refusing to separate from the party service line and install a separate individual water service line as did three of his neighbors, the Musgraves did not comply with the Official Prior Tariff.

## 2. PWSA's Commission-Approved Tariff

PWSA's first tariff approved after coming under PUC jurisdiction became effective on March 1, 2019. A copy of this tariff, PWSA Tariff Water – Pa. P.U.C. No. 1 ("Tariff"), was provided as PWSA Exhibit 9. This Tariff was in effect at the time that PWSA replaced the Complainant's party line under the LSLR Program in November 2020.

PWSA's Tariff defines a Party Water Service Line as "[a] single Water Service Line that connects to the Authority's Water Main and that delivers water from the Authority's Water Main to more than one building. **The start of the Party Water Service Line is the terminal point for**

**the Authority’s responsibility for the service connection.”** PWSA Exh. 9, Original Page No. 23 (emphasis added).

As noted above, the party water service line here was a 2-inch line. The Tariff provides that “[a]ll **Residential service lines larger than 1-inch in diameter . . . are the responsibility of the property owner**, including the section from the Curb Stop, the Curb Box, and that portion of the Water Service Line running from the Curb Stop to the Water Main.” PWSA Exh. 9, Original Page No. 34 (emphasis added).

PWSA’s Tariff also requires that party water service lines be replaced by the customer. The Tariff provides that:

Residential Property Owners whose properties are served by a Party Water Service Line must install separate service lines to each individual property. Each Customer shall have an individual Water Service Line and Meter of a size, type, location, and setting approved by the Authority. The cost of installation of the Water Service Line from the residence to the Curb Stop is the responsibility of the property Owner. Installation and the cost of installation of the Water Service Line from the Water Main to and including the Curb Stop is the responsibility of the Authority...

PWSA Exh. 9 at Original Page No. 36.

Further, the Tariff is clear that not all water lines in the City are part of PWSA’s distribution system. An “Authority Water Main” is defined as follows:

The Authority has a duty to operate, maintain, inspect, repair, replace or abandon only those Water Mains that are part of or connected to the public water distribution system and that fall into one of the following classifications: (1) Water Mains leased to the Authority by the City under the Capital Lease Agreement effective July 27, 1995, as amended; (2) Water Mains constructed by the City or the Authority for public use since July 27, 1995; and (3) Water Mains dedicated to public use and accepted by the Authority on or after July 27, 1995.



PWSA Exh. 9, Original Page No. 20. Although the Complainant has speculated that the party line could have been dedicated to PWSA at some time, he did not present any evidence to support this claim.<sup>45</sup>

PWSA's Tariff also gives the Authority the ability to make repairs on a private service line in certain situations. The Tariff states that:

Should the condition of a customer service line be such that there is a risk to public health or safety or of damage to public property, and the property Owner fails to take prompt action to cure the problem following notice to do so, **the Authority shall have the right, but not the duty, to make the necessary repair or replacement** and to charge the property Owner with the reasonable cost of the repair or replacement.

PWSA Exh. 9 at Original Page No. 35 (emphasis added). As such, PWSA had the ability (but not the obligation) to make repairs on the private line when necessary to avoid damage to property from a water leak, for example. Therefore, PWSA's Tariff clearly establishes that that the Complainant and his neighbors had maintenance and repair responsibility for the party service line serving their properties.

### 3. Conclusion

For these reasons, PWSA's Official Prior Tariff and its Commission-approved Tariff Water – Pa. P.U.C. No. 1 both establish that the Complainant and his neighbors were responsible for the maintenance, repair, and replacement of the party service line prior to November 2020. PWSA had no responsibility to repair or maintain the private service line at any time.

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<sup>45</sup> Tr. 189 ("Q. [by PWSA counsel] You testified earlier that you thought the line could have been dedicated to PWSA at some point. Do you have any evidence that that happened? A. [by Mr. Musgrave] No.").

**C. Available Historical Records Establish that the Party Line was a Private Service Line**

The available historical records also support the conclusion that the party line was a private service line. These records include original drilling records and an application for water supply, which indicate that the party line at issue was first constructed in 1929. Tr. 367-368, 370-371; PWSA Exh. 3.<sup>46</sup> According to the testimony of Mr. McFaddin, the documents also include handwritten notes stating that this is a “Private Line.” Tr. 371; PWSA Exh. 3.

Additionally, City of Pittsburgh Ordinance No. 339, which was enacted in 1952, vacates Bunkerhill Street making it a private street. Tr. 369-370, 373; PWSA Exh. 4. Although the Ordinance reserves the City’s right to maintain public sewers on the street, it makes no mention of public water lines. *Id.* While the Complainant has made claims that Bunkerhill Street runs slightly differently than originally anticipated, he has not provided any evidence that this affected who has maintenance or repair responsibility for the party line or that the Ordinance is referring to anything other than the private portion of Bunkerhill Street where the Musgrave property is located. There is no dispute that the portion of Bunkerhill Street at issue here is a private street. *See* ALJ Exh. 1 at 6; Tr. 191. The language of this Ordinance further supports the fact that the party line was a private line on a private street, and not part of PWSA’s water distribution system.

**D. PWSA Never Had Repair or Maintenance Responsibility for the Party Line**

In summary, PWSA’s Tariffs (which are legally binding on both PWSA and its customers) clearly establish that the Musgraves and their neighbors, not PWSA, had maintenance and repair responsibilities for the party service line prior to November 2020. This is further

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<sup>46</sup> These records are nearly 100 years old and predate the existence of PWSA, which was created in 1984. PWSA Exh. 1 at 4. These are records of a predecessor, the City of Pittsburgh Bureau of Water. PWSA Exh. 3.

supported by the available historical records. Mr. Musgrave has failed to present any substantial evidence to the contrary, as the only information he presented consisted primarily of personal beliefs or assertions, which are not evidence. As such, he has not met his burden of proof and the complaint must be dismissed.

PWSA does not dispute that it may have assisted customers with repairs to the private party service line prior to coming under Commission jurisdiction beginning in early 2018. Tr. 377-379. However, there is no evidence that PWSA was *required* to do so; and in fact, as discussed above, the Official Prior Tariff shows that PWSA was not obligated to make such repairs. As explained by Mr. McFaddin, PWSA was simply providing assistance at its discretion to help these customers continue to receive water service, which ceased when PWSA came under the jurisdiction of the Commission. Tr. 377. Further, because PWSA was providing any such assistance voluntarily, there was no requirement to give notice that this assistance would not be provided in the future. Tr. 378. Additionally, because any such repairs were made prior to the start of PUC jurisdiction on April 1, 2018, it is not within the Commission's jurisdiction to determine whether those repairs were appropriately made by PWSA.<sup>47</sup> The Authority was ultimately able to replace the party line at no cost to the Complainant under its LSLR Program, which is a program specifically approved by the Commission to allow for replacement of private water service lines made of lead or galvanized steel, as was the case here. Tr. 380. As Mr. McFaddin testified, the new service lines continue to be owned by the customers, who have responsibilities to maintain and repair the lines. Tr. 380-381.

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<sup>47</sup> The parties stipulated that customers hired private plumbers to make repairs after breaks on the party line occurred in late January 2018 and in July 2020. ALJ Exh. 2, Attach. A at ¶ I.A.

**E. The Commission Lacks Jurisdiction to Grant the Requested Relief**

The relief sought by the Complainant has evolved during the course of this proceeding. During the evidentiary hearing, the Complainant was asked on cross examination to clarify what he wants PWSA to do, or in other words, what relief he is seeking. In response, Mr. Musgrave stated:

Well, I would like them [PWSA] to repave the end of the street and fix the approximately ten feet of curb that is destroyed on the edge of our garden. I would like them to take ownership and maintenance responsibility for the new line that they put in all the way to where our curb box used to be. And in doing that, that's going to prevent us from having to get easements. . . . And – and ideally, I – I wanted to have the meter crocks moved onto my own property, so that I could be able to see whether they were maintained and not vandalized.

Tr. 192-193. When subsequently asked if the relief being sought is for the Commission to order PWSA to do these things, Mr. Musgrave said, “If they would do so, that would be nice, but I don’t know if they have the authority to do that.” Tr. 193.

Indeed, the Commission lacks jurisdiction to grant the requested relief, and/or the relief has already been considered and dismissed from this proceeding. For the reasons discussed below, the request relief cannot be granted and the Complaint must be dismissed in its entirety.

**1. Repaving and Other Curb Restoration**

Mr. Musgrave has previously argued that PWSA is responsible for repaving the private street and restoring the curb along Bunkerhill Street bordering the Musgrave property. These same claims have already been addressed in the March 18, 2022 Interim Order. In that Order, ALJ DeVoe dismissed these claims, ruling that they involve the interpretation and applicability of the Lead Service Line Replacement Agreement, which is “a private contractual matter over which the Commission lacks jurisdiction.” March 18, 2022 Interim Order at 16. As such, these

claims have already been considered and dismissed for lack of jurisdiction, and the requested relief cannot be granted.

2. Ownership and Maintenance Responsibility for the New Service Line

Similarly, Mr. Musgrave has previously argued that as of November 11, 2020, PWSA has maintenance and repair responsibilities for the water line along Bunkerhill Street to the original location of the Musgrave curb box. This claim was also addressed in the March 18, 2022 Interim Order. As discussed in that Order, this claim involves the applicability and interpretation of the Lead Service Line Replacement Agreement and the Temporary Easement Agreement, which are “private contractual matters which lie outside the Commission’s jurisdiction,” and therefore the claim was dismissed. March 18, 2022 Interim Order at 16. This claim also has already been considered and dismissed for lack of jurisdiction, and the requested relief cannot be granted.

3. Relocation of Meter Crocks

The Complainant’s claim regarding the location of meter crocks was the subject of a lengthy discussion during the evidentiary hearing. Tr. 87-111. Two primary conclusions were made as a result of this discussion. First, Mr. Musgrave failed to raise this issue at the appropriate time. This claim was not included in the original Complaint. The Complainant also did not raise this claim as part of his Amended Complaint filed on December 22, 2021, despite specific direction from ALJ DeVoe that all claims should be included as part of that filing. Instead, this claim was first raised in the Complainant’s response to PWSA’s Motion in Limine, on July 28, 2022, to which PWSA did not have an opportunity to respond. *See* Tr. 97-101. Therefore, the claim was not properly at issue in this proceeding, and including it at this late stage would violate PWSA’s due process rights.

Second, the location of the new meter crocks is outside the limited scope of this proceeding. Tr. 101-111. This issue goes to the validity and applicability of the Lead Service

Line Replacement Agreement and Temporary Easement Agreement, which the March 18, 2022 Interim Order ruled are private contractual agreements and outside the Commission's jurisdiction. During the hearing, ALJ DeVoe reiterated that "[t]his proceeding is restricted to whether PWSA had maintenance and repair responsibilities prior to November 11, 2020," (Tr. 111), and issues related to the location of new meter crocks is outside this limited scope.

For these reasons, this requested relief is not properly considered in this proceeding and cannot be granted.

## VI. CONCLUSION

For the foregoing reasons, the Complainant has failed to meet his burden of proof to show that PWSA has violated the Public Utility Code, Commission regulations or orders, or PWSA's tariff. To the contrary, PWSA has complied with its Tariffs, which establish that Mr. Musgrave and his neighbors, not PWSA, had maintenance and repair responsibility for the party service line at issue here prior to November 2020. This conclusion is also supported by the available historical records. Further, the Commission cannot grant the requested relief due to the lack of jurisdiction to interpret private contracts, to determine the validity of easement agreements or to award monetary damages. Therefore, PWSA respectfully requests that this Complaint be dismissed in its entirety.

Respectfully submitted,

*/s/ Karen O. Moury*

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