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April 19, 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 Reply 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 Reply 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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Hon. Emily I. DeVoe  
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PA Public Utility Commission  
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Dated: April 19, 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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**REPLY BRIEF OF  
THE PITTSBURGH WATER AND SEWER AUTHORITY**

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Date: April 19, 2023

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 Reply Brief to the Main Brief of John Kerr Musgrave, IV (“Mr. Musgrave” or “Complainant”). In the interest of brevity and to avoid unnecessary repetition concerning its position on the issues in this proceeding, PWSA hereby incorporates herein by reference its Main Brief (“PWSA M.B.”) filed on April 10, 2023.

## **I. INTRODUCTION**

In his Main Brief, Mr. Musgrave fails to point to a single shred of factual evidence to support his claim that 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 contrary, Mr. Musgrave’s Main Brief, as much of his advocacy throughout this proceeding, improperly focuses upon various water service line breaks that have occurred (dating back to 1993 and going through July 2020), and PWSA’s repair of certain private service line breaks during that time. However, the question in this proceeding is not whether PWSA has on occasion in the past repaired breaks in private water service lines, but rather whether PWSA has had the legal obligation to do so. Indeed, a review of the evidence in this proceeding, including the Tariffs under which PWSA has operated under at the relevant times, shows that PWSA has had no such legal obligation.

It is undisputed that as the party who filed the Complaint in this proceeding, Mr. Musgrave has the burden of proving that PWSA had maintenance and repair responsibilities as

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

of November 2020, which it failed to fulfill, resulting in alleged service line breaks in January 2018, February 2020 and July 2020. Simply, the Complainant has not carried his burden of presenting factual evidence showing that PWSA had maintenance and repair responsibilities for the private lines in dispute and that it failed to fulfill them, resulting in service line breaks. By relying on PWSA's past practices that may have included the repair of private lines as the basis for his argument regarding its legal obligations, Mr. Musgrave has failed to show any violation of the Public Utility Code, Commission regulations or Commission order, or a Commission-approved tariff provision.

Of note, Mr. Musgrave's opening line in his Main Brief is misleading in that it suggests that "safe water" is at issue in this proceeding. The Complainant expressly withdrew his claim regarding the amount of chlorine that is in the water, which is the issue that has been repeatedly referred to in this proceeding as raising concerns about PWSA's safe water service. While Section 1501 of the Public Utility Code remains at issue, the dispute regarding any violation of this provisions stems from the adequacy of PWSA's service from the standpoint of its financial responsibility for repairing and maintaining private service lines. Any Section 1501 issues pending in this proceeding are not related to the safety of PWSA's water service. Therefore, the Commission should not be misled by Mr. Musgrave's reference in his opening line in his Main Brief to safe water.

For the reasons discussed in PWSA's Main Brief, 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 applicable Tariffs clearly established 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 substantial evidence to prove otherwise. Rather, his arguments are based on nothing but conjecture or his opinion. Therefore, PWSA respectfully requests that this Complaint be dismissed in its entirety.

## **II. ARGUMENT**

In the March 18, 2022 Interim Order, ALJ DeVoe clearly framed the issues in this proceeding as being limited to whether: (1) at the time of the alleged service line break in January 2018, PWSA had a maintenance/repair responsibility over the line, and the break was a direct result of PWSA failing to perform its responsibilities under the Official Prior Tariff;<sup>2</sup> and (2) at the time of the alleged service line breaks in February 2020 and July 2020, PWSA had a maintenance/repair responsibility over the line(s) that broke and 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>3 4</sup> Therefore, 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 line breaks in January 2018, February 2020 and July 2020, in violation of its Tariffs and/or the Public Utility Code.<sup>5</sup>

Notably, despite the ALJ's clear framing and limiting of the issues in this proceeding, Mr. Musgrave's Main Brief contains no discussion of PWSA's applicable Tariffs, including its Official Prior Tariff and its Tariff Water – Pa. P.U.C. No. 1. Had the Complainant considered

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<sup>2</sup> March 18, 2022 Interim Order at 18.

<sup>3</sup> 66 Pa. C.S. § 1501.

<sup>4</sup> March 18, 2022 Interim Order at 18.

<sup>5</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.

those provisions, he would have had to concede that they clearly establish that he and his neighbors had the responsibility to repair, maintain and replace the private party service line at issue here prior to November 2020. Simply ignoring the Tariff provisions, Mr. Musgrave has not presented any substantial evidence to prove otherwise. Moreover, the Complainant's only reference to Section 1501 of the Public Utility is in the context of whether PWSA has provided "safe water," as opposed to the obligation of public utilities under Section 1501 of the Public Utility Code to provide adequate service.<sup>6</sup> As a result, Mr. Musgrave's Main Brief does not address how Section 1501 establishes, or even could establish, a duty on public utilities to repair or maintain private property or equipment that is not part of the public utility system. Indeed, it does not impose this obligation on public utilities and cannot reasonably be viewed otherwise.

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.

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

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.<sup>7</sup> 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

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<sup>6</sup> Mr. Musgrave's opening line in his Main Brief is misleading in that it suggests that "safe water" is at issue in this proceeding. The Complainant expressly withdrew his claim regarding the amount of chlorine that is in the water, which is the issue that has been repeatedly referred to as raising concerns about the safe water service.

<sup>7</sup> PWSA M.B. at 14-18.

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. The Official Prior Tariff defined 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 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). These provisions, which clearly establish that the Complainant and his neighbors had maintenance and repair responsibility for the party service line serving their properties, have been wholly ignored by Mr. Musgrave.

## 2. PWSA's Commission-Approved Tariff

PWSA's first tariff approved after coming under PUC jurisdiction became effective on March 1, 2019 as Tariff Water – Pa. P.U.C. No. 1 ("Tariff"), which was in effect at the time that PWSA replaced the Complainant's party line under the Lead Service Replacement Program in November 2020. PWSA's Tariff defined 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 provided 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 required that party water service lines be replaced by the customer. The Tariff provided 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 was clear that not all water lines in the City are part of PWSA’s distribution system. An “Authority Water Main” was 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>8</sup>

Therefore, PWSA's Tariff clearly established that that the Complainant and his neighbors had maintenance and repair responsibility for the party service line serving their properties – again, a reality that Mr. Musgrave has chosen to ignore. Of note, Mr. Musgrave argues in his Main Brief that the Property should have had his water service discounted as a result of the line being private. However, Mr. Musgrave refers to no evidence in the record or to any provision in the Official Prior Tariff, Tariff Water No. 1 – Pa. P.U.C. or the existing tariff to support this argument, which should be disregarded.

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

Although Mr. Musgrave argues that no conclusive evidence is available to show whether the party line was private or public, PWSA has presented historical records that 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.<sup>9</sup>

Additionally, City of Pittsburgh Ordinance No. 339, which was enacted in 1952, vacates Bunkerhill Street making it a private street.<sup>10</sup> Although the Ordinance reserves the City's right to maintain public sewers on the street, it makes no mention of public water lines. While the Complainant has made claims that Bunkerhill Street runs slightly differently than originally

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<sup>8</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.”).

<sup>9</sup> PWSA M.B. at 19.

<sup>10</sup> PWSA M.B. at 19.

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. 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.

**C. 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 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.

As explained in its Main Brief, 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.<sup>11</sup> 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. Rather, 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. Further, because PWSA was providing any such assistance voluntarily, there was no requirement to give notice that this assistance would not be provided in

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<sup>11</sup> PWSA M.B. at 20.

the future. The Authority was ultimately able to replace the party line at no cost to the Complainant under its Lead Service Line Replacement 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. The new service lines continue to be owned by the customers, who have responsibilities to maintain and repair the lines.

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

The relief sought by the Complainant has evolved during the course of this proceeding, none of which is warranted or may be granted by the Commission.<sup>12</sup> In his Main Brief, Mr. Musgrave seeks the following relief: (1) reimbursement of the private plumber expenses incurred by to repair certain breaks that have occurred; (2) assumption of maintenance responsibility by PWSA of the new service line; (3) movement of the curb stop and meter crock; and (4) paving of a designated portion of the street and repair of a damaged section of the curb. The Complainant argues that if PWSA takes ownership of the new line, it would relieve the current owner of undergoing the complex and expensive easement process.

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. 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.

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<sup>12</sup> PWSA M.B. at 21-23.

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 Cocks

The Complainant’s claim regarding the location of meter cocks 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.

#### 4. Reimbursement of Private Plumber Expenses

Complainant's request to be reimbursed for private plumber expenses incurred as a result of the break of private lines is also outside the jurisdiction of the Commission to award. It is longstanding law that the Commission lacks the statutory authority to award monetary damages, and that the courts of common pleas have jurisdiction over suits for damages, including claims against public utilities.<sup>13</sup>

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

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<sup>13</sup> *See, e.g., DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell Telephone Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

## 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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