

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**INITIAL DECISION**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

**INTRODUCTION**

This decision grants in part a formal complaint alleging a water utility failed to provide reliable, safe and quality water service to the service address by failing to provide reasonable and adequate maintenance and repair services between May 2018 and November 2020, and by unreasonably replacing and relocating the customer’s curb stop and service line.

**HISTORY OF THE PROCEEDING**

On July 8, 2020, John Kerr Musgrave IV (Mr. Musgrave or Complainant) filed a formal complaint (Complaint or Musgrave Complaint) with the Pennsylvania Public Utility Commission (Commission) against the Pittsburgh Water and Sewer Authority (PWSA or Respondent) alleging Respondent failed to provide reliable, safe and/or quality water service to his residence. Specifically, Complainant alleged the water provided by PWSA was unsafe due to low chlorine and PWSA refused to replace the water line which provided water service on the

street where the service address was located. Complainant requested the Commission order PWSA to repair the water line and to provide safe drinking water with the appropriate chlorine levels.

On August 10, 2020, PWSA filed its Answer in which PWSA generally denied it failed to provide safe and reliable water service. Further, Respondent alleged the Commission lacked jurisdiction to enforce water quality standards, such as chlorine levels, and the Commission lacked jurisdiction to determine if the waterline serving the service address was a public line versus a private line.

Also, on August 10, 2020, PWSA filed Preliminary Objection, alleging the Complaint should be dismissed without a hearing for three reasons. First, PWSA averred the Commission lacked jurisdiction regarding water quality issues, specifically the chlorination levels. Second, PWSA asserted the Commission lacked jurisdiction to settle disputes over whether a service line is on public or private land. Thirdly, PWSA argued Complainant did not have standing to bring the Complaint because he was not the customer of record for the service address. Complainant filed a response to the Preliminary Objection, contending he was the customer of record and the contesting PWSA's assertions the service line was on private property.

On September 18, 2020, the Office of Administrative Law Judge (OALJ) issued a Motion Judge Assignment Notice which assigned the proceeding to Administrative Law Judge (ALJ) Marta Guhl to handle the Preliminary Objection filed by PWSA. On October 27, 2020, ALJ Guhl issued the Order Granting Pittsburgh Water and Sewer Authority's Preliminary Objection in Part and Denying in Part. ALJ Guhl ruled Complainant's allegations regarding specific chlorination levels were stricken from the Complaint as those allegations related to the Pennsylvania Safe Drinking Water Act and the Federal Safe Drinking Water Act. ALJ Guhl ruled the Complaint should proceed to a hearing in which the issues would concern whether PWSA provided adequate, efficient, safe and reasonable service, whether the general water quality is safe service, whether Complainant has standing to bring the Complaint, and whether civil penalties should be assessed.

On October 28, 2020, the Office of Administrative Law Judge issued an Initial Telephonic Hearing Notice, which scheduled an initial call-in telephonic hearing to be conducted by ALJ Guhl on December 8, 2020. On the same date, ALJ Guhl issued a Prehearing Order.

Thereafter, ALJ Guhl granted two separate continuances to the parties, first to Respondent on November 30, 2020 and then to Complainant on January 11, 2021.

On January 28, 2021, Respondent filed a Motion to Consolidate the Complaint with another proceeding, Karen Toole v. Pittsburgh Water and Sewer Authority, at Docket No. C-2020-3022232 (Toole Complaint), filed by another resident of the same street on which Complainant lived. The Toole Complaint was assigned on November 30, 2020 to ALJ DeVoe and, on December 24, 2020, OALJ scheduled an initial hearing in the Toole Complaint to be conducted on February 3, 2021. Due to similarities between the two formal complaints, OALJ issued the Hearing Cancellation and Judge Change Notice on January 29, 2021 in the Musgrave Complaint, which reassigned the proceeding to ALJ Emily DeVoe and cancelled the hearing that had been scheduled for February 9, 2021 with ALJ Guhl.

Thereafter, on March 16, 2021, ALJ DeVoe issued the Interim Order Denying Motion to Consolidate. ALJ DeVoe noted Respondent argued the two formal complaints both related to the same alleged private water service line, which PWSA asserted it had replaced as part of its lead service line replacement program, and both formal complaints involved the same legal issues with substantially similar facts. ALJ DeVoe denied the Motion to Consolidate because the formal complaints were substantially different because the Toole Complaint alleged problems with water lead levels and the Musgrave Complaint alleged problems with water chlorine levels. With the replacement of the water line at issue (as part of the lead service line replacement program), ALJ DeVoe noted the issues in the Toole Complaint may have been resolved while the issues in the Musgrave Complaint may not have been resolved. Accordingly, the Motion to Consolidate was denied.

Also, on March 16, 2021, OALJ issued a Call-In Telephone Prehearing Conference Notice in the Musgrave Complaint, which scheduled an initial telephone prehearing conference to be conducted by ALJ DeVoe on April 7, 2021.

On April 1, 2021, the presiding officer issued the Interim Order Denying Motion to Continue Prehearing Conference, in response to a Motion to Continue the Prehearing Conference (March 31, 2021 Motion) emailed by Complainant on March 31, 2021. Complainant had requested the prehearing conference be cancelled because he needed more time to gather evidence in support of his claims. Complainant had requested the evidentiary hearing be scheduled in the fall of 2021. Complainant's request was denied because the proceeding scheduled for April 7, 2021 was a conference at which the parties would be able to discuss the issues, the collection of evidence and the scheduling of an evidentiary hearing.

On April 7, 2021, the presiding officer conducted the prehearing conference as scheduled. Complainant clarified his Complaint concerned two issues: (1) concern over the chlorine levels in Complainant's water; and (2) Complainant's opposition to assuming ownership of the newly-replaced service line installed by PWSA. After discussion, the parties agreed to submit a status report on or before October 1, 2021 which would address: (1) whether there were any new developments; (2) if the parties made progress towards settlement; (3) whether the parties settled any of Complainant's claims; (4) whether the parties preferred the presiding officer to schedule another prehearing conference or go directly to an evidentiary hearing; and (5) whether the parties would prefer to file dispositive motions or motions *in limine* prior to the scheduling of an evidentiary hearing. On June 14, 2021, the presiding officer issued the Interim Order Directing Parties to File Status Report which commemorated the matters discussed at the prehearing conference.

Status reports were filed by Mr. Musgrave and PWSA on September 28, 2021 and October 1, 2021, respectively. Complainant asserted the issue concerning chlorine levels in the water had been resolved but unresolved remained Complainant's contest of whether the water line was publicly owned or privately owned. PWSA agreed the water quality issue had been resolved and acknowledged Complainant contested the public versus private nature of the water

line. PWSA requested an opportunity to file dispositive motions and, if deemed necessary, the scheduling of another prehearing conference. On November 16, 2021, OALJ issued the Further Call-In Telephonic Prehearing Conference Notice which scheduled a prehearing conference for December 2, 2021.

The presiding officer conducted a prehearing conference on December 2, 2021, as scheduled. Complainant raised several new claims not raised in the original Complaint. After discussion, the parties agreed Complainant would file an Amended Complaint by December 22, 2021, to which PWSA could file an Answer on or before January 12, 2022. On December 3, 2021, the presiding officer issued the Interim Order Directing Parties to File Amended Pleadings which commemorated the matters discussed at the prehearing conference on December 2, 2021.

On December 22, 2021, Complainant filed the Amended Complaint. The Amended Complaint asserted two issues: (1) whether the water line serving the service address is public; and (2) whether Complainant's mother was forced to sign an unclear temporary easement agreement under duress. The Amended Complaint listed nine (9) different requests for restitution, four of which requested specific actions from PWSA concerning ownership, maintenance, a permanent easement, repaving and reconstruction of curbs, and five of which requested specific sums of monies to reimburse Complainant and/or his mother for monies expended.

On January 12, 2022, Respondent filed the Answer with New Matter to Amended Formal Complaint (Answer to Amended Complaint). PWSA argued the service water line is a private, customer-owned service line and the Commission lacks the jurisdiction to determine whether the water line is privately owned or publicly owned. PWSA asserted it is only responsible for the repair and maintenance of water mains leased to it by the City of Pittsburgh, constructed by the City or PWSA for public use since 1995 and dedicated to public use by PWSA since 1995. PWSA contended the subject water line does not fall within PWSA's authority because it does not fit the category descriptions listed above. Further, PWSA asserted it had to move the curb stop when replacing the water lines on Complainant's street because the curb box was originally on private property and the curb stop had to be installed on a public right

of way. In addition, PWSA argued it is not responsible to perform restoration work to the private road because of its nature as a private road. Finally, PWSA disagreed with Complainant's claim that the Temporary Easement Agreement was forced upon Complainant's mother and, to the extent the claim would have any merit, PWSA argued the agreement is a private contractual issue which is outside the Commission's jurisdiction. PWSA argued Complainant was not entitled to any of the nine requests listed in the Amended Complaint.

In New Matter, Respondent argued the Amended Complaint was insufficient and did not evidence Complainant was entitled to relief. PWSA contended provisions at 66 Pa.C.S. § 1501 et. seq. required it to furnish and maintain adequate, efficient, safe and reasonable service and facilities but does not require PWSA to bear all repair and maintenance responsibilities for any and all water lines located in the City of Pittsburgh without regard to ownership. In addition, PWSA argues the Commission lacks jurisdiction over the contractual matter concerning restoration work after PWSA replaced the service line as part of the lead service line replacement program. PWSA pointed out the owner of the service address signed a contract that stated PWSA was not responsible to perform restoration work on private property. PWSA argued Complainant cannot get the Commission to resolve a contractual dispute because private contractual disputes between a utility and a customer are outside the Commission's jurisdiction. Lastly, PWSA averred the Commission lacks jurisdiction to award monetary damages to Complainant and, accordingly, Complainant's request for monetary restitution and reimbursement should be denied as outside the Commission's jurisdiction.

Also, on January 12, 2022, Respondent filed a Motion to Dismiss. In its Motion to Dismiss, Respondent argued the Complaint should be dismissed because: (1) the Commission lacks subject matter jurisdiction to decide whether the water line is a public versus private line; (2) the Complaint, as amended, is insufficient legally; (3) the Commission lacks subject matter jurisdiction to decide private contractual matters; and (4) the Commission lacks jurisdiction to award monetary damages.

On March 8, 2022, the presiding officer issued the Interim Order Providing Notice of the Taking of Judicial Notice (Judicial Notice Order). The presiding officer notified

the parties of her intent to take judicial notice of ten facts and documents, specified in the Judicial Notice Order unless a party objected in writing before March 17, 2022. In short, those facts upon which the presiding officer indicated would be accepted as facts were: Complainant and his mother, Judith Musgrave, reside at 6059 Bunkerhill Street, Pittsburgh (service address); Complainant owns the service address; Bunkerhill Street begins where Melon Street becomes One Wild Place and runs in an East-Southeasterly direction until it ends in a dead-end within the City of Pittsburgh with Highland Park located directly to the North; the service address is among a small group of home located towards the end of Bunkerhill Street which is a private portion of the street that starts as a public street but becomes a private street at some point. In addition, the presiding officer took judicial notice of PWSA's tariff (Tariff Water – Pa. P.U.C. No. 1, filed February 28, 2019, at Docket No. R-2018-3002645), and PWSA's Rules and Regulations, found as Exhibit JAQ-5, part of Tariffs Volume IV, filed July 3, 2018, at Docket No. R-2018-3002645. No party took exception to or expressed opposition to the items listed in the Judicial Notice Order.

On March 18, 2022, the presiding officer issued the Interim Order Granting in Part and Dismissing in Part PWSA's Motion to Dismiss (Interim Order, 3/18/22). The presiding officer dismissed for lack of jurisdiction the following claims of Complainant: (1) that PWSA should be held responsible for maintenance and repair of the water line along Bunkerhill Street to the location of the original curb box; (2) that PWSA was responsible to repave the trench it dug and restore the curb along Bunkerhill Street which bordered the service address; (3) that PWSA failed to comply with the Lead Service Line Replacement Agreement; (4) that PWSA was responsible to obtain an easement for the portion of the line service that extends through the property of Complainant's neighbor; (5) that PWSA failed to comply with the Temporary Easement Agreement; (6) that PWSA should reimburse Complainant's mother for water line repair costs in January 2018 and February 2020, and to establish water service after a line break in July 2020; and (7) that PWSA should reimburse Complainant for the cost of test kits, tablets, Department of Environmental (DEP) samples, bottled water and ice from May 2018 to October 2020. The presiding officer did not dismiss and permitted Complainant to proceed on the following claims: (1) that PWSA had maintenance and/or repair responsibilities over the service line running along the private portion of Bunkerhill Street prior to November 11, 2020 and failed

to perform those responsibilities, resulting in water line breaks in January 2018, February 2020 and July 2020; and (2) that PWSA failed to maintain proper levels of chlorine in its water provided to the service address between May 2018 and October 2020.

On March 21, 2022, OALJ issued the Evidentiary Call-In Telephone Hearing Notice scheduling the evidentiary hearing to be conducted telephonically on April 21, 2022.

On April 7, 2022, OALJ issued the Further Call-In Telephonic Prehearing Conference Notice which scheduled a prehearing conference for April 14, 2022. Thereafter, on May 5, 2022, the presiding officer issued the Interim Order Cancelling Evidentiary Hearing and Establishing Litigation Schedule (Interim Order, 5/5/22). In response to discussions with the parties at the prehearing conference held on April 7, 2022, the presiding officer deemed the evidentiary hearing should be cancelled and instead a litigation schedule was established to guide the parties in the prehearing process.

On August 25, 2022, the presiding officer issued the Interim Order Holding Preliminary Objections in Abeyance Until Status Conference (Interim Order, 8/25/22), in which the presiding officer ordered that PWSA's Motion *in Limine* should be held in abeyance until the status conference on September 1, 2022. The presiding officer also ordered the parties to come to the status conference prepared to present oral argument on the Motion *in Limine*.

The presiding officer conducted a status conference with the parties on September 1, 2022. At the status conference, the presiding officer discussed the Motion *in Limine* with the parties, in addition to Complainant's proposed witness list. The parties agreed to have a subsequent status conference on September 14, 2022.

The presiding officer conducted a status conference with the parties on September 14, 2022 with the parties present. At the status conference, the presiding officer ruled the parties were to meet without the presiding officer to discuss stipulating to facts before September 30, 2022, and the Motion *in Limine* was held in abeyance. On September 15, 2022, the presiding officer issued the Interim Order Holding Motion *in Limine* in Abeyance Until



Status Conference, Ordering Meet and Confer, and Directing Status Report (Interim Order, 9/15/22) which commemorated the discussions at the status conference on September 14, 2022.

On November 9, 2022, the presiding officer issued the Corrected Interim Order Adopting Joint Stipulations, Granting in Part and Denying in Part PWSA's Motion *in Limine* and Scheduling Evidentiary Hearing (Corrected Interim Order).<sup>1</sup>

On January 4, 2023, the presiding officer issued the Interim Order Denying in Part and Granting in Part, Application for Issuance of Subpoenas which granted in part and denied in part Complainant's request for the issuance of subpoenas to various individuals, expert witnesses and a company. The presiding officer issued a subpoena for five individuals (Czochara, Andrew McFarland, Rebecca Prince, Brooke McCartney and Justin Crowley). In addition, the presiding officer granted the request for a *subpoena duces tecum* for specified records of the Allegheny County Health Department and a subpoena for the testimony of the records custodian at the Allegheny County Health Department.

On January 5, 2023, the presiding officer issued the Interim Order Converting In Person Evidentiary Hearing to Telephonic Prehearing Conference, in which the evidentiary hearing scheduled for January 9, 2023 was converted from in person into telephonic, and the proceeding was changed from an evidentiary hearing into a prehearing conference.

On February 8, 2023, the presiding officer convened the in person evidentiary hearing for the purpose of receiving evidence from Complainant, as scheduled. Complainant appeared *pro se* and testified on his own behalf. In addition, Complainant presented five witnesses: Judith Musgrave; Rebecca Price; Justin Crowley; Dr. Brooke McCartney and Jeffrey Czochara. Complainant offered 20 exhibits which were marked and of which 17 exhibits were admitted into evidence as Complainant's Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19 and 20. Respondent was represented by Lauren M. Burge, Esquire. In addition to

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<sup>1</sup> The Corrected Interim Order corrected an interim order issued by the presiding officer on November 8, 2022. The correction was to remove the tenth proposed factual stipulation after Complainant objected to it in the Interim Order, 11/8/22.

Complainant's exhibits, the ALJ admitted two documents – ALJ Exhibit 1 and ALJ Exhibit 2 – which were the Interim Order dated March 8, 2022 (notice that the ALJ would take judicial notice of stipulated facts) and the Corrected Interim Order dated November 9, 2022 (judicial notice of 9 stipulated facts after objection from Complainant to one listed fact).

On February 9, 2023, the presiding officer reconvened the in person evidentiary hearing for the purpose of receiving evidence from Respondent. Complainant appeared *pro se*. Respondent was represented by Attorney Burge who presented the testimony of one witness and offered 9 exhibits, which were marked and admitted into evidence as PWSA Exhibits 1 through 9.

On March 1, 2023, the Commission received the transcript from the in person hearing on February 9, 2023. The presiding officer issued the Briefing Order on March 20, 2023, which gave the parties an opportunity to file main briefs on or before April 10, 2023, and to file reply briefs on or before April 19, 2023. Main briefs were received from PWSA and Mr. Musgrave on April 10, 2023 and April 11, 2023, respectively. Reply briefs were received from both parties on April 19, 2023.

On April 20, 2023, the presiding officer closed the hearing record with the issuance of the Interim Order Closing the Hearing Record. The hearing record consists of multiple transcripts<sup>2</sup> containing a total of 424 pages plus 17 exhibits sponsored by Complainant, 9 exhibits sponsored by Respondent, and 2 exhibits admitted pursuant to judicial notice from the ALJ.

On June 28, 2023, OALJ issued a Judge Change Notice assigning the proceedings to ALJ Katrina L. Dunderdale.

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<sup>2</sup> The transcripts from the evidentiary hearings were filed with the Commission containing page numbering errors. For the purposes of this Initial Decision, the presiding officer used and refers to pages from the transcript of the February 8, 2023 evidentiary hearing, which was received in the Secretary's Bureau on February 21, 2023, and refers to the transcript of the February 9, 2023 evidentiary hearing which was received in the Secretary's Bureau on March 1, 2023.

## FINDINGS OF FACT

1. Complainant, John Kerr Musgrave IV, resides at 6059 Bunkerhill Street, Pittsburgh, Pennsylvania (service address). (Tr. 184, 185; ALJ Exhibit 1, p. 5).
2. Respondent, Pittsburgh Water and Sewer Authority, supplies water service to the service address and came within the Commission's jurisdiction on April 1, 2018. (Tr. 195).
3. The service address is owned by Judith Musgrave, who is Complainant's mother and who resides at the service address with Complainant. (Tr. 185, 186; ALJ Exhibit 1, p. 5).
4. Bunkerhill Street is located in the City of Pittsburgh, which begins where Mellon Street turns into One Wild Place and ends in a dead-end section with the City's Highland Park located immediately to the north. (ALJ Exhibit 1, p. 5).
5. Bunkerhill Street starts as a public street but becomes a private street at an unknown location near the end of Bunkerhill Street, which terminates at a dead-end. (ALJ Exhibit 1, p. 5, 6).
6. The service address is located near the end of Bunkerhill Street. (ALJ Exhibit 1, p. 6).
7. The service address received water service on a shared water service line, or party line, located at the dead-end section of Bunkerhill Street which serviced multiple properties located on Bunkerhill Street. (Tr. 199, 200, 206; ALJ Exhibits 1 and 2).
8. Historically, the service address was one of six residences which received water service to more than one customer through one line. (Tr. 206, 368, 373, 374; PWSA Exhibit 5).

9. Shared water lines are not considered a current best practice, are a legacy condition installed many years previous and are no longer permitted by PWSA. (Tr. 375; PWSA Exhibits 8 and 9).

10. PWSA currently requires all customers within its territory to install separate water service lines so that one water service line only serves one customer. (Tr. 375).

11. Allegheny Department of Health code requirements do not permit shared water lines, which provide water service to more than one building. (Tr. 321).

12. Prior to 2018, when breaks occurred on the shared water line serving the service address and five other residences, Respondent fixed the leaks. (Tr. 185, 186, 206, 340).

13. PWSA repaired a water line break that occurred on January 16, 2015, in the yard of Complainant's neighbor located at 6049 Bunkerhill Street. (Tr. 193, 198-200; Complainant Exhibit 10).

14. The residence located at 6049 Bunkerhill Street did not receive water service through a shared or party water line with any other residence on the street. (Tr. 200).

15. Two water line breaks occurred in March 2017 in the shared water line: one occurred near or on the residence at 6041 Bunkerhill Street; and one occurred near or on the residence at 6045 Bunkerhill Street. (Tr. 204-206, 213-215).

16. PWSA repaired the broken shared water lines that occurred in 2017. (Tr. 210-212; Complainant Exhibits 14 and 15).

17. Other public utilities have facilities located underground in the easement on Bunkerhill Street. (Tr. 206).

18. Water line breaks occurred in the shared water service line along Bunkerhill Street on January 22, 2018 to January 24, 2018, and again on July 27, 2020. (ALJ Exhibit 2).

19. The water line breaks identified in Finding No. 18 were repaired by a private plumber hired by affected property owners. (ALJ Exhibit 2).

20. PWSA notified affected property owners in 2018 that PWSA refused to repair the water line and required the property owner to hire private plumbers. (Tr. 329, 340).

21. As part of the repairs from the leak in January 2018, PWSA replaced a valve on February 14, 2018, along the shared water line in front of 6041 and 6045 Bunkerhill Street, because water continued to leak from a broken valve. (Tr. 332-334; Complainant Exhibit 8).

22. On March 14, 2018, the shared service line was separated to provide separate water service to three customers (located at 6041, 6045 and 6049 Bunkerhill Street), leaving the service address and two customers (located at 6053 and 6055 Bunkerhill Street) on the original shared water line. (ALJ Exhibit 2).

23. PWSA's water and wastewater operations became subject to regulation by the Commission on April 1, 2018, pursuant to Act 65 of 2017, 66 Pa.C.S. § 3201 *et seq.* See also, *Pa. Pub. Util. Comm'n, et al v. Pittsburgh Water and Sewer Authority*, Docket No. R-2018-3002645 (Opinion and Order entered Feb. 27, 2019).

24. A water line break occurred on the shared water line in February 2020 which PWSA refused to fix, maintain and/or repair. (Tr. 329).

25. PWSA did not provide justification for its decision to stop repairing water line breaks on the shared line and did not provide any notification to Complainant concerning this decision by PWSA. (Tr. 329).

26. To receive water service in February 2020, the three affected customers on the shared line individually purchased hoses which had to be connected to a fire hydrant on Bunkerhill Street. (Tr. 340, 341).

27. The customers continued to receive water service through a hose from February 2020, through the start of the COVID19 pandemic until PWSA fixed the leaks in or after November 2020. (Tr. 342).

28. Water line breaks along the 6-inch water main that serves Bunkerhill Street experienced breaks on: April 26, 2020; June 2, 2020; June 28, 2020; July 13, 2020; and July 27, 2020. (ALJ Exhibit 2).

29. In November 2020, Mrs. Musgrave signed a Temporary Easement Agreement (TEA) and a Lead Service Line Replacement Agreement (LSLRA) with PWSA. (Tr. 186-188; Complainant Exhibits 3 and 5).

30. In or after November 2020, PWSA replaced the shared water line that served Complainant and two other customers as part of the LSLRA program. (Tr. 341, 380; PWSA Exhibit 2).

31. Prior to November 2020, the curb box for the service address was located approximately 10 feet from the service address along the shared water line. (Tr. 295, 339; Complainant Exhibit 9).

32. In November 2020, PWSA moved the curb box serving the service address a distance of approximately 200 feet from the service address and connected Complainant's service line to a shared line. (Tr. 380; PWSA Exhibit 2).

33. In or after November 2020, PWSA installed the service line under the properties of five different neighbors before connecting to the main line. (Tr. 338-340).

## DISCUSSION

### Burden of Proof

Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.”<sup>3</sup> Therefore, a complainant must generally demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order.

Under Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”<sup>4</sup> The preponderance of evidence standard requires proof by a greater weight of the evidence.<sup>5</sup> This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party.<sup>6</sup>

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden of persuasion shifts to the opponent.<sup>7</sup> Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not

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<sup>3</sup> 66 Pa.C.S. § 701.

<sup>4</sup> *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

<sup>5</sup> *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999).

<sup>6</sup> *Brown v. Commonwealth*, 940 A.2d 610 (Pa. Cmwlth. 2008); *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (1980).

<sup>7</sup> *MacDonald v. Pa. R.R. Co.*, 36 A.2d 492 (Pa. 1944).

presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof.<sup>8</sup>

In Pennsylvania, there is a legal distinction between the burden of proof and the burden of persuasion or the burden of going forward with the evidence.<sup>9</sup> The Public Utility Code assigns the initial burden of proof to a proponent which, in this proceeding, is Mr. Musgrave.<sup>10</sup> The secondary burden, i.e., the burden of persuasion, requires a party to present evidence sufficient to establish a *prima facie* case and the *prima facie* case may shift the secondary burden to the opponent.<sup>11</sup> Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent.<sup>12</sup>

If the opponent utility, herein PWSA, submits evidence of "co-equal" weight to refute a complainant's evidence, the complainant has not satisfied the burden of proof unless it presents additional evidence opposing the utility's evidence.<sup>13</sup>

The issues in this case were limited prior to the hearing through Interim Orders issued by ALJ DeVoe. Specifically, the Interim Order issued March 18, 2022, dismissed all of Complainant's claims but for Claimant's claims that: (1) PWSA had maintenance/repair

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<sup>8</sup> See *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); see also *Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pa.-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence Cnty., Pa.*, Docket No. A-212285F0148 (Opinion and Order entered Oct. 29, 2008). *Henes v. McGovern*, 176 A. 503 (Pa. 1935).

<sup>9</sup> *Cup v. Lake Latonka Water Co.*, Docket No. R-842577C0001 (Opinion and Order entered March 19, 1990), *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377, 1379-80 (Pa. Cmwlth. 1979), *Park v. United Tel. Co.*, Docket No. R-811781C001 (Order entered September 17, 1982).

<sup>10</sup> 66 Pa.C.S.A. § 332(a).

<sup>11</sup> *Wigmore*, §§ 2487, 2489 at 296-297, 301. *McDonald v. Pa. R.R. Co.*, 36 A.2d 492, (Pa. 1940).

<sup>12</sup> *Wigmore*, § 2994 at I(1) and (2); *In re: Fink's Estate*, 21 A.2d 883 (Pa. 1941); *Rogers v. United States*, 66 F.Supp. 663 (Ed. Pa. 1946), (citing *Roseberry v. Home Life Ins. Co.*, 183 A. 121 (Pa. Super. 1936), 95 A.L.R. 749 (1936).

<sup>13</sup> *Morrissey v. Pa. Dept. of Highways*, 225 A.2d 895 (Pa. 1967); *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).



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) PWSA failed to provide safe water.<sup>14</sup> As the record developed at the evidentiary hearing, another issue arose: (3) whether PWSA violated Section 1501 by moving Complainant's curb box during its construction work on Bunkerhill Road on or about November 2022 and extending the service line 190 feet by transecting the real properties of five neighbors.

Section 1501 of the Public Utility Code provides:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the Commission. Subject to the provisions of this part and the regulations or orders of the Commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service[.]<sup>15]</sup>

The Commission has the authority and responsibility to define reasonable service under 66 Pa.C.S. § 1501 and § 1502. The Commission has exclusive jurisdiction to determine the reasonableness, adequacy and sufficiency of a public utility's services and facilities.<sup>16</sup> The term "service" should be "used in its broadest and most inclusive sense, including any and all acts done, rendered, or performed, and any and all things furnished or supplied...by public utilities...in the performance of their duties under the Public Utility Code[.]"<sup>17</sup>

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<sup>14</sup> Complainant indicated during the evidentiary hearing that he would not be presenting evidence on the safe water claim, effectively abandoning the claim.

<sup>15</sup> 66 Pa.C.S. § 1501.

<sup>16</sup> *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980).

<sup>17</sup> 66 Pa.C.S. § 102.

Section 65.1 of the Public Utility Code defines the utility company’s service line as the “connection between the distribution facilities or pipeline extensions of the utility which connects any main with the inlet connection of a service line of a customer at the curb or property line,” while the customer’s service line is the “line extending from the curb, property line or utility connection to a point of consumption.”<sup>18</sup>

Whether PWSA Violated Section 1501 Related to The Maintenance/Repair Responsibility for the Line Prior to November 11, 2020

Complainant did not make any specific averments or arguments in the Complaint as to why PWSA should be deemed to have maintenance/repair responsibilities of this portion of the water lines prior to November 11, 2020. The LSLRA and the TEA are not at issue since these documents did not exist prior to November 2020. During the hearing, however, Complainant presented evidence and testimony that PWSA repeatedly treated the shared line as its own, completing repairs for a break in January 16, 2015<sup>19</sup>, and two breaks in March 2017.<sup>20</sup>

At the time of the alleged breaks in February 2020 and July 2020, PWSA was under the Commission’s jurisdiction, and was required to comply with its Commission-approved tariff, as well as all statutes, rules, and orders, over which the Commission has authority, including Section 1501 of Title 66 of the Pennsylvania Consolidated Statutes, 66 Pa. C.S. § 1501.

PWSA’s did not dispute that it made repairs on the line once in January 16, 2015<sup>21</sup> and twice in March 2017, but maintained that the water line(s) running down the private portion of Bunkerhill were nevertheless not their responsibility.

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<sup>18</sup> 52 Pa. Code § 65.1.

<sup>19</sup> Tr. 193, 198-200; Complainant Exhibit 10.

<sup>20</sup> Tr. 210-212; Complainant Exhibits 14 and 15.

<sup>21</sup> Tr. 193, 198-200; Complainant Exhibit 10.

PWSA essentially treated the line as its own prior to the breaks in February 2020 and July 2020, repeatedly performing repairs to the line. When a water line break occurred in the shared water service line along Bunkerhill Street on January 22, 2018, PWSA, *for the first time*, notified affected customers PWSA refused to assume repair and maintenance responsibilities for the line. PWSA waited until the line was *broken and leaking* (i.e. an emergency situation) to assert its position that it was a privately owned line, and not PWSA's responsibility. Furthermore, PWSA presented no evidence it personally gave *Mr. Musgrave* notice of its intent to no longer perform necessary repairs and maintenance on the line until after the line broke again in February 2020. It was unreasonable for PWSA to make such a drastic, material change without first providing clear, direct notice to Mr. Musgrave *before* repairs needed to be made. These actions constitute unreasonable service in violation of Section 1501.

PWSA's behavior in February 2020 is all the more egregious when viewed within context, however. The loss of water service occurred on February 14, 2020, which was less than one month before the county and state was affected adversely by the COVID pandemic. During the COVID pandemic, access to water became more critical and necessary for health and safety than it had for decades previous. To be safe and reduce the transmission of the virus, all citizens were told to repeatedly wash surfaces and their hands. At such a critical time, when water service was critical to the health of its customers and the Commonwealth's citizens, PWSA indicates it will not make the repairs – and permits the situation to persist until after November 2020. Complainant and his mother used a hose attached to a fire hydrant during the time of the pandemic to be able to access a critical utility at a time when access to water was critical for the health of themselves, their neighbors and anyone with whom they came into contact.

Accordingly, the presiding officer concludes PWSA failed to provide reasonable and adequate customer service, pursuant to 66 Pa.C.S. § 1501, et seq., when it refused to maintain and repair the broken and leaky water lines prior to November 2020 and failed to provide Complainant with sufficient notice of PWSA's assertion the legacy shared water line was Complainant's responsibility to maintain and repair.

### Whether Respondent Failed to Provide Reasonable and Adequate Service

In addition to the violation noted above (for a failure to handle the maintenance and repair of the broken or leaking lines consistent with Section 1501), PWSA failed to provide reasonable and adequate service to Complainant in an additional manner.

PWSA failed to provide reasonable and adequate service when it determined and took actions to move Complainant's curb box from 10 feet from the service address to a location 190 feet farther away (effectively extending the service line by 20 times its then current length) and installing the service line across the real property owned by five neighbors before connecting the service line to a shared portion of the water line. PWSA provided no explanation for why it chose the location of the new service line, or why it did not directly connect Complainant's service line to the main line. PWSA insisted the actions it took after November 2020 resulted from the two agreements between Ms. Musgrave and PWSA. PWSA argued the Commission lacked jurisdiction to consider the impact or applicability of PWSA's business decisions about these two contracts with Ms. Musgrave. PWSA is correct. The Commission does not have the jurisdiction to consider the reasonableness of those contracts.

However, setting aside the existence of the TEA and LSLRA in their entirety, the Commission has exclusive jurisdiction to determine if a public utility provided reasonable and adequate service to its customer when it moved a curb box, extended Complainant's service line and connected Complainant's service line to the main line. The evidence presented by both parties clearly shows PWSA failed to provide reasonable and adequate customer service when it moved Complainant's curb box an additional 190 feet from its then current location. PWSA never provided any evidence to explain why a more direct route was not used to connect to the main line. PWSA did not explain why it connected Complainant's service line to a shared portion of the original line when PWSA's own Commission-approved tariff *does not permit its own customers to install a shared line*.<sup>22</sup> PWSA did not explain why the main line was not extended or if the main line could not be extended due to its alleged private ownership.

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Tr. 375.

Accordingly, the presiding officer concludes PWSA failed to provide reasonable and adequate customer service, pursuant to 66 Pa.C.S. § 1501, *et seq.*, when it moved the curb box and Complainant's service line in the manner it did.

### Civil Penalty

The Commission is without authority to award monetary damages to a complainant, pursuant to *Feingold v. Bell of Pennsylvania*.<sup>23</sup> To receive monetary damages to correct damage caused by a utility, a complainant would have to seek redress from the local Court of Common Pleas. However, the Commission is empowered to determine if a public utility failed to provide reasonable and adequate customer service and then issue a civil penalty.

When appropriate due to violation of the Commission's statutes or regulations, Sections 3301(a) and (b) of the Public Utility Code, 66 Pa.C.S. § 3301(a) and (b), authorize the Commission to impose a maximum civil penalty of \$1,000 per day for violations of its statutes, regulations and orders. The Commission has adopted certain standards that are to be applied in determining the amount of civil penalties when violations are admitted or determined to have occurred.

There are ten standards which the Commission first articulated in *Rosi v. Bell Atlantic-Pennsylvania, Inc. and Sprint Communications Co., L.P.*, Docket No. C-00992409 (Opinion and Order entered Feb. 10, 2000) (*Rosi*) and which are now published at 52 Pa. Code § 69.1201(c) in the Commission's Policy Statements and Guidelines. In any case in which a civil penalty is assessed, these ten factors must be considered when calculating the amount of the penalty. The factors are meant to ascertain, in general, how serious was the conduct and intention of the utility, how the individual consumer was affected and how the utility's conduct may bode for similar future situations.

While assessing a civil penalty against PWSA was considered when rendering a decision herein, the presiding officer has determined that a penalty is not the best resolution for

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<sup>23</sup> *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978).

the debacle existing on Bunkerhill Street. In addition, assessing a penalty against PWSA might result in the cost of the penalty being felt by PWSA's customers at large. Accordingly, it is the determination of the presiding officer that a civil penalty will not be assessed.

Instead, PWSA will be required, in the Ordering Paragraphs below, to rectify the conditions it created when it moved the curb box from its original location 10 feet from the service address to a location 200 feet from the service address. PWSA shall ensure the new water line is installed such that it taps directly into the main line, using the most direct route within the existing easement or right of way on Bunkerhill Street and without transecting or traversing across the real properties of any neighbor.

### Final Analysis

PWSA was in error to refuse to maintain and repair a line it historically treated as its responsibility without sufficiently reasonable notice to Complainant. PWSA was in error to install a new service line 190 feet farther from the service address that does not tap directly into the main line. This Initial Decision does not require PWSA to maintain and/or repair Complainant's service line. Lastly, Complainant's Complaint that PWSA failed to provide water that met Health Department requirements for safety is moot due to Complainant's decision to drop that claim and will be dismissed.

Complainant's Formal Complaint will be sustained in part and denied in part. Complainant is correct that PWSA failed to provide reasonable and adequate customer service when, without notice, PWSA made Complainant responsible for maintenance and repair of his service line after PWSA unilaterally assumed responsibility over the years for the maintenance and repair of the water lines, both shared and public, on Bunkerhill Street. Further, the Complaint will be granted in that PWSA failed to provide adequate and reasonable customer service when it moved the curb stop approximately 190 feet from the service address, extended the service line from 10 feet to 200 feet in length and failed to connect the service line to the mainline, leaving the service line connected to a shared water line with the curb stop and service

line located under the real property belonging to five neighbors. The Complaint is denied in that Complainant did not meet the burden of proving that PWSA failed to provide water service that was safe.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding as it relates to the maintenance and repair of water lines on Bunkerhill Street, and the installation of service lines and curb boxes. 66 Pa.C.S. §§ 701, 1312, 1501 and 3314.

2. The Commission does not have jurisdiction over the subject matter of this proceeding as it relates to contractual agreements between a public utility and a customer concerning matters outside the Commission's jurisdiction. 66 Pa.C.S. §§ 701, 1312 and 3314.

3. Any person with an interest in the subject matter may complain in writing to the Commission about any act or thing done by a public utility which the person claims violate any Commission statute, regulation or order. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

4. The public utility must provide and maintain adequate, efficient, safe, and reasonable service and facilities, making all such repairs, changes, alterations, as needed or proper for the accommodation, convenience, and safety of its patrons. 66 Pa.C.S. § 1501.

5. The proponent of a rule or order has the burden of proof and, to satisfy his burden of proof, Complainant must demonstrate by a preponderance of the evidence Respondent violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 332(a) and § 701; *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

6. The preponderance of evidence standard requires proof by a greater weight of the evidence which standard is satisfied by presenting evidence that makes the

existence of a contested fact more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610 (Pa. Cmwlth. 2008); *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999).

7. Complainant carried his burden of proof establishing that Pittsburgh Water and Sewer Authority violated the Public Utility Code, its tariff, or a regulation or order of the Commission when it moved the curb box, lengthened his service line and installed his service line below the real property of five neighbors before connecting to the main line. 66 Pa.C.S. §§ 332 and 1501.

8. Complainant carried his burden of proof establishing that Pittsburgh Water and Sewer Authority violated the Public Utility Code, its tariff, or a regulation or order of the Commission when it refused to continue the long-time practice to maintain and repair water lines serving the service address without notice in February 2020. 66 Pa.C.S. §§ 332 and 1501.

9. The Commission may impose a civil penalty, when appropriate due to violations of its statutes, regulations and orders by a public utility, and has adopted certain standards to be applied to determine the amount of civil penalty. 66 Pa.C.S. § 3301(a) and (b); 52 Pa. Code § 69.1201(c)(10).

10. Complainant failed to meet the burden of proving Respondent did not provide quality and safe water service in how Respondent treated the water, consistent with quality and safety requirements for clean water. 66 Pa.C.S. §§ 332 and 1501.



## ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of John Kerr Musgrave IV versus the Pittsburgh Water and Sewer Authority at Docket No. C-2020-3020714 is hereby sustained in part and denied in part.

2. That the Formal Complaint of John Kerr Musgrave IV versus the Pittsburgh Water and Sewer Authority at Docket No. C-2020-3020714 is hereby sustained in that Pittsburgh Water and Sewer Authority failed to provide reasonable and adequate customer service when it refused to maintain and repair water lines in February 2020 without providing Complainant with prior notice.

3. That the Formal Complaint of John Kerr Musgrave IV versus the Pittsburgh Water and Sewer Authority at Docket No. C-2020-3020714 is hereby sustained in that Pittsburgh Water and Sewer Authority failed to provide reasonable and adequate customer service when it moved the curb box and service line of Complainant without connecting directly to the main line and without transecting under the real property of five neighbors.

4. That the Formal Complaint of John Kerr Musgrave IV versus the Pittsburgh Water and Sewer Authority at Docket No. C-2020-3020714 is hereby denied in that Complainant did not prove the Pittsburgh Water and Sewer Authority failed to provide quality and safe water prior to November 2020.

5. That, within 30 days after the date of a final order of the Commission in this matter, the Pittsburgh Water and Sewer Authority shall submit to the Commission's Bureau of Technical Utility Services a plan for how the curb box will be re-installed near or within ten

feet of the service address, how water service will be made available in a direct connection to the main line and a timely schedule for when the remedial work will be accomplished.

6. That upon submission of the remedial plan to the Bureau of Technical Utility Services identified in Ordering Paragraph No. 5, the Secretary mark this docket as closed.

Date: July 18, 2023

/s/  
Katrina L. Dunderdale  
Administrative Law Judge