

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

John Kerr Musgrave IV
vs.
Pittsburgh Water and Sewer Authority

Public Meeting held April 4, 2024
3020714-OSA
Docket No. C-2020-3020714

MOTION OF VICE CHAIR KIMBERLY BARROW

The matter before us for disposition involves allegations that Pittsburgh Water and Sewer Authority (PWSA) failed to provide reliable, safe, and quality water service to Mr. John Kerr Musgrave's service address by not repairing line breaks which occurred between January 2018 through November 2020.

By way of a brief background, Act 65 of 2017 amended Section 1301 of Title 66 of the Pennsylvania Consolidated Statutes to include municipal corporations under the Pennsylvania Public Utility Commission's jurisdiction.¹ Act 65 became effective immediately, i.e., upon signature by Governor Tom Wolf on December 21, 2017.² Pursuant to Act 65, Chapter 32 was applicable as of April 1, 2018, with minor exceptions.³ Therefore, PWSA became subject to the Commission's jurisdiction as a regulated public utility on April 1, 2018.

This matter involves allegations related to water line breaks on a shared service line located on a portion of Bunker Hill Street, which occurred on or about January 22, 2018 and July 27, 2020.⁴ A portion of Bunker Hill Street was serviced by a private, single share service line, also called a party line, which provided water service to six properties, including Mr. Musgrave's residence.⁵ The party line connected to the PWSA water main on the public portion of Bunker Hill Street.⁶ Prior to 2018, the party line experienced a break in January 2015, and in March 2017. PWSA repaired both of those breaks even though the party line was the responsibility of Mr. Musgrave and his neighbors.⁷

On January 22, 2018, the party line experienced another break, and Mr. Musgrave contacted PWSA to repair the leak.⁸ PWSA refused to complete the January 2018 repair, explaining that the party line was a private service line and that PWSA was not responsible for the repair and

¹ H.B. 1490, Session of 2017, Act 65 of 2017 (Dec. 21, 2017); 66 Pa.C.S. §§ 3201-3209.

² *Id.*

³ 66 Pa.C.S. § 3202.

⁴ ALJ Exhibit 2, Attachment A.

⁵ The transcripts from the evidentiary hearings were filed with the Commission containing page errors. For the purpose of this Motion, citations to the February 8, 2023 hearing will encompass pages 167-354 and citations to the February 9, 2023 hearing will encompass pages 355 to 424; Hearing Transcript, pg. 373 (February 9, 2023); PWSA Exhibit 5; ALJ Exhibit 1. The party line was modified in March 2018 to separate three (3) of the properties to individual service lines and two (2) lines remained on the party line. Hearing Transcript, pg. 379 (February 9, 2023).

⁶ Hearing Transcript, pg. 373 (February 9, 2023); PWSA Exhibit 5.

⁷ Hearing Transcript, pgs. 193, 211-212, 342-343 (February 8, 2023); Hearing Transcript, pg. 377 (February 9, 2023).

⁸ Hearing Transcript, pg. 376 (February 9, 2023).

maintenance of the line. Mr. Musgrave and his neighbors hired a private plumber to complete the January 2018 repair.⁹ The party line experienced another break on July 27, 2020, which was later replaced by PWSA in November 2020 through its lead service line replacement program.¹⁰

Administrative Law Judge (ALJ) Katrina L. Dunderdale's July 19, 2023 Initial Decision held that PWSA violated the Public Utility Code, its tariff, or a regulation or order of the Commission when it moved the curb box, lengthened the service line, and installed the service line below the property of five neighbors, and when it refused to continue the long-time practice to maintain and repair water lines serving the service address without notice in July 2020.¹¹ Mr. Musgrave¹² and PWSA filed Exceptions.

I disagree with the ALJ's findings in this matter. First, through various Interim Orders, the matter was limited to two claims: (1) that PWSA had maintenance and/or repair responsibilities over the service line running along the private portion of the private 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 2020.¹³ The claims and allegations relating to the curb box and lengthening of the new service line were not within the scope of this litigated matter.¹⁴ Accordingly, PWSA's Exception No. 1 is granted and the ALJ's recommendation is reversed.

Second, as explained above, PWSA became subject to the Commission's jurisdiction on April 1, 2018. Thus, the allegations relating to unreasonable and inadequate maintenance and repair services during the January 2018 party line break predate the Commission's jurisdiction and authority over PWSA. Moreover, in reference to the July 2020 break, the record clearly demonstrates that (1) PWSA is not required or allowed by law nor its tariff to complete repairs on a private party line¹⁵ and (2) that PWSA provided notice to Mr. Musgrave and his neighbors that it would not complete repairs on the private party line during the January 2018 break, thus notice was provided.¹⁶ Furthermore, PWSA's practice of repairing private service lines pre-2018 and prior to becoming subject to the Commission's jurisdiction does not create a legal obligation for it to continue this practice.

⁹ Hearing Transcript, pgs. 230, 340 (February 8, 2023); Hearing Transcript, pgs. 376-378 (February 9, 2023); ALJ Exhibit 2, Attachment A; PWSA Exhibit 1.

¹⁰ Hearing Transcript, pg. 380 (February 9, 2023); Complainant Exhibit 3; PWSA Exhibit 2.

¹¹ Initial Decision, pg. 24, Docket No. C-2020-3020714 (entered July 18, 2023). Mr. Musgrave's Exception Nos. 4, 5, and 6 state that no break occurred on the party line in February 2020, but rather the date was July 27, 2020. The record supports Mr. Musgrave's Exceptions that the break in 2020 occurred in July and not February.

¹² Mr. Musgrave's Exceptions allege factual and typographical errors which are supported by the record. Accordingly, Mr. Musgrave's Exceptions are granted.

¹³ Interim Order, Docket No. C-2020-3020714 (entered March 18, 2022). Mr. Musgrave later asserted that the issue concerning chlorine levels in the water had been resolved. Hence, the remaining issue involved Mr. Musgrave's contest of whether the water line was publicly owned or privately owned.

¹⁴ Interim Order, Docket No. C-2020-3020714 (entered March 18, 2022).

¹⁵ Hearing Transcript, pgs. 377, 380 (February 9, 2023); PWSA Exhibits 6, 7, 8, and 9.

¹⁶ Hearing Transcript, pgs. 230, 340 (February 8, 2023); Hearing Transcript, pgs. 376-378 (February 9, 2023); ALJ Exhibit 2, Attachment A; PWSA Exhibit 1.

In light of the January 2018 allegations predating the Commission's jurisdiction, because PWSA provided notice to Mr. Musgrave and his neighbors that it would not repair the private party line due to the Commission's regulations and its tariff, and because PWSA's tariff and the Commission's regulations post April 1, 2018, do not allow PWSA to complete repairs on private service lines, there is no basis to find a violation in this matter.

THEREFORE, I MOVE THAT:

1. The Exceptions filed by Pittsburgh Water and Sewer Authority to the Initial Decision of Administrative Law Judge Katrina L. Dunderdale, issued on July 19, 2023, are granted.
2. The Exceptions filed by John Kerr Musgrave IV to the Initial Decision of Administrative Law Judge Katrina L. Dunderdale, issued on July 19, 2023, are granted.
3. The Initial Decision of Administrative Law Judge Katrina L. Dunderdale, issued on July 19, 2023, is reversed, consistent with this Motion.
4. The Formal Complaint of John Kerr Musgrave IV is dismissed, consistent with this Motion.
5. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

April 4, 2024



Kimberly Barrow, Vice Chair