

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

John Kerr Musgrave IV

Public Meeting of April 4, 2024

3020714-OSA

v.

Docket No. C-2020-3020714

Pittsburgh Water and Sewer
Authority

**JOINT STATEMENT OF CHAIRMAN STEPHEN M. DEFRANK
AND COMMISSIONER KATHRYN L. ZERFUSS**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of John Kerr Musgrave IV (Complainant or Mr. Musgrave) and the Pittsburgh Water and Sewer Authority (PWSA) to the Initial Decision of Administrative Law Judge (ALJ) Katrina L. Dunderdale issued on July 19, 2023.

By way of background, PWSA provides water service to Mr. Musgrave and his mother at the service address.¹ Prior to November 11, 2020, Mr. Musgrave received water service on a shared service line located along a private portion of Bunkerhill Street in the Highland Park neighborhood of Pittsburgh. This shared water line, constructed in 1929, historically provided water service to six residences including the Musgrave residence.

The record reflects that prior to the time that PWSA became subject to the Commission's jurisdiction on April 1, 2018,² it repeatedly repaired breaks that occurred on this shared, private water line. Mr. Musgrave's mother testified that PWSA repaired breaks on the water line for at least thirty years,³ which included one break that took place in January 2015⁴ and one break that occurred in March 2017.⁵

When a water line break occurred on the shared service line in January 2018, however, PWSA did not repair the line and the property owners hired a private plumber for the first time.⁶ PWSA contends here that it did not repair the line at this time because it was transitioning to being subject to the Commission's jurisdiction and no longer had flexibility to assist with repairs to private water lines.⁷

¹ Judith Musgrave, Mr. Musgrave's mother, owns the service address. Tr. at 185.

² Act 65 of 2017, 66 Pa.C.S. §§ 3201 *et seq.*

³ Tr. at 185.

⁴ Tr. at 193, 198-200.

⁵ Tr. at 204-205, 212, 214.

⁶ Tr. at 135, 340.

⁷ Tr. at 377; PWSA Exceptions at 11.

Another water line break occurred on the shared water service line in July 2020, which was unable to be repaired.⁸ The line was ultimately replaced by PWSA in November 2020 through its lead line replacement program.⁹ In the interim, however, Mr. Musgrave, his mother and two other households, with PWSA's awareness, received water service from hoses connected to a fire hydrant.¹⁰

The record also supports the conclusion that PWSA was not obligated to repair private water lines and that private water lines were always the customer's responsibility even prior to PWSA being subject to Commission jurisdiction. PWSA acknowledges, however, that it repaired breaks in private water service lines pre-Commission jurisdiction even though it was under no legal obligation to do so.¹¹

Based on our review of the totality of the evidence, we find that Mr. Musgrave met his burden in proving by a preponderance of the evidence¹² that PWSA provided unreasonable service in violation of Section 1501 of the Public Utility Code¹³ in connection with its change in position, without adequate communication, with respect to its previously and voluntarily assumed maintenance responsibilities of private water lines. "Service" is defined in "its broadest and most inclusive sense" and includes "all acts done, rendered, or performed" by a public utility in the performance of its duties.¹⁴ Customer service falls squarely within the Commission's jurisdiction and quality customer service is expected of all regulated utilities.¹⁵

Prior to 2018, PWSA essentially treated the Complainant's line as its own and repeatedly repaired the line. When the water line break occurred in January 2018, PWSA notified Mr. Musgrave for the first time that it would not repair the line. There was no indication from PWSA that this change in policy would apply going forward. In fact, PWSA's witness testified that PWSA was not obligated to provide any notice and saw no reason to send out notifications since it was a private line.¹⁶ Likewise, Mr. Musgrave testified that PWSA provided no notification, either verbal or written, about the *change in policy* from repairing breaks on the shared service line to requiring the property owners to hire plumbers to address the breaks.¹⁷ We do not find that PWSA successfully rebutted Mr. Musgrave's testimony concerning the lack of notification. Under the facts of this matter, it was reasonable for Mr. Musgrave to expect PWSA to continue repairing the private water line consistent with PWSA's long history of repairing the line. A commonsense business practice would have been for PWSA to notify Mr. Musgrave and similarly situated customers of its change in policy of no longer repairing this shared service line.

The next and final break occurred in July 2020, when the shared private water line experienced a break that was not able to be repaired. We find that the lack of advance notice from

⁸ Tr. at 341.

⁹ Complainant Exhibit 3.

¹⁰ Tr. at 39.

¹¹ Tr. at 377.

¹² 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth 1990).

¹³ 66 Pa.C.S. § 1501.

¹⁴ 66 Pa.C.S. § 102.

¹⁵ *Barbara R. Lolly v. Duquesne Light Co.*, Docket No. C-2010-2167824 (Order entered May 9, 2011) (finding that even though the claim for damages did not fall within the Commission's jurisdiction, the utility afforded the customer unreasonable service with respect to the claims process).

¹⁶ Tr. at 378.

¹⁷ Tr. at 329.

PWSA to Mr. Musgrave regarding its changed position constituted unreasonable service, especially when considering the vintage of the water line. PWSA’s witness testified that it is common for a line close to 100 years old to start to have leaks as it is nearing the end of its useful life.¹⁸ PWSA was aware of Mr. Musgrave’s situation and other neighbors on the shared service line, and had ample time between April 1, 2018, when PWSA became subject to the Commission’s jurisdiction, and July 2020, when the line failed, to provide adequate notice to Mr. Musgrave so as to allow him to prepare for a costly repair.

While we find that PWSA violated Section 1501 by providing unreasonable service, based on our consideration of the ten standards established by the Commission in *Rosi v. Bell Atlantic-Pennsylvania., Inc. and Sprint Communications Co., L.P.*, Docket No. C-00992409 (Opinion and Order entered Feb. 10, 2000), we would not impose a civil penalty here. Significantly, PWSA’s actions were prudent in ceasing to continue using ratepayer funds to pay for the repairs of private water lines after the time that PWSA became subject to Commission jurisdiction.

While we do not find that a civil penalty for PWSA’s violation is appropriate in this instance, the Commission generally remains empowered to impose a civil penalty on PWSA pursuant to 66 Pa.C.S. § 3301. All civil penalties paid under Section 3301 are required to be remitted to the Commonwealth’s General Fund.¹⁹ PWSA, as a municipal authority deemed to be a public utility, is unique in that ratepayers/taxpayers, and not shareholders, ultimately pay the cost of a civil penalty.


It would be prudent for the Commission to be granted the authority to direct a monetary penalty imposed on PWSA, or any other municipally-owned utility system under our jurisdiction, towards a universal service program, such as a hardship fund, so that ratepayer funding of a penalty could be allocated back to customers and possibly reduce potentially uncollectible expenses.

Therefore, for these reasons, we support the Initial Decision, as modified herein, as we find that PWSA violated Section 1501 by providing unreasonable customer service.²⁰

April 4, 2024
Date



Stephen M. DeFrank
Chairman



Kathryn L. Zerfuss
Commissioner

¹⁸ Tr. at 377.

¹⁹ 66 Pa.C.S. § 3315.

²⁰ While we would deny PWSA’s second Exception relating to whether it provided adequate service, we find that PWSA’s first Exception related to the relocation of the curb box should be granted as such matter was determined to be beyond the scope of the proceeding as set forth in the March 18, 2022 Interim Order.