

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

OFFICE PARTNERS XXIII BLOCK G1 LLC,	)	
	)	
Complainant,	)	
	)	
vs.	)	Docket Nos. C-2022-3033251
	)	C-2022-3033266
THE PITTSBURGH WATER AND SEWER	)	
AUTHORITY,	)	
	)	
Respondent.	)	

**NOTICE TO PLEAD**

To: OFFICE PARTNERS XXII BLOCK G1, LLC

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified to file an answer to the enclosed Preliminary Objections within ten (10) days from service hereof or the Preliminary Objections may be granted.

Pursuant to 52 Pa. Code § 1.4, all documents must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on counsel, and where applicable, the Administrative Law Judge presiding over the issue, or electronically on the Commission's electronic filing system if the document is a qualified document.

Dated: July 14, 2022

*/s/ Ashley L. Buck, Esq.*  
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Complainant,	)	
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AUTHORITY,	)	
	)	
Respondent.	)	

**RESPONDENT THE PITTSBURGH WATER AND SEWER AUTHORITY'S  
PRELIMINARY OBJECTIONS TO COMPLAINANT'S COMPLAINTS**

Respondent, The Pittsburgh Water and Sewer Authority (the "PWSA"), by and through its undersigned counsel, hereby preliminarily objects, pursuant to 52 Pa. Code § 5.101(a)(4),<sup>1</sup> to the Complainant, Office Partners XXIII Block G1, LLC's ("Office Partners"), Complaints,<sup>2</sup> as follows:

**BACKGROUND**

1. On or about June 17, 2022, Office Partners filed two identical formal Complaints<sup>3</sup> with the Pennsylvania Public Utility Commission (the "PUC") at the above docket numbers.<sup>4</sup>

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<sup>1</sup> Preliminary objection practice before the Public Utility Commission is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (July 18, 1994).

<sup>2</sup> The PWSA respectfully submits that the two Complaints filed in Docket Numbers C-2022-3033251 and C-2022-3033266 are identical and should be consolidated pursuant to 52 Pa. Code § 5.81. The PWSA is filing, contemporaneously herewith, Motions seeking to effect such consolidation.

<sup>3</sup> The Complaints were not actually served on the PWSA until June 24, 2022.

<sup>4</sup> On or about February 25, 2022, Office Partners instituted a civil action in the Allegheny Court of Common Pleas at G.D. 22-002217. Following the entry of a Consent Order negotiated by Office Partners and the PWSA, Office Partners initiated the instant actions. Pursuant to the Consent Order, the Allegheny Court

2. This action involves, in short, a fee dispute over tap-in fees relating to new construction.

3. At all relevant times hereto, Office Partners was developing commercial property known as the FNB Financial Center. (Complaints, ¶ 3.)

4. Office Partners' construction of the FNB Financial Center requires PWSA approval of an application for the connection to a PWSA main. (Complaints, ¶ 5); *see also* 53 Pa.C.S.A. § 5607(d)(24) (among other things, authorizing the PWSA to “charge enumerated fees to property owners who desire to or are required to connect to the authority’s sewer or water system.”).

5. 53 Pa.C.S.A. § 5607(d)(24) further provides, in relevant part: “Fees ***shall be based upon the duly adopted fee schedule which is in effect at the time of payment and shall be payable at the time of application for connection*** or at a time to which the property owner and the authority agree.” (Emphasis added.)

6. Act 65 of 2017 directed the PUC to begin oversight of the PWSA on April 1, 2018.

7. The PUC has exclusive jurisdiction over the rates charged by utilities within its jurisdiction, including the PWSA. *See, e.g.*, 66 Pa.C.S. §§ 1301 (requiring rates to be just and reasonable), 1302 (relating to the use of tariffs showing rates), 1303 (mandating adherence to tariffs), 1304 (barring discrimination in rates), & 1312(c) (imposing conditions on suit); *Byer v. The Peoples Natural Gas Co.*, 380 A.2d 383 (Pa. Super. Ct. 1977) (stating that the PUC has “exclusive jurisdiction over the rates charged by public utilities . . . Moreover, the P.U.C.’s jurisdiction over utility rates exists regardless of whether those rates have been established by

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of Common Pleas, specifically, the Honorable John T. McVay, Jr., retained jurisdiction over the bond and/or security docketed on March 15, 2022, by Office Partners until either: (1) the conclusion of these proceedings; or (2) further order of the Allegheny County Court of Common Pleas.

deed, contract, ordinance or otherwise.”) (citing *Blythe Township Municipal Authority v. Pennsylvania Public Utility Commission*, 185 A.2d 628 (Pa. Super. Ct. 1962)).

8. Per the PWSA’s Developer’s Manual then in effect: “All fees are established in the PWSA Water and Wastewater Tariffs and approved by the PUC.” (Complaints, Exhibit A, p. 35.)

9. To be clear, the PUC Tariff that forms the basis of this matter was effective March 1, 2019 and is set forth at PUC Docket No. R-2018-3002647, providing the following Tapping Fee:

Collection Fee	\$1,701 Per EDU*
Capacity Fee	\$1,277 Per EDU*
Total Tapping Fee	\$2,978 Per EDU*
	* 300 gpd/EDU.

10. The 2021 PUC Tariff, set forth at PUC Docket No. R-2020-3017970, indicated: “No Changes to Part III, Section G, Tapping Fee from Original PUC Tariff;” thus, the 2019 rates continued to apply to 2021 applications.

11. The PWSA Developer’s Manual provides: “PWSA will calculate the appropriate fees based upon the related project information submitted by the applicant.” (Complaints, Exhibit A, p. 35.)

12. Moreover, the PWSA Developer’s Manual states: “After the final review, PWSA will supply the applicant with a permit fee invoice.” (Complaints, Exhibit A, p. 20.)

13. Office Partners alleges that it submitted an application to tap in to the PWSA’s infrastructure on May 11, 2021. (Complaints, ¶ 6).

14. It is undisputed that, on December 23, 2021, the PWSA accepted Office Partners’ application, identifying the fees due and owing as \$508,314.79. (Complaints, ¶ 8, Exhibit C.)

15. Following the PWSA's approval on December 23, 2021, Office Partners purportedly attempted to "withdraw" the 2021 permit application. (Complaints, ¶ 11, Exhibit D.)

16. Office Partners then sought to "reapply" for its tap-in permit on or about February 4, 2022. (Complaints, ¶ 12, Exhibit D.)

17. In short, once Office Partners learned that the PWSA's tariff rates were changing in January 2022 to a structure that eliminated tap-in fees, Office Partners sought to withdraw its already-approved permit and resubmit its application (again, that had already been approved) at a time when the fees were supposedly more favorable to it.

18. Of course, when Office Partners attempted its "withdrawal" and reapplication, it was advised by the PWSA that the 2021 fees previously conveyed to Office Partners pursuant to the 2021-approved application would be applicable and that the permit would not be issued until those fees were paid.

19. In their Complaints, Office Partners asks the PUC to: (1) "declare" that the applicable fees are the 2022 fees; (2) "order" issuance of the subject permit based upon the 2022 rate schedule; and (3) "order" the return of the funds currently held in escrow with the Allegheny County Court of Common Pleas.

20. Through its requested relief, Office Partners is essentially asking the PUC to permit Office Partners to exempt itself from a mandatory statute requiring Office Partners to pay the 2021 fees in effect at the time of its application.

### ARGUMENT

21. The PWSA hereby incorporates the preceding paragraphs of these Preliminary Objections as if the same were set forth at length herein.

**A. STANDARD**

22. For purposes of disposing of preliminary objections, the PUC must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. *William and Joan Gruver v. Pennsylvania Electric Company*, Docket No. C-2021-3025700 (August 17, 2021) (citing *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988)).

23. The PUC should dismiss the Complaints if it appears that Office Partners would not be entitled to relief under any circumstances as a matter of law. *Id.*

**B. PRELIMINARY OBJECTION IN THE NATURE OF DEMURRER**

24. In cases involving the interpretation of a statute, courts are “guided by the provisions of the Statutory Construction Act, 1 Pa.C.S. § 1901 *et seq.*” as follows:

Under the Statutory Construction Act, the object of all statutory construction is to ascertain and effectuate the General Assembly’s intention. *See* 1 Pa.C.S. § 1921(a) (“The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly”); *Hannaberry HVAC v. Workers' Compensation Appeal Bd. (Snyder, Jr.)*, 575 Pa. 66, 834 A.2d 524, 531 (2003). ***Generally speaking, the best indication of legislative intent is the plain language of a statute.*** *Commonwealth v. Gilmour Manufacturing Co.*, 573 Pa. 143, 822 A.2d 676, 679 (2003) (citations omitted). ... The Act further provides that, “[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921(b); *see also Scheipe v. Orlando*, 559 Pa. 112, 739 A.2d 475, 478 (1999).

*Sternlicht v. Sternlicht*, 583 Pa. 149, 876 A.2d 904, 909 (Pa. 2005) (emphasis added).

25. In fact, under Section 1921(c) of the Statutory Construction Act, it is only when the words of a statute “are not explicit” that a court may resort to other considerations in order to ascertain legislative intent. *Id.*

26. As further set forth by the Pennsylvania Supreme Court: “Where the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words.” *Id.*

27. Thus, 53 Pa.C.S.A. § 5607(d)(24) must be interpreted pursuant to its plain language in accordance with the foregoing rules of statutory interpretation.

28. Per the express language of 53 Pa.C.S.A. § 5607(d)(24), fees are payable *at the time of application*, and fees are determined based upon the duly adopted fee schedule which is in effect at the time of payment, *i.e.*, the time of application. *See also* PWSA Tariff (effective January 14, 2021) (“A Main Extension Applicant shall pay enumerated fees to the Authority. Fees shall be based upon the duly adopted fee schedule which is in effect at the time of payment and shall be payable at the time of application for connection or at a time to which the property owner and the Authority agree.”).<sup>5</sup>

29. When accepting as true all well pleaded material facts in Office Partners’ Complaints, as well as every reasonable inference from those facts, and viewing the Complaints in this case in the light most favorable to Office Partners, it is clear that Office Partners is not entitled to the relief it seeks from the PUC under any circumstances as a matter of law.

30. Office Partners’ claims are legally insufficient because Office Partners expressly pleads that it applied for a permit with the PWSA on May 11, 2021, and it is undisputed that the subject permit was ultimately approved during 2021. (Complaints, ¶¶ 6, 8, Exhibit C).

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<sup>5</sup> A copy of the Tariff is publicly available at: <https://www.pgh2o.com/sites/default/files/2021-01/TARIFF%20-%20WASTEWATER%20-%20THROUGH%20SUPP%20NO.%205%20RATE%20CASE%202020%20-%20EFF%201.14.21%20%28L0980323xA35AE%29.pdf>.

31. Thus, the applicable fees must be determined pursuant to the date Office Partners applied for its permit, and, as such, the controlling fees are the 2021 fees.

32. Officer Partners submitted an application for a tap-in permit in 2021; that application was considered and negotiated throughout 2021; and that application was ultimately approved and invoiced in 2021.

33. The 2021 application was only “withdrawn” by Office Partners in 2022 in an attempt to secure a lower rate through the re-submission of an application that was fundamentally the same as its initial 2021 application.

34. Office Partners cannot rely on its purported withdrawal to shirk its statutory obligations to pay the 2021 fees.

35. Noticeably, Office Partners’ Complaints do not point to any procedural mechanism which permits Office Partners to withdraw an already-approved application with the PWSA, nor could they, because there is no such procedure.

36. Even more specifically, Office Partners’ Complaints are devoid of any allegation or point of law supporting its ability to withdraw a prior *approved* application, only to resubmit the application soon thereafter, in an attempt to obtain a more favorable rate.

37. Moreover, Office Partners’ actions ignore the deleterious result to the public that would result from depriving the PWSA and its ratepayers of the amounts that are due under the 2021 fee structure in place when Office Partners applied for the subject permit.

38. The PWSA is upholding its obligations to its ratepayers by requiring Office Partners to pay the 2021 fees assessed, as the PWSA uniformly has done with other applicants whose application processes were conducted entirely within a single tariff rate/structure.

WHEREFORE, the PWSA respectfully requests that the PUC: (1) grant the PWSA's Preliminary Objections, upon a finding that Office Partners is not permitted to withdraw an approved application for the purpose of securing a more favorable rate; (2) declare that the 2021 Tariff rates apply to Office Partners' permit; (3) declare that the amount as set forth in Exhibit "C" to the Complaints, totaling \$508,314.79, is immediately due and owing to the PWSA by Office Partners; and (4) and dismiss Office Partners' Complaints against the PWSA with prejudice.

C. **(IN THE ALTERNATIVE) PRELIMINARY OBJECTION IN THE NATURE OF DEMURRER**

39. It is well settled that the PUC may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. Pub. Util. Comm'n.*, 43 A.2d 348 (Pa. Super. Ct. 1945).

40. As a creation of the legislature, the PUC possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, *et seq.*

41. The PUC's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977).

42. The statutory array of PUC remedial and enforcement powers does not include the power to "order the return of funds" which are presently subject to the jurisdiction of the Allegheny Court of Common Pleas.

43. As such, when accepting as true all well pleaded material facts in Office Partners' Complaints, as well as every reasonable inference from those facts, and viewing the Complaints in this case in the light most favorable to Office Partners, it is clear that Office Partners is not entitled to the relief it seeks from the PUC to interfere with the jurisdiction of the Allegheny County Court of Common Pleas over the bond under any circumstances as a matter of law.

44. As a result, such a request is improper as part of these proceedings.

WHEREFORE, the PWSA respectfully requests that the PUC grant the PWSA's Preliminary Objections and strike from Office Partners' Complaints against the PWSA the requested relief to "order the return [*sic*] all funds held in Court in excess of the amount due under the rate schedule" with prejudice.

Dated: July 14, 2022

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **RESPONDENT THE PITTSBURGH WATER AND SEWER AUTHORITY'S PRELIMINARY OBJECTIONS TO COMPLAINANT'S COMPLAINTS** was served electronically via the Commission's electronic filing system, as well as by courtesy copy via electronic mail, this 14th day of July, 2022, upon the following:

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*/s/ Ashley L. Buck* \_\_\_\_\_  
Ashley L. Buck