

**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.)	

**RESPONDENT THE PITTSBURGH WATER AND SEWER AUTHORITY'S
MOTION TO CONSOLIDATE ACTIONS**

AND NOW comes Respondent, The Pittsburgh Water and Sewer Authority (the "PWSA"), by and through its undersigned counsel, pursuant to 52 Pa. Code § 5.81, and files the following Motion to Consolidate the Actions filed by Complainant, Office Partners XXIII Block G1, LLC's ("Office Partners"), as follows:¹

1. On or about February 25, 2022, Office Partners instituted a civil action in the Allegheny County Court of Common Pleas at G.D. 22-002217 (the "State Court Action").
2. Pursuant to a Consent Order negotiated by Office Partners and the PWSA in the State Court Action, *inter alia*, the Allegheny County Court 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 the instant proceedings; or (2) further order of the Allegheny County Court of Common Pleas.

¹ The Complaints were not actually served on the PWSA until June 24, 2022.

3. Additionally, the Consent Order required Office Partners to, *inter alia*, initiate an action before the Public Utility Commission (“Commission”) within sixty (60) days of the date of the Consent Order.

4. On or about June 17, 2022, Office Partners filed two identical formal Complaints in Docket Numbers C-2022-3033251 and C-2022-3033266 (collectively, the “Actions”).

5. The Actions are identical with the exception of the fact that they were assigned two different docket numbers pursuant to “utility type” – water (municipal) and wastewater.

6. The Actions involve, in short, a fee dispute over tap-in fees relating to Office Partners’ new construction.

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

8. 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.”).

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

10. On December 23, 2021, the PWSA accepted Office Partners’ application, identifying the fees due and owing as \$508,314.79. (Complaints, ¶ 8, Exhibit C.)

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

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

13. 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.

14. 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.

15. In its Complaints, Office Partners asks the Commission 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.

16. The PWSA conversely argues that Office Partners is not permitted to “withdraw” an already-approved application and submit “new” tap-in plans for the sole or primary purpose of obtaining purportedly more favorable rates; therefore, the 2021 fees assessed to the 2021 application and approval are due and owing.

17. In fact, 53 Pa.C.S.A. § 5607(d)(24) 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.)

18. 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.”).

19. The PWSA moves to consolidate the Actions pursuant to 52 Pa. Code § 5.81 in light of the identical questions of law and fact in the Actions – namely, whether the 2021 or 2022 rate structure applies to Office Partners’ 2021 application.

20. Both the language of 52 Pa. Code § 5.81 and Commission decisions applying it make clear that consolidation is contemplated at the start of a proceeding in order to reduce the time and costs otherwise associated with litigating common issues across proceedings. *See, e.g., Pennsylvania Pub. Util. Comm'n*, 236 P.U.R.4th 218 (Aug. 5, 2004) (noting that a rate case and petition proceeding were consolidated at the prehearing conference on the petition when the petition case sought recovery of deferred amounts in future base rate proceedings).

21. Consolidation in the Actions will preserve judicial and party resources and limit the time and money spent on discovery, the need for multiple rounds of duplicative testimony, the number of separate evidentiary hearings and associated expenses, and the number and length of filings.

22. Most importantly, consolidation of the Actions will ensure that there are no inconsistencies in decisions made in matters where the Complaints are plainly identical.

WHEREFORE, the PWSA respectfully demands that the actions at Docket Numbers C-2022-3033251 and C-2022-3033266 be consolidated.

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 MOTION TO CONSOLIDATE ACTIONS** 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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