

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

OFFICE PARTNERS XXIII BLOCK GI LLC,
3033251

Docket Nos. C-2022-

Complainant,

C-2022-3033266

Vs.

THE PITTSBURGH WATER AND SEWER
AUTHORITY,

Respondent,

COMPLAINANT'S REPLY TO RESPONDENT'S NEW MATTER

29. Office Partners incorporates by reference Paragraphs 1 through 28 of the Complaint along with its response to PWSA's Preliminary Objections.

Importantly, this New Matter is nothing more than a reiteration of the Preliminary Objections filed by PWSA. As such, they should be denied.

30. Paragraph 30 constitutes a legal conclusion and no response is required. To the extent a response is required, it is denied. Further, this defense must be raised via preliminary objections and is improper in a New Matter and should not be considered or should otherwise be stricken.

31. Admitted in part and denied in part. Office Partners is developing the FNB Financial Center. The Property at issue is not entirely commercial and is not entirely owned by Office Partners.

32. Admitted in part. It is admitted that Office Partners required approval of an application to connect. The balance of this averment constitutes a legal conclusion and no response

is required. To the extent a response is required, it is denied as the statute shall speak for itself. Further, response to Paragraphs 35 and 44 of this New Matter are incorporated herein.

33. Paragraph 33 constitutes a legal conclusion and no response is required. To the extent a response is required, it is denied.

34. Paragraph 34 constitutes a legal conclusion and no response is required.

35. Paragraph 35 is a legal conclusion and no response is required. To the extent a response is required it is denied. The cited statute, 53 Pa.C.S.A. § 5607(d)(24) states as follows:

“To charge enumerated fees to property owners who desire to or are required to connect to the authority’s sewer or water system. 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.”

Taking PWSA’s interpretation on its face, this objection must be dismissed. Office Partners pled the 2021 application was withdrawn and thus, we are dealing only with the 2022 Application. The 2022 fees are applicable pursuant to the schedule (using either the application or payment dates pursuant to the statute). Moreover, the Complaint and Answer make clear that the fee was not paid. If PWSA’s position is correct, then PWSA has already been paid as the application was made in 2021. It is thus, obvious, that PWSA did not require payment until the permit was actually issued and no permit was ever issued; thus, no payment ever became due.¹

It is apparently PWSA’s position that Office Partners cannot withdraw the 2021 Application. This is non-sensical. The PWSA Developer’s Manual states that permits are only issued upon payment, and any permit will expire and become invalid if not paid within 6 months. (Exhibit A, P. 4). The PWSA is apparently contending that it can void a permit, prior to issuance,

¹ Office Partners was issued the permit upon agreement regarding this action, as pled. However, the fee upon issuance would have been the 2022 fee, thus, as stated herein, the fee is the 2022 fee regardless.

for failure of payment. But, an applicant cannot withdraw or void a permit. There is no legal authority for this.

The 2022 Application is separate from the 2021 Application. At the time of payment, Office Partners tendered the then applicable fees. PWSA refused to accept payment and issue the permit unless the 2021 fees were paid. PWSA is violating the very statute it cites for its authority.

Even if the PUC were to consider only the 2021 Application (which it should not), the 2022 fee schedule would still apply. PWSA only issues an approve permit upon payment. 53 Pa.C.S.A. § 5607(d)(24) requires the fee to be calculated pursuant to the fee schedule in effect at the time of payment. In accordance with this, the PWSA Developer's Manual specifically states that a permit is issued only upon payment. (Exhibit A, P. 4).

The PWSA has argued the plain language rule. However, in this allegation (paragraph 35) PWSA adds "i.e. the time of application" to its quoted language in 53 Pa.C.S.A. § 5607. The statute does not say this and it is inappropriate to include it. The statute is clear that the fee is to be determined upon the fee schedule in effect at the time of payment. PWSA is bound to only charge those fees applicable when it accepts payment. (Exhibit A, P. 4). Furthermore, PWSA has opted to allow applicants 6 months from the time of permit approval, to pay for the permit (and would charge more if fees were increased as they historically had). Thus, PWSA is doubly bound as it is their policy.

Here, payment was tendered at the time the 2022 fee schedule was in effect. Thus, that fee should apply. Any attempt to somehow charge the 2021 Fees for either the 2021 or 2022 Applications would violate the specific language of 53 Pa.C.S.A. § 5607(d)(24).

Previously, the PWSA would have charged the tap in fees at the time payment was tendered, because tap in fees always increased until it was determined that this was impermissible

and changed pursuant to PUC order. Thus, the 2022 fees are reduced to nothing because usage fees have been substantially increased. The Project will be subject to the increased usage fees for its life. Regardless of the decision of the PUC in this case.

PWSA is attempting to double dip. It is attempting to subject Office Partners to the 2021 tap in fees as well as the increased usage fees. PWSA is accusing Office Partners of withdrawing the 2021 Application to save money, in fact it is the opposite, PWSA is attempting to impose the 2021 fees to profit, which is impermissible.

36. Denied. The Manual shall speak for itself and must be read as a whole. To the extent a response is required, applicable fees are those pled by Office Partners.

37. Denied. The applicable rate is the 2022 rate pled in the Complaint.

38. Paragraph 37 constitutes a conclusion of law and no response is required. TO the extent a response is required it is denied and response to Paragraph 35 is incorporated herein.

39. The document referred to shall speak for itself. TO the extent a response is required, it is denied. While PWSA may calculate the fees, it must be based upon the statutes to which the PWSA is bound, here, PWSA is attempting to double dip.

40. The document referred to shall speak for itself. TO the extent a response is required, it is denied. Fees are calculated for the amount of the fee schedule upon the date of payment.

41. Admitted.

42. Denied. No permit is issued until payment is made. Thus, no permit was issued. Further, no payment was made upon that date. Response to Paragraph 35 is incorporated herein.

43. Denied. Office Partners did in fact withdraw its 2021 Application.

44. Denied. It was a new application, Office Partners withdrew the 2021 Application and filed new, separate applications for each of the parcels contained in the 2021 Application (G1 and G4 Parcels) due to the separate ownership. In addition, sewer flows were removed from the G4 Application due to issues raised by the Pennsylvania Department of Environmental Protection. Office Partners paid PWSA for expedited review of the applications. Changes were then made pursuant to PWSA requests which were then approved.

45. Denied. Office Partners did withdraw its 2021 Permit. Responses to Paragraphs 35 and 44 are incorporated herein.

46. Denied. Responses to Paragraphs 35 and 44 are incorporated herein.

47. Denied. Responses to Paragraphs 35 and 44 are incorporated herein. Further, PWSA is attempting to double dip by charging an unlawful fee to Office Partners. PWSA has a duty to follow the law and must do so.

48. Denied. Responses to Paragraphs 35 and 44 are incorporated herein.

49. Denied. Responses to Paragraphs 35 and 44 are incorporated herein.

50. Denied. Responses to Paragraphs 35 and 44 are incorporated herein.

51. Denied. Responses to Paragraphs 35 and 44 are incorporated herein. Under either scenario, the 2022 fees would apply.

52. Denied. Responses to Paragraphs 35 and 44 are incorporated herein. Further, PWSA has not identified any procedure where it can deny a withdrawal. PWSA is attempting to cast the 2022 Application as the same as the 2021 Application, it is not, it is a new application.

53. Denied. Responses to Paragraphs 35 and 44 are incorporated herein.

54. Denied. Responses to Paragraphs 35 and 44 are incorporated herein. Further, PWSA is attempting to double dip, Office Partners will be responsible to pay for the increased

usage fees for the lifetime of the project, PWSA is attempting to also reap an additional payment to which it is not entitled.

55. Denied. Responses to Paragraphs 35 and 44 are incorporated herein. That PWSA is uniformly overcharging applicants is of no consequence to this action.

56. denied. Responses to Paragraphs 35 and 44 are incorporated herein. Further, that PWSA acted reasonably (which it did not) does not equate to whether PWSA acted properly and legally, which it did not.

57. Denied. Responses to Paragraphs 35 and 44 are incorporated herein.

WHEREFORE, Office Partners respectfully requests this tribunal dismiss PWSA's New Matter and grant the relief sought in Office Partners' Complaint.

Respectfully submitted,

MAURICE A. NERNBERG & ASSOCIATES

Date: 8/1/22

By 

David M. Nernberg
Pa.I.D. No. 205631


*Counsel for Complainant, Office Partners
XXIII Block G1 LLC*

VERIFICATION

I, Boris Kaplan, hereby verify that the statements made in this **Reply to New Matter** are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date:

07/20/2022



Boris Kaplan, Authorized Signatory of
Office Partners XXIII Block G1 LLC

CERTIFICATE OF SERVICE

I, David M. Nernberg, hereby certify that a true and correct copy of the within
COMPLAINANT'S REPLY TO RESPONDENT'S NEW MATTER was served via email upon
following:

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David M. Nernberg