**Before the**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Office Partners XXIII Block G1, LLC : C-2022-3033251 (water)

: C-2022-3033266 (wastewater)

v. :

:

Pittsburgh Water and Sewer Authority :

**INTERIM ORDER**

**CONSOLIDATING COMPLAINTS, DENYING**

**PWSA’S PRELIMINARY OBJECTION, AND CONVERTING**

**HEARING TO PREHEARING CONFERENCE**

On June 17, 2022, Office Partners XIII Block G1, LLC (Complainant or Office Partners) filed two Formal Complaints (Complaints) against Pittsburgh Water and Sewer Authority (Respondent, Company, or PWSA), alleging PWSA was charging incorrect permit fees for Complainant’s new commercial property development. The Complaints are identical and were assigned two different docket numbers pursuant to “utility type” – water (municipal) and wastewater.

Office Partners avers it submitted an application to tap into PWSA infrastructure on May 11, 2021. Office Partners avers it communicated with PWSA regarding the plan submission between August 2021 and December 21, 2021. On December 23, 2021, PWSA, by letter accepted the tap in plans but informed Complainant the permit would not be considered approved until the permit fees were paid. The fees were $508,314.79. On January 31, 2022, Office Partners alleges it withdrew the 2021 Permit Application and made no payment toward the permit fees.

Office Partners alleges it submitted new tap-in plans to PWSA on February 4, 2022, and maintains these plans were part of an application separate and distinct from that submitted in 2021. Office Partners argues it submitted revised tap-in plans on February 22, 2022, to address verbal comments made by PWSA. Complainant avers PWSA approved the revised plans on February 22, 2022. Office Partners maintains it again submitted revised plans to address final comments made by PWSA on February 23, 2022. Office Partners avers PWSA approved these plans but verbally advised the permit would not be issued until Office Partners made payment for the permit. Complainant argues PWSA, although approving its new application in 2022, is still demanding fees calculated using the fee schedule in effect at the time of its original application in 2021. Office Partners maintains the fees should be calculated using the fee schedule in effect at the time PWSA approved its 2022 plans, which total $2,590.

In its Answer, PWSA agrees Office Partners filed an application on May 11, 2021, and avers that PWSA approved that application on December 23, 2021, identifying the fees owed as $508,314.79. PWSA expressly denies it told Complainant that its application would not be considered “approved” until the fees were paid. PWSA avers it stated: “The fees have been calculated and are attached for your reference. Permits are not considered ***issued*** until permits fees are paid.”[[1]](#footnote-1)

PWSA alleges once Complainant learned 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 and resubmit its application at a time when the fees were supposedly more favorable to it. PWSA denies it permitted Office Partners to withdraw its “already-approved” application or that such attempted withdrawal has the legal or factual effect of exempting such application from the rates applicable to such application when actually presented, considered, and approved. PWSA maintains it approved Complainant’s application on December 21, 2021, and identified the fees owing as $508,314.79. PWSA argues Office Partners is not permitted to withdraw an already-approved application, and any purported revisions were to the already-approved 2021 tap-in plans.

In its New Matter and Preliminary Objection, PWSA argues Office Partners is not entitled to any relief as a matter of law. PWSA argues, and Office Partners agrees, the controlling statute is 53 Pa. C.S. § 5607(d)(24), which reads, 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.” The parties advance different interpretations of this statute in their filings.

On July 14, 2022, PWSA filed a Motion to consolidate the above-captioned Complaints.

On July 22, 2022, Office Partners filed an answer to the Preliminary Objection, essentially restating the arguments in its Complaint.

On August 1, 2022, Office Partners filed a reply to PWSA’s New Matter.

On August 9, 2022, the Commission issued a Hearing Notice, scheduling an evidentiary hearing for September 22, 2022. On September 11, 2022, I issued a Prehearing Order.

Discussion

This case is essentially a dispute over the fees owed by Office Partners.

The grounds for preliminary objections are limited. Section 5.101(a)(1), provides that preliminary objections may be granted where the Commission lacks jurisdiction to resolve a dispute.[[2]](#footnote-2)

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.[[3]](#footnote-3) In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.[[4]](#footnote-4) Any doubt must be resolved in favor of the non‑moving party by refusing to sustain the preliminary objections.[[5]](#footnote-5) All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections.[[6]](#footnote-6) Only those facts specifically admitted may be considered against the non-moving party.[[7]](#footnote-7) A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.[[8]](#footnote-8)

As a Preliminary matter, I note that although both parties identify 53 Pa. C.S. § 5607(d)(24) as controlling, I have concerns about the Commission’s jurisdiction to interpret this statute. Therefore, for the purposes of this analysis, I am viewing the Complaint in context of PWSA’s tariff. PWSA’s tariff Section G(1) provides, “A Line Extension Applicant shall pay all applicable fees set forth in Part I, Section H *at the time of application* for connection or at a time to which the property owner and the Authority agree,”[[9]](#footnote-9) and then includes a citation to 53 Pa.C.S. § 5607(d)(24).

Office Partners avers it submitted an initial application in 2021, and that PWSA advised the permit would not be considered approved until the tap-in fees, which totaled $508,314.79, were paid. Office Partners avers it subsequently withdrew the initial application and submitted a separate and distinct application in 2022, which PWSA ultimately approved.

The Complainant raises multiple factual and legal disputes its Complaint. For example, (and I note this is not an exhaustive list): (1) Was Office Partners permitted to withdraw its 2021 application? (2) If so, up until what point was it permitted to do so? (3) Did Office Partners effectively withdraw its initial application? (4) Did Office Partners submit a new, separate and distinct application in 2022 or did it simply submit revisions to the initial application?

Office Partners avers sufficient facts in its Complaint such that PWSA’s Preliminary Objection must be denied.

Office Partners did not file an objection to PWSA’s Motion to Consolidate, so that Motion will be granted.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection of Pittsburgh Water and Sewer Authority is denied.

2. That Pittsburgh Water and Sewer Authority’s Motion to Consolidate is granted, such that Docket Numbers C-2022-3033251 and C-2022-3033266 shall be consolidated under Docket Number C-2022-3033251.

3. That the Evidentiary Hearing scheduled for September 22, 2022, shall be converted into and convened as a prehearing conference.

Date: August 23, 2022 /s/

Emily I. DeVoe

Administrative Law Judge

**C-2022-3033251 & C-2022-3033266 - OFFICE PARTNERS XXIII BLOCK G1 LLC v. PITTSBURGH WATER AND SEWER AUTHORITY**BORIS KAPLANOFFICE PARTNERS XXIII BLOCK G1 LLC1000 NORTH WEST STREET SUITE 900WILMINGTON DE 19801**610.202.8606**bkaplan@bpgroup.netAccepts eService

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1. *See* PWSA Answer filed July 14, 2022 at 3 (emphasis in original). [↑](#footnote-ref-1)
2. 52 Pa.Code § 5.101(a)(1). [↑](#footnote-ref-2)
3. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). [↑](#footnote-ref-3)
4. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm’n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). [↑](#footnote-ref-4)
5. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). [↑](#footnote-ref-5)
6. *County of Allegheny v. Commw. of Pa*., 490 A.2d 402 (Pa. 1985); Pennsylvania *State Lodge, Fraternal Order of Police v. Dept. of Conservation and Natural Resources*, 909 A.2d 413 (Pa.Cmwlth. 2006*), aff’d per curium,* 924 A.2d 1203 (Pa. 2007). [↑](#footnote-ref-6)
7. *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997). [↑](#footnote-ref-7)
8. *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Application of K&F Medical Transport, LLC*, Docket No. A-2008-2020353 (Final Order July 8, 2008).

   [↑](#footnote-ref-8)
9. (emphasis added). [↑](#footnote-ref-9)