

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

3213 PENN, LLC,)	
)	
Complainant,)	
)	
v.)	Docket No. C-2023-3038775
)	
THE PITTSBURGH WATER AND SEWER)	
AUTHORITY,)	
)	
Respondent.)	

COMPLAINANT 3213 PENN, LLC’S MOTION TO EXTEND ITS DEADLINE IN WHICH TO ANSWER NEW MATTER OF RESPONDENT THE PITTSBURGH WATER AND SEWER AUTHORITY

AND NOW comes the Complainant, 3213 Penn, LLC (“3213 Penn”) and asks the Commission to extend the period in which it is to answer the New Matter that Respondent The Pittsburgh Water and Sewer Authority (“PWSA”) has filed in this proceeding and, in support, states as follows:

1. 3213 Penn seeks this extension because it has asked PWSA to amend its New Matter and, while PWSA has neither granted nor denied that request, it has agreed that the period for response should be extended while that request is pending.
2. PWSA has consented to an extension of this deadline.
3. PWSA filed its Answer and New Matter on April 13, 2022.
4. Pursuant to this Commission’s Rules, an answer to PWSA’s new matter is due on or before May 3, 2023.
5. 3213 Penn has asked PWSA to amend its New Matter.
6. By asking PWSA to amend its New Matter, 3213 Penn hoped to avoid preliminary objections practice before this Commission pursuant to 52 Pa. Code § 5.101.

7. PWSA has consented to an extension of this answer deadline while it considers the request of 3213 Penn.

8. A copy of the email exchange between counsel for 3213 Penn and PWSA, redacted to remove the substance of the request to amend, is attached to this motion as Exhibit A.

9. 3213 Penn requests that this Court extend this deadline to May 15, 2023, which is the first business day that is more than ten days after the current deadline. 3213 Penn is optimistic that this new deadline will allow it to consider PWSA's response and to prepare and file with this Commission the appropriate pleading.

WHEREFORE 3213 Penn respectfully requests that this Commission grant this deadline and extend the deadline for its Answer to New Matter to May 15, 2023

Dated: May 3, 2023

BERNSTEIN-BURKLEY, P.C.

By: /s/Stuart C. Gaul, Jr.

Stuart C. Gaul, Jr., Esquire

PA ID #74529

D. McArdle Booker, Esquire

PA ID #320890

601 Grant Street, 9th Floor

Pittsburgh, PA 15219

Telephone: 412-456-8100

Facsimile: 412-456-8135

Email: sgaul@bernsteinlaw.com

mbooker@bernsteinlaw.com

*Counsel for Complainant, 3213
Penn, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May, 2023, a true and correct copy of the foregoing COMPLAINANT 3213 PENN, LLC'S MOTION TO EXTEND ITS DEADLINE IN WHICH TO ANSWER NEW MATTER OF RESPONDENT THE PITTSBURGH WATER AND SEWER AUTHORITY was served electronically via the Commission's electronic filing system as follows:

Samuel A. Hornak, Esquire
Ashley L. Buck, Esquire
CLARK HILL PLC
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425

Counsel for Respondent, The Pittsburgh Water and Sewer Authority

/s/ Stuart C. Gaul, Jr.

Stuart C. Gaul, Jr., Esquire

Stuart C. Gaul, Jr.

From: Hornak, Samuel A. <shornak@clarkhill.com>
Sent: Monday, May 1, 2023 10:17 AM
To: Stuart C. Gaul, Jr.; Buck, Ashley L.
Cc: Mac Booker
Subject: RE: 3213 Penn, LLC v. PWSA

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Stu,

We are confirming with our client on how to proceed, but please consider an extension granted as we sort it out.

Sam

Samuel A. Hornak

Attorney at Law

Clark Hill

One Oxford Centre, 301 Grant Street, 14th floor, Pittsburgh, PA 15219

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shornak@clarkhill.com | www.clarkhill.com

From: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Sent: Friday, April 28, 2023 10:00 AM
To: Hornak, Samuel A. <shornak@clarkhill.com>; Buck, Ashley L. <abuck@clarkhill.com>
Cc: Mac Booker <mbooker@bernsteinlaw.com>
Subject: RE: 3213 Penn, LLC v. PWSA

[External Message]

Sam and Ashley,

Following up on this. Sorry to be a pest, but our current deadline is Wednesday.

Thanks,
Stu

Stuart C. Gaul, Jr., Esq.



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sgaul@bernsteinlaw.com | P: 412.456.8139 | F: 412.456.8135



EXHIBIT A

From: Mac Booker <mbooker@bernsteinlaw.com>
Sent: Thursday, April 27, 2023 10:17 AM
To: Hornak, Samuel A. <shornak@clarkhill.com>; Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Cc: Buck, Ashley L. <abuck@clarkhill.com>
Subject: RE: 3213 Penn, LLC v. PWSA

Sam,

We have been reviewing PWSA's New Matter, as well as the PUC procedural rules.

[REDACTED]

[REDACTED]

Would you please let me know if PWSA is willing to file an amended New Matter with the PUC [REDACTED] [REDACTED]?

Thanks,

Mac

Mac Booker, Esq.



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mbooker@bernsteinlaw.com | P: 412-456-8122 | F: 412-456-8135



From: Hornak, Samuel A. <shornak@clarkhill.com>
Sent: Thursday, April 13, 2023 4:14 PM
To: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Cc: Mac Booker <mbooker@bernsteinlaw.com>; Buck, Ashley L. <abuck@clarkhill.com>
Subject: RE: 3213 Penn, LLC v. PWSA

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Stu and Mac,

Please see attached for the PWSA's Answer and New Matter in this case, which was filed with the PUC today.

Sam

Samuel A. Hornak

Attorney at Law

Clark Hill

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From: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>

Sent: Thursday, March 23, 2023 3:42 PM

To: Hornak, Samuel A. <shornak@clarkhill.com>

Cc: Mac Booker <mbooker@bernsteinlaw.com>; Cerrone, Danny P. <dcerrone@clarkhill.com>; Buck, Ashley L. <abuck@clarkhill.com>

Subject: RE: 3213 Penn, LLC v. PWSA

[External Message]

Sam,

This is what we expect to file – probably this afternoon, but, regardless of when, essentially unchanged.

Stuart

Stuart C. Gaul, Jr., Esq.



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From: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>

Sent: Wednesday, March 22, 2023 5:32 PM

To: Hornak, Samuel A. <shornak@clarkhill.com>

Cc: Mac Booker <mbooker@bernsteinlaw.com>; Cerrone, Danny P. <dcerrone@clarkhill.com>; Buck, Ashley L. <abuck@clarkhill.com>

Subject: RE: 3213 Penn, LLC v. PWSA

Sam,

Client rep has this because of the verification requirement. Unless there's an objection from him, we'll get this filed as soon as we can and will try to get a version with numbers to you as soon as we have one.

Stu

Stuart C. Gaul, Jr., Esq.



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From: Hornak, Samuel A. <shornak@clarkhill.com>

Sent: Wednesday, March 22, 2023 11:41 AM

To: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>

Cc: Mac Booker <mbooker@bernsteinlaw.com>; Cerrone, Danny P. <dcerrone@clarkhill.com>; Buck, Ashley L. <abuck@clarkhill.com>

Subject: RE: 3213 Penn, LLC v. PWSA

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Stu,

Just confirming our call of yesterday where you confirmed that 3213 Penn, LLC is going to amend the Complaint pending before the PUC to comply with 52 Pa. Code § 1.31. We just wanted to confirm since there is a fast approaching responsive pleading deadline.

Sam

Samuel A. Hornak

Attorney at Law

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From: Hornak, Samuel A.

Sent: Monday, March 20, 2023 12:54 PM

To: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>

Cc: Mac Booker <mbooker@bernsteinlaw.com>; Cerrone, Danny P. <dcerrone@clarkhill.com>; Buck, Ashley L. <abuck@clarkhill.com>

Subject: RE: 3213 Penn, LLC v. PWSA

Stu,

Checking in on this to see whether 3213 Penn is able to amend its Complaint along these lines.

Sam

Samuel A. Hornak

Attorney at Law

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From: Hornak, Samuel A.

Sent: Thursday, March 16, 2023 3:33 PM

To: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>

Cc: Mac Booker <mbooker@bernsteinlaw.com>; Cerrone, Danny P. <dcerrone@clarkhill.com>; Buck, Ashley L. <abuck@clarkhill.com>

Subject: RE: 3213 Penn, LLC v. PWSA

Stu,

We are preparing a response to the Complaint filed before the PUC, and we note that it is not written in paragraph-by-paragraph format. There is a companion to Pa. R. Civ. P. 1022 which requires the Complaint to be drafted in individual paragraphs:

52 Pa. Code § 1.31

(a) *Form.* Pleadings must be divided into numbered paragraphs.

We are not looking to stand on form over substance here. Compiling a response is difficult without characterizing or quoting the Complaint verbatim, and runs the risk that the parties will not have identified the precise issues in dispute.

Please let us know if 3213 Penn is willing to file an Amended Complaint with the PUC.

Sam

Samuel A. Hornak

Attorney at Law

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shornak@clarkhill.com | www.clarkhill.com

From: Hornak, Samuel A. <shornak@clarkhill.com>

Sent: Wednesday, March 15, 2023 12:51 PM

To: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>

Cc: Mac Booker <mbooker@bernsteinlaw.com>; Cerrone, Danny P. <dcerrone@clarkhill.com>; Buck, Ashley L. <abuck@clarkhill.com>

Subject: RE: 3213 Penn, LLC v. PWSA

Stu,

Please see attached for the Acceptance of Service. Please let me know if you think it makes sense for us to have a call to discuss the case posture and next steps.

Sam

Samuel A. Hornak

Attorney at Law

Clark Hill

One Oxford Centre, 301 Grant Street, 14th floor, Pittsburgh, PA 15219

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shornak@clarkhill.com | www.clarkhill.com

From: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>

Sent: Monday, March 13, 2023 9:42 AM

To: Hornak, Samuel A. <shornak@clarkhill.com>

Cc: Mac Booker <mbooker@bernsteinlaw.com>; Cerrone, Danny P. <dcerrone@clarkhill.com>; Buck, Ashley L. <abuck@clarkhill.com>

Subject: RE: 3213 Penn, LLC v. PWSA

[External Message]

Sam,

Checking in on the Acceptance of Service. Please let us know by COB on Wednesday.

Thanks,
Stu

Stuart C. Gaul, Jr., Esq.



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From: Stuart C. Gaul, Jr.

Sent: Tuesday, March 7, 2023 4:14 PM

To: 'shornak@clarkhill.com' <shornak@clarkhill.com>

Cc: Mac Booker <mbooker@bernsteinlaw.com>; 'dcerrone@clarkhill.com' <dcerrone@clarkhill.com>; 'abuck@clarkhill.com' <abuck@clarkhill.com>

Subject: 3213 Penn, LLC v. PWSA

Sam,

Per your request in your February 9 email to Mac Booker of this firm, I am attaching the complaint that we filed with the PUC today on behalf of 3213 Penn, LLC. The PUC advises that it has docketed this complaint at C-2023-3038775.

I am also enclosing copies of the praecipe for writ of summons that we filed yesterday with the Department of Court Records and the writ of summons that the Department issued today at G.D. No. 23-003075. I am also enclosing an acceptance of service form. I ask that you or another agent of the PWSA execute the acceptance form and return it to us for filing.

Thank you for your attention. Of course, please let Mac or me know if you have any questions.

Stuart