**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**

**HOLDING MOTIONS FOR SUMMARY JUDGMENT IN ABEYANCE**

**PENDING THE FILING OF STATUS REPORTS**

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.

PWSA filed an Answer and Preliminary Objections on July 14, 2023. 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.

On August 23, 2023, I issued an Interim Oder consolidating the Complaints, denying PWSA’s Preliminary Objection, and converting the September 11, 2022, hearing to a prehearing conference.

The prehearing conference convened as scheduled on September 11, 2022. David Nernberg, Esq., appeared on behalf of Office Partners, and Samuel Hornak, Esq, appeared on behalf of PWSA. Counsel agreed to provide a proposed litigation schedule to me by Friday, September 23, 2022. Counsel did so, and, on September 27, 2022, I issued an Interim Order adopting their proposal, and setting a deadline for a status report.

Upon agreement of the parties, the litigation schedule was twice amended by Interim Orders issued on January 9, 2023, and March 20, 2023.

The March 20, 2023, Interim Order called for dispositive motions to be filed by May 26, 2023, responses to dispositive motions be filed by June 23, 2023, and a status report to be filed by June 30, 2023.

On May 26, 2023, each party filed a Motion for Summary Judgment. As the parties prepare their responses to the motions and their status report(s), I wanted to advise them that **I cannot issue a decision in this matter without making findings of fact or having an evidentiary record from which to cite**. If the parties believe that there are no disputes of fact, they may prepare a stipulation of facts that may be adopted by me upon a joint motion. Similarly, the parties may stipulate to have certain documents admitted into the record, which may also be adopted upon a joint motion.

In their status reports I expect the parties to state their position on whether a stipulation of facts and/or evidence to be admitted is possible in this matter. Without a stipulation of facts and evidence to be admitted, we will need to convene an evidentiary hearing.

If the parties agree to prepare a stipulation of facts and stipulate to a list of evidence to be admitted, they must propose in their status report(s) a deadline for the filing of these stipulations/joint motions.

If the parties would like to have a conference to discuss this issue, or if they have questions, they may, in their status report(s), request a conference be scheduled.

THEREFORE,

IT IS ORDERED:

1. That the Motions for Summary Judgment filed separately by Office Partners and PWSA shall be held in abeyance pending the filing of the status reports on June 30, 2023.

Date: June 20, 2023 /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)