

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

OFFICE PARTNERS XXIII BLOCK G1	)	
LLC,	)	
	)	
Complainant,	)	
	)	Docket Nos. C-2022-3033251
vs.	)	C-2022-3033266
	)	
THE PITTSBURGH WATER AND SEWER	)	
AUTHORITY,	)	
	)	
Respondent.	)	

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**THE PITTSBURGH WATER AND SEWER AUTHORITY’S ANSWER AND BRIEF  
IN OPPOSITION TO OFFICE PARTNERS’ MOTION FOR DIRECTED VERDICT  
OR ALTERNATIVELY TO SUPPLEMENT MOTION FOR SUMMARY JUDGMENT**

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Pursuant to, *inter alia*, 52 Pa. Code § 5.102, The Pittsburgh Water and Sewer Authority (the “PWSA”) hereby submits this Answer and Brief in Opposition to the Complainant, Office Partners XXIII Block G1 LLC’s (“Office Partners”), Motion for Directed Verdict or Alternatively to Supplement Motion for Summary Judgment (“Motion”) in the above-captioned numbers.<sup>1</sup>

**INTRODUCTION**

Office Partners views this entire action as a “Hail Mary.”<sup>2</sup> The PWSA respectfully submits that Office Partners’ filing of the Motion is another step in that process, whereby Office Partners

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<sup>1</sup> While the PWSA submits that an answer pursuant to 52 Pa. Code § 5.102, § 1.36, and/or § 5.61 is inapplicable and further unnecessary because the Motion and this Opposition: (1) do not contain any “averment of fact not appearing of record” (including through sworn deposition testimony, pleadings, and discovery responses, in part attached hereto); and (2) do not contain a denial of fact, to the extent an answer is nevertheless required, the PWSA submits this filing as its Answer because it, including all exhibits hereto, incorporates sworn and/or verified parts of the record.

To the extent that the Commission considers the substance of the Motion (relating to Office Partners’ request for a “directed verdict”), the PWSA respectfully requests a telephonic oral argument on the same.

<sup>2</sup> The clear and uncontroverted evidence establishes that Office Partners’ attempted withdrawal and resubmission of the Application was a *post facto* effort, described by Office Partners as a “Hail Mary,” to save approximately \$500,000.00 in fees. *See* Deposition of Boris Kaplan, representative

submits a Motion without a basis in the Commission’s Rules, and in contravention not only of the law of this Commonwealth, but also in derogation of the Commission’s own guidance on case management. Office Partners’ Motion is also rife with inaccuracies and misstatements, as well as selective quotations and statements devoid of context.

Office Partners provides no legal support for this Commission to consider a purported “Motion for a Directed Verdict.” Even if this Commission were to consider the substance of the Motion, however, numerous reasons require the denial of the same, particularly in light of the high burden such motion would impose upon Office Partners, the procedural posture of this case, the legal inadequacies of Office Partners’ argument, and the Commission’s own guidance on case management.

First, the Motion selectively quotes one allegation from a pleading in another matter pending before this Commission, *3213 Penn, LLC v. The Pittsburgh Water and Sewer Authority*, No. C-2023-3038775 (the “3213 Penn Matter”), without providing context or even citing to other allegations in that same pleading that are more directly on point.<sup>3</sup> Office Partners seeks to fashion a “judicial admission” by the PWSA, while failing to provide the Commission with the context of the purported admission, and while ignoring the verified pleadings and uncontroverted evidence of record in this action. In so doing, Office Partners improperly analogizes actions that are based upon similar arguments, and which require the same conclusion—but which sit in a different procedural posture and are based upon different sets of operative facts.

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of Office Partners (the “Kaplan Dep.”), at pp. 63:20-65:25,73:7-10 and Exhibit 7 to Kaplan Dep., attached hereto in relevant part as “Exhibit 1.”

<sup>3</sup> To the extent the PWSA references the 3213 Penn Matter in the instant Answer and Brief, such references are descriptive and exemplary only, and do not constitute supplements or amendments to the filings submitted by the PWSA in the 3213 Penn Matter.

Office Partners also incorrectly (and disingenuously) accuses the PWSA of deficiencies in its production of documents or responses to open records requests. Unfortunately, Office Partners makes such accusations through the violation of evidentiary privileges, incorrect characterizations and self-serving, partial quotations and citations. Given the nature of the allegations leveled by Office Partners, the PWSA is required to respond—though not in kind.

In short, and as set forth to this Commission in numerous filings to date, the PWSA's actions at all relevant times with respect to Office Partners, 3213 Penn, LLC ("3213 Penn"), and all other similarly-situated applicants are consistent with the Rules and Regulations approved by this Commission, as well as the PWSA's own policies and procedures. The Motion is purely an attempt by Office Partners to avoid substantively responding to the PWSA's Motion for Summary Judgment. For the reasons set forth herein, the Motion must be denied.<sup>4</sup>

## ARGUMENT

**I. There is no legal or procedural support for this Commission to consider the Motion; thus, the Motion should be summarily denied.**

The Commission's Rules of Practice and Procedure provide for various motions. 52 Pa. Code §§ 5.101-5.103. Office Partners captions the Motion, in part, "Motion for Directed Verdict." In addition to lacking support in law or fact, this type of motion is premature, it is not authorized by the Commission's rules, regulations or practices, and it sits in derogation of the Commission's Interim Order Holding Motions for Summary Judgment in Abeyance Pending the Filing of Status Reports dated June 20, 2023 (the "Interim Order"), which stated the Commission's unwillingness

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<sup>4</sup> To the extent the Commission grants Office Partners leave to supplement and/or amend its pending Motion for Summary Judgment, the PWSA requests that such leave be mutual, to allow (but not require) amendments by both parties, and to allow both parties a reasonable amount of time to file responses to such amended Motions for Summary Judgment. After, or contemporaneously with such supplementation, the parties can provide joint and independent stipulations of fact.

to grant any sort of dispositive motion prior to the establishment of a detailed factual record. The filing of a “Motion for Directed Verdict” was not included in any case management order issues by the Commission.

On the basis of those various substantive and procedural defects, the Motion must be summarily denied.<sup>5</sup>

Even if this Commission were to consider the Motion and its requested relief, the standard this Commission must apply to a directed verdict is stringent. To grant a directed verdict, the Commission must hear evidence and, drawing all inferences adverse to the movant, find that the movant is entitled to judgment as a matter of law. *See Hall v. Episcopal Long Term Care*, 54 A.3d 381, 395 (Pa. Super. Ct. 2012) (citation omitted). This burden is especially heavy in a proceeding before the Commission where the burden of proof in a proceeding falls upon the party seeking affirmative relief. 66 Pa. C.S.A. § 332(a).

Given the factual record, it is appropriate for the Commission to consider the parties’ respective Motions for Summary Judgment. However, there is no basis to consider the Motion, which amounts to an attempt by Office Partners to file two conterminous dispositive Motions.

**II. The PWSA’s allegations in the 3213 Penn Matter are not judicial admissions and, in any event, are factually distinct from the case *sub judice*.**

The Motion submits that the PWSA has somehow admitted in the 3213 Penn Matter that the PWSA calculates tap-in fees only on the date of permit payment, which Office Partners claims to be in contradiction with the PWSA’s consistent positions in this litigation, and that a finding of

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<sup>5</sup> Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them, including the opportunity to be heard. *Schneider v. Pa. P.U.C.*, 479 A.2d 10, 15 (Pa. Commw. Ct. 1984). To allow consideration of the merits of the Motion could potentially violate the substantive rights of the PWSA by virtue of a pre-hearing and/or fact gathering disposition of this matter.

a judicial admission is appropriate. (*See* Motion, p. 1.) Office Partners' argument in the Motion lacks procedural, factual and legal support.

First, a statement made by the PWSA in pleadings in another action, sitting in a different procedural posture, and based upon a different set of facts does **not** constitute a judicial admission in this action.

To constitute a judicial admission, there must be a clear and unequivocal admission of fact, and when there is an uncertainty surrounding a conceded fact, it is the role of the judge or the jury as fact finder to determine which facts have been adequately proved and which must be rejected. *Thompson v. Ginkel*, 95 A.3d 900 (Pa. Super. Ct. 2014). "Judicial admissions are limited in scope to factual matters otherwise requiring evidentiary proof, and are exclusive of legal theories and conclusions of law." *John B. Conomos, Inc. v. Sun Co.*, 831 A.2d 696, 713 (Pa. Super. Ct. 2003) (citation omitted).<sup>6</sup>

In evaluating whether a statement constitutes a judicial admission, that statement cannot be taken out of context, or based upon only part of a pleading. *See, e.g., O'Brien v. Dela Pena*, 3162 EDA 2013, 2015 WL 7573096 at \*6 (Pa. Super. Ct. 2015) (citing *Cogley v. Duncan*, 32 A.3d 1288, 1292 (Pa. Super. Ct. 2011) ("Whether an allegation is of fact or law is determined by the context disclosing the circumstances and purpose of the allegation.")). Fatally for Office Partners' argument, even statements properly taken as judicial admissions are only "considered conclusive

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<sup>6</sup> In *Conomos*, the plaintiff pleaded that the parties' contract "terminated." The defendant argued that "termination" and "cancellation" were terms with specific meanings under the contract, and that the pleading was a judicial admission that should have precluded the plaintiff from taking the position at trial that the contract was "cancelled" rather than "terminated." *Id.* at 712. On appeal, the Superior Court found that whether the contract had been "terminated" or "cancelled" "require[d] an interpretation and evaluation of the definitions in the contract and their legal implications.... [T]he proposition that Sun indeed terminated the contract [wa]s a legal theory that Sun wished to advance, not a judicial admission of fact by Conomos." *Id.* at 714.

in the cause of action in which they are made—and any appeals thereof...” *Id.*; see also *Basinger v. Adamson*, No 293 CD 2022 and No. 294 CD 2022, 2023 WL 3767809 at \*5-6 (Pa. Commw. Ct. 2023).

In the instant case, a determination as to the application of 53 Pa.C.S.A. § 5607(d)(24) (providing that fees are payable **at the time of application** for connection, and that those payable fees are then **based upon the duly adopted fee schedule which is in effect at the time of payment**) is a question of law, which is not a proper subject for a judicial admission. And, even if the PWSA’s statement in the 3213 Penn Matter were factual rather than a conclusion of law, that statement still could not properly be considered a judicial admission because the PWSA’s allegations in the 3213 Penn Matter were not sufficiently unequivocal, particularly in light of the other averments made in the entirety of the subject pleading.

For example, in *Conomos*, the court refused to assign the same meaning to “termination” in the plaintiff’s pleading as the meaning of “termination” in the parties’ contract. Instead, the court noted that “[t]he use of the word ‘termination’ is reasonably susceptible to at least two different interpretations”: (1) Conomos intended to use the word as it was used in the contract, or (2) Conomos merely meant that the contract ended. *Id.* The court noted, “[w]hen placed in context, [footnote omitted] the term is susceptible to an interpretation other than what Sun argues. As judicial admissions cannot result from equivocal statements open to interpretation, Conomos’s use of the word ‘termination’ does not rise to the level of a judicial admission.” *Id.*

Office Partners’ attempt to find judicial admissions cherry picks certain allegations made by the PWSA in the 3213 Penn Matter, and ignores not only other allegations in that same pleading, but also the contrary (and uncontroverted) factual evidence established in this action (and pending before the Commission on the PWSA’s Motion for Summary Judgment). Office Partners’ entire

argument in the Motion is premised upon the supposed admission that an application fee is only payable at the time of final payment. In support of that proposition Office Partners selectively cites to certain paragraphs of the PWSA's Answer and New Matter in the 3213 Penn Matter, but self-servingly omits, *inter alia*, any citation to Paragraph 7 of the PWSA's New Matter in the 3213 Penn Matter, where the PWSA directly states that the application fee is technically due at the time of a permit application.

The PWSA's position on this question was consistent throughout discovery in this matter. Because different applicants submitted initial materials to the PWSA in different ways, the PWSA did not have a strict "application date" for a tap-in permit. Accordingly, the PWSA's consistent policy during the relevant time period was to issue a tap-in permit upon payment of the applicable fees, and to determine such fees by the rate schedule in effect on the date when a tap-in permit is **approved**. See Deposition of Julie Ascioffa (the "Ascioffa Dep."), attached hereto in relevant part as "Exhibit 2," at 14:16-15:23, 17:16-18:3. The approval date was a significant milestone in the PWSA's application process because a tap-in permit would not issue from the PWSA if other application materials were outstanding. See Ascioffa Dep. at 18:5-12. Accordingly, Office Partners' requested relief is not only based upon an incomplete context, but it is also directly contrary to the uncontroverted evidence established during discovery in this case.

Office Partners' attempts to import incomplete parts of the record from the 3213 Penn Matter into this case is also inappropriate on the basis of the significant differences between the two cases. The 3213 Penn Matter is still in the pleadings stage, and no discovery has been taken. In the 3213 Penn Matter, it is uncontroverted that the subject application, approval and fee payment all took place during the same calendar (and Tariff) year, and there is no evidence or allegation

that the applicant in the 3213 Penn Matter unilaterally sought to withdraw its application in a “Hail Mary” attempt to secure special treatment through a lower rate.<sup>7</sup>

Put differently, the factual context and procedural posture of this case are vastly different than those presented by the 3213 Penn Matter—even though the legal background and, thus, the required outcome, is the same.<sup>8</sup>

In evaluating and denying Office Partners’ requests to benefit from the lower 2022 PUC Tariff Rate, the PWSA was consistent in its imperative to apply its policy uniformly to all similarly-situated applications. This imperative was addressed at both the approval level with Ms. Ascioffa, and at the executive level of the PWSA. *See Ascioffa Dep.* at pp. 40:13-41:19, 46:11-47:3 and Exhibit G to Ascioffa Dep. The PWSA’s treatment of the Application was consistent in all respects with its treatment of similarly-situated applicants. *See Ascioffa Dep.* 64:9-22, 66:16-67:12.<sup>9</sup>

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<sup>7</sup> The Office Partners application underlying this matter (the “Application”) was applied for and approved in 2021. A new tariff took effect on January 13, 2022, which had the effect of eliminating the tap-in fees and changing the PWSA’s overall rate structure (the “2022 PUC Tariff”). Only then did Office Partners attempt to withdraw the Application and resubmit a substantially similar application—admittedly seeking to avail itself of more favorable rates under the 2022 PUC Tariff. When Office Partners attempted its “withdrawal” and reapplication, the PWSA advised Office Partners that the fees contained in the Governing PUC Tariff (previously conveyed to Office Partners pursuant to the 2021-approved application via an approval letter and fee sheet) would be applicable, and that the permit would not be issued until those fees were paid. The PWSA declined to deviate from the Governing PUC Tariff or from its consistent treatment of other similar applicants and applied the policy it had consistently applied to previous applicants for tap-in permits. Ultimately, the PWSA was faithful to the Governing PUC Tariff and charged Office Partners the rate in effect in December 2021 when the Application was approved.

<sup>8</sup> The PUC Tariff that forms the basis of both matters was effective March 1, 2019 and is set forth at PUC Docket No. R-2018-3002647 (the “Governing PUC Tariff”). The 2021 PUC Tariff, set forth at PUC Docket No. R-2020-3017970, states that: “No Changes to Part III, Section G, Tapping Fee from Original PUC Tariff;” thus, the 2019 rates in the Governing PUC Tariff continued to apply to all 2021 applications with the PWSA.

<sup>9</sup> In discovery, the PWSA produced to Office Partners all approval letters, fee sheets and permits maintained by the PWSA for applications approved in 2020, 2021 and 2022. These voluminous documents, not individually cited or attached hereto, support the indisputable fact that the PWSA



The 3213 Penn Matter presents a different factual background than this case. In the 3213 Penn Matter, it is undisputed that all of the determinative milestones occurred during the same calendar and Tariff year:

- 3213 Penn submitted an application to tap in to the PWSA’s infrastructure in 2021. *See* 3213 Penn Amended Complaint, ¶3; *see also* PWSA New Matter in the 3213 Penn Matter, ¶13.
- On August 2, 2021, the PWSA accepted and approved 3213 Penn’s application, identifying the fees due and owing as \$348,110.03. *See* 3213 Penn Amended Complaint, ¶ 6; *see also* PWSA New Matter in the 3213 Penn Matter, ¶14.
- 3213 Penn paid the fees properly due and owing to the PWSA pursuant to the 2021 Tariff in the amount of \$348,110.03 on or about August 19, 2021. *See* 3213 Penn Amended Complaint, ¶5; *see also* PWSA New Matter in the 3213 Penn Matter, ¶16.
- On August 20, 2021, the PWSA issued the approved tap-in permit to 3213 Penn. *See* 3213 Penn Amended Complaint, ¶6.

The sole (though unsupported) lifeline for Office Partners’ claims in this action is its attempted withdrawal of the original Application. No such withdrawal is at issue in the 3213 Penn Matter. Yet, despite these critical factual and procedural differences between the two actions, in both this action and in the 3213 Penn Matter, it is undisputed that the PWSA approved both applications in 2021. Additionally, the PWSA has taken the position in both disputes that the PWSA’s consistent policy during the relevant time period was to **issue** a tap-in permit upon

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treated similarly-situated applications in the same manner applied to the Application—that the Tariff rate in effect at the time of approval was the governing rate.

payment of the applicable fees, and to determine such fees by the rate schedule in effect on the date when a tap-in permit is approved.

**III. The Motion should be denied on the basis of Office Partners' misstatements to the Commission.**

Office Partners makes a number of incorrect representations to the Commission in its Motion. Given the record in this action, correction of those misstatements is required.

**a. Office Partners improperly and incorrectly states matters that were, in any event, protected by the Rules of Evidence.**

Office Partners disingenuously states that it only learned of the 3213 Penn Matter on June 28, 2023, through a privileged settlement conference with counsel for the PWSA. To the contrary, Office Partners disclosed its knowledge of the existence of the 3213 Penn Matter at any earlier date, when Office Partners was presenting a settlement proposal to the PWSA. All of these matters are protected from disclosure pursuant to Pennsylvania Rule of Evidence 408, and the PWSA will not meet Office Partners' non-compliance with Rule 408 by disclosing further substance underlying those discussions in this Answer and Brief.

**b. Office Partners' claims of discovery deficiencies by the PWSA are without merit, and are not supported by the record.**

Furthermore, Office Partners has been in possession of discovery materials relating to the 3213 Penn Matter since *at least* March 2023. Through discovery in this action the PWSA produced to Office Partners all approval letters, fee sheets and permits maintained by the PWSA for applications approved in 2020, 2021 and 2022.<sup>10</sup> This production included documents relating to 3213 Penn's application and permit. These voluminous documents establish that the PWSA treated similarly-situated applications in the same manner applied to the Application—that the

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<sup>10</sup> In making this production, the PWSA conducted good faith redactions to the documents produced to protect personal identifying information of applicants.

Tariff rate in effect at the time of approval was the governing rate. Office Partners has not cited, and cannot cite, evidence to the contrary, and instead relies on misconstruing and selectively citing the PWSA's pleading in another matter.

Additionally, Office Partners had ample opportunity to question the PWSA's corporate representative as to the 3213 Penn application – and all other applications – at a deposition of the responsible PWSA representative, which was taken on April 14, 2023. However, Office Partners failed to question the PWSA on any other applications during that deposition.

Office Partners concedes that the PWSA's corporate representative testified that the PWSA's policy was that the “approval date is the date it sends a letter approving the plans and issues a fee invoice ... not the date of payment.” Motion, ¶ 10. Thus, Office Partners' contention that a context-free and selectively-quoted statement in a pleading from a different action somehow displaces the verified pleadings in this matter, as well as the undisputed deposition testimony, is without legal or logical support.

**c. Office Partners incorrectly claims that the PWSA failed to respond to an open records request, and selectively attached only portions of communications that reveal Office Partners' own error.**

Office Partners claims that the PWSA failed to produce pleadings from the 3213 Penn Matter in response to a request made by Office Partners pursuant to the Pennsylvania Right to Know Law, 65 P.S. §§ 67.101–67.3104 (the “RTKL”). In making this argument, Office Partners' again selectively cites email correspondence detrimental to its own argument.

The PWSA received the subject RTKL request on June 28, 2023 and timely invoked a statutory 30-day extension of time to respond on July 6, 2023. On July 11, 2023, the PWSA produced the responsive records to Office Partners by email—weeks in advance of the due date for such production under the RTKL. Counsel met and conferred on the status of the RTKL

production, and counsel for the PWSA informed counsel for Office Partners that the production had already been sent. Instead of communicating through counsel, Office Partners' counsel then sent an email directly to the PWSA Open Records Officer to check on the status of the production. The PWSA Open Records Officer responded within 13 minutes of the inquiry and attached the email through which the PWSA originally provided the records. Counsel for Office Partners responded: "Nevermind, I got it. Thank you."

In attaching Exhibits B and C to the Motion, Office Partners provided an incomplete copy of the subject email correspondence, deceptively omitting an admission by counsel for Office Partners that he had actually received the production. Most troubling, that confirmatory email correspondence occurred a week prior to Office Partners' filing the Motion. A true and correct copy of the full email communications between counsel for the Complainant and the PWSA's Open Records Officer, redacted only to exclude the privileged forwarding correspondence from the PWSA to counsel for the PWSA, is attached hereto as Exhibit 3.

**d. The PWSA took no steps to render the docket or docket entries in the 3213 Penn Matter private, and that decision was made by the Commission.**

Office Partners also implies some impropriety with the "private" nature of the docket and certain docket entries in the 3213 Penn Matter. The PWSA did not commence the 3213 Penn Matter, and did not determine what documents or docket entries would be viewable to the public. By email correspondence dated July 11, 2023, counsel for the PWSA received communications from Christopher van de Berg, Assistant Counsel to the Commission, stating that, *inter alia*, the

decision to establish the docketing protocol for the 3213 Penn Matter was made by the Commission itself.<sup>11</sup>

### CONCLUSION

There is no basis in law or in fact for the granting of Office Partners' Motion, and such Motion should be summarily denied. Office Partners' Motion is without citation to any authorizing authority, and the filing of the Motion is in contravention of the Commission's management of this case. Additionally, there is no substantive basis to grant Office Partners' request to import selective quotations from a different action, among different parties, based upon a different factual record, sitting in a different procedural posture. In addition, the Motion include numerous misstatements of the record, which constitute an independent basis for summary denial of the Motion. As a result, the Motion must be denied.

Dated: August 14, 2023

/s/ Samuel A. Hornak, Esq.  
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*Attorneys for Respondent,  
The Pittsburgh Water and Sewer Authority*

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<sup>11</sup> Given the nature of those communications, such communications are not attached hereto. To the extent the Commission requires further information on this point, the PWSA can supplement this submission.

BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

OFFICE PARTNERS XXIII	)	
BLOCK G1, LLC,	)	Docket Nos.
	)	C-2022-3033251
	)	C-202203933266
Claimant,	)	
	)	
-vs-	)	
	)	
THE PITTSBURGH WATER	)	
AND SEWER AUTHORITY,	)	
	)	
Respondent.	)	

DEPOSITION OF BORIS KAPLAN

April 19, 2023

Reported by:

Michelle L. Goehring

Job no: 7062



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DEPOSITION OF BORIS KAPLAN, a witness  
herein, called by the Respondent, for  
examination, taken pursuant to the Pennsylvania  
Rules of Civil Procedure, by and before  
Michelle L. Goehring, a court reporter and a  
notary public in and for the Commonwealth of  
Pennsylvania, at the offices of Clark Hill PLC,  
One Oxford Centre, 301 Grant Street,  
Pittsburgh, Pennsylvania, on Wednesday,  
April 19, 2023, at 10:00 a.m.

COUNSEL PRESENT:

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- - -  
I N D E X

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E X H I B I T S

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Exhibit 4	12/23/21 Letter & 1/3/22 Emails	25
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1 PROCEEDINGS

2 BORIS KAPLAN, a witness herein, having  
3 been first duly sworn, was examined and  
4 testified as follows:

5 EXAMINATION

6 BY MR. HORNAK:

7 Q. Good morning, Mr. Kaplan. My name  
8 is Sam Hornak. I represent the Pittsburgh  
9 Water and Sewer Authority with respect to the  
10 actions commenced by Office Partners XXIII  
11 Block G1, LLC, which I'll refer today as Office  
12 Partners, against the PWSA before the Allegheny  
13 Court of Common Pleas first and then before the  
14 Public Utility Commission of Pennsylvania.

15 Can we agree that any time I refer  
16 to Office Partners today, I'm referring to the  
17 entity that filed those lawsuits?

18 A. Yes.

19 Q. Okay. You already passed the first  
20 test, Mr. Kaplan. Have you ever been deposed  
21 before?

22 A. Yes.

23 Q. Okay. So I'll just give you some  
24 ground rules that, again, you've already passed  
25 the main test here which is, you have to answer

1 negotiations and discussions at staff level,  
2 leadership level, and so on.

3 Q. Did you ever personally participate  
4 in any of those conversations, Mr. Kaplan, with  
5 either city officials or any other political  
6 officials?

7 A. I don't believe that I did.

8 Q. So when you say they were on a staff  
9 level, they were your staff at Buccini/Pollin  
10 or other representatives of Office Partners?

11 A. Correct.

12 Q. I'll show you another set of e-mails  
13 here, Mr. Kaplan. Beginning with Office  
14 Partners Page 509, this is a document also  
15 produced to the PWSA by Office Partners.

16 MR. NERNBERG: Are we going to  
17 mark this as an exhibit?

18 MR. HORNAK: Yes. We'll call  
19 this Exhibit 7.

20 (Deposition Exhibit No. 7 was  
21 marked for identification.)

22 BY MR. HORNAK:

23 Q. The first e-mail I would like to  
24 direct you to is at the bottom of Page 509 and  
25 it goes on to 510. This is an e-mail from you

1 to Kevin Acklin, Mr. Howze, and several others,  
2 dated January 19, 2022, at 1:26 p.m.

3 If you could read that e-mail and  
4 let me know when you're finished.

5 A. I'm ready.

6 Q. So the last sentence of this reads,  
7 "We are also exploring an alternative (a Hail  
8 Mary) whereby we have Baker make an amendment  
9 to the previously submitted tap-in plans so  
10 that there's no ambiguity that the basis of the  
11 permit was reviewed after the January 12 date  
12 for the new fee structure."

13 Can you explain what you meant by  
14 that sentence, Mr. Kaplan?

15 A. Sure. I think by the 19th of  
16 January we had had several conversations  
17 through our representatives about the approvals  
18 and the rate structure that was going to be  
19 applied.

20 Those conversations were not leading  
21 to a satisfactory resolution, and so we were  
22 starting to explore alternatives to picking up  
23 a permit based on the 2021 application.

24 Q. So as I read that sentence in this  
25 e-mail, Mr. Kaplan, it sounds like the

1 amendment or the modifications to the prior  
2 application, the reasons that we've discussed  
3 today, it sounds like a pretext that the real  
4 reason why Office Partners wanted to submit --  
5 withdrawal its application and make revisions  
6 is strictly for the basis of securing the new  
7 rate; is that correct?

8 A. I don't think that's correct. It's  
9 not strictly for the new rate, but certainly  
10 the new rate, I think, is a very large  
11 component in the decision.

12 As we became aware and quantified  
13 the difference between the rate structure of  
14 2021 and the rate structure of 2022, the  
15 difference of upfront fees was -- I'll speak  
16 just in order of magnitude of it -- like, half  
17 a million dollars, and that was sufficient to  
18 pursue additional conversations, additional  
19 applications, additional effort to secure a  
20 very substantial savings for the project.

21 Q. And securing that savings was one  
22 of -- and I think you just said a major reason  
23 for withdrawing the initial application and  
24 submitting a new modified application?

25 A. Correct.

1 have any further questions, Mr. Kaplan. Your  
2 counsel may have some questions. Thank you for  
3 appearing today.

4 MR. NERNBERG: I might just  
5 have a few.

6 EXAMINATION

7 BY MR. NERNBERG:

8 Q. Boris, you were asked about the  
9 budget of this project; do you recall those  
10 questions?

11 A. I do.

12 Q. And have you managed budgets for  
13 other projects?

14 A. I have.

15 Q. Do projects -- have projects you've  
16 managed ever come below budget?

17 A. Maybe one or two.

18 Q. And have projects you've managed  
19 gone above budget?

20 A. Yes. Maybe one or two.

21 Q. As a project manager, what is your  
22 goal with regard to managing projects under or  
23 over budget?

24 A. The budget consists of many, many  
25 line items. My goal is to balance those line

1 items in such a fashion that we deliver  
2 projects on budget.

3 Q. And so is it -- can it happen that  
4 some line items are increased and some line  
5 items are decreased?

6 A. Certainly. It happens all the time.  
7 And certainly it's my duty to keep identifying  
8 reasonable savings that could be realized in a  
9 way that offsets potential increases that occur  
10 across the rest of the budget.

11 Q. Could you take a look at Exhibit 3  
12 again? That's the Complaint. Page 2 of the  
13 second part, please.

14 A. With the Item 7 at the top?

15 Q. Yes. You were asked about two  
16 paragraphs. I just wanted you to read the two  
17 paragraphs into the record.

18 Could you read Paragraph 8, please?

19 A. Paragraph 8. "On December 23, 2021,  
20 the PWSA by letter accepted the tap in plans  
21 but informed Office Partners the permit would  
22 not be considered approved until the permit  
23 fees were paid."

24 Q. And could you read -- sorry --  
25 Paragraph 14, please?

1 COMMONWEALTH OF PENNSYLVANIA )  
 ) SS  
2 COUNTY OF ALLEGHENY )

3 CERTIFICATE

4 I, Michelle L. Goehring, a notary public  
in and for the Commonwealth of Pennsylvania, do  
5 hereby certify that the witness, BORIS KAPLAN,  
was by me first duly sworn to testify the  
6 truth, the whole truth, and nothing but the  
truth; that the foregoing deposition was taken  
7 at the time and place stated herein; and that  
the said deposition was recorded  
8 stenographically by me and then reduced to  
typewriting under my direction, and constitutes  
9 a true record of the testimony given by said  
witness.

10  
11 I further certify that I am not a  
relative, employee or attorney of any of the  
parties, or a relative or employee of either  
12 counsel, and that I am in no way interested  
directly or indirectly in this action.

13  
14 IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed my seal of office this 1st day  
of May 2023.

15  
16  
17 /S/Michelle L. Goehring, Notary Public  
18 Court Reporter  
My Commission Expires: July 12, 2025  
19 Commission No. 1317058  
20  
21  
22  
23  
24  
25

**David M. Nernberg**

**From:** Bomani Howze  
**Sent:** Wednesday, January 19, 2022 8:41 PM  
**To:** Boris Kaplan; Kevin Acklin; Grant Gittlen  
**Cc:** Matt Corace; Craig Dunham  
**Subject:** RE: [EXT] RE: PWSA Tap In / Permit

I talked with a couple of developers today.  
One has been given his approval and the new tap-in fee.  
The other has two projects and received two different rates; the new rate for \$25k and the other for \$300k.  
This project is also considerably smaller than ours but not far behind in fees.

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**From:** Boris Kaplan <bkaplan@bpgroup.net>  
**Sent:** Wednesday, January 19, 2022 4:49:01 PM  
**To:** Kevin Acklin <kacklin@pittsburghpenguins.com>; Bomani Howze <bhowze@bpgroup.net>; Grant Gittlen <ggittlen@pittsburghpenguins.com>  
**Cc:** Matt Corace <mcorace@bpgsconstruction.com>; Craig Dunham <dunham@dunhamregroup.com>  
**Subject:** RE: [EXT] RE: PWSA Tap In / Permit

Every project that is getting a PWSA permit after 1/12 is taking advantage of significantly reduce tap-in fees. We're not seeking a waiver - just want FNB Financial Center to be subject to the new fee structure.



Business Process Group

MISSION:  
VALUES:  
COMMUNITY

Boris Kaplan  
Senior Vice President  
The Buccini/Pollin Group  
M 610-202-8606  
www.bpgroup.net



**From:** Kevin Acklin <kacklin@pittsburghpenguins.com>  
**Sent:** Wednesday, January 19, 2022 4:46 PM  
**To:** Boris Kaplan <bkaplan@bpgroup.net>; Bomani Howze <bhowze@bpgroup.net>; Grant Gittlen <ggittlen@pittsburghpenguins.com>  
**Cc:** Matt Corace <mcorace@bpgsconstruction.com>; Craig Dunham <dunham@dunhamregroup.com>  
**Subject:** [EXT] RE: PWSA Tap In / Permit

Thanks Boris. I know the PWSA Board previously had changed policies against waiving tap-in fees. Do we know of any recent projects that received the treatment we are requesting?

**From:** Boris Kaplan <bkaplan@bpgroup.net>  
**Sent:** Wednesday, January 19, 2022 1:26 PM  
**To:** Bomani Howze <bhowze@bpgroup.net>; Kevin Acklin <kacklin@pittsburghpenguins.com>; Grant Gittlen <ggittlen@pittsburghpenguins.com>  
**Cc:** Matt Corace <mcorace@bpgsconstruction.com>; Craig Dunham <dunham@dunhamregroup.com>  
**Subject:** RE: PWSA Tap In / Permit

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Kevin, Grant,

484

EXHIBIT

7

B. Kaplan

OfficePartners\_000509



If you have a relationship with Dir. Will Pickering, who has been serving in his capacity as Director since May 2020 (previously the Deputy Director there), it would be very helpful to have you join a proposed call. We were hoping to have Chief Wheatley join a call with PWSA leadership, but he has not volunteered to do so. We are also exploring an alternative (a "Hail Mary") whereby we have Baker make an amendment to the previously submitted tap-in plans so that there's no ambiguity that the basis of the permit was reviewed after the January 12 date for the new fee structure.

Thanks,  
Boris



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Boris Kaplan  
Senior Vice President  
The Buccini/Pollin Group  
M: 610-202-8606  
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---

From: Bomani Howze <bhowze@bpgroup.net>  
Sent: Wednesday, January 19, 2022 11:11 AM  
To: Boris Kaplan <bkaplan@bpgroup.net>; kacklin@pittsburghpenguins.com; Grant Gittlen <ggittlen@pittsburghpenguins.com>  
Cc: Matt Corace <mcorace@bpgsconstruction.com>; Craig Dunham <dunham@dunhamregroup.com>  
Subject: RE: PWSA Tap In / Permit

Update... This morning I reached out directly by way of an introduction to Dir. Pickering to request a meeting for Matt and I to discuss the permits and tap-in fees matter. Waiting to hear back from the Director.

---

From: Boris Kaplan <bkaplan@bpgroup.net>  
Sent: Wednesday, January 19, 2022 11:00 AM  
To: kacklin@pittsburghpenguins.com; Grant Gittlen <ggittlen@pittsburghpenguins.com>  
Cc: Bomani Howze <bhowze@bpgroup.net>; Matt Corace <mcorace@bpgsconstruction.com>; Craig Dunham <dunham@dunhamregroup.com>  
Subject: FW: PWSA Tap In / Permit

Kevin,  
I'm following up on Matt's email from yesterday. Please let me know if you have any questions about PWSA's new fee structure that we need to apply to our project despite PWSA's initial hesitation to do so. As it stands now, our project is in line to be charged with high upfront AND recurring fees, which is not equitable since our permit hasn't even been issued. Furthermore, DEP's reluctance to accept the recorded planning module will add significant approval and expense burdens to each phase of development on the Lower Hill. The new structure went into effect last week (1/12) and we are hoping to secure the tap-in permit next week for the FNB Financial Center. Bomani and I would like to discuss possible outreach efforts with you this afternoon. Let us know if you have 10 minutes after 3:30.

Thanks,  
Boris



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Boris Kaplan  
Senior Vice President  
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M: 610-202-8606  
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**From:** Matt Corace <[mcorace@bpgsconstruction.com](mailto:mcorace@bpgsconstruction.com)>

**Sent:** Tuesday, January 18, 2022 5:46 PM

**To:** Craig Dunham <[dunham@dunhamregroup.com](mailto:dunham@dunhamregroup.com)>; Kevin Acklin <[kacklin@pittsburghpenguins.com](mailto:kacklin@pittsburghpenguins.com)>; Gittlen <[ggittlen@pittsburghpenguins.com](mailto:ggittlen@pittsburghpenguins.com)>

**Cc:** Boris Kaplan <[bkaplan@bpgroup.net](mailto:bkaplan@bpgroup.net)>; Wesley Schwandt <[wschwandt@bpgsconstruction.com](mailto:wschwandt@bpgsconstruction.com)>; Bomani Howze <[bhowze@bpgroup.net](mailto:bhowze@bpgroup.net)>

**Subject:** PWSA Tap In / Permit

Good Afternoon --

Thank you again for your past efforts to address approvals/permitting roadblocks. We are currently approaching the final City approvals for the FNB Financial Center -- DOMI, Zoning, PU & PWSA. An issue has recently developed with PWSA that we are seeking your guidance to address and hopefully resolve.

The project has an opportunity to save in excess of \$400k in projected Water & Sewer Tap In Permit fees based on a PWSA Rate/Tariff restructuring that went into effect on January 12. Up until now permit fees were based on Equivalent Dwelling Units (EDU's) and projected Gallons per day. There is an analysis the Authority performs based on square footage, Building Type, Use, etc. to determine the values. Once determined the Developer is expected to pay prior to the release of the Permit & Stamped Drawings. The new system in place does not utilize EDU's for the equation, just a flat review fee, some meter, valves and processing fees thus significantly reducing the cost. PWSA has restructured these upfront fees with the expectation of significant increases in usage charges. As it stands now, our project is in line to be charged with high upfront AND recurring fees, which is not equitable since our permit hasn't even been issued. We received a letter from PWSA on 12/23 (attached) indicating that our permit and stamped drawings would be issued upon receipt of payment. When the change in fee structure was realized, we requested that the new schedule apply to our permit to which they initially rejected due to the letter being issued last month. When asked about how the Authority plans to recoup these significant fees we were informed that the usage rates were going to be increased -- so should the new permit fee schedule not get recognized we would essentially be hit on the back end as well. Our discussion with PWSA ended last week with Julie Ascioia, the Industry Relations manager understanding our plea but indicating that only way we could receive approval under the new rules would be acceptance from the Director and potentially support from the Mayor's office.

Due to the substantial burden these fees place on the project, the fact that the Permit has not been issued and that the building will be held to the higher usage rates it is our position that we have a case with merit to review with the Director. If in agreement I would appreciate guidance on the approach/strategy we should utilize to see if we can convince the city to hold our permit values to the current schedule which went in effect last week.

This PWSA approval is critical and time sensitive, as several additional permits we are currently seeking directly tie to a resolution. Please reach out with any questions.

**Matthew Corace**



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F 302.691.2099

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**Kevin Acklin**

Chief Operating Officer and General Counsel

Pittsburgh Penguins

[kacklin@pittsburghpenguins.com](mailto:kacklin@pittsburghpenguins.com)

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# **Transcript of Julie Ascioia, Corporate Designee**

**Date:** April 14, 2023

**Case:** Office Partners XXIII Block GI, LLC -v- The Pittsburgh Water & Sewer  
Authority

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

-----x

OFFICE PARTNERS XXIII BLOCK : Docket Nos.

GI LLC : C-2022-3033251

Complainant, : C-2022-3033266

-v- :

THE PITTSBURGH WATER AND :

SEWER AUTHORITY, :

Respondent. :

-----x

Deposition of THE PITTSBURGH WATER AND SEWER  
AUTHORITY, by its designee JULIE ASCIOLLA  
Pittsburgh, Pennsylvania  
Friday, April 14, 2023  
9:30 a.m.

Job No.: 485769

Pages: 1 - 69

Reported by: Keith G. Shreckengast, RPR

Transcript of Julie Ascioffa, Corporate Designee  
Conducted on April 14, 2023

2

1 Deposition of JULIE ASCIOLLA, held at the  
2 offices of:

3

4

5

NERNBERG and ASSOCIATES

6

301 Smithfield Street

7

Pittsburgh, Pennsylvania 15222

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(412) 232-0334

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Pursuant to Notice, before Keith G.

13

Shreckengast, Registered Professional Reporter and

14

Notary Public in and for the Commonwealth of

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Pennsylvania.

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A P P E A R A N C E S

ON BEHALF OF COMPLAINANT:

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- and -

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C O N T E N T S

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By Mr. Nernberg	7
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Re-Examination By Mr. Nernberg	65
Re-Examination By Mr. Hornak	67

E X H I B I T S

(Attached to transcript)

ASCIOLLA DEPOSITION EXHIBIT	PAGE
Ex. A 4 pgs. Notice of Deposition	12
Directed the Pittsburgh Water and Sewer Authority	
Ex. B 22 pgs. Pennsylvania Utility	27
Commission Complaint Against the Pittsburgh Water and Sewer Authority to Set Rate for Approved Permit to Petitioner, Office Partners XXIII Block GI, LLC	
Ex. C 11 dbl-sided pgs. Respondent The Pittsburgh Water and Sewer Authority's Preliminary Objections to Complainant's Complaints	27



Transcript of Julie Ascioffa, Corporate Designee  
Conducted on April 14, 2023

5

1	E X H I B I T S   C O N T I N U E D		
2	Ex. D	PWSA_OfficePartners_002917-2918.	36
3		1/7/22 email from Robert Herring to	
4		Steven Savich	
5	Ex. E	PWSA_OfficePartners_002574-2575.	40
6		1/10/22 email from Julie Ascioffa to	
7		Robert Herring, Steven Savich	
8	Ex. F	PWSA_OfficePartners_002746-2747.	42
9		Documents/Project	
10		Submittals/20015.10 540 North Lang	
11		Avenue	
12	Ex. G	PWSA_OfficePrtners_002923-2924.	43
13		1/31/22 email from WPickering to	
14		Julie Ascioffa	
15	Ex. H	PWSA_OfficePartners_002748-2749.	47
16		2/1/22 email from Julie Ascioffa to	
17		Steven Savich	
18	Ex. I	PWSA_OfficePartners)--2587-2589.	50
19		2/3/22 email from Will Pickering to	
20		Julie Ascioffa	
21	Ex. J	PWSA_OfficePartners_000985, 000854	51
22		(and 1 non Bates numbered pg.)	
23		12/23/21 letter from Wendy M. Dean	
24		to Office Partners XXII Block G1 LLC	
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E X H I B I T S   C O N T I N U E D

Ex. K	PWSA_OfficePartners_000446 (plus 1 non Bates numbered pg.) 2/22/22 email from Shannon Connell to Thomas Flanagan	54
Ex. L	7 pgs. C-2060 Revised Office Partners XXII Block G1 LLC	54

Transcript of Julie Ascioffa, Corporate Designee  
Conducted on April 14, 2023

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JULIE ASCIOLLA,

Having been first duly sworn/affirmed, was examined  
and testified under oath as follows:

EXAMINATION

BY MR. NERNBERG:

Q Would you prefer I call you Julie, or Ms.  
Ascioffa?

A Julie is fine.

Q Okay. And could you give your full name  
for the record, please.

A Julie Ascioffa.

Q Julie Ascioffa, thank you. And could you  
please tell me your relationship with PWSA.

A I am the Industry Relations Manager at  
PWSA.

Q And how long have you worked for PWSA?

A July will be five years.

Q Five years. And prior to PWSA, were you  
employed elsewhere?

A I was, at the City of Pittsburgh.

Q And how long did you work for the City of  
Pittsburgh?

A That was seven years.

Q Seven years. And what was your role at  
the City of Pittsburgh?

1 would go to number 6, if you could review it,  
2 please.

3 A Okay.

4 Q And sorry, number 8, 7 and 8. Just  
5 review all three, please. Let me know when you're  
6 finished. You can review more if you'd like as  
7 well.

8 A Okay, I'm good.

9 Q Could you, not necessarily specific to  
10 this case, give me an idea, you said you did testify  
11 that you're familiar with the application process  
12 for these types of permits. Could you give me a  
13 step by step how these permits work, from I guess  
14 application to approval. And just start with  
15 whatever the first step would be.

16 A Sure. So these types of permits for  
17 larger developments, or even smaller developments,  
18 have three separate approvals prior to the permit  
19 being issued. Which include a water and sewer use  
20 approval, which has its own application. And that's  
21 typically the first step. And you would submit that  
22 for review. And there would be an approval at the  
23 end of that review.

24 The second step would -- the water and  
25 sewer use application would be to a DEP planning

1 module application, depending on the results of that  
2 first water and sewer use application. And if a  
3 planning module is required, we review that  
4 application. And at the end of that comes an  
5 approval, which we sign a document that is submitted  
6 to the DEP by the applicant.

7           Once those two steps are completed, the  
8 applicant will submit what we call tap-in plans,  
9 which are engineering drawings that go through a  
10 review process. And after a back and forth with the  
11 applicant, get to a point that we can approve those.  
12 And then that, at that time, the application is  
13 considered approved. And it's met all of the  
14 requirements to that point. And we would send an  
15 approval letter, and an invoice for fees to be paid.  
16 And then the applicant would pay those fees, and the  
17 permit would be issued.

18           Q       So the permit is not issued until the  
19 fees are paid; is that correct?

20           A       That is correct.

21           Q       So that approval letter is -- is that  
22 approval letter a permit?

23           A       No, it is not a permit.

24           Q       In response to -- and I guess I should  
25 ask, it's now April of 2023, is this the same

Transcript of Julie Ascioffa, Corporate Designee  
Conducted on April 14, 2023

17

1 information in your initial application. So we're  
2 reviewing the same information, just not issuing the  
3 same type of approval throughout the process.

4 Q If you could again take a look at the  
5 paragraph 6, the allegation is that on May 11th,  
6 Office Partners submitted an application to tap into  
7 PWSA infrastructure. The response, the allegations  
8 contained in paragraph 6 of the Complaints are  
9 denied as stated. While the PWSA admits that Office  
10 Partners' application was initiated, evaluated and  
11 ultimately completed and approved in '21, due to the  
12 rolling nature of Office Partners' initial  
13 application (which included meetings and numerous  
14 submissions) the PWSA is not able to admit or deny  
15 the precise application date for the subject permit.

16 Can you describe to me what you mean by  
17 rolling nature.

18 A Yes. So as I described in the process,  
19 there are several different approvals that are  
20 needed. And at the time of Office Partners'  
21 application, we didn't have a strict guideline on  
22 which of those documents should be submitted first.  
23 So we usually took the first document that was  
24 submitted as the application date. But sometimes  
25 that could be when the development permit was --

1 application was submitted. So that is what we meant  
2 by rolling nature.

3 Q Okay.

4 A Just as documents come in.

5 Q With regard to payment for the permit,  
6 you said once approved, the permit is issued upon  
7 payment, correct?

8 A Correct, as long as the other  
9 requirements have been met, yes.

10 Q Would you issue an approval letter if  
11 other requirements were not met?

12 A No.

13 Q There's no requirement once an approval  
14 letter is issued to pay for the permit, is there?

15 A No.

16 Q So an applicant could just walk away; is  
17 that right?

18 A Correct. Correct.

19 Q Has an applicant ever just walked away?

20 A Yes.

21 Q And what happens internally when an  
22 applicant just walks away? With PWSA I should say.

23 A Those applications usually just sit in  
24 our document retention software. Until, you know,  
25 either the applicant comes back to pay for that, or,

1 want to cut you off when you were reciting --

2 MR. NERNBERG: No, I appreciate that.

3 (Exhibit E was marked for  
4 identification.)

5 MR. NERNBERG: Thank you for correcting  
6 me I should say.

7 MR. HORNAK: No problem.

8 Q If you could review that.

9 A Okay.

10 Q Did I accurately recite the email, to the  
11 best of your knowledge?

12 A Yes.

13 Q Thank you. With regard to your email,  
14 and Robert Herring's -- or to Steven Savich's and  
15 Robert Herring's response, was there any policy in  
16 place at that time related to how PWSA applied  
17 application fees based on approval date?

18 A There was no written policy, no.

19 Q And prior to responding to Steven Savich,  
20 did you consult anyone?

21 A Yes.

22 Q Who did you consult?

23 A Our Executive Director at the time, or  
24 Chief Executive Officer, and our counsel.

25 Q I won't ask you about your conversations



Transcript of Julie Ascioffa, Corporate Designee  
Conducted on April 14, 2023

41

1 with counsel. But could you tell me who your Chief  
2 Executive Officer was at the time.

3 A It's Will Pickering.

4 Q And could you tell me the nature of your  
5 conversation Mr. Pickering.

6 A There were several conversations. Just  
7 to ensure that we were applying the new fees  
8 equitably across all of our customers.

9 Q With regard to your email back to Steven  
10 Savich, would you say that's consistent to what  
11 you've already testified with regard to the amounts  
12 of the tap-in fees?

13 A Yes.

14 Q And you responded on the 10th of January.  
15 Would you have consulted with Mr. Pickering prior to  
16 that time?

17 A So during this time I was on vacation, so  
18 I would -- upon my return, I probably did email him  
19 prior to sending this email.

20 Q But do you recall specifically, or are  
21 you just -- do you know, or are you guessing?

22 A I don't know.

23 Q Okay. Thank you. This will be Exhibit  
24 F. I'm going to let you look at this one. It's two  
25 pages. If you could share, please.

1 been the same in 2022 and 2023, then yes.

2 Q Okay. And your belief was then they were  
3 attempting to withdraw and submit new permits to  
4 take advantage of the 2022 fees versus the 2021  
5 fees?

6 A Correct.

7 Q And would you say that you told them they  
8 could not withdraw the application?

9 A Yes, because there was not a process to  
10 do so.

11 Q The prior email that we discussed with  
12 Mr. Pickering and Herring were January 7th and  
13 January 10th. I believe you testified that you  
14 would have discussed the issues with them prior to  
15 responding. Does this refresh your recollection as  
16 to when you may have discussed these issues with Mr.  
17 Pickering, or Miss Presutti for that matter?

18 A Yes. I mean this is helpful for this  
19 particular email. Not necessarily the previous  
20 email.

21 Q And I see a response from Mr. Pickering  
22 that says, Hi Julie, as long as this approach is  
23 consistent with how we would treat similar  
24 applications, I support your position. Would you  
25 have had any other conversations related

1 specifically to this email with Mr. Pickering, or  
2 Miss. Presutti?

3 A I don't know.

4 Q Okay. That's all I have for that one.

5 MR. HORNAK: Did we mark this as an  
6 exhibit?

7 MR. NERNBERG: Yes, it is G.

8 Q With regard to that email, I should ask,  
9 if they -- I believe you suggested they revise the  
10 application; is that correct?

11 A I don't think I suggested that.

12 Q Sorry, the 1-10 email. I should go back  
13 to that. I don't have it before me.

14 MR. HORNAK: You're referring to Exhibit  
15 E?

16 MR. NERNBERG: Actually, strike that.  
17 Strike that.

18 A I'm confused.

19 Q This will be Exhibit H.

20 (Exhibit H was marked for  
21 identification.)

22 Q If you could please review again.

23 A Okay.

24 Q I perhaps got a bit ahead of myself.  
25 This is -- if you review both pages, this appears to

1 Office Partners wanted to expedite consideration and  
2 ultimate approval of their application?

3 A Yes.

4 Q Is it your understanding that the  
5 application, consideration, and ultimate approval of  
6 the Office Partners application all occurred within  
7 calendar year 2021?

8 A Yes.

9 Q Prior to and including the Office  
10 Partners application, so other applications, say in  
11 2020 and 2021, up through the Office Partners  
12 application in 2021, was the PWSA consistent in  
13 using the approval date for an application as  
14 determinative of which tariff would apply?

15 A Yes.

16 Q Are you aware of any instances where the  
17 PWSA did not look to approval date?

18 A No, I'm not aware.

19 Q Do you have any reason to believe that  
20 the PWSA did not treat Office Partners the same as  
21 any other similarly situated applicant?

22 A No.

23 MR. HORNAK: I don't have any further  
24 questions. Mr. Nernberg may have some followup  
25 questions based on mine.

1 submitted, it has to be in the EBuilder system at  
2 that time; is that correct?

3 A Yes. Yes.

4 Q Mr. Hornak had asked you if Office  
5 Partners is treated similarly to other developers  
6 and builders during that time period with regard to  
7 tap fees and approvals. Did any other developers  
8 request to withdraw their permits during that time  
9 period?

10 A To withdraw, no, not that came to my  
11 attention.

12 MR. NERNBERG: That's all I have.

13 MR. HORNAK: I have nothing further. Do  
14 you want to ask me a question?

15 THE WITNESS: No.

16 A I did just want to add to that, that even  
17 though they didn't ask for withdrawal, we did have  
18 several ask about the fees, and to waive the fees as  
19 well. So those were treated similarly.

20 BY MR. NERNBERG:

21 Q So no fees were waived for any developer  
22 that had an approval in -- prior to January 12th,  
23 2022?

24 A Correct.

25 MR. NERNBERG: That's all I have.

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RE-EXAMINATION

BY MR. HORNAK:

Q To clarify Mr. Nernberg's last question, your answer that no fees were waived for any developer during the applicable time period, did you -- what did you mean by that? Did you mean that no other developer asked for treatment under a different tariff, and received a fee waiver, or fee reduction?

A Correct, yes, that's what I meant. If they had asked for a fee waiver related to tap fees in the new tariff, we did not grant that waiver.

MR. HORNAK: Understood. I have no further questions.

MR. NERNBERG: I have no followup.

MR. HORNAK: We'd like to read.

(Off the record at 11:05 a.m.)

1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

2

3 I, Keith G. Shreckengast, Registered  
4 Professional Reporter, the officer before whom the  
5 foregoing proceedings were taken, do hereby certify  
6 that the foregoing transcript is a true and correct  
7 record of the proceedings; that said proceedings  
8 were taken by me stenographically, and thereafter  
9 reduced to typewriting under my supervision; that  
10 reading and signing was requested, and that I am  
11 neither counsel for, related to, nor employed by any  
12 of the parties to this case, and have no interest,  
13 financial or otherwise, in its outcome.

14 IN WITNESS WHEREOF, I have hereunto set my hand  
15 and affixed my notarial seal this 26th day of April.

16

17

18 My commission expires April 30, 2024.

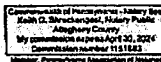
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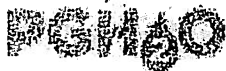
Message

From: WPickering@pgh2o.com [WPickering@pgh2o.com]  
Sent: 1/31/2022 9:33:02 PM  
To: jasciolla@pgh2o.com; JPresutti@pgh2o.com  
CC: RHerring@pgh2o.com  
Subject: RE: Lower Hill G1/G4 Tap In Application

Hi Julie -- As long as this approach is consistent with how we would treat similar applications, I support your position.

From: Julie Ascioffa <jasciolla@pgh2o.com>  
Sent: Monday, January 31, 2022 3:10 PM  
To: Will Pickering <WPickering@pgh2o.com>; Jennifer Presutti <JPresutti@pgh2o.com>  
Cc: Robert Herring, PE, PMP <RHerring@pgh2o.com>  
Subject: FW: Lower Hill G1/G4 Tap In Application

Good afternoon,  
I wanted to pass along this email I received from the FNB Tower. I assume this is their way to skirt the fees. I am going to advise them that they wouldn't withdraw the application as that is not necessary. They would just submit a revised planning module under their previous application and pay the expedited revised permit review fee. They likely will not like that answer so I wanted to run it by you before responding.



Julie Ascioffa  
Industry Relations Manager  
Office: 412.255.8800  
Ext: 8019  
Cell: 412.606.1233  
24/7 media inquiry line: 412.430.3898

Pittsburgh Water and Sewer Authority  
1200 Penn Ave., Pittsburgh, PA 15222

<https://pgh2o.com>



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From: Savich, Steven <SSavich@mbakerintl.com>  
Sent: Monday, January 31, 2022 3:01 PM  
To: Julie Ascioffa <jasciolla@pgh2o.com>  
Cc: Partridge, Toby <TPartridge@mbakerintl.com>; mcorace@bpgsconstruction.com; Boris Kaplan <bkaplan@bpgroup.net>  
Subject: Lower Hill G1/G4 Tap In Application





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Julie -

I wanted to give you the heads up that, after much internal discussion, the owner of the project will be withdrawing their current Tap-In permit application and submitting new applications later this week. In further evaluation of the project program and path forward for the planning module they feel it is most prudent to separate the G1 and G4 parcels for a few reasons:

First, the ownership entities for each of these parcels will be different and in turn so would the ultimate holder of the permitted sewage facilities.

Second, the sewer (and water) usage for the G4 parcel is still unknown at this time. The landscape and configuration is set but the facilities for small business retail uses are still being determined.

Third, there is a concern that PADEP will not approve the combined G1 / G4 application since the outcome of the meetings with them allowed for the development of the G1 parcel only under the capacity of the overall block.

With that said, there is still a need for expediency in getting to final permit for the G1 block. The intent would be to file the permit application as an expedited application under the new guidance. This would guarantee an initial review period of 15 days, correct? We will review all of the updated forms and process to ensure we have met the requirements and provide the checklist with the new application to allow for PWSA staff to better review the application. Please let me know what you will need from the owner to withdraw the current application and to establish the new project email within ebuilder and confirm path forward for the new application.

If you like, we can touch base later today to discuss in more detail.

Thanks!

Steven Savich | Vice President, Practice Executive - LD&I  
100 Airside Drive, Airside Business Park | Moon Township, PA 15108 | [O] 412-269-6467 | [M] 330-550-4579  
[ssavich@mbakerintl.com](mailto:ssavich@mbakerintl.com) | [www.mbakertnl.com](http://www.mbakertnl.com) | [f](#) [t](#) [@](#) [in](#) [v](#)

**Michael Baker**  
INTERNATIONAL

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**Hornak, Samuel A.**

---

**From:** Tracy Smith <TSmith@pgh2o.com>  
**Sent:** Tuesday, July 18, 2023 11:46 AM  
**To:** Hornak, Samuel A.; Buck, Ashley L.  
**Subject:** FW: RTK Request

Redacted — Attorney-Client Privilege



Tracy Smith  
Risk Coordinator  
Office: 412.255.8800  
Cell: 412.475.5344

Pittsburgh Water and Sewer Authority  
1200 Penn Ave, Pittsburgh, PA 15222

<https://pgh2o.com>



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**From:** David M. Nernberg <[dmn@nernberg.com](mailto:dmn@nernberg.com)>  
**Sent:** Tuesday, July 18, 2023 11:44 AM  
**To:** Tracy Smith <[TSmith@pgh2o.com](mailto:TSmith@pgh2o.com)>  
**Subject:** RE: RTK Request

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Nevermind, I got it. Thank you.



**From:** Tracy Smith <TSmith@pgh2o.com>  
**Sent:** Tuesday, July 18, 2023 11:29 AM  
**To:** David M. Nernberg <dmn@nernberg.com>  
**Subject:** RE: RTK Request

Yes, of course.

I've attached it for you. Please let me know if I can be of further assistance.

Thank you



Tracy Smith  
Risk Coordinator  
Office: 412.255.8800  
Cell: 412.475.5344

Pittsburgh Water and Sewer Authority  
1200 Penn Ave, Pittsburgh, PA 15222

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**From:** David M. Nernberg <dmn@nernberg.com>  
**Sent:** Tuesday, July 18, 2023 11:16 AM  
**To:** Right To Know <[righttoknow@pgh2o.com](mailto:righttoknow@pgh2o.com)>  
**Subject:** RE: RTK Request

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Tracy,

I was recently informed you sent a formal response on July 11, 2023. I did not receive it. Can you please confirm and resend.

Thanks,

David.

**From:** Right To Know <[righttoknow@pgh2o.com](mailto:righttoknow@pgh2o.com)>  
**Sent:** Thursday, July 6, 2023 2:26 PM  
**To:** David M. Nernberg <[dmn@nernberg.com](mailto:dmn@nernberg.com)>  
**Subject:** RTK Request

Good afternoon,

Please see attached in regard to your request.

Thank you

**From:** David M. Nernberg <[dmn@nernberg.com](mailto:dmn@nernberg.com)>  
**Sent:** Wednesday, June 28, 2023 11:30 AM  
**To:** Right To Know <[RightToKnow@pgh2o.com](mailto:RightToKnow@pgh2o.com)>  
**Subject:** RTK Request

CAUTION: This email originated from outside the authority. Do not click links or open attachments unless you recognize the sender and know the content is safe.  
Please see the attached right to know request.

David Nernberg

David Nernberg  
Nernberg & Associates  
301 Smithfield St.  
Pittsburgh, PA 15222  
412-232-0334  
[dmn@nernberg.com](mailto:dmn@nernberg.com)



Pittsburgh  
Water & Sewer  
Authority

July 6, 2023

David Nernberg  
301 Smithfield Street  
Pittsburgh, Pa 15222

Dear Mr. Nernberg:

I am the Open Records Officer for the Pittsburgh Water and Sewer Authority ("PWSA"), and I am responding to your Right-to-Know Law Request ("Request") received by the PWSA on June 28, 2023. Pursuant to Pennsylvania's Right-to-Know Law ("RTKL"), your Request is for the following:

"Please provide all documents filed of record in case number (Formal Complaint) C-2023-3038775 including but not limited to the Formal Complaint filed on March 7, 2023, Amendment to Formal Complaint filed on or about March 24, 2023, and the Answer and New Matter to the Amended Complaint filed on April 13, 2023."

The PWSA has determined that it will need additional time beyond the five (5) business days provided under Section 901 of the RTKL, 65 P.S. § 67.901, to respond to the items in your Request. Pursuant to Section 902 of the RTKL, 65 P.S. § 67.902, the PWSA has determined that the following circumstances apply to your Request and, therefore, the PWSA requires additional time to respond:

- 1) The Request may require redaction of records in accordance with Section 706 of the RTKL, 65 P.S. § 67.706;
- 2) A timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;
- 3) A legal review is necessary to determine whether the records are subject to access under the RTKL; and/or
- 4) The extent or nature of the Request precludes a response within the required time period.

Please be advised that the RTKL does not require the PWSA to compile lists, prepare summaries, or create documents that do not exist. 65 P.S. § 67.705. Subject to the above, and any and all applicable privileges, state and federal law prohibitions, as well as the exemptions set forth in the RTKL, the PWSA expects to provide a response to your Request in a reasonable time period, not exceeding thirty (30) days. At the present time, the PWSA is not able to estimate the fees necessary to fulfill your Request. If you have any questions or concerns, please do not hesitate to contact me at [RightToKnow@pgh2o.com](mailto:RightToKnow@pgh2o.com).

Sincerely,

*Tracy Smith*

Tracy Smith

Penn Liberty Plaza I  
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Pittsburgh PA 15222

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F 412.255.2475

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served electronically via the Commission's electronic filing system, as well as by courtesy copy via electronic mail, this 14th day of August, 2023, upon the following:

David M. Nernberg, Esquire  
Maurice A. Nernberg & Associates  
301 Smithfield Street  
Pittsburgh, PA 15222  
[dmn@nernberg.com](mailto:dmn@nernberg.com)  
*Attorneys for Complainant,  
Office Partners XXIII Block G1, LLC*

/s/ Samuel A. Hornak

Samuel A. Hornak