

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

REPLY TO NEW MATTER

AND NOW comes the Complainant, 3213 Penn, LLC (“3213 Penn”), by and through its undersigned counsel and replies to the New Matter that Respondent The Pittsburgh Water and Sewer Authority (“PWSA”) has filed in this proceeding as follows:

1. 3213 Penn reasserts the averments of its Amended Complaint in this proceeding. To the extent that PWSA’s Answer admits to those averments, those averments of the Answer are admitted. Except as expressly admitted below, 3213 Penn denies the remaining factual averments of PWSA’s Answer. The remaining averments of PWSA’s Answer set forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.
2. Paragraph 2 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.
3. 3213 Penn admits to the averments of Paragraph 3 of the New Matter.
4. Paragraph 4 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

5. Paragraph 5 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

6. Paragraph 6 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

7. Paragraph 7 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

8. To the extent that Paragraph 8 of the New Matter attempts to set forth the contents of a PWSA publication, after reasonable inquiry, 3213 Penn is without knowledge or information sufficient to form a belief as to the truth of that averment. To the extent that Paragraph 8 attempts to allege that the matters asserted therein are a correct statement of applicable law, those averments set forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

9. Paragraph 9 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

10. Paragraph 10 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

11. To the extent that Paragraph 11 of the New Matter attempts to set forth the contents of a PWSA publication, after reasonable inquiry, 3213 Penn is without knowledge or information sufficient to form a belief as to the truth of that averment. To the extent that Paragraph 11 attempts to allege that the matters asserted therein are a correct statement of applicable law, those averments set forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

12. To the extent that Paragraph 12 of the New Matter attempts to set forth the contents of a PWSA publication, after reasonable inquiry, 3213 Penn is without knowledge or information sufficient to form a belief as to the truth of that averment. To the extent that Paragraph 12 attempts to allege that the matters asserted therein are a correct statement of applicable law, those averments set forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

13. 3213 Penn admits to the averments of Paragraph 13 of the New Matter.

14. 3213 Penn admits to the averment of Paragraph 14 of the New Matter that PWSA demanded payment of \$348,110.03. The remaining averments of Paragraph 14 set forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

15. After reasonable inquiry, 3213 Penn is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 15 of the New Matter regarding the methodology that PWSA used in calculating fees. To any extent that Paragraph 15 alleges that PWSA's methodology was correct, those averments set forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

16. 3213 Penn admits to the averments of Paragraph 16 of the New Matter that it paid \$348,110.03 to PWSA in 2021. The remaining averments of Paragraph 16 set forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

17. 3213 Penn admits to the averments of Paragraph 17 of the New Matter that it paid funds to PWSA in 2021. The remaining averments of Paragraph 17 set forth conclusions of law

to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments. In particular, 3213 Penn denies that PWSA gave final approval to 3213 Penn's application in 2021.

18. Paragraph 18 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

19. Paragraph 19 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

20. Any averment of Paragraph 20 of the New Matter that, after PWSA required further action by 3213 Penn on its application, 3213 Penn was somehow required to request a reduction in fees sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments. The remaining averments of Paragraph 20 are denied.

21. After reasonable inquiry, 3213 Penn is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 21 of the New Matter.

22. After reasonable inquiry, 3213 Penn is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 22 of the New Matter.

23. After reasonable inquiry, 3213 Penn is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 23 of the New Matter.

24. Paragraph 24 of the New Matter sets forth conclusions of law to which no responsive pleading is required.

25. 3213 Penn admits to the averments of Paragraph 25 of the New Matter.

26. 3213 Penn admits to the averments of Paragraph 26 of the New Matter.

27. The averments of Paragraph 27 of the New Matter are denied.

28. Paragraph 28 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

29. 3213 Penn denies the averment of Paragraph 29 of the New Matter that PWSA ultimately approved 3213 Penn's application in 2021. The remaining averments of Paragraph 29 are admitted.

30. Paragraph 30 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

31. The averment of Paragraph 31 of the New Matter that 3213 Penn is attempting to "shirk its duties" are denied. To the contrary, 3213 Penn is seeking a refund of fee that it has already paid. The remaining averments of Paragraph 31 set forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

32. Paragraph 32 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

33. Paragraph 33 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

34. Paragraph 34 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

35. Paragraph 35 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

36. After reasonable inquiry, 3213 Penn is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 36 of the New Matter that PWSA's treatment of 3213 Penn was consistent with its treatment of other similarly situated

applicants. The remaining averments of Paragraph 36 set forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

37. Paragraph 37 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

38. After reasonable inquiry, 3213 Penn is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 38 of the New Matter that it made payment to PWSA in 2021 with a full knowledge of the facts. The remaining averments of Paragraph 38 set forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

39. Paragraph 39 of the New Matter sets forth conclusions of law to which no responsive pleading is required. To any extent necessary, 3213 Penn denies those averments.

WHEREFORE, 3213 Penn respectfully requests that this Commission award 3213 Penn the relief requested in the Amended Complaint in this proceeding.

Dated: July 31, 2023

BERNSTEIN-BURKLEY, P.C.

By: /s/ D. McArdle Booker
Stuart C. Gaul, 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*

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VERIFICATION

I, Shawn Kichline, verify that the facts set forth in the foregoing Reply to New Matter are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

I am authorized to make this verification on behalf of Plaintiff 3213 Penn, LLC, by virtue of my position as the Managing Partner of its Managing Member.

Dated: 07/31/23

By: 

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July, 2023, a true and correct copy of the foregoing
REPLY TO NEW MATTER 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/ D. McArdle Booker