

**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.)	

JOINT STIPULATION OF FACTS

AND NOW come the parties to the above captioned consolidated actions, and, in response to the Commission’s Order, Office Partners XXIII Block G1 LLC (“Office Partners”) and The Pittsburgh Water and Sewer Authority (the “PWSA”) hereby submit this Joint Stipulation of Facts and move for adoption of the same by the Commission:

1. At all relevant times hereto, Office Partners was developing a commercial property known as the FNB Financial Center.
2. Office Partners’ construction of the FNB Financial Center required PWSA to issue a permit for the connection to a PWSA sewer main.
3. Office Partners began the application process (which included design and construction plans) to tap into the PWSA’s infrastructure in May of 2021, for two parcels known as G1 and G4 (the “2021 Application”).
4. The PUC Tariff (“2021 Tariff”) that was in effect from March 1, 2019 until January 12, 2022, and is set forth at PUC Docket No. R-2018-3002647 and PUC Docket No. R-2020-3017970- was:

Collection Fee	\$1,701 Per EDU*
Capacity Fee	\$1,277 Per EDU*

Total Tapping Fee \$2,978 Per EDU*
 * 300 gpd/EDU.

5. The 2021 Tariff in effect m at the time of the 2021 Application found at R-2018-3002647 (Section G 2) states:

A Main Extension Applicant shall pay enumerated fees to the Authority. 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 Authority agree. 53 Pa.C.S. 5607(d)(24).

6. On December 23, 2021, PWSA sent a letter to Office Partners stating, in part:

The Pittsburgh Water and Sewer Authority (PWSA) has approved the tap-in plans for the above reference project. The fees have been calculated and are attached for your reference. Permits are not considered issued until permit fees are paid. Due to the closure of the PWSA permit counter in response to COVID-19, payments will be accepted by mail only. Please send check or money order to Pittsburgh Water and Sewer Authority at 1200 Penn Avenue, PGH, PA 15222, Attention: Permits. Permits will be processed and emailed after payment is received.

7. Along with the December 23, 2021 letter was an invoice for \$508,314.79 calculated pursuant to the 2021 Tariff. The invoice also states capitalized and in bold:

****PLEASE NOTE****

PAYMENT FOR PERMITS MUST BE RECEIVED WITHIN 6 MONTHS FROM 12/23/2021. IF PERMITS ARE NOT PAID FOR WITHIN THIS PERIOD, THIS PROJECT AND PLANS WILL BE VOIDED AND WILL REQUIRE THIS PROJECT TO START FROM THE BEGINNING.

8. The PWSA issues tap-in permits after the permit fees are paid.

9. A new Tariff went into effect on January 13, 2022 (the “2022 Tariff”), which had the effect of eliminating tap-in fees and changing the PWSA’s overall rate structure by, *inter alia*, increasing usage rates. There is no corresponding fee or section (as the tap-in fee had been eliminated) and it can be found at PUC Docket No. R-2021-3024779.

10. On January 31, 2022 Office Partners' representative Steven Savich emailed PWSA stating in part:

I wanted to give you a 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 meeting with them allowed for the development of the G1 parcel only under the capacity of the overall block...

11. Julie Ascioffa of PWSA forwarded Office Partners' January 31, 2022 email to PWSA executives and employees, Will Pickering, Jennifer Presutti and Robert Herring with the following:

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 the 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 3 before responding.

12. Will Pickering responded: "Hi Julie – As long as this approach is consistent with how we would treat similar applications, I support your position."

13. On February 1, 2022, Julie Ascioffa responded to Office Partners' January 31, 2022 email with the following:

Hi Steve,

We don't have any existing policies to withdraw an application. All permits and projects under review have the option to submit revised applications, planning modules, and tap-in plans without restarting an application. We wouldn't start a new application in e-Builder or CityGrows. To move forward with your review please resubmit your DEP Planning Module under your previous e-Builder folder. We will review expeditiously.

Please let me know if you have any questions.

14. On or about February 4, 2022, Office Partners submitted another application to PWSA for the Project which excised the G4 Parcel water and sanitary taps from the 2021 Application plans (leaving only the G1 parcel) which changed usage calculations. This shall be referred to as the "2022 Application." The reference to the 2022 Application is not a stipulation that it is a separate application from the 2021 Application as that is a disputed fact.

15. The PWSA's position in this action is that the 2022 Application is not separate from the 2021 Application.

16. On February 22, 2022, PWSA sent a letter to Office Partners approving the plans in the 2022 Application. No invoice was included.

17. On February 25, 2022, Office Partners initiated an action in in mandamus before the Court of Common Pleas of Allegheny County to require the issuance of the permits at the 2022 Tariff rate.

18. On March 3, 2022, PWSA sent an invoice for the tap-in authorization permit in the amount of \$506,647.18, pursuant to the 2022 Application (a lesser amount than the 2021 Application invoice) accompanied by the following statement:

**IF PERMITS ARE NOT PAID FOR WITHIN THIS PERIOD,
THIS PROJECT AND PLANS WILL BE VOIDED AND WILL
REQUIRE THIS PROJECT TO START FROM THE
BEGINNING.**

19. On March 15, 2022, Office Partners made an escrow deposit for the March 3, 2022 invoice amount with the Court of Common Pleas of Allegheny County subject to a consent order to determine how much or if anything is due from Office Partners to the PWSA. The permit was then issued.

20. Thereafter, pursuant to the consent order, on or about June 17, 2022, Office Partners filed two identical formal Complaints with the Commission docketed and consolidated at the above-captioned numbers.

21. On April 14, 2023, Julie Ascioffa, Industry Relations Manager for the PWSA, testified at a deposition in this action pursuant to Pa. R.C.P. 4007.1 and verified all pleadings in these consolidated actions.

22. On April 18, 2023, Boris Kaplan testified for Office Partners at a deposition in this action, pursuant to Pa. R.C.P. 4007.1.

23. The PWSA published a Developer's Manual during the relevant times of this action.

WHEREFORE, the parties respectfully request that the Commission adopt this Joint Stipulation of Facts.

SIGNATURES ON NEXT PAGE

Dated: May 3, 2024

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Dated: May 3, 2024

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XXIII Block G1 LLC*

CERTIFICATE OF SERVICE

I, David M. Nernberg, hereby certify that a true and correct copy of the within Stipulated Issues of Fact on Behalf of Office Partners XXIII Block G1, LLC was served via email upon the following:

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Dated: May 3, 2024

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