

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

OFFICE PARTNERS XXIII BLOCK G1)
LLC,)

Complainant,)

vs.)

THE PITTSBURGH WATER AND SEWER)
AUTHORITY,)

Respondent.)

Docket Nos. C-2022-3033251
C-2022-3033266

**DISPUTED ISSUES OF FACT
ON BEHALF OF OFFICE
PARTNERS XXIII BLOCK G1,
LLC. PURSUAN TO MARCH
20, 2024 ORDER**

Filed on behalf of: Plaintiff

Counsel of Record for This Party:

David M. Nernberg
Pa. I.D. No. 205631

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Firm No. 331

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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LLC,)
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vs.) Docket Nos. C-2022-3033251
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NOTICE TO PLEAD

To: THE PITTSBURGH WATER AND SEWER AUTHORITY

Pursuant to 52 Pa. Code § 5.102(a), you are hereby notified to file an answer or other responsive pleading to the Disputed Issues of Fact on Behalf of Office Partners XXIII Block G1, LLC filed on May 3, 2024, at this case number, within twenty (20) days from service hereof.

Pursuant to 52 Pa. Code § 1.4, all document must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on counsel, and where applicable, the Administrative Law Judge presiding over the issue, or electronically on the Commission’s electronically filing system if the document is a qualified document.

Respectfully submitted,

MAURICE A. NERNBERG & ASSOCIATES

Dated: May 3, 2024

/s/ David M. Nernberg, Esq.
David M. Nernberg
Pa.I.D. No. 205631
*Counsel for Complainant, Office Partners
XXIII Block G1 LLC*

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 LLC,)
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 AUTHORITY,)
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 Respondent.)

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 C-2022-3033266

**DISPUTED ISSUES OF FACT ON BEHALF
 OF OFFICE PARTNERS XXIII BLOCK G1, LLC**

AND NOW comes Office Partners XXIII Block G1 LLC (“Office Partners”) and hereby submits this Disputed Issues of Facts and move for adoption of the same by the Commission. On the parties to this action were ordered to file joint stipulated facts to the extent the parties could agree. On May 3, 2024 Office Partners and The Pittsburgh Water and Sewer Authority (“PWSA”) filed their stipulated facts referred to herein as “SF.” The parties were also ordered to file disputed issues of fact which they agreed to file separately. The filing is filed as a stipulation for lack of another category and pursuant to the March 20, 2024 PUC order. The Parties do not stipulate to the relevance, or veracity of their respective filings. Office Partners hereby submits the following for the Commission’s Consideration:

1. The Stipulation of Facts filed on May 3, 2024, Office Partners Motion for Summary Judgment and Appendix thereto, Motion for Directed Verdict, Brief in Response to PWSA’s Response to Office Partner’s Motion for Directed Verdict, and Office Partners’ Response to PWSA’s Motion for Summary Judgment are fully incorporated herein.
2. The Parties agree 53 Pa.C.S. 5607(d)(24) controls See PWSA New Matter Paragraph 35 and Office Partners’ Complaint Paragraph 32:

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.

3. Julie Ascioffa (“JA”), Industry Relations Manager for the PWSA, testified as the corporate designee for PWSA pursuant to Pa. R.C.P. 4007.1 and verified all pleadings in these consolidated actions. SF 21.

4. PWSA did not assign an application date and did not assign any importance to the date of application. (SF 3, Response to Complaint Paragraph 6, JA Deposition P. 17-18 Exhibit A to PWSA’s Answer and Brief in Opposition to Office Partners’ Motion for Summary Judgment).

5. On December 23, 2021, PWSA approved Office Partners’ 2021 Application Plans, but no permit was issued. It included an invoice for \$508,314.79 pursuant to the 2021 Tariff. SF 4 and 7.

6. The December 23, 2021, invoice was never paid by Office Partners. SF 18 and 19.

7. On January 13, 2022 the 2022 Tariff became effective eliminating tap-in fees. SF 9.

8. On January 31, 2022, Office Partners withdrew the 2021 Application. SF 10.

9. JA testified that PWSA has no policies related to or forbidding withdrawal of an application. (JA Deposition, P. 20, L 12-14, Exhibit A to PWSA’s Answer and Brief in Opposition to Office Partners’ Motion for Summary Judgment).

10. On or about February 4, 2022, Office Partners submitted another application (“2022 Application”) separating the G1 and G4 parcels resulting in lesser flows. SF 14.

11. On February 22, 2022, PWSA sent a letter to Office Partners approving the 2022 Application Plans. SF 16.

12. On March 3, 2022, PWSA sent a final invoice for \$506,647.18 pursuant to the 2022 Application. SF 18 and Appendix O to Office Partners' Motion for Summary Judgment.

13. On March 15, 2022, Office Partners, by consent order and agreement with PWSA, paid the March 3, 2022, final invoice amount into escrow with the Court of Common Pleas of Allegheny County pending resolution of this action, and the permit was issued. SF. 19

14. In this action PWSA contends that its "policy" determines tap-in permit fees by the rate schedule in effect on the date when a tap-in permit application is approved and a final invoice transmitted, in this case, December 23, 2021. Paragraph 23 and 24 of PWSA's Motion for Summary Judgment.

15. JA testified that PWSA's written policies are contained in the developer's manual. (JA Deposition P. 20. Exhibit A to PWSA's Answer and Brief in Opposition to Office Partners' Motion for Summary Judgment).

16. JA testified that an approval letter "is not a permit." (JA Deposition, P. 15 Exhibit A to PWSA's Answer and Brief in Opposition to Office Partners' Motion for Summary Judgment).

17. JA testified that there is no requirement to pay for a permit once the approval letter is issued, and that an applicant could just "walk away" and PWSA would not have further contact. (JA Deposition, P. 18-19, Exhibit A to PWSA's Answer and Brief in Opposition to Office Partners' Motion for Summary Judgment).

18. The 2021 and 2022 Tariffs both incorporate 53 Pa.C.S. § 5607 (d)(24).

19. Another action was filed at C-2023-3038775 with the Pennsylvania Utility Commission, on March 22, 2023 by 3213 Penn, LLC. Against PWSA regarding whether the 2022 or 2021 rates should apply to a permit approved and paid for in 2021 when the 2021 tap-in

rates applied, but the permit was not issued until after the 2022 tap-in rates came into effect. (“3213 Penn Action”). Exhibit E to Office Partners’ Motion for Directed Verdict.

20. JA verified all pleadings on behalf of PWSA in the 3213 Penn Action. Exhibit F to Motion for Directed Verdict.

21. In the 3213 Penn Action PWSA also contends that 53 Pa.C.S. § 5607(d)(24) is applicable. Exhibit F to Motion for Directed Verdict.

22. In the 3213 Penn Action the permit application was approved and an invoice issued on August 2, 2021 and the fee was paid on August 19, 2021 pursuant to the 2021 Tariff. Exhibits E and F to Motion for Directed Verdict.

23. No permit was issued because of changes to the plans required by other government authorities. Exhibits E and F to Motion for Directed Verdict.

24. 3213 modified its tap-in plans after the 2022 Tariff became effective, on March 14, 2022 in order to receive the approvals from the other government authorities. See PWSA response to 3213’s complaint cited below Paragraphs 11, 20, 22 and 24 (Exhibit F to Motion for Directed Verdict).

25. PWSA issued the permit to 3213 Penn after the 2022 Tariff became effective. Exhibits E and F to Motion for Directed Verdict.

26. 3213 is requesting a refund of the 2021 Tariff and that the 2022 Tariff rates be applicable because no permit was issued until after the 2022 Tariff became effective. Exhibits E and F to Motion for Directed Verdict.

27. In the 3213 Penn Action PWSA pled as follows in its answer and new matter (“Amended Answer New Matter and Counterclaim”). Exhibit F to Motion for Directed Verdict.

The language is as follows:

Paragraph 6: “It is admitted only that PWSA approved 3213’s application on or about August 19, 2021, upon receipt of 3213’s full payment.

Paragraph 8: “To the contrary, the PWSA approved 3213’s application on or about August 19, 2021, upon receipt of 3213’s full fee payment.”

Paragraph 10: “It is admitted only that the PWSA approved 3213’s application on or about August 19, 2021, upon receipt of the 3213’s full fee payment.”

Paragraph 11: “By way of further answer, the PWSA approved 3213’s application on or about August 19, 2021, upon receipt of 3213’s full fee payment. Thus, the 2022 PUC Tariff did not and does not apply to 3212’s March 14, 2022 modifications.”

Paragraphs 20, 22 and 24: “To the contrary, the PWSA approved 3213’s application on or about August 19, 2021, upon receipt of 3213’s full fee payment. Further, 3213’s March 14, 2022 modifications were to its already-approved 2021 tap-in plans.”

Paragraph 17 of PWSA’s New Matter: “The PWSA approved 3213’s application on or about August 10, 2021, upon receipt of 3213’s full payment.”

28. PWSA approves tap-in permits upon receipt of payment.

WHEREFORE, the parties respectfully request that the Commission adopt these

Disputed Issues of Fact in this case.

Respectfully submitted,

MAURICE A. NERNBERG & ASSOCIATES

Dated: May 3, 2024

/s/ David M. Nernberg, Esq.

David M. Nernberg

Pa.I.D. No. 205631

Counsel for Complainant, Office Partners

XXIII Block G1 LLC

CERTIFICATE OF SERVICE

I, David M. Nernberg, hereby certify that a true and correct copy of the within Disputed 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

/s/ David M. Nernberg, Esq.
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