Office Partners XXIII Block G1 LLC, v. Pittsburgh Water and Sewer Authority	Docket Nos.: C-2022-3033251 C-2022-3033266
Initial Call-In Telephonic	

Pages 62 - 125

Judge's Chambers
Piatt Place
301 5th Avenue
Suite 220
Pittsburgh, PA

Wednesday, May 22, 2024
Commencing at 1:55 p.m.

INDEX TO EXHIBITS

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

Hearing date: May 22, 2024

NUMBER		FOR IDENTIFICATION	IN EVIDENCE
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L	Consolidated Amended Pleading	--	--
PWSA Exhibits:			
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Docket Nos. C-2022-3033251

C-2022-3033266

Hearing date: May 22, 2024

NUMBER		FOR IDENTIFICATION	IN EVIDENCE
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Municipalities Planning Code. If financial security is required by the authority and without limitation as to other types of financial security which the authority may approve, which approval shall not be unreasonably withheld, federally chartered or Commonwealth-chartered lending institution irrevocable letters of credit and restrictive or escrow accounts in these lending institutions shall be deemed acceptable financial security. Financial security shall be posted with a bonding company or federally chartered or Commonwealth-chartered lending institution chosen by the party posting the financial security if the bonding company or lending institution is authorized to conduct business within this Commonwealth. The bond or other security shall provide for and secure to the authority the completion of required improvements within one year from the date of posting of the security. The amount of financial security shall be equal to 110% of the cost of the required improvements for which financial security is to be posted. The cost of required improvements shall be established by submitting to the authority a bona fide bid from a contractor chosen by the party posting the financial security. In the absence of a bona fide bid, the cost shall be established by an estimate prepared by the authority's engineer. If the party posting the financial security requires more than one year from the date of posting the financial security to complete the required improvements, the amount of financial security may be increased by an additional 10% for each one-year period beyond the first anniversary date from the initial posting date or to 110% of the cost of completing the required improvements as reestablished on or about the expiration of the preceding one-year period by using the above bidding procedure. As the work of installing the required improvements proceeds, the party posting the financial security may request the authority to release or authorize the release of, from time to time, portions of the financial security necessary to pay the contractor performing the work. Release requests shall be in writing addressed to the authority, and the authority shall have 45 days after receiving a request to ascertain from the authority engineer, certified in writing, that the portion of the work has been completed in accordance with the approved plat. Upon receiving written certification, the authority shall authorize release by the bonding company or lending institution of an amount estimated by the authority engineer to fairly represent the value of the improvements completed. If the authority fails to act within the 45-day period, it shall be deemed to have approved the requested release of funds. The authority may, prior to final release at the time of completion and certification by its engineer, retain 10% of the original amount of the posted financial security for the improvements. If the authority accepts dedication of all or some of the required improvements following completion, it may require the posting of financial security to secure structural integrity of the dedicated improvements as well as the functioning of the improvements in accordance with the design and specifications as depicted on the final plat and the authority's rules and regulations. This financial security shall expire not later than 18 months from the date of acceptance of dedication and shall be of the same type as set forth in this paragraph with regard to that which is required for installation of the improvements, except that it shall not exceed 15% of the actual cost of installation of the improvements. Any inconsistent ordinance, resolution or statute is null and void.

(24) To charge enumerated fees to property owners who desire to or are required to connect to the authority's sewer or water system. 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. In the case of projects to serve existing development, fees shall be payable at a time to be determined by the

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Exhibit
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authority. An authority may require that no capacity be guaranteed for a property owner until the tapping fees have been paid or secured by other financial security. The fees shall be in addition to any charges assessed against the property in the construction of a sewer or water main by the authority under paragraphs (21) and (22) as well as any other user charges imposed by the authority under paragraph (9), except that no reservation of capacity fee or other similar charge shall be imposed or collected from a property owner who has applied for service unless the charge is based on debt and fixed operating expenses. A reservation of capacity fee or other similar charge may not exceed 60% of the average sanitary sewer bill for a residential customer in the same sewer service area for the same billing period. Any authority opting to collect a reservation of capacity fee or other similar charge may not collect the tapping fee until the time as the building permit fee is due. Tapping fees shall not include costs included in the calculation of any other fees, assessments, rates or other charges imposed under this act.

(i) The fees may include any of the following if they are separately set forth in a resolution adopted by the authority:

(A) Connection fee. A connection fee shall not exceed an amount based upon the actual cost of the connection of the property extending from the authority's main to the property line or curb stop of the property connected. The authority may also base the connection fee upon an average cost for previously installed connections of similar type and size. Such average cost may be trended to current cost using published cost indexes. In lieu of payment of the fee, an authority may require the construction of those facilities by the property owner who requested the connection.

(B) Customer facilities fee. A customer facilities fee shall not exceed an amount based upon the actual cost of facilities serving the connected property from the property line or curb stop to the proposed dwelling or building to be served. The fee shall be chargeable only if the authority installs the customer facilities. In lieu of payment of the customer facilities fee, an authority may require the construction of those facilities by the property owner who requests customer facilities. In the case of water service, the fee may include the cost of a water meter and installation if the authority provides or installs the water meter. If the property connected or to be connected with the sewer system of the authority is not equipped with a water meter, the authority may install a meter at its own cost and expense. If the property is supplied with water from the facilities of a public water supply agency, the authority shall not install a meter without the consent and approval of the public water supply agency.

(C) Tapping fee. A tapping fee shall not exceed an amount based upon some or all of the following parts which shall be separately set forth in the resolution adopted by the authority to establish these fees. In lieu of payment of this fee, an authority may require the construction and dedication of only such capacity, distribution-collection or special purpose facilities necessary to supply service to the property owner or owners.

(I) Capacity part. The capacity part shall not exceed an amount that is based upon the cost of capacity-related facilities, including, but not limited to, source of supply, treatment, pumping, transmission, trunk, interceptor and outfall mains, storage, sludge treatment or disposal, interconnection or other general system facilities. Except as specifically provided in this paragraph, such facilities may include only

those that provide existing service. The cost of capacity-related facilities, excluding facilities contributed to the authority by any person, government or agency, or portions of facilities paid for with contributions or grants other than tapping fees, shall be based upon their historical cost trended to current cost using published cost indexes or upon the historical cost plus interest and other financing fees paid on debt financing such facilities. To the extent that historical cost is not ascertainable, tapping fees may be based upon an engineer's reasonable written estimate of current replacement cost. Such written estimate shall be based upon and include an itemized listing of those components of the actual facilities for which historical cost is not ascertainable. Outstanding debt related to the facilities shall be subtracted from the cost except when calculating the initial tapping fee imposed for connection to facilities exclusively serving new customers. The outstanding debt shall be subtracted for all subsequent revisions of the initial tapping fee where the historical cost has been updated to reflect current cost except as specifically provided in this section. For tapping fees or components related to facilities initially serving exclusively new customers, an authority may, no more frequently than annually and without updating the historical cost of or subtracting the outstanding debt related to such facilities, increase such tapping fee by an amount calculated by multiplying the tapping fee by the weighted average interest rate on the debt related to such facilities applicable for the period since the fee was initially established or the last increase of the tapping fee for such facilities. The capacity part of the tapping fee per unit of design capacity of said facilities required by the new customer shall not exceed the total cost of the facilities as described herein divided by the system design capacity of all such facilities. Where the cost of facilities to be constructed or acquired in the future are included in the calculation of the capacity part as permitted herein, the total cost of the facilities shall be divided by the system design capacity plus the additional capacity to be provided by the facilities to be constructed or acquired in the future. An authority may allocate its capacity-related facilities to different sections or districts of its system and may impose additional capacity-related tapping fees on specific groups of existing customers such as commercial and industrial customers in conjunction with additional capacity requirements of those customers. The cost of facilities to be constructed or acquired in the future that will increase the system design capacity may be included in the calculation of the capacity part, subject to the provisions of clause (VI). The cost of such facilities shall not exceed their reasonable estimated cost set forth in a duly adopted annual budget or a five-year capital improvement plan. The authority shall have taken at least two of the following actions toward construction of the facilities:

(a) obtained financing for the facilities;

(b) entered into a contract obligating the authority to construct or pay for the cost of construction of the facilities or its portion thereof in the event that multiple parties are constructing the facilities;

(c) obtained a permit for the facilities;

(d) obtained title to or condemned additional real estate upon which the facilities will be constructed;

(e) entered into a contract obligating the authority to purchase or acquire facilities owned by another;

(f) prepared an engineering feasibility study specifically related to the facilities, which study recommends the construction of the facilities within a five-year period;

(g) entered into a contract for the design or construction of the facilities or adopted a budget which includes the use of in-house resources for the design or construction of the facilities.

(II) Distribution or collection part. The distribution or collection part may not exceed an amount based upon the cost of distribution or collection facilities required to provide service, such as mains, hydrants and pumping stations. Facilities may only include those that provide existing service. The cost of distribution or collections facilities, excluding facilities contributed to the authority by any person, government or agency, or portions of facilities paid for with contributions or grants other than tapping fees, shall be based upon historical cost trended to current cost using published cost indexes or upon the historical cost plus interest and other financing fees paid on debt financing such facilities. To the extent that historical cost is not ascertainable, tapping fees may be based upon an engineer's reasonable written estimate of replacement cost. Such written estimate shall be based upon and include an itemized listing of those components of the actual facilities for which historical cost is not ascertainable. Outstanding debt related to the facilities shall be subtracted from the cost except when calculating the initial tapping fee imposed for connection to facilities exclusively serving new customers. The outstanding debt shall be subtracted for all subsequent revisions of the initial tapping fee where the historical cost has been updated to reflect current cost except as specifically provided in this section. For tapping fees or components related to facilities initially serving exclusively new customers, an authority may, no more frequently than annually and without updating the historical cost of or subtracting the outstanding debt related to such facilities, increase such tapping fee by an amount calculated by multiplying the tapping fee by the weighted average interest rate on the debt related to such facilities applicable for the period since the fee was initially established or the last increase of the tapping fee for such facilities. The distribution or collection part of the tapping fee per unit of design capacity of said facilities required by the new customer shall not exceed the cost of the facilities divided by the design capacity. An authority may allocate its distribution-related or collection-related facilities to different sections or districts of its system and may impose additional distribution-related or collection-related tapping fees on specific groups of existing customers such as commercial and industrial customers in conjunction with additional capacity requirements of those customers.

(III) Special purpose part. A part for special purpose facilities shall be applicable only to a particular group of customers or for serving a particular purpose or a specific area based upon the cost of the facilities, including, but not limited to, booster pump stations, fire service facilities, water or sewer mains, pumping stations and industrial wastewater treatment facilities. Such facilities may include

only those that provide existing service. The cost of special purpose facilities, excluding facilities contributed to the authority by any person, government or agency, or portions of facilities paid for with contributions or grants other than tapping fees, shall be based upon historical cost trended to current cost using published cost indexes or upon the historical cost plus interest and other financing fees paid on debt financing such facilities. To the extent that historical cost is not ascertainable, tapping fees may be based upon an engineer's reasonable written estimate of current replacement cost. Such written estimate shall be based upon and include an itemized listing of those components of the actual facilities for which historical cost is not ascertainable. Outstanding debt related to the facilities shall be subtracted from the cost except when calculating the initial tapping fee imposed for connection to facilities exclusively serving new customers. The outstanding debt shall be subtracted for all subsequent revisions of the initial tapping fee where the historical cost has been updated to reflect current cost except as specifically provided in this section. For tapping fees or components related to facilities initially serving exclusively new customers, an authority may, no more frequently than annually and without updating the historical cost of or subtracting the outstanding debt related to such facilities, increase such tapping fee by an amount calculated by multiplying the tapping fee by the weighted average interest rate on the debt related to such facilities applicable for the period since the fee was initially established or the last increase of the tapping fee for such facilities. The special purpose part of the tapping fee per unit of design capacity of such special purpose facilities required by the new customer shall not exceed the cost of the facilities as described herein divided by the design capacity of the facilities. Where an authority constructs special purpose facilities at its own expense, the design capacity for the facilities may be expressed in terms of the number of equivalent dwelling units to be served by the facilities. In no event shall an authority continue to collect any tapping fee which includes a special purpose part after special purpose part fees have been imposed on the total number of design capacity units used in the original calculation of the special purpose part. An authority may allocate its special purpose facilities to different sections or districts of its system and may impose additional special purpose tapping fees on specific groups of existing customers such as commercial and industrial customers in conjunction with additional capacity requirements of those customers.

(IV) Reimbursement part. The reimbursement part shall only be applicable to the users of certain specific facilities when a fee required to be collected from such users will be reimbursed to the person at whose expense the facilities were constructed as set forth in a written agreement between the authority and such person at whose expense such facilities were constructed.

(V) Calculation of tapping fee.

(a) In arriving at the cost to be included in the tapping fee, the same cost shall not be included in more than one part of the tapping fee.

(b) No tapping fee may be based upon or include the cost of expanding, replacing, updating or upgrading facilities serving only existing customers in

order to meet stricter efficiency, environmental, regulatory or safety standards or to provide better service to or meet the needs of existing customers.

(c) The cost used in calculating tapping fees shall not include maintenance and operation expenses.

(d) As used in this subclause, “maintenance and operation expenses” are those expenditures made during the useful life of a sewer or water system for labor, materials, utilities, equipment accessories, appurtenances and other items which are necessary to manage and maintain the system capacity and performance and to provide the service for which the system was constructed. Costs or expenses to reduce or eliminate groundwater infiltration or inflow may not be included in the cost of facilities used to calculate tapping fees unless these costs or expenses result in an increase in system design capacity.

(e) Except as otherwise provided for the calculation of a special purpose part, the design capacity required by a new residential customer used in calculating sewer or water tapping fees shall not exceed an amount established by multiplying 65 gallons per capita per day for water capacity, 90 gallons per capita per day for sewer capacity times the average number of persons per household as established by the most recent census data provided by the United States Census Bureau. If an authority service area is entirely within a municipal boundary for which there is corresponding census data specifying the average number of persons per household, issued by the United States Census Bureau, the average shall be used. If an authority service area is not entirely within a municipal boundary but is entirely within a county or other geographic area within Pennsylvania for which the United States Census Bureau has provided the average number of persons per household, then that average for the county or geographic area shall be used. If an authority service area is not entirely within a municipal, county or other geographic area within Pennsylvania for which the United States Census Bureau has calculated an average number of persons per household, then the Pennsylvania average number of persons per household shall be used as published by the United States Census Bureau. Alternatively, the design capacity required for a new residential customer shall be determined by a study but shall not exceed:

> **(i)** for water capacity, the average residential water consumption per residential customer, or, for sewage capacity, the average residential water consumption per residential customer plus ten percent. The average residential water consumption shall be determined by dividing the total water consumption for all metered residential customers in the authority's service area over at least a 12-consecutive-month period within the most recent five years by the average number of customers during the period; or
>
> **(ii)** for sewer capacity, the average sewage flow per residential customer determined by a measured sewage flow study. Such study shall be completed in accordance with sound engineering practices within the most recent five years for the lesser of three or all residential subdivisions of more than ten lots which have collection systems in good repair and which

connected to the authority's facilities within the most recent five years. The study shall calculate the average sewage flow per residential customer in such developments by measuring actual sewage flows over at least 12 consecutive months at the points where such developments connected to the authority's sewer main.

(iii) All data and other information considered or obtained by an authority in connection with determining capacity under this subsection shall be made available to the public upon request.

(iv) f any person required to pay a tapping fee submits to the authority an opinion from a professional engineer that challenges the validity of the results of the calculation of design capacity required to serve new residential customers prepared under subparagraph (i) or (ii), the authority shall within 30 days obtain a written certification from another professional engineer, who is not an employee of the authority, verifying that the results and the calculations, methodology and measurement were performed in accordance with this title and generally accepted engineering practices. If an authority does not obtain a certification required under this subsection within 30 days of receiving such challenge, the authority may not impose or collect tapping fees based on any such challenged calculations or study until such engineering certification is obtained.

(f) An authority may use lower design capacity requirements and impose lower tapping fees for multifamily residential dwellings than imposed on other types of residential customers.

(VI) Separate accounting for future facility costs. Any portion of tapping fees collected which, based on facilities to be constructed or acquired in the future in accordance with this section, shall be separately accounted for and shall be expended only for that particular facility or a substitute facility accomplishing the same purpose which is commenced within the same period. Such accounting shall include, but not be limited to, the total fees collected as a result of including facilities to be constructed in the future, the source of the fees collected and the amount of fees expended on specific facilities. The proportionate share of tapping fees based upon facilities to be constructed or acquired in the future under this section shall be refunded to the payor of such fees within 90 days of the occurrence of the following:

(a) the authority abandons its plan or a part thereof to construct or acquire a facility or facilities which are the basis for such fee; or

(b) the facilities have not been placed into service within seven years, or, for an authority which provides service to five or more municipalities, the facilities have not been placed into service within 20 years, after adoption of a resolution which imposes tapping fees which are based upon facilities to be constructed or acquired in the future. Any refund of fees held for 20 years shall include interest for the period the money was held.

(VII) Definitions. As used in this clause, the following words and phrases shall have the meanings given to them in this subclause:

"OD5." The five-day biochemical-oxygen demand.

"Design capacity." For residential customers, the permitted or rated capacity of facilities expressed in million gallons per day. For nonresidential customers, design capacity may also be expressed in pounds of BOD5 per day, pounds of suspended solids per day or any other capacity-defining parameter that is separately and specifically set forth in the permit governing the operation of the system and based upon its original design as modified by those regulatory agencies having jurisdiction over these facilities. Additionally, for separate fire service customers, the permitted or rated capacity of fire service facilities may be expressed in peak flows. The units of measurement used to express design capacity shall be the same units of measurement used to express the system design capacity. Except as otherwise provided for special purpose facilities, design capacity may not be expressed in terms of equivalent dwelling units.

"Outstanding debt." The principal amount outstanding of any bonds, notes, loans or other form of indebtedness used to finance or refinance facilities included in the tapping fee.

"Service line." A water or sewer line that directly connects a single building or structure to a distribution or collection facility.

"System design capacity." The design capacity of the system for which the tapping fee is being calculated which represents the total design capacity of the treatment facility or water sources.

(ii) Every authority charging a tapping, customer facilities or connection fee shall do so only pursuant to a resolution adopted at a public meeting of the authority. The authority shall have available for public inspection a detailed itemization of all calculations, clearly showing the maximum fees allowable for each part of the tapping fee and the manner in which the fees were determined, which shall be made a part of any resolution imposing such fees. A tapping, customer facilities or connection fee may be revised and imposed upon those who subsequently connect to the system, subject to the provisions and limitations of the act.

(iii) No authority shall have the power to impose a connection fee, customer facilities fee, tapping fee or similar fee except as provided specifically under this section.

(iv) A municipality or municipal authority with available excess sewage capacity, wishing to sell a portion of that capacity to another municipality or municipal authority, may not charge a higher cost for the capacity portion of the tapping fee as the selling entity charges to its customers for the capacity portion of the tapping fee. In turn, the municipality or municipal authority buying this excess capacity may not charge a higher cost for the capacity portion of the tapping fee to its residential customers than that charged to them by the selling entity.

(v) As used in this paragraph, the term "residential customer" shall also include those developing property for residential dwellings that require multiple tapping fee permits.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Amended Formal Complaint Docket # C-2023-3038775

Filing this form begins a legal proceeding and you will be a party to the case.
If you do not wish to be a party to the case, consider filing an informal complaint.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name 3213 Penn, LLC, c/o Bernstein Burkley, P.C.

Street/P.O. Box 601 Grant Street, 9th Floor

City Pittsburgh State PA Zip 15219

County Allegheny

Telephone Number(s) Where We Can Contact You During the Day (required):

(412) 456-8139 (Stuart Gaul, Esq.) (412) 456-8122 (Mac Booker, Esq.)

E-mail Address (required): sgaul@bernsteinlaw.com, mbooker@bernsteinlaw.com

Utility Account Number (from your bill) PWSA Project # 20013.24

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name: 3213 Penn, LLC

Street/P.O. Box: 3205 Penn Avenue

City Pittsburgh State PA Zip 15201

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

Pittsburgh Water and Sewer Authority

Office Partners Exhibit
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3. **Type of Utility Service**

Check the box listing the type of utility service that is the subject of your complaint (check only one):

☐ ELECTRIC	☐ STORM WATER
☐ GAS	☐ WASTEWATER/SEWER
X WATER	☐ TELEPHONE/TELECOMMUNICATIONS (local, long distance)
☐ STEAM HEAT	☐ MOTOR CARRIER (*e.g.* taxi, moving company, limousine)

4. **Reason for Complaint**

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

☐ The utility is threatening to shut off my service or has already shut off my service.

☐ I would like a payment agreement.

☐ Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.

☐ I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

X Other (explain).

3213 Penn and the Project

1. 3213 Penn brings this complaint because the Pittsburgh Water and Sewer Authority ("PWSA") is withholding more than $345,000.00 of 3213 Penn's money without any lawful justification to do so.

1. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same. The PWSA denies any and all liability to 3213.

2. 3213 Penn is a real estate developer. It is developing a new residential complex (the "Project") in the 3200 block of Penn Avenue in the Strip District of the City of Pittsburgh. In order to complete the Project and allow residents to move into it, 3213 Penn must tap into both fresh-water and sewer lines. PWSA provides and maintains the fresh-water and sewer lines in the vicinity of the Project.

2. Admitted in part and denied in part. It is admitted that, upon information and belief, 3213 is developing residential property in the Strip District of Pittsburgh (the "Project"). It is also admitted that the PWSA provides and maintains certain water and sewer lines in the vicinity of the Project. After reasonable investigation, the PWSA is without knowledge or information sufficient so as to form a belief as to the truth of the remaining averments contained in this paragraph of the Complaint and, accordingly, the same are denied with strict proof thereof demanded Any remaining averments are denied with strict proof demanded thereof.

3213 Penn's $348,110.03 Payment Under PWSA's Prior Fee Schedule

3. 3213 Penn submitted its original application for the Project to tap into PWSA's fresh-water and sewer lines in 2021. On or about August 2, 2021, PWSA approved 3213 Penn's application (the "2021 Tap-In Approval"). Exhibit A.

3. Admitted in part and denied in part. The averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied. By way of further answer, the PWSA admits that the 3213 application was initiated, evaluated and ultimately completed and approved in 2021. Any remaining averments are denied with strict proof demanded thereof.

4. At that time, PWSA operated under a published Fee Schedule (the "2020 Schedule") that imposed both a "Water Tapping Fee" and a "Sewer Tapping Fee." PWSA has asserted that it included this schedule in a tariff that it filed with this Commission.

4. The averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied.[2] Any remaining averments are denied with strict proof demanded thereof.

5. For multi-family residences such as the Project, PWSA calculated both of these fees by determining the number of Equivalent Dwelling Units ("EDUs") and multiplying the number of units by its per- unit rate. Because PWSA determined that the Project included 66.30 EDUs, PWSA required 3213 Penn pay a fee of $348,110.03 within six months and before proceeding with the tap-in. See Exhibit B, 2020 PWSA Fee Schedule; Exhibit C, Permit Approval Including Fee Requirement. This fee included a tap-in fee of $344,892.60 and other fees of $3,217.43. 3213 Penn, by its managing member, paid the full $348,110.03 demanded in fees to PWSA on or about August 19, 2021. Exhibit C.

5. Admitted in part and denied in part. The averments of this paragraph refer, in part, to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied. It is admitted that the PWSA calculated fees for multi-family residences such as the Project in accordance with the 2021 Tariff when the underlying applications were received, considered and approved in 2021. It is further admitted that 3213 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. After reasonable investigation, the PWSA is without knowledge or information sufficient so as to form a belief as to the truth of the remaining averments contained in this paragraph of the Complaint and, accordingly, the same are denied with strict proof thereof demanded. Any remaining averments are denied with strict proof demanded thereof.

6. On or about August 20, 2021, PWSA issued an approved tap-in permit to 3213 Penn. Exhibit C.

6. Admitted in part and denied in part. The averments of this paragraph refer, in part, to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied. It is admitted only that the PWSA approved 3213's application on or about August 19, 2021, upon receipt of 3213's full fee payment. Any remaining averments are denied with strict proof demanded thereof.

7. However, on or about October 18, 2021, the City of Pittsburgh Office of Permits, Licenses, and Inspections ("PLI"), demanded that 3213 Penn revise its fire permit submission. As part of these demanded revisions, PLI directed 3213 Penn to obtain an updated approval from PWSA that reflected PLI's other demanded changes, which included an updated flow test. Exhibit D. On or about October 29, 2021, PWSA advised 3213 Penn that, although PWSA did not believe that it actually required any new tests, PWSA would defer to PLI's demands on the issue. Exhibit E. PWSA's decision effectively canceled the 2021 Tap-In Approval, because 3213 Penn could not practically proceed with tap-in. In accordance with this new demand, 3213 Penn performed the updated flow test.

7. Admitted in part and denied in part. The averments of this paragraph refer, in part, to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied. This paragraph of the Complaint relating to the PWSA's "effective[]" cancellation contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same. To the contrary, it is expressly denied that any decision by the PWSA "effectively canceled" 3213's application because any purported revisions were to the already-approved 2021 tap-in plans, and were made in response to the direction of a different governmental entity. Finally, after reasonable investigation, the PWSA is without knowledge or information sufficient so as to form a belief as to the truth of the remaining averments contained in this paragraph of the Complaint and, accordingly, the same are denied with strict proof thereof demanded. Any remaining averments are denied with strict proof demanded thereof.

8. PWSA did not otherwise approve 3213 Penn's tap-in to PWSA's fresh-water and sewer lines prior to January 12, 2022, when PWSA abandoned the 2020 Fee Schedule.

8. Denied. To the contrary, the PWSA approved 3213's application on or about August 19, 2021, upon receipt of 3213's full fee payment. Therefore, any purported revisions after that date were to the already-approved 2021 tap-in plans. Further, it is expressly denied that the PWSA "abandon[ed]" the 2021 Tariff. To the contrary, the 2022 PUC Tariff was effective

January 12, 2022 and, among other things, removed the Tapping Fee from the 2021 Tariff.

The 2022 Application and the $2,870.00 Fee

9. PWSA published a new fee schedule (the "2022 Schedule") on or about January 12, 2022. Exhibit F. This schedule was included in PWSA's tariff that became effective on that date ("2022 Tariff"). Exhibit G. Of particular importance here, neither the 2022 Schedule nor the 2022 Tariff includes the EDU- based tap-in fee that PWSA had included in the 2021 Schedule.

9. Admitted in part and denied in part. The averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied. It is admitted only that the 2022 PUC Tariff was effective January 12, 2022 and, among other things, removed the Tapping Fee from the 2021 Tariff. Any remaining averments are denied with strict proof demanded thereof.

10. On or about March 11, 2022, PWSA advised 3213 Penn that 3213 Penn's application was incomplete and that 3213 Penn was required to resubmit the tap-in plan with revisions to comply with its 2022 Developer's Manual. PWSA also required 3213 Penn to pay a resubmission fee. Exhibit H. These PWSA- demanded revisions were non-substantive and did not include any technical changes to the plan.

10. Admitted in part and denied in part. The averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied. It is admitted only that the PWSA approved 3213's application on or about August 19, 2021, upon receipt of 3213's full fee payment. Therefore, any purported revisions after that date were to the already-approved 2021 tap-in plans. Any remaining averments are denied with strict proof demanded thereof.

11. On or about March 14, 2022, 3213 Penn submitted its tap-in plans for the Project. Under the 2022 Schedule, PWSA's fees for this tap-in are $2,870.00. These fees include a $400 fee for six-inch tap into the lines, $1,540.00 for a compound three-inch meter, $190.00 for a 5/8-inch by 3/4-inch meter to be used for the fire suppression system and $740 for a development permit.

11. Denied. To the contrary, on or about March 14, 2022, 3213 submitted modifications to its already-approved 2021 tap-in plans. 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 3213's March 14, 2022 modifications. After reasonable investigation, the PWSA is without knowledge or information sufficient so as to form a belief as to the truth of the remaining averments contained in this paragraph of the Complaint and, accordingly, the same are denied with strict proof thereof demanded.

12. These new fees are $345,240.03 less than the fees paid. Exhibit F. On or about March 24, 2022, PWSA provided comments on 3213 Penn's application. On or about April 7, 2022, PWSA approved 3213 Penn's application (the "2022 Tap-In Approval"). Exhibit I.

12. Denied. The averments of this paragraph refer, in part, to written documentation, the contents of which are self-

explanatory, and any attempt to mischaracterize them is denied. It is further expressly denied that the PWSA "approved" anything but 3213's March 14, 2022 modifications to its already-approved 2021 tap-in plans. After reasonable investigation, the PWSA is without knowledge or information sufficient so as to form a belief as to the truth of the remaining averments contained in this paragraph of the Complaint and, accordingly, the same are denied with strict proof thereof demanded.

3213 Penn's Demand for a Refund and PWSA's Refusal

13. As noted above, PWSA's fees for 3213 Penn's 2022 application are $345,240.03 less than the fees that 3213 Penn paid under the 2020 Schedule. This difference arose mostly because the 2022 Schedule and the 2022 Tariff eliminated EDU-based tap-in fees for approved developments like the Project. While 3213 Penn paid that higher amount in support of the 2021 Tap-In Approval, PWSA effectively revoked that approval and made it impossible for 3213 Penn to proceed in reliance on it. 3213 Penn did nothing that caused that revocation. Rather, PWSA revoked that approval against its own judgment and solely because it chose to accede to PLI's determination.

13. Denied. This paragraph of the Complaint relating to the PWSA's "effective[]" revocation contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same. To the contrary, it is expressly denied that any decision or action by the PWSA "effectively revoked" 3213's application because any purported revisions were to the already-approved 2021 tap-in plans. It is further expressly denied that the PWSA "approved" anything but 3213's March 14, 2022 modifications to its already-approved 2021 tap-in plans. Finally, after reasonable investigation, the PWSA is without knowledge or information sufficient so as to form a belief as to the truth of the remaining averments contained in this paragraph of the Complaint and, accordingly, the same are denied with strict proof thereof demanded.

14. PWSA directed 3213 Penn to reapply and pay a new resubmission fee in 2022. 3213 Penn has demanded that PWSA return to it the difference between the fee actually due for its 2022 application and the fees it actually paid for the revoked 2021 Tap-In Approval. This difference is more than $345,000.00. To date, PWSA has not done so. To the contrary, though its attorney, PWSA claimed that it has retained this amount pursuant to a tariff in effect at the time of the approval of the application and refused to return any portion of the funds wrongfully retained.

14. Admitted in part and denied in part. It is expressly denied that the PWSA directed 3213 to "reapply" in 2022. To the contrary, 3213's March 14, 2022 modifications were to its already-approved 2021 tap-in plans. The remaining averments contained in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same.

Discrimination in Rates

15. PWSA's retention of 3213 Penn's funds when other similarly situated persons and entities approved to do similar work at

the same time while being charged hundreds of thousands of dollars less subjects 3213 Penn to an "unreasonable prejudice or disadvantage" in violation of the Pennsylvania Public Utility Code. 66 Pa.C.S. § 1304.

15. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same. The PWSA specifically denies any discrimination in its application of the subject Tariff or in its rates, and the PWSA denies any and all liability to 3213.

Non-adherence to Tariffs

16. PWSA's retention of 3213 Penn's funds when other similarly situated persons and entities approved to do similar work at the same time while being charged hundreds of thousands of dollars less and when the published tariffs/rates indicate the lower amount constitutes the charging of a greater rate for a service rendered than that specified in the tariffs of applicable to PWSA. 66 Pa. C.S. § 1303. Further, this is a violation of the statutory requirement to "compute bills under the rate most advantageous to the patron." *Id*.

16. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same. The PWSA specifically denies any non-adherence to applicable laws, rules or regulations, and the PWSA denies any and all liability to 3213. To the contrary, as part of the 2022 PUC Tariff and part of its continuing transition to regulation by the Commission, the PWSA introduced changes to residential and commercial permitting fees to simplify and standardize water, sewer, and stormwater costs. The changes came after a comprehensive 2021 fee study that evaluated the labor and material costs associated with our permitting functions and best practices across the industry. The fee study was reviewed and approved by the Commission after a nine-month litigation process.

Unjust and Unreasonable Rates

17. The rates charged to 3213 Penn under the 2020 Schedule were not "just and reasonable." 66 Pa. C.S. § 1301. This is made clear by PWSA's reduction by orders of magnitude of those rates in the 2022 Schedule. On information and belief, it was in fact because PWSA recognized that the rates under the 2020 Schedule were not just and reasonable that it reduced those rates.

17. Denied. This paragraph of the Complaint relating to the citation to statutory authority contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same. The remaining averments contained in this paragraph of the Complaint are denied. The PWSA specifically denies any non-adherence to applicable laws, rules or regulations, and the PWSA denies any and all liability to 3213. To the contrary, as part of the 2022 PUC Tariff and part of its continuing transition to regulation by the Commission, the PWSA introduced changes to residential and commercial permitting fees to simplify and standardize water, sewer, and stormwater costs. The changes came after a comprehensive 2021 fee study that evaluated the labor and material costs associated with our permitting functions and best practices across the industry. The fee study was reviewed and approved by the Commission after a nine-month

litigation process.

Additional Legal Harms Caused By PWSA's Actions

18. PWSA maintains that its unjust, inequitable, and wrongful retention of more than $345,000 in 3213 Penn's funds was pursuant to published tariffs. As noted above, this retention was contrary to the Public Utility Code in multiple particulars. It is also, however, otherwise unlawful under Pennsylvania Law.

18. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same. To the contrary, the PWSA is upholding its obligations to its ratepayers by requiring 3213 to pay the 2021 fees assessed, as the PWSA uniformly has done with other similarly-situated applicants.

Unjust Enrichment

19. 3213 Penn conferred a benefit on PWSA by paying PWSA the $348,110.03 that PWSA demanded as fees under the 2021 Tap-In Approval. PWSA has retained the full amount of this benefit.

19. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same.

20. The Parties entered into the final stages of an agreement when 3213 Penn was induced to pay the tap-in fee pursuant to the 2021 Fee Arrangement prior to receiving final approval to tap into the water system PWSA manages. After collecting the fee under the 2021 Fee Schedule, PWSA prevented 3213 Penn from proceeding with the tap-in, despite much later approving the tap-in plans without any technical changes to the application. Thus, despite the substantial payment made for the purpose of completing an agreement and tapping in the Project through the PWSA service, such agreement was not completed. As a result, when PWSA finally approved the Project without material changes under the 2022 Fee Schedule, the fees were vastly less than what 3213 Penn paid the prior year.

20. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same. To the contrary, the PWSA approved 3213's application on or about August 19, 2021, upon receipt of3213's full fee payment. Further, 3213's March 14, 2022 modifications were to its already-approved 2021 tap-in plans.

21. PWSA finally approved 3213 Penn's tap-in timeline on April 7, 2022. As a result, PWSA did not fully or functionally approve the tap-ins until after the tap-in fees were deemed unnecessary and eliminated, yet PWSA still demanded, accepted, and retained a payment of $348,110.03 from 3213 Penn for the 2021 Tap-In Approval, upon which 3213 Penn was not able to act and which was not materially different from the 2022 Tap- In Approval. This is a substantial and unjustified enrichment of PWSA.

21. Denied. This paragraph of the Complaint relating to a purported "substantial and unjustified enrichment" contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same. The remaining averments contained in this paragraph of the Complaint are expressly denied. 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.

22. In essence, PWSA (a) induced 3213 Penn into a substantial payment, (b) effectively rescinded its approval of 3213 Penn's application, (c) subsequently eliminated the fees which 3213 Penn paid, (d) demanded a re-submission fee, and, only then, (e) provided final approval to tap-in to water services while retaining 3213 Penn's 2021 payment (as well as a resubmission fee). As a result of this scheme, 3213 Penn was forced to pay $348,110.03 under the 2021 fee schedule for no benefit while, under the 2022 fee schedule, the period when 3213 Penn was actually able to proceed with its work, that payment had been significantly reduced to $2,870.00. Thus, PWSA has been unjustly enriched as a result of collecting, and refusing to return, an unjustified and substantial fee.

22. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same. The remaining averments contained in this paragraph of the Complaint are denied. 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.

Quantum Merit

23. PWSA promised 3213 Penn in 2021 that, if 3213 Penn paid the $348,110.03 in tap-in and associated fees, PWSA would permit 3213 Penn to tap into PWSA's water lines to draw water for the residents who would live at the project. With the expectation of tapping into PWSA's water lines, 3213 Penn actually paid these fees. PWSA, as a result of inducing, receiving, and retaining 3213 Penn's 2021 fee payment, was conferred a monetary benefit of $348,110.03.

23. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same.

24. By "approving" the tap-in schedule for 3213 Penn and collecting the tap-in fee, along with other fees, but not allowing tap in to procced, while retaining the full fee payment it demanded for tap-in in 2021, PWSA substantially appreciated the benefit conferred by 3213 Penn. On or about January 12, 2022, PWSA eliminated the tap-in fees under which it extracted the fees from 3213 Penn, and yet retained the fees it had collected from 3213 Penn. Throughout this time, however, PWSA did not finalize its tap-in approval.

24. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same. 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.

25. As a result, PWSA established a scheme where it received a full benefit from 3213 Penn, appreciated such benefit, failed to provide the service which the benefit was intended to secure, and subsequently ceased to demand the benefit from others for stated policy reasons that would apply equally to 3213 Penn. Other similarly situated parties in fact paid hundreds of thousands of dollars less for the same service from PWSA, at the same time, as was provided to 3213 Penn.

25. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a

response is deemed necessary, these averments are denied with strict proof demanded of the same. To the contrary, the PWSA is upholding its obligations to its ratepayers by requiring 3213 to pay the 2021 fees assessed, as the PWSA uniformly has done with other similarly-situated applicants.

Breach of Contract

26. 3213 Penn and PWSA, pursuant to the approval under the 2021 Fee Arrangement, mutually assented to 3213 Penn's access to a tap-in service in exchange for monetary consideration. By accepting the 2021 application of 3213 Penn, collecting of 3213 Penn's payment pursuant to the 2021 Fee Schedule, and issuing the 2021 Tap-In Approval, PWSA contractually obligated itself to allow 3213 Penn to tap into its water and sewer lines.

26. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same.

27. PWSA repudiated this agreement when it effectively prevented 3213 Penn from proceeding with the tap-in in 2021. Despite this, PWSA has retained the funds that 3213 Penn paid to it as part of that agreement.

27. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same.

28. Furthermore, PWSA knew or should have known that its tap-in fees would be eliminated in 2022 at the time it agreed to the 2021 Fee Arrangement with 3213 Penn, but it kept that information secret while negotiating with 3213 Penn. In Pennsylvania, the negotiation of any agreement necessarily includes an implied covenant of good faith and fair dealing. Consequently, PWSA materially breached its agreement with 3213 Penn by breaking the implied covenant, as it was well aware it would reduce fees in 2022 and capitalized on the fact that 3213 Penn did not yet have access to this information.

28. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same.

29. Thus, PWSA induced 3213 Penn to agree to terms which PWSA itself knew to be unfair, causing the damages in the amount of $345,240.03, the difference between the fees 3213 Penn initially paid to tap-in to the water line compared to the 2022 fees that would be incurred.

29. This paragraph of the Complaint contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, these averments are denied with strict proof demanded of the same.

Reason for Amendment

30. 3213 Penn is amending its original complaint in response to a request from PWSA to include paragraph numbers as a convenience for preparation of a response.

30. It is admitted only that the PWSA requested 3213 to amend its original complaint to comply with 52 Pa. Code § 1.31. The original complaint did not comply with that regulatory provision.

PWSA'S NEW MATTER

1. The PWSA incorporates by reference the preceding paragraphs of this Answer as if the same were set forth at length herein.

2. 3213 is not entitled to relief under any circumstances as a matter of law.

3. At all relevant times hereto, 3213 was developing residential property known as the Project, as defined above.

4. 3213's construction of the Project requires PWSA approval of an application for the connection to a PWSA main. *See* 53 Pa.C.S.A. § 5607(d)(24) (among other things, authorizing the PWSA to "charge enumerated fees to property owners who desire to or are required to connect to the authority's sewer or water system.").

5. 53 Pa.C.S.A. § 5607(d)(24) further provides, in relevant part: "Fees ***shall be based upon the duly adopted fee schedule which is in effect at the time of payment and shall be payable at the time of application for connection*** or at a time to which the property owner and the authority agree." (Emphasis added.)

6. 53 Pa.C.S.A. § 5607(d)(24) must be interpreted pursuant to its plain language in accordance with rules of statutory interpretation.

7. Per the express language of 53 Pa.C.S.A. § 5607(d)(24), fees are payable ***at the time of application,*** and fees are determined based upon the duly adopted fee schedule which is in effect at the time of payment, *i e* , the time of application. *See also* PWSA Tariff (effective January 14, 2021) ("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 the Authority agree.").

8. Per the PWSA's Developer's Manual then in effect: "All fees are established in the PWSA Water and Wastewater Tariffs and approved by the PUC."

9. The PUC Tariff that forms the basis of this matter was effective March 1, 2019 and is set forth at PUC Docket No. R-2018-3002647, providing the following Tapping Fee:

Collection Fee	$1,701 Per EDU*
Capacity Fee	$1,277 Per EDU*
Total Tapping Fee	$2,978 Per EDU*

* 300 gpd/EDU.

10. The 2021 PUC Tariff, set forth at PUC Docket No. R-2020-3017970, indicated: "No Changes to Part III, Section G, Tapping Fee from Original PUC Tariff;" thus, the 2019 rates continued to apply to 2021 applications.

11. The PWSA Developer's Manual provides: "PWSA will calculate the appropriate fees based upon the related project information submitted by the applicant."

12. The PWSA Developer's Manual states: "After the final review, PWSA will supply the applicant with a permit fee invoice."

13. 3213 submitted an application to tap in to the PWSA's infrastructure in 2021.

14. On August 2, 2021, the PWSA accepted and approved 3213's application, identifying the fees due and owing as $348,110.03.

15. The PWSA calculated fees for multi-family residences such as the Project in accordance with the 2021 Tariff when the underlying applications were received, considered and approved in 2021.

16. 3213 paid the fees properly due and owing to the PWSA pursuant to the 2021 Tariff in the amount of $348110.03 on or about August 19, 2021.

17. The PWSA approved 3213's application on or about August 19, 2021, upon receipt of 3213's full fee payment.

18. Any purported revisions after August 19, 2021 were to 3213's already-approved 2021 tap-in plans.

19. The 3213 application was initiated, evaluated and ultimately completed and approved in 2021.

20. At no point during 3213's application or modification process did it request a reduction in fees.

21. As part of the 2022 PUC Tariff and part of its continuing transition to regulation by the Commission, the PWSA introduced changes to residential and commercial permitting fees to simplify and standardize water, sewer, and stormwater costs.

22. The changes came after a comprehensive 2021 fee study that evaluated the labor and material costs associated with our permitting functions and best practices across the industry.

23. The fee study was reviewed and approved by the Commission after a nine-month litigation process.

24. The 2022 PUC Tariff was effective January 12, 2022.

25. When 3213 learned that the PWSA's tariff rates changed to a structure that eliminated tap-in fees, 3213 sought to obtain a refund of already-paid fees.

26. When 3213 sought a refund, it was advised by the PWSA that the 2021 fees previously conveyed to 3121 pursuant to the 2021-approved application were applicable.

27. 3213 is nevertheless essentially asking the Commission to permit 3213 to exempt itself from a mandatory statute requiring 3213 to pay the 2021 fees in effect at the time of its application and approval.

28. The applicable fees must be determined pursuant to the date 3213 applied for its permit and the date when such application was approved, and, as such, the controlling fees are the 2021 fees.

29. 3213 submitted an application for a tap-in permit in 2021; that application was considered and negotiated throughout 2021; that application was ultimately approved and invoiced in 2021; and that invoice was paid in 2021.

30. The 2021 application was only ***modified*** by 3213 in 2022 and, as admitted by 3213, any purported changes to 3213's 2021 application in 2022 were non-substantive and not technical.

31. 3213 cannot rely on its non-substantive and not technical modifications to shirk its statutory obligations to pay the 2021 fees.

32. 3213 does not and cannot identify any factual or legal support for the proposition that such modifications have the legal or factual effect of exempting such application from the rates applicable to such application when it was initially presented, considered, approved, invoiced, and paid.

33. 3213's arguments and allegations ignore the deleterious result to the public that would result from depriving the PWSA and its ratepayers of the amounts that are due under the 2021 fee structure in place when 3213 applied for the subject permit, and 3213's actions represent an attempt to obtain favorable rates at the expense of the PWSA's ratepayers.

34. The PWSA is upholding its obligations to its ratepayers by requiring 3213to pay the 2021 fees assessed, as the PWSA uniformly has done with other similarly-situated applicants.

35. The PWSA acted reasonably in its consideration and approval of 3213's application for the subject permit.

36. The PWSA' s treatment of 3213's application was consistent with its treatment of other applicants similarly-situated to 3213 and represented a rational and fair attempt to protect the interests of applicants for permits and ratepayers alike.

37. 3213's causes of action are barred by the defenses of consent, justification, waiver, payment, privilege, estoppel, and the voluntary payment doctrine.

38. 3213 cannot recover money voluntarily paid with a full knowledge of the facts and without any fraud, duress, or extortion, even if no obligation to make such payment existed.

39. The PWSA acted in full compliance with its obligations under applicable laws, rules and regulations throughout the longevity of its consideration and approval of 3213's application.

WHEREFORE, the PWSA respectfully requests that: (1) the relief sought in the Complaint be denied, upon a finding that 3213 is not permitted to obtain a refund for an approved and paid application for the purpose of securing a more favorable rate; (2) declare that the 2021 Tariff rates apply to 3213's permit; and (3) dismiss 3213's Complaint against the PWSA with prejudice.

Dated: April 13, 2023

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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

NOTICE TO PLEAD

To: OFFICE PARTNERS XXII BLOCK G1, LLC

Pursuant to 52 Pa. Code §§ 5.61-5.62, you are hereby notified to file an answer to the enclosed New Matter within twenty (20) days from service hereof or judgment may be entered against you.

Pursuant to 52 Pa. Code § 1.4, all documents 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 electronic filing system if the document is a qualified document.

Dated: July 14, 2022

/s/ Ashley L. Buck, Esq.
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PWSA
Exhibit
A
5/22/2024 py

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

RESPONDENT THE PITTSBURGH WATER AND SEWER AUTHORITY'S ANSWER AND NEW MATTER TO COMPLAINANT'S COMPLAINTS

AND NOW comes Respondent, The Pittsburgh Water and Sewer Authority (the "PWSA"), by and through its undersigned counsel, pursuant to 52 Pa. Code §§ 5.61-5.62, and files the following Answer and New Matter to the Complaints[1] filed by Complainant, Office Partners XXIII Block G1, LLC's ("Office Partners"), as follows:[2]

Introduction:

1. After reasonable investigation, the PWSA is without knowledge or information sufficient so as to form a belief as to the truth of the averments contained in this paragraph of the Complaints and, accordingly, the same are denied with strict proof thereof demanded.

2. Admitted.

3. Admitted in part and denied in part. It is admitted only that, upon information and belief, Office Partners is developing commercial property known as the FNB Financial Center.

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[1] The PWSA respectfully submits that the two Complaints filed in Docket Numbers C-2022-3033251 and C-2022-3033266 are identical and should be consolidated pursuant to 52 Pa. Code § 5.81. The PWSA is filing, contemporaneously herewith, Motions seeking to effect such consolidation.

[2] The Complaints were not actually served on the PWSA until June 24, 2022.

After reasonable investigation, the PWSA is without knowledge or information sufficient so as to form a belief as to the truth of the remaining averments contained in this paragraph of the Complaints and, accordingly, the same are denied with strict proof thereof demanded.

4. This paragraph of the Complaints contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, it is admitted that Office Partners' construction of the FNB Financial Center requires PWSA approval of an application for the connection to a PWSA main. Any remaining allegations are denied.

5. The averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied.[3]

2021 Application Process and Withdrawal:

6. The allegations contained in Paragraph 6 of the Complaints are denied as stated. While the PWSA admits that the Office Partners application was initiated, evaluated and ultimately

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[3] The PWSA incorporates herein the PWSA Rates, Rules and Regulations applicable at the time when Office Partners' application was received, considered and approved (the "2021 Tariff"), as well as the PWSA Rates, Rules and Regulations in effect after January 12, 2022 (the "2022 Tariff"). The PWSA does not admit, and affirmatively denies, that the 2022 Tariff applies to Office Partners' application.

More specifically, the original PUC Tariff that forms the basis of this matter is set forth at PUC Docket No. R-2018-3002647, and can be found at https://www.puc.pa.gov/pcdocs/1607875.pdf. It was effective March 1, 2019 and set forth the following Tapping Fee:

Collection Fee	$1,701 Per EDU*
Capacity Fee	$1,277 Per EDU*
Total Tapping Fee	$2,978 Per EDU*

* 300 gpd/EDU.

The 2021 Tariff, set forth at PUC Docket No. R-2020-3017970, and which can be found at https://www.puc.pa.gov/pcdocs/1687421.pdf, indicated "No Changes to Part III, Section G, Tapping Fee from Original PUC Tariff" and, thus, the 2019 rates continued to apply to the Plaintiff's 2021 application.

Then, the 2022 PUC Tariff, set forth at PUC Docket No. R-2021-3024774, and which can be found at https://www.puc.pa.gov/pcdocs/1729291.pdf, was effective January 12, 2022 and removed the Tapping Fee from Part III, Section G of the PUC Tariff set forth above.

completed and approved in 2021, due to the rolling nature of Office Partners' initial application (which included meetings and numerous submissions) the PWSA is not able to admit or deny the precise application date for the subject permit.

7. Admitted in part and denied in part. It is admitted only that the PWSA and Office Partners engaged in communications with respect to Office Partners' application on numerous occasions following Office Partners' application date of May 11, 2021, through the date of PWSA's approval of the application on December 23, 2021. Any remaining allegations are denied.

8. Admitted in part and denied in part. While it is admitted only that on December 23, 2021, the PWSA approved Office Partners' application, identifying the fees due and owing as $508,314.79, the averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied. By way of further response, the PWSA did not inform Office Partners that its permit would not be considered "approved" until the permit fees were paid. On the contrary, the PWSA stated as follows: "The fees have been calculated and are attached for your reference. Permits are not considered ***issued*** until permits fees are paid." *See* Complaints, Exhibit C (emphasis added).

9. The averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied.

10. After reasonable investigation, the PWSA is without knowledge or information sufficient so as to form a belief as to the truth of the averments contained in this paragraph of the Complaints and, accordingly, the same are denied with strict proof thereof demanded. By way of further response, upon information and belief, once Office Partners learned that the PWSA's tariff rates were changing in January 2022 to a structure that eliminated tap-in fees, Office Partners

sought to withdraw its already-approved permit and resubmit its application (again, that had already been approved) at a time when the fees were supposedly more favorable to it.

11. It is expressly denied that Office Partners is permitted to "withdraw" an already-approved application, or that such attempted withdrawal has the legal or factual effect of exempting such application from the rates applicable to such application when it was initially presented, considered and approved. It is further expressly denied that the PWSA had not already approved Office Partners' 2021 application. Strict proof thereof is demanded. On the contrary, on December 23, 2021, the PWSA approved Office Partners' application, identifying the fees due and owing as $508,314.79.

2022 Application Process:

12. It is expressly denied that Office Partners is permitted to "withdraw" an already-approved application and therefore submit "new" tap-in plans, or that such attempted withdrawal has the legal or factual effect of exempting such application from the rates applicable to such application when it was initially presented, considered and approved. Strict proof thereof is demanded. By way of further response, the averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied.

13. It is expressly denied that Office Partners is permitted to "withdraw" an already-approved application and therefore submit "new" tap-in plans; thus, any purported revisions were to the already-approved 2021 tap-in plans. Strict proof thereof is demanded. By way of further response, the averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied.

14. It is expressly denied that Office Partners is permitted to "withdraw" an already-approved application and therefore submit "new" tap-in plans; thus, any purported revisions were to the already-approved 2021 tap-in plans. Strict proof thereof is demanded. On the contrary, the PWSA had previously approved the tap-in plans submitted by Office Partners on December 23, 2021. By way of further response, the averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied.

15. It is expressly denied that Office Partners is permitted to "withdraw" an already-approved application and therefore submit "new" tap-in plans; thus, any purported revisions were to the already-approved 2021 tap-in plans. Strict proof thereof is demanded. By way of further response, the averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied.

16. It is expressly denied that Office Partners is permitted to "withdraw" an already-approved application and therefore submit "new" tap-in plans; thus, any purported revisions were to the already-approved 2021 tap-in plans. Strict proof thereof is demanded. By way of further response, the PWSA had previously approved the tap-in plans submitted by Office Partners on December 23, 2021.

17. The averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied. By way of further response, it is expressly denied that the 2022 rate schedule applies to Office Partners' 2021 tap-in application and approval. Strict proof thereof is demanded.

18. After reasonable investigation, the PWSA is without knowledge or information sufficient so as to form a belief as to the truth of the averments contained in this paragraph of the Complaints and, accordingly, the same are denied with strict proof thereof demanded.

19. After reasonable investigation, the PWSA is without knowledge or information sufficient so as to form a belief as to the truth of the averments contained in this paragraph of the Complaints and, accordingly, the same are denied with strict proof thereof demanded. By way of further response, the PWSA expressly denies that Office Partners has expressed a readiness or willingness to pay the governing fees associated with obtaining the subject permit.

20. Admitted in part and denied in part. It is admitted that on December 23, 2021, the PWSA approved Office Partners' application, identifying the fees due and owing as $508,314.79. It is expressly denied that the 2022 rate schedule applies to Office Partners' 2021 tap-in application and approval. Strict proof thereof is demanded.

21. Denied. On the contrary, on December 23, 2021, the PWSA approved Office Partners' application, identifying the fees due and owing as $508,314.79. It is expressly denied that Office Partners is permitted to "withdraw" an already-approved application and therefore submit "new" tap-in plans to obtain purportedly more favorable rates. Strict proof thereof is demanded.

Procedural History:

22. Admitted in part and denied in part. It is admitted only that on or about February 25, 2022, Office Partners instituted a civil action in the Allegheny County Court of Common Pleas at G.D. 22-002217. Any remaining allegations are denied.

23. Admitted in part and denied in part. It is admitted only that the parties entered into a Consent Order in the Allegheny County Court of Common Pleas at G.D. 22-002217; however, the averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied. It is expressly denied that the bond and/or security deposited by Office Partners with the Allegheny County Court of Common

Pleas represents an earlier fee structure that was superseded when utility rates were increased but tap-in fees reduced. On the contrary, the bond and/or security deposited by Office Partners with the Allegheny County Court of Common Pleas represents and secures the total amount due and owing from Office Partners when the PWSA approved Office Partners' application on December 23, 2021. Any remaining allegations are denied.

24. Admitted in part and denied in part. It is admitted only that the parties entered into a Consent Order in the Allegheny County Court of Common Pleas at G.D. 22-002217; however, the averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied.

25. Admitted in part and denied in part. It is admitted only that the parties entered into a Consent Order in the Allegheny County Court of Common Pleas at G.D. 22-002217; however, the averments of this paragraph refer to written documentation, the contents of which are self-explanatory, and any attempt to mischaracterize them is denied.

Dispute and Matter in Controversy:

26. It is expressly denied that Office Partners is permitted to "withdraw" an already-approved application and therefore submit "new" tap-in plans to obtain purportedly more favorable rates. Strict proof thereof is demanded. On the contrary, on December 23, 2021, the PWSA approved Office Partners' application, identifying the fees due and owing as $508,314.79.

27. Admitted in part and denied in part. It is admitted only that Act 65 of 2017 directed the PUC to begin oversight of the PWSA on April 1, 2018. The PUC has exclusive jurisdiction over the rates charged by utilities within its jurisdiction, including the PWSA. Thus, the 2022 tap-in fee structure was implemented with oversight from the PUC. The remaining allegations are denied with strict proof thereof demanded. By way of further response, the PWSA specifically

denies that its treatment of Office Partners' application is an attempt to "double dip," and such allegations are disingenuous in light of Office Partners' attempt to withdraw an approved permit for the purpose of obtaining a lower rate. To the extent that the PWSA's tariff rate structure changed, such change was premised upon payment, pursuant to the then-governing tariff, for applications that were in process and subject to approval during the lifespan of the 2021 Tariff. Office Partners' gambit of seeking to withdraw its application is an attempt to receive preferential rate treatment, at the expense of the PWSA's ratepayers.

28. It is expressly denied that Office Partners is permitted to "withdraw" an already-approved application and therefore submit "new" tap-in plans to obtain purportedly more favorable rates. Strict proof thereof is demanded. On the contrary, on December 23, 2021, the PWSA accepted Office Partners' application, identifying the fees due and owing as $508,314.79.

WHEREFORE, the PWSA respectfully requests that: (1) the relief sought in the Complaints be denied, upon a finding that Office Partners is not permitted to withdraw an approved application for the purpose of securing a more favorable rate; (2) declare that the 2021 Tariff rates apply to Office Partners' permit; (3) declare that the amount as set forth in Exhibit "C" to the Complaints, totaling $508,314.79, is immediately due and owing to the PWSA by Office Partners; and (4) dismiss Office Partners' Complaints against the PWSA with prejudice.

PWSA'S NEW MATTER

29. The PWSA incorporates by reference the preceding paragraphs of this Answer as if the same were set forth at length herein.

30. Office Partners is not entitled to relief under any circumstances as a matter of law.

31. At all relevant times hereto, Office Partners was developing commercial property known as the FNB Financial Center.

32. Office Partners' construction of the FNB Financial Center requires PWSA approval of an application for the connection to a PWSA main. *See* 53 Pa.C.S.A. § 5607(d)(24) (among other things, authorizing the PWSA to "charge enumerated fees to property owners who desire to or are required to connect to the authority's sewer or water system.").

33. 53 Pa.C.S.A. § 5607(d)(24) further provides, in relevant part: "Fees ***shall be based upon the duly adopted fee schedule which is in effect at the time of payment and shall be payable at the time of application for connection*** or at a time to which the property owner and the authority agree." (Emphasis added.)

34. 53 Pa.C.S.A. § 5607(d)(24) must be interpreted pursuant to its plain language in accordance with rules of statutory interpretation.

35. Per the express language of 53 Pa.C.S.A. § 5607(d)(24), fees are payable ***at the time of application***, and fees are determined based upon the duly adopted fee schedule which is in effect at the time of payment, *i.e.*, the time of application. *See also* PWSA Tariff (effective January 14, 2021) ("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 the Authority agree.").

36. Per the PWSA's Developer's Manual then in effect: "All fees are established in the PWSA Water and Wastewater Tariffs and approved by the PUC."

37. The PUC Tariff that forms the basis of this matter was effective March 1, 2019 and is set forth at PUC Docket No. R-2018-3002647, providing the following Tapping Fee:

Collection Fee	$1,701 Per EDU*
Capacity Fee	$1,277 Per EDU*
Total Tapping Fee	$2,978 Per EDU*

* 300 gpd/EDU.

38. The 2021 PUC Tariff, set forth at PUC Docket No. R-2020-3017970, indicated: "No Changes to Part III, Section G, Tapping Fee from Original PUC Tariff;" thus, the 2019 rates continued to apply to 2021 applications.

39. The PWSA Developer's Manual provides: "PWSA will calculate the appropriate fees based upon the related project information submitted by the applicant."

40. The PWSA Developer's Manual states: "After the final review, PWSA will supply the applicant with a permit fee invoice."

41. Office Partners submitted an application to tap in to the PWSA's infrastructure on in 2021.

42. On December 23, 2021, the PWSA accepted and approved Office Partners' application, identifying the fees due and owing as $508,314.79.

43. Following the PWSA's approval on December 23, 2021, Office Partners purportedly attempted to "withdraw" the 2021 permit application.

44. Office Partners then sought to "reapply" for its tap-in permit on or about February 4, 2022, and sought expedited consideration of the same.

45. Once Office Partners learned that the PWSA's tariff rates were changing in January 2022 to a structure that eliminated tap-in fees, Office Partners sought to withdraw its already-approved permit and resubmit its application (again, that had already been approved) at a time when the fees were supposedly more favorable to it.

46. When Office Partners attempted its "withdrawal" and reapplication, it was advised by the PWSA that the 2021 fees previously conveyed to Office Partners pursuant to the 2021-

approved application would be applicable and that the permit would not be issued until those fees were paid.

47. Office Partners is essentially asking the PUC to permit Office Partners to exempt itself from a mandatory statute requiring Office Partners to pay the 2021 fees in effect at the time of its application and approval.

48. The applicable fees must be determined pursuant to the date Office Partners applied for its permit and the date when such application was approved, and, as such, the controlling fees are the 2021 fees.

49. Officer Partners submitted an application for a tap-in permit in 2021; that application was considered and negotiated throughout 2021; and that application was ultimately approved and invoiced in 2021.

50. The 2021 application was only "withdrawn" by Office Partners in 2022 in an attempt to secure a lower rate through the re-submission of an application that was fundamentally the same as its initial 2021 application.

51. Office Partners cannot rely on its purported withdrawal to shirk its statutory obligations to pay the 2021 fees.

52. Office Partners does not and cannot identify any procedural mechanism which permits Office Partners to withdraw an already-approved application with the PWSA because there is no such procedure.

53. Office Partners does not and cannot identify any factual or legal support for the proposition that such attempted withdrawal has the legal or factual effect of exempting such application from the rates applicable to such application when it was initially presented, considered and approved.

54. Office Partners' arguments and allegations ignore the deleterious result to the public that would result from depriving the PWSA and its ratepayers of the amounts that are due under the 2021 fee structure in place when Office Partners applied for the subject permit, and Office Partners' actions represent an attempt to obtain favorable rates at the expense of the PWSA's ratepayers.

55. The PWSA is upholding its obligations to its ratepayers by requiring Office Partners to pay the 2021 fees assessed, as the PWSA uniformly has done with other applicants whose application processes spanned multiple years and multiple tariff/rate structures.

56. The PWSA acted reasonably in its consideration and approval of Office Partners' application for the subject permit.

57. The PWSA's treatment of Office Partners' application was consistent with its treatment of other applicants similarly-situated to Office Partners and represented a rational and fair attempt to protect the interests of applicants for permits and ratepayers alike.

WHEREFORE, the PWSA respectfully requests that: (1) the relief sought in the Complaints be denied, upon a finding that Office Partners is not permitted to withdraw an approved application for the purpose of securing a more favorable rate; (2) declare that the 2021 Tariff rates apply to Office Partners' permit; (3) declare that the amount as set forth in Exhibit "C" to the Complaints, totaling $508,314.79, is immediately due and owing to the PWSA by Office Partners; and (4) dismiss Office Partners' Complaints against the PWSA with prejudice.

Dated: July 14, 2022

/s/ Ashley L. Buck, Esq.

Samuel A. Hornak, Esquire
Pa. I.D. No. 312360
Ashley L. Buck, Esquire
Pa. I.D. No. 320537
CLARK HILL PLC
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425
(412) 394-7711
Attorneys for Respondent,
The Pittsburgh Water and Sewer Authority

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

VERIFICATION

I, Julie Asciolla, Industry Relations Manager at The Pittsburgh Water and Sewer Authority, am authorized to make this verification on its behalf, and state that the factual information contained in the foregoing **ANSWER AND NEW MATTER** may not entirely be within my personal knowledge; that such facts of which I have personal knowledge are true upon my information and belief; to the extent I do not have personal knowledge of such facts, the facts stated therein have been assembled by authorized representatives of the PWSA; and I am informed that the facts stated therein are true. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: July 13, 2022

Julie Asciolla
Title Industry Relations Manager
The Pittsburgh Water and Sewer Authority

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONDENT THE PITTSBURGH WATER AND SEWER AUTHORITY'S ANSWER AND NEW MATTER TO COMPLAINANT'S COMPLAINTS** was served electronically via the Commission's electronic filing system, as well as by courtesy copy via electronic mail, this 14th day of July, 2022, upon the following:

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

/s/ Ashley L. Buck
Ashley L. Buck

267839136.v1

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

NOTICE TO PLEAD

To: OFFICE PARTNERS XXII BLOCK G1, LLC

Pursuant to 52 Pa. Code § 5.102(a), you are hereby notified to file an answer or other responsive pleading to the enclosed Motion for Summary Judgment within twenty (20) days from service hereof.

Pursuant to 52 Pa. Code § 1.4, all documents 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 electronic filing system if the document is a qualified document.

Dated: May 26, 2023

/s/ Ashley L. Buck, Esq.
Samuel A. Hornak, Esquire
Pa. I.D. No. 312360
Ashley L. Buck, Esquire
Pa. I.D. No. 320537
CLARK HILL PLC
One Oxford Centre
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(412) 394-7711
Attorneys for Respondent,
The Pittsburgh Water and Sewer Authority

PWSA
Exhibit
B
5/22/2024 py

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MOTION FOR SUMMARY JUDGMENT BY THE PITTSBURGH WATER AND SEWER AUTHORITY

Pursuant to 52 Pa. Code § 5.102, The Pittsburgh Water and Sewer Authority (the "PWSA") submits this Motion for Summary Judgment ("Motion"), seeking the dismissal of the Formal Complaints docketed and consolidated at the above-captioned numbers (collectively, the Complaints docketed at the above-captioned numbers are referred to as the "Complaints").

In support of its Motion, the PWSA states as follows:

The Complainant, Office Partners XXIII Block G1 LLC ("Office Partners") applied for a permit to tap into the PWSA infrastructure in 2021 (the "Application"), and such application was ultimately approved in December 2021. After a new Tariff took effect on January 13, 2022, Office Partners attempted to withdraw the Application and resubmit a substantially similar application, admittedly seeking to avail itself of the more favorable Tariff rate. The PWSA nevertheless applied the policy that it had consistently applied to previous applicants for tap-in permits, and, thus, charged Office Partners the Tariff rate in effect in December 2021 when the Application was approved.

There is no genuine issue of material fact and, as a matter of law, the PWSA's policy and its application of the same to Office Partners is wholly consistent with the Rules and Regulations approved by the Pennsylvania Public Utility Commission (the "Commission"). Accordingly, Office Partners' request that the PWSA deviate from its consistent treatment of similar applications to provide Officer Partners with a financial benefit at the expense of ratepayers, must, as a matter of law, be denied, and the Complaints should be dismissed, with prejudice.

I. INTRODUCTION

1. Section 5.21(a) of the Commission's Regulations permits the filing of a formal complaint claiming a violation of a statute that the Commission has jurisdiction to administer. 52 Pa. Code § 5.21(a). If, however, a hearing is not necessary, then Section 5.21(d) authorizes the Commission to dismiss such a complaint. 52 Pa. Code § 5.21(d).

2. Section 5.102 of the Commission's Regulations permits any party to move for summary judgment after the pleadings are closed, but within such time so as not to delay a hearing. 52 Pa. Code § 5.102. A motion for summary judgment must be based on the pleadings, depositions, answers to interrogatories, admissions, and supporting affidavits. 52 Pa. Code § 5.102(c). Pursuant to Section 5.1(a)(2), the pleadings in an action before the Commission include the formal complaint, answer, new matter, reply to new matter, and preliminary objections. 52 Pa. Code § 5.1(a)(2). The presiding officer will grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

3. It is well recognized that an administrative law judge has the discretion to dismiss a complaint on preliminary motion if that dismissal is neither arbitrary nor capricious, and is otherwise in accordance with the law. *Guesman v. Columbia Gas of Pa., Inc.*, Docket No. C-2012-

2326301 (Final Order entered January 4, 2013) (citing *Graham v. Philadelphia Suburban Water Co. and Bell-Atlantic Pa., Inc.*, Docket No. C-00957557 (Order entered June 12, 1996)).

4. Section 5.102(d), which expressly permits dismissal based on summary judgment, serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S.A. § 703(a); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa. Cmwlth. 1989); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n,* 563 A.2d 548 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n.*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Auth. v. Pa. Pub. Util. Comm'n.*, 103 A.2d 502 (Pa. Super. 1954).

II. FACTUAL BACKGROUND

5. On or about June 17, 2022, Office Partners filed two identical formal Complaints with the Commission (the "Action").

6. This Action involves, in short, a fee dispute over tap-in fees relating to new construction in Downtown Pittsburgh, Pennsylvania.

7. At all relevant times hereto, Office Partners was developing commercial property known as the FNB Financial Center. *See* Complaints, ¶ 3.

8. Office Partners' construction of the FNB Financial Center requires PWSA approval of an application for the connection to a PWSA sewer main. *See* Complaints, ¶ 5; *see also* 53 Pa.C.S.A. § 5607(d)(24) (among other things, authorizing the PWSA to "charge enumerated fees to property owners who desire to or are required to connect to the authority's sewer or water system.").

The Applicable Laws, Regulations and Tariffs

9. 53 Pa.C.S.A. § 5607(d)(24) provides, in relevant part: "Fees ***shall be based upon the duly adopted fee schedule which is in effect at the time of payment and shall be payable at***

the time of application for connection or at a time to which the property owner and the authority agree." (Emphasis added.)

10. Act 65 of 2017 directed the Commission to begin oversight of the PWSA on April 1, 2018.

11. The Commission has exclusive jurisdiction over the rates charged by utilities within its jurisdiction, including the PWSA. *See, e.g.,* 66 Pa.C.S.A. §§ 1301 (requiring rates to be just and reasonable), 1302 (relating to the use of tariffs showing rates), 1303 (mandating adherence to tariffs), 1304 (barring discrimination in rates), & 1312(c) (imposing conditions on suit); *Byer v. The Peoples Natural Gas Co.*, 380 A.2d 383 (Pa. Super. Ct. 1977) (stating that the Commission has "exclusive jurisdiction over the rates charged by public utilities . . . Moreover, the P.U.C.'s jurisdiction over utility rates exists regardless of whether those rates have been established by deed, contract, ordinance or otherwise.") (citing *Blythe Township Municipal Authority v. Pennsylvania Public Utility Commission*, 185 A.2d 628 (Pa. Super. Ct. 1962)).

12. Per the PWSA's Developer's Manual in effect at all relevant times: "All fees are established in the PWSA Water and Wastewater Tariffs and approved by the [Commission]," and the Developer's Manual further provides that the "PWSA will calculate the appropriate fees based upon the related project information submitted by the applicant." *See* Complaints, Exhibit A thereto, p. 35.

13. Moreover, the PWSA Developer's Manual states, at all relevant times, that "[a]fter the final review, PWSA will supply the applicant with a permit fee invoice." *See* Complaints, Exhibit A thereto, p. 20.

14. The PUC Tariff that forms the basis of this matter was effective March 1, 2019 and is set forth at PUC Docket No. R-2018-3002647 (the "Governing PUC Tariff"), providing the following Tapping Fee:

Collection Fee	$1,701 Per EDU*
Capacity Fee	$1,277 Per EDU*
Total Tapping Fee	$2,978 Per EDU*

* 300 gpd/EDU.

15. 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.

16. A new Tariff went into effect on January 13, 2022 (the "2022 PUC Tariff"), which had the effect of eliminating the tap-in fees and changing the PWSA's overall rate structure. The docket for the Commission's consideration and approval of the 2022 PUC Tariff (the "Rate Case") is R-2021-3024779.

The Submission, Consideration and Approval of the Application in 2021

17. The evidence of record establishes that the Application, the PWSA's consideration of the Application, and the PWSA's ultimate approval of the Application all occurred in 2021, during the effective period of the 2021 PUC Tariff, and, thus, the Governing PUC Tariff.

18. Julie Asciolla, Industry Relations Manager for the PWSA, testified that she had experience not only with consideration of the Application, but also with all other tap-in permit applications during the relevant time period. A true and correct copy of the pertinent portions of the deposition transcript of Ms. Asciolla ("Asciolla Dep.") is attached hereto as Exhibit A. *See* Asciolla Dep. at 7:12-17, 10:15-25, 14:9-15:20.

19. It is undisputed that Office Partners submitted an application to tap in to the PWSA's infrastructure in 2021. *See* Complaints, ¶ 6. *See* Asciolla Dep. at 17:4-18:2.

20. Specifically, the PWSA ultimately approved the Application on December 23, 2021. *See* Asciolla Dep. at 64:4-8.

21. Boris Kaplan, Senior Vice President with Buccini Pollin, the developer and owner of Office Partners, confirmed the timing of the approval of the Application. A true and correct copy of the pertinent portions of the deposition transcript of Mr. Kaplan ("Kaplan Dep.") is attached hereto as Exhibit B. *See* Kaplan Dep. at 8:2-9, 22:4-22.

22. Accordingly, it is undisputed that, on December 23, 2021, the PWSA accepted and approved the Application, identifying the fees due and owing as $508,314.79.[1] *See* Complaints, ¶ 8, Exhibit C thereto; *see also* Asciolla Dep. at pp. 51:5-23 and Exhibit J to Asciolla Dep.; *see also* Kaplan Dep. at 25:8-28:10 and Exhibit 4 to Kaplan Dep.

23. 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* Asciolla Dep. at 14:16-15:23, 17:16-18:3.

24. 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* Asciolla Dep. at 18:5-12.

Office Partners' Attempted Withdrawal of the Application and the PWSA's Response

25. Following the PWSA's approval on December 23, 2021, Office Partners attempted to "withdraw" the 2021 permit application. *See* Complaints, ¶ 11, Exhibit D thereto.

[1] This amount was revised to $506,647.18 (the "Escrow Amount"), on the basis of a recalculation of the amount of flow implicated by the Application. *See* Asciolla Dep. 56:16-57:1.

26. The evidence of record establishes that Office Partners learned of the 2022 PUC Tariff, and its effect on tap-in fees, in January 2022—after the Application was approved.

From: Savich, Steven <SSavich@mbakerintl.com>
Sent: Wednesday, January 5, 2022 4:12 PM
To: mcorace@bnjsconstruction.com
Cc: Partridge, Toby <TPartridge@mbakerintl.com>
Subject: Possible Good News

FYI.

I just had got a notice from one of my staff who met with PWSA on a separate project ... they are cancelling all tap in fees for all projects effective Jan 1st. If a project was previously issued a permit then it still has to pay the fee. Was the PWSA permit issued after January 1?

There will be a public announcement within a week or two, so maybe this is an opportunity to at least ask the question ...

However, there will be an updated sewage fee and application fee which will offset some of the savings, but overall it will not be nearly as much as the current tap in fees.

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 | www.mbakerintl.com

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See communications produced by Office Partners through discovery and bates labeled at OfficePartners_000088, attached in full hereto as Exhibit C.[2]

27. The PWSA has no experience with an attempted withdrawal of a tap-in application, and there is no process in place for such purported withdrawal because unperfected applications can remain open in the PWSA system indefinitely. Put differently, there is no practical or official need to withdraw a tap-in application to the PWSA. *See* Asciolla Dep. 20:12-14, 48:5-49:21.

[2] At the relevant times hereto, Steven Savich was a senior engineer at Michael Baker International, an engineering firm working with Office Partners in support of the Application. *See* Kaplan Dep. 16:3-17:1. Matt Corace worked at Buccini Pollin in the technical services group. Kaplan Dep. 17:22-18:12. Toby Partridge also worked at Michael Baker International. Kaplan Dep. 17:2-6.

28. When Office Partners learned that the PWSA's tariff rates were changing in January 2022 to a structure that eliminated tap-in fees, Office Partners sought to withdraw its already-approved Application and resubmit it at a time when the fees were more favorable to Office Partners.

29. In an effort to circumvent the PWSA's consistent policy, and to shop for a preferable rate, Office Partners attempted to assert pretextual reasons[3] for a "new" application:

> Need a high level summary that explains why this is important: "I'm reaching out to see if you might be able to lead me in the right direction regarding PWSA's new tap-in fees. I believe the issue can be resolved if we're able to get a meeting with the Dir. Will Pickering." It's 2-3 sentences pulled from what you sent Kevin and underscores that we're not seeking any favorable treatment of consideration – just for the permit date (yet to be determined) to trigger the fee structure that went into effect 1/12/22.
>
> Kevin said that he will reach out Director Pickering before the larger call given his relationship.
>
> We should get feedback from Steve on any reasonable/plan modifications that can also help supersede the correspondence from late December.

See communication from Mr. Kaplan to Mr. Corace, included among documents produced through discovery by Office Partners and bates labeled as OfficePartners_0000563, attached hereto as Exhibit D.

[3] Office Partners contends that the purportedly withdrawn application was a "new" application because it was amended to clarify or modify the ownership status of the subject parcel, to effect other "structural considerations," or to make changes necessary to secure regulatory approval. Kaplan Dep. 43:19-44:45:3, 47:1-4; 48:24-49:13, 50:4-51:10. However, the evidence is clear that these claims are mere pretext for Office Partners' real objective: securing a more favorable fee. (*See* Kaplan Dep. 45:17-46:8, 47:1-13, 50:4-51:10; 57:10-13, 64:24-65:25 and Exhibit 7 to Kaplan Dep.) The evidence is clear that changes or differences in ownership would not require a new application (Asciolla Dep. at 19:8-23), and that the subject regulator (the Pennsylvania Department of Environmental Protection not only approved of the Application, but was actually willing to assist in expediting the Application as it was submitted in 2021 (Kaplan Dep. 34:9-35-20, 41:18-42:5 and Exhibit 5 to Kaplan Dep.). Office Partners was unable to identify a single "structural consideration" requiring a new application (Kaplan Dep. 43:23-45:7 and Exhibit 3 to Kaplan Dep., Paragraph 10 of the Complaints). Put differently, Office Partners has not asserted a single supported evidentiary basis for attempting to withdraw its Application, other than its desire for a reduced fee.

30. Office Partners admits that a "major reason" and a "central component" for the attempted re-submission of a tap-in application was the realization of cost savings; that the decision to attempt the withdrawal of the Application rested with Office Partners alone; and was not based upon any requirement or statement from the PWSA or any government entity. *See* Kaplan Dep. 47:1-13, 57:10-13, 64:24-65:25 and Exhibit 7 to Kaplan Dep.[4]

31. This admission is consistent with Office Partners' objective, since first discovering the change in the tariff fee structure, to obtain a favorable rate for the Application and subsequent permit:

Please see correspondence below from Steve. Not super optimistic but there is a glimmer we may be able to save a chunk. Regardless we will not be cutting any checks to PWSA until we make a hard push. Wrapping up with Carolyn will call you in a bit.

Matthew Corace

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From: Savich, Steven <SSavich@mbakerintl.com>
Sent: Wednesday, January 5, 2022 4:41 PM
To: Matt Corace <mcorace@bpgsconstruction.com>; Partridge, Toby <TPartridge@mbakerintl.com>
Subject: RE: EXTERNAL: RE: [EXT] RE: Possible Good News

I take this to mean that the EDU based fee for sewer will remain and possibly increase some. The fees for taps (by size) of waterlines and the EDU based water fees will go away. I expect the meter costs to remain as well. I have only gotten some partial information on this but will look to confirm with Julie at PWSA tomorrow ...

Steven Savich | Vice President, Practice Executive - LD&I
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[4] This admission is consistent with the other evidence of record because there is no credible evidence that Office Partners had any discussions with the PWSA regarding the tap-in rates prior to January 2022, or that Office Partners made any submissions to the PUC in connection with the Rate Case. *See* Kaplan Dep. 24:10-13, 54:24-55:19.

See document produced by Office Partners through discovery and Bates labeled at OfficePartners_000091, attached hereto as Exhibit E.

32. 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. *See* Asciolla Dep. at pp. 39:5-41:19 and Exhibit E to Asciolla Dep.

33. 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 and approved at both the approval level with Ms. Asciolla, and at the executive level of the PWSA. *See* Asciolla Dep. at pp. 40:13-41:19, 46:11-47:3 and Exhibit G to Asciolla Dep.

34. The PWSA's treatment of the Application was consistent in all respects with its treatment of similarly-situated applicants. *See* Asciolla Dep. 64:9-22, 66:16-67:12.[5]

35. Office Partners does not present any evidence that the PWSA's consistent application of its policy contravenes any approved tariff, rule or regulation, or that Office Partners' demand is mandated by any approved tariff, rule or regulation – nor could it.

36. Instead, Office Partners claims that the PWSA's position in this case is inequitable because Office Partners alleges that it could have waited until its approval letter and fee sheet

[5] 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 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.

"expired" six months after issuance, then re-submitted a "new" application to obtain a more favorable rate.

37. However, Office Partners' argument finds no support in the evidence, since the PWSA policy was to allow for late, post-expiration payments to perfect a permit application, as long as the system had sufficient flow capacity in its system at the time in which the post-expiration payment was made. *See* Asciolla Dep. at 20:12-22:10, 61:4-62:16.

38. Office Partners' argument is also disingenuous, since the evidence is clear and undisputed that Office Partners sought to expedite—not to delay—the PWSA's consideration and approval of the Application, and that the PWSA took steps to expedite the consideration of the Application. *See* Asciolla Dep. at 63:8-64:3; Kaplan Dep. 35:21-36:21, 38:6-38:25, 42:7-43:18, 59:1-11 and Exhibit 5 to Kaplan Dep.

39. In fact, the evidence is clear that the ***only*** effort Office Partners took to stall progress on the Application was the post-approval attempt to withdrawal of the Application. This attempt was to be followed by a request for expedited treatment of the "new" application—all while relying on the PWSA's prior approval as a basis to keep work on its project proceeding apace during the withdrawal process. *See* Kaplan Dep. 60:4-62:3, 71:1-24 and Exhibit 6 to Kaplan Dep.:

> Good morning. After the OAC yesterday, we discussed our path forward with PWSA. We said that we would notify PWSA staff and Director Pickering of our intent to:
>
> 1) Withdraw the current tap-in fee application
> 2) Submit revised applications and tap plans that separate parcels G1 and G4
> 3) Request that both applications receive the 15-day expedited review and pay the $1300 fee per application for expedited review
>
> Before we send a follow up communication to PWSA, can we quickly confirm that
>
> 1) splitting the application into G1 and G4 components won't have an unintended ripple impact on completed PWSA agreements, bonds, etc? If those supporting documents have to change as well, we'd likely be facing a more protracted delay than the 15 days review process.
> 2) Is there a different plan update that we should consider instead of splitting apart the G1 and G4 parcels?
> 3) Can we use the PWSA notice from December and other approvals to keep advancing the work in the field for another couple of weeks?

See Exhibit 6 to Kaplan Dep., attached hereto as part of Exhibit B.

40. 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.[6] *See* Kaplan Dep. 63:20-65:25,73:7-10 and Exhibit 7 to Kaplan Dep.:

> 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.

See Exhibit 7 to Kaplan Dep., communication from Mr. Kaplan to another stakeholder in Office Partners, attached hereto as part of Exhibit B.

41. On March 15, 2022, as part of a consent process that resulted in the stay of an action initiated by Office Partners before the Allegheny County Court of Common Pleas and the initiation of this Action, Office Partners paid the Escrow Amount into the Allegheny County Court of Common Pleas and the PWSA issued the subject permit on the same date.

42. In their Complaints, Office Partners asks the Commission to: (1) "declare" that the applicable fees are those set forth in the 2022 PUC Tariff; (2) "order" issuance of the subject permit based upon the 2022 rate schedule; and (3) "order" the return of the funds currently held in escrow with the Allegheny County Court of Common Pleas.

43. Through its requested relief, Office Partners requests that the Commission permit Office Partners to exempt itself from a mandatory statute requiring the payment of the fees set forth in the Governing PUC Tariff, which was in effect at the time of the submission, consideration and approval of the Application.

---

[6] Office Partners also admitted that the amount correctly charged by the PWSA pursuant to the Governing PUC Tariff was consistent with the amount Office Partners budgeted for the tap-in fee, on a total project budget of approximately $240,000,000.00. *See* Kaplan Dep. 68:16-69:4. It is noteworthy that Mr. Kaplan stated that, as project manager, "it's my duty to keep identifying reasonable savings that could be realized in a way that offsets potential increases that occur across the rest of the budget." *See* Kaplan Dep. 72:21-73:10.

44. There is no genuine issue of material fact, and judgment as a matter of law, in favor of the PWSA and against Office Partners, is appropriate on this record.

III. MOTION FOR SUMMARY JUDGMENT

A. Standard of Review

45. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Commw. Ct. 1976).

46. The non-moving party in a motion for summary judgment must allege facts showing that an issue for trial exists. *First Mortgage Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. Ct. 1983); *Commonwealth v. Diamond Shamrock Chemical Co.*, 391 A.2d 1333 (Pa. Commw. Ct. 1978); *Stover v. The United Telephone Co. of Pa.*, Docket No. C-00923833 (Order entered July 21, 1992). The Commission has interpreted Section 5.102(c) in conformity with Rule 1035 (now Rule 1035.1) of the Pennsylvania Rules of Civil Procedure. *South River Power Partners, L.P. v. West Penn Power Co.*, Docket No. C-00935287 (Order entered Nov. 6, 1996). In civil practice, a non-moving party may not rely solely upon denials in its pleadings, but must submit evidence to establish that a genuine issue of material fact exists. *Nicastro v. Cuyler*, 467 A.2d 1218 (Pa. Commw. Ct. 1983); *Pennsylvania Gas & Water Co. v. Nenna & Frain, Inc.*, 467 A.2d 330 (Pa. Super. Ct. 1983); *Geriot v. Council of Borough of Darby*, 457 A.2d 202 (Pa. Commw. Ct. 1983).

B. No Genuine Issue of Material Fact Exists Regarding Office Partners' Allegations and the Commission Should Enter Judgment as a Matter of Law in Favor of the PWSA.

47. Office Partners bears the burden of proving that the PWSA violated a Commission regulation or order. *See* 66 Pa. C.S.A. § 332(a). However, as supported by the pleadings and the evidence of record, there is no genuine issue of material fact in this case. The PWSA is entitled to a judgment as a matter of law.

48. In cases involving the interpretation of a statute, courts are "guided by the provisions of the Statutory Construction Act, 1 Pa.C.S. § 1901 *et seq.*" as follows:

> Under the Statutory Construction Act, the object of all statutory construction is to ascertain and effectuate the General Assembly's intention. *See* 1 Pa.C.S. § 1921(a) ("The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly"); *Hannaberry HVAC v. Workers' Compensation Appeal Bd. (Snyder, Jr.)*, 575 Pa. 66, 834 A.2d 524, 531 (2003). ***Generally speaking, the best indication of legislative intent is the plain language of a statute.***" *Commonwealth v. Gilmour Manufacturing Co.*, 573 Pa. 143, 822 A.2d 676, 679 (2003) (citations omitted). ... The Act further provides that, "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b); *see also Scheipe v. Orlando,* 559 Pa. 112, 739 A.2d 475, 478 (1999).

Sternlicht v. Sternlicht, 583 Pa. 149, 876 A.2d 904, 909 (Pa. 2005) (emphasis added).

49. In fact, under Section 1921(c) of the Statutory Construction Act, it is only when the words of a statute "are not explicit" that a court may resort to other considerations in order to ascertain legislative intent. *Id.*

50. As further set forth by the Pennsylvania Supreme Court: "Where the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words." *Id.*

51. Thus, 53 Pa.C.S.A. § 5607(d)(24) must be interpreted pursuant to its plain language in accordance with the foregoing rules of statutory interpretation.

52. Per the express language of 53 Pa.C.S.A. § 5607(d)(24), fees are payable ***at the time of application***, and fees are determined based upon the duly adopted fee schedule which is in effect at the time of approval, *i.e.*, the time of application. *See also* PWSA Tariff (effective January 14, 2021) ("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 the Authority agree.").[7]

53. Even when viewing the evidence of record in the light most favorable to Office Partners, as well as every reasonable inference from those facts, it is clear that Office Partners is not entitled to the relief it seeks from the Commission under any circumstance as a matter of law.

54. Office Partners' claims are legally insufficient because Office Partners expressly pleads that it applied for a permit with the PWSA on May 11, 2021, and it is undisputed that the subject permit was ultimately approved during 2021. Complaints, ¶¶ 6, 8, Exhibit C thereo; *see also* Asciolla Dep. at 64:4-8; *see also* Kaplan Dep. at 8:2-9, 22:4-22

55. Thus, the applicable fees must be determined pursuant to the rates in effect when Office Partners applied (and was approved) for its permit. As such, the controlling fees are those set forth in the Governing PUC Tariff.

[7] A copy of the Tariff is publicly available at: https://www.pgh2o.com/sites/default/files/2021-01/TARIFF%20-%20WASTEWATER%20-%20THROUGH%20SUPP%20NO.%205%20RATE%20CASE%202020%20-%20EFF%201.14.21%20%28L0980323xA35AE%29.pdf.

56. Office Partners submitted an application for a tap-in permit in 2021; that application was considered and negotiated throughout 2021; and that application was ultimately approved and invoiced in 2021. *Id.*

57. The Application was only subject to an attempted withdrawal by Office Partners in 2022 in an attempt to secure a lower rate for an application that was fundamentally the same as its initial Application. *See* Kaplan Dep. 47:1-13, 57:10-13, 64:24-65:25 and Exhibit 7 to Kaplan Dep.

58. Office Partners cannot rely on its purported withdrawal to shirk its statutory obligations to pay the rates set forth in the Governing PUC Tariff, and allowing such withdrawal and re-submission would not only be counter to the rate structure approved by the Commission in the Rate Case, but would also be inequitable as a deviation from the PWSA's established policies and practices.

59. Office Partners' Complaints are devoid of any allegation or point of law supporting its ability to withdraw a prior ***approved*** application, only to resubmit the application soon thereafter, in an attempt to obtain a more favorable rate, and the record is devoid of any legal support for such an attempted "Hail Mary." *See* Kaplan Dep. 63:20-65:25,73:7-10 and Exhibit 7 to Kaplan Dep.

60. Moreover, Office Partners' actions ignore the deleterious result to the public that would result from depriving the PWSA and its ratepayers of the amounts that are due under the fee structure in place when Office Partners applied (and was approved) for the subject permit.

61. The PWSA is upholding its obligations to its ratepayers and exercising fidelity to the applicable tariff, rules and regulations of the Commission by requiring Office Partners to pay the fees in effect upon the Application's approval, as the PWSA uniformly has done with other applicants whose application processes were conducted entirely within a single tariff rate/structure.

IV. CONCLUSION

62. The PWSA is entitled to summary judgment as a matter of law. The pleadings, as well as the evidence of record, demonstrate that there is no material dispute that the Application was submitted, considered and approved in 2021, during the effective period of the Governing PUC Tariff. Any attempt by Office Partners to withdraw its Application, especially after approval, for the sole purpose of achieving a lower fee, is inequitable and contrary to the governing tariff, rules and regulations of the Commission.

WHEREFORE, the PWSA respectfully requests that the Commission: (1) grant the PWSA's Motion, upon a finding that, as a matter of law, Office Partners is not permitted to withdraw an approved application for the purpose of securing a more favorable rate; (2) declare that the rates set forth in the Governing PUC Tariff apply to Office Partners' permit; (3) declare that the Escrow Amount, totaling $506,647.18, is immediately due and owing to the PWSA by Office Partners, subject to an Order of the Commission or the Allegheny County Court of Common Pleas requiring the disbursement of the Escrow Amount to the PWSA; and (4) dismiss Office Partners' Complaints against the PWSA with prejudice.

Dated: May 26, 2023

/s/ Ashley L. Buck, Esq.

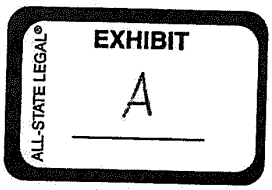
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Transcript of Julie Asciolla, Corporate Designee

Date: April 14, 2023
Case: Office Partners XXIII Block GI, LLC -v- The Pittsburgh Water & Sewer Authority

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

OFFICE PARTNERS XXIII BLOCK GI LLC	:	Docket Nos.
Complainant,	:	C-2022-3033251
-v-	:	C-2022-3033266
THE PITTSBURGH WATER AND SEWER AUTHORITY,	:	
Respondent.	:	

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

Deposition of JULIE ASCIOLLA, held at the offices of:

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301 Smithfield Street
Pittsburgh, Pennsylvania 15222
(412) 232-0334

Pursuant to Notice, before Keith G. Shreckengast, Registered Professional Reporter and Notary Public in and for the Commonwealth of Pennsylvania.

A P P E A R A N C E S

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C O N T E N T S

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E X H I B I T S

(Attached to transcript)

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

EXHIBITS CONTINUED

Ex. D	PWSA_OfficePartners_002917-2918. 1/7/22 email from Robert Herring to Steven Savich	36
Ex. E	PWSA_OfficePartners_002574-2575. 1/10/22 email from Julie Asciolla to Robert Herring, Steven Savich	40
Ex. F	PWSA_OfficePartners_002746-2747. Documents/Project Submittals/20015.10 540 North Lang Avenue	42
Ex. G	PWSA_OfficePrtners_002923-2924. 1/31/22 email from WPickering to Julie Asciolla	43
Ex. H	PWSA_OfficePartners_002748-2749. 2/1/22 email from Julie Asciolla to Steven Savich	47
Ex. I	PWSA_OfficePartners)--2587-2589. 2/3/22 email from Will Pickering to Julie Asciolla	50
Ex. J	PWSA_OfficePartners_000985, 000854 (and 1 non Bates numbered pg.) 12/23/21 letter from Wendy M. Dean to Office Partners XXII Block G1 LLC	51

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

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. Asciolla?

A Julie is fine.

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

A Julie Asciolla.

Q Julie Asciolla, 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?

of the case, Office Partners XXIII Block GI, LLC versus Pittsburgh Water & Sewer Authority. Are you familiar with this case?

A Yes.

Q Okay. And have you had a role with this case or these -- the Plaintiff or Complainant in this prior to this Complaint being filed?

A Yes.

Q And so are you -- it states that we requested a representative essentially to testify to certain subject matter. Do you have knowledge with regard to the PWSA's discovery responses in this action?

A Yes.

Q And do you have knowledge with regard to the application process with regard to this action?

A Yes.

Q And do you have knowledge with regard to PWSA's policies with regard to the permits that are the subject matter of this action?

A Yes.

Q And number 5, do you have knowledge with regard to the tariff and rates PWSA charges for the permits with regard to this action?

A Yes.

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

A Okay.

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

A Okay, I'm good.

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

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

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

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

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

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

A That is correct.

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

A No, it is not a permit.

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

process that the Complainant, Office Partners, would have participated in with regard to the subject matter of this action, the process you just described?

A If they were to apply today, it would be a different process. Similar requirements, but the process itself is different.

Q Okay. So but this -- what you just described is the process that Office Partners participated in; is that --

A Yes, uh-huh.

Q Okay. Or the process in place I should say?

A Correct.

Q What's different about the process now?

A So we started to use an online permitting system, which simplified the process, and reduced the number of paper applications that needed to be submitted prior to the permit issuance. So it just -- it simplified the process now.

Q Other than simplifying the process, is it still the same with regard to the steps?

A It's similar. So we ask for the same information. We just don't call it a water and sewer use application anymore. We just ask for that

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

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

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

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

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

Q Okay.

A Just as documents come in.

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

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

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

A No.

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

A No.

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

A Correct. Correct.

Q Has an applicant ever just walked away?

A Yes.

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

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

you know, if there's a new development on that property, in -- that process is initiated.

Q If the applicant -- is there any point in time where there's a letter sent that the application is no longer active, or something to that effect?

A No. We don't send a letter.

Q Okay. You said if there was a new development or something on that property. What -- would it pertain to the application that you had on file, or would they start the process over again?

A It would depend on the nature of that development. So we would take a look at the application that had previously been approved, and then what the new development is proposing. And if they were different projects, then the application process would start over.

Q Okay. What about if there were different ownership groups?

A If it was different ownership, but the same project, same thing was going to be constructed, we would remain with the original approved application, even if the ownership changed.

Q Are there insurance requirements to provide the permit?

A I'm not sure what you mean.
Q Does PWSA require a developer to have insurance before issuing a permit?
A No, we do not.
Q In 2021 or 2022, were there any written policies with regard to this application process?
A Say that one more time.
Q Were there any written policies in 2021 or 2022 with regard to the application process?
A We have the developer's manual, which contained our written policies for the process.
Q Were there any written policies related to the withdrawal of a permit?
A No.
Q Were there any written policies related to the expiration of a permit approval?
A Yes.
Q And do you recall what those policies are, or were, sorry, in 2021 and 2022?
A Yes. So in 2021, that policy was that approved permit would expire after six months. Which we had that in place because the DEP limited the amount of flow we can add to the system every year. So we had to examine those projects to make sure we had enough flow before issuing the permit.

And we didn't reserve flow for projects that didn't pay. So, yes.

Q And when a -- is there any notice when a permit expires, or an approval expires I should say?

A So on the invoice that we send out after approval, there is a note that lets applicants know that that approval does expire six months from the date of approval.

Q Has that -- was it ever a shorter or longer time period?

A Yes.

Q When was that?

A So during Covid in 2020, we did not have an expiration date. Because we knew projects were having trouble moving forward. So we wanted to give them time to come in and pay. And then prior to that, around, like -- I don't know the exact dates, but prior to that there was a two month expiration date at some point.

Q Has an approved party ever obtained a permit after the expiration --

A Yes.

Q -- for the same work?

A Yes.

Q And have they had to restart the process?

A No.

Q So is it safe to say that PWSA doesn't enforce the expiration policy?

A So I think it's safe to say that we take it on a case-by-case basis. If an applicant comes and says they would like to receive this permit, we'll look at it, make sure the -- we still have the flow available in the system for those applications. And if we do, we would issue the permit, rather than start the application over.

Q In 2021 and -- I guess 2020 and 2021, can you explain what the purpose of the application fees, or the permit fees, are for the permits that are subject matter of this action.

A Say that one more time.

Q Prior to 2022, as you're aware, you can confirm or not, that this charging scheme for tap-in permits changed in 2022; is that correct?

A That is correct, yes.

Q So prior to that change, there was a fee for tap-in permits. Once approved, you had to pay a fee. Do you know what that fee was for? What was the purpose of the fee?

A So there were a few fees that an applicant had to pay at the time of approval. Which

application fees.

Q With regard to the new application fees and the application fees in 2022, what did those fees cover? What were they, the applicants, paying for?

A For the application fees did you say?

Q Yes.

A So that was for the time spent by our employees to review the application.

Q Is that -- and what would they pay for the permit, to obtain the permit upon approval at that time, in 2022 and I guess today?

A Yes, so at the end of the review process, it would still be the meter and tap fee based on the project.

Q Okay. Is that a fixed unit charge?

A No.

Q How is that determined?

A It's calculated based on the size of the meter, and the size of the tap, which is our -- based on the direct cost to the PWSA, to provide that service.

Q So if a tap was X size, it would cost the same for one developer versus the other; is that right?

A Correct.
Q And there is no charge based on usage then?
A There would be, based on -- Like a monthly rate; is that what you're asking?
Q Sorry, there's no charge to obtain the permit based on usage?
A No.
Q So that maintenance fee is eliminated then?
A Correct, through permitting fees.
Q Through permitting fees?
A Yes.
Q Did PWSA alter the usage fee in any way, shape or form in 2022?
A Yes.
Q And for developers like my client, and the projects of that size, were fees increased or decreased for usage?
A I don't know that exactly.
Q Are rates higher or lower for usage now than they were in 2021?
A Do you mean generally, as a whole?
Q Yes.
A They are higher.

Q Sorry, I'm going to have to find one more document here. We'll introduce Exhibit B, the consolidated Complaint.

(Exhibit B was marked for identification.)

(Exhibit C was marked for identification.)

MR. NERNBERG: Sam, again I'm going to represent -- and Ashley, I'm going to represent this is another consolidated document, preliminary objections.

MR. HORNAK: We have no objection to proceeding in that manner, provided and based upon that representation that the various requests and responses are true and correct, as well as completely consistent with the underlying requests and responses exchanged through discovery.

Q Julie, again I'm going to represent that this is a consolidated document with regard to the preliminary objections that were filed by PWSA in this action, and the responses by my client. If you could, please -- I'm not really interested in going through the responses. I just want you to take a look at paragraphs 8, 9 and 10, and just review them, please. Are you completed?

A Uh-huh.

Q So just to be clear, paragraphs 8, 9 and 10 all discuss PWSA -- preliminary objections all discuss the action before the PUC that we discussed briefly at R-2018 3002647, as well as what we discussed in the Notice of Deposition. Could you tell me what that -- just give me a background of what that action or dispute was about with the PUC.

MR. HORNAK: I would just ask a point of clarification, David. In the paragraphs that you've directed her to review, 8, 9 and 10 --

MR. NERNBERG: Uh-huh.

MR. HORNAK: There are references to other PUC docket numbers. So are you referring specifically to the docket number --

MR. NERNBERG: I'm referring to both.

MR. HORNAK: -- in the Notice of Deposition, or to specific docket numbers in paragraphs 8, 9 and 10 of these consolidated --

MR. NERNBERG: To both, if they're different. She can respond if the actions are different.

MR. HORNAK: Can you ask the question again.

MR. NERNBERG: Sure.

I'll defer to Julie as she returns to work on Monday. Is that yourself, you believe, he's referring to?

A Yes.

Q And at the top, it looks like you responded to Steven Savich saying the new tariff goes into effect January 12th, '22. Within the new tariff there are several changes to development fees, including the removal of tap fees and new application fees. Any permits approved in 2021 are subject to the 2021 tap fees. Any projects approved in 2022 will be subject to the 2022 tariffs and new fees. The Lower Hill project was approved on December 23rd, 2021, so the project does not fall under the new 2022 fees. Let me know if you have any more questions.

MR. HORNAK: And, sorry, I don't think that's on the exact Exhibit D that we have. I think our Exhibit D starts with the January 7th, 2022 at 4:16:27 p.m. email from Robert Herring to Steven Savich, copying Julie. I think you're referring to a later email.

MR. NERNBERG: We'll just make this Exhibit E, then. Sorry, I jumped ahead.

MR. HORNAK: No problem. Sorry, I didn't

want to cut you off when you were reciting --

MR. NERNBERG: No, I appreciate that.

(Exhibit E was marked for identification.)

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

MR. HORNAK: No problem.

Q If you could review that.

A Okay.

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

A Yes.

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

A There was no written policy, no.

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

A Yes.

Q Who did you consult?

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

Q I won't ask you about your conversations

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

A It's Will Pickering.

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

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

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

A Yes.

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

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

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

A I don't know.

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

been the same in 2022 and 2023, then yes.

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

A Correct.

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

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

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

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

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

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

A I don't know.

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

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

MR. NERNBERG: Yes, it is G.

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

A I don't think I suggested that.

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

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

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

A I'm confused.

Q This will be Exhibit H.

(Exhibit H was marked for identification.)

Q If you could please review again.

A Okay.

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

be your response to Steven Savich with regard to his request to separate the applications. Is that correct?

A Yes.

Q Okay. And you wrote, we don't have any existing policies to withdraw an application. Did you have any existing policies against withdrawing an application?

A No, not explicitly.

Q All permits under review have the option to submit revised applications, planning modules, and tap-in plans without restarting an application. What would be the other option, or any other options?

MR. HORNAK: Object to the form. You can answer.

A I don't think there would have been another option. Just to abandon the application.

Q What would happen if they submitted a revision and it was rejected by PWSA?

A Typically revisions will go through a review process between PWSA engineers and the project engineer, to come to a point that they are approved. So typically they aren't outright rejected.

Q Let's say -- let's not use our client, but just a random -- any individual developer. If a developer had submitted plans, they're approved, paid the permit fee, and the permit was issued, could they revise the plans after the permit was issued?

A Yes.

Q And if those revised plans were not accepted -- if they were accepted, would a revised permit be issued?

A Not a new permit. It would -- the original permit would remain in existence, and the tap-in plans would be updated for that permit.

Q Okay. And if the revisions were not accepted, would the tap-in plans be revised in that situation?

A Yeah, I don't -- I can't think of a scenario where they would not be accepted. Again, the engineers would work back and forth until they are approved, until they're at a point acceptable to PWSA.

Q To the best of your knowledge, has a developer, someone desiring to tap-in, ever abandoned a revision, because it was not able to complete it to their satisfaction, or for some other

A If we don't have that email in your records, then it wasn't by email.

(Exhibit J was marked for identification.)

Q We marked this as Exhibit J. This is a three page document. And I'll ask you about each page individually. I believe you discussed an approval of my client's permit. This letter on top that's dated December 23rd, 2021, is this the approval that you're referring to?

A Yes.

Q And it states that the tap-in plans for the project have been calculated and approved; is that right?

A Yes.

Q And it says the fees have been calculated and are attached for your reference. Permits are not considered issued until permit fees are paid; is that correct?

A Correct.

Q And is that consistent, to the best of your knowledge, with your prior testimony today?

A Yes.

Q If we could go to page 2, please.

MR. HORNAK: You're referring to

being Bates stamped. And my guess is that they are also part of a larger Bates stamp production, one way or the other.

MR. HORNAK: Understood.

Q So let me know when you've been able to review them.

A I'm good.

Q Let's just start with the first page. This appears to be similar to the 12-23 rate chart that we reviewed previously. At the bottom here it notes payment for permits must be received within six months from 3-3-21. Would this relate to the revised permit by Office Partners?

A You would think so, but that date does not match up.

Q You did testify previously that the permit was issued after funds were placed into escrow; is that correct?

A Correct.

Q So we'll start with the first page. The total is $506,647.18. That is slightly less than the prior billing, correct?

A Correct.

Q And would that be based in part upon the EDUs?

A Correct. Yes.
Q And if we go to the second page, this appears to be a signed Development Permit Form. Is this something that's created by the PWSA?
A It was at the time, yes.
Q At the time, I guess that is, thank you. And it says Permit Number 2022-0021; is that correct?
A Correct.
Q So would that be for permits issued in 2022?
A Yes.
Q Okay. And the next page -- and the next page appears to be a continuation of that; is that correct?
A Yes.
Q And it's dated 3-15-2022, correct, at the bottom right?
A Correct.
Q And if you look at the amount, the check amount, it says -- or amount due, 506,647.18?
A Yes.
Q Is that the same as the first page?
A Yes.
Q And then if we go to what I'll say is the

THE WITNESS: No, let's just get it done.

EXAMINATION

BY MR. HORNAK:

Q And I may jump around a little bit. I just wanted to clarify a couple of answers that you gave throughout the course of your deposition. I believe earlier you gave some representation about whether PWSA has a policy relating to whether an approval would, on its face, purportedly expire after two, three, six months, or perhaps not at all during Covid. Did the PWSA have a written policy about that practice, or was that based on just consistent treatment of similarly situated applicants?

A At some point we did put it in the Developers Manual. But prior to that point, it was just applied consistently across applicants.

Q To the extent that the PWSA had written policies about tap-in fees during 2021, into 2022, were those written policies articulated in the applicable Developers Agreement?

A Developers Manual?

Q Or Developers Manual, yes.

A Yes.

Q As well as the PWSA's PUC approved rules

and regulations; is that correct?

A Yes.

Q Towards the very end of your deposition, and I'm still asking about that two, three, six month expiration period, you testified, I believe, that the intent was that that two, three or six month time period be applied across the board. Do you remember that testimony?

A Yes.

Q When you say the intent was that it be applied across the board, did you mean, is it correct to say that the PWSA intended to apply the same time period as articulated at the bottom of an approval letter, to any applicant on a particular date?

A Yes.

Q Between the time when a permit is approved, and a tap-in ultimately occurs, and there is actual usage, does the PWSA apply any flat fees or non-usage based fees to a property?

A No.

Q Okay. I'd like to -- I'll show you Exhibit F. If you take a look at this, I think you testified that that is a set of screenshots from the PWSA's EBuilder system. And there were some

questions about certain entries on this, including dates that seemed to appear on this document. Is it possible that those dates are associated with when various documents are uploaded to EBuilder, rather than when such documents are either created or submitted to the PWSA?

A Correct.

Q In the middle of your deposition testimony there were some questions about revisions, and the back and forth discussion process between the PWSA and various developers. I don't think that questioning was confined just to Office Partners. Is it your general experience that developers want to work with PWSA toward ultimate approval of either an underlying application, or to the revisions to a previously approved application?

A Yes.

Q Is it your general experience that developers want to expedite the PWSA's consideration of projects, and want to expedite the PWSA's ultimate approval of those projects?

A Yes.

Q Based on your personal involvement with the Office Partners application, and based upon your review of records, is it your understanding that

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

A Yes.

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

A Yes.

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

A Yes.

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

A No, I'm not aware.

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

A No.

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

MR. NERNBERG: I may have two.

RE-EXAMINATION

BY MR. NERNBERG:

Q With regard do written policies, would you say they are all contained in the Developers Manual? The written policies we discussed today, if there are written policies, would they be contained in the Development Manuals applicable at the time?

A Yes.

Q With regard to the EBuilder spreadsheet, Exhibit F, the documents upload date, is that when they are submitted to PWSA, or was there another way to submit them to PWSA?

A This is the official way to submit your documents. But just because it's in the system doesn't mean that it's an official submittal. Typically at that time using EBuilder we would require a review fee be submitted prior to that -- the start -- prior to us reviewing the application. So it could be in the EBuilder system before we considered it submitted.

Q But it would not be in the EBuilder system after you considered it submitted?

A It would be.

Q Right. So in order to be considered

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

A Yes. Yes.

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

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

MR. NERNBERG: That's all I have.

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

THE WITNESS: No.

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

BY MR. NERNBERG:

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

A Correct.

MR. NERNBERG: That's all I have.

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.)

CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

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

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

My commission expires April 30, 2024.



NOTARY PUBLIC IN AND FOR THE COMMONWEALTH OF PENNSYLVANIA

Message

From: jasciolla@pgh2o.com [jasciolla@pgh2o.com]
Sent: 1/10/2022 2:47:04 PM
To: RHerring@pgh2o.com; SSavich@mbakerintl.com
Subject: RE: Tap In Fees

Hi Steven,
The new tariff goes into effect January 12th, 2022. Within the new tariff, there are several changes to development fees including the removal of tap fees and new application fees.
Any permits approved in 2021 are subject to the 2021 tap fees. Any projects approved in 2022 will be subject to the 2022 tariff and new fees.
The Lower Hill Project was approved on December 23rd, 2021 so the project does not fall under the new 2022 fees.
Let me know if you have any more questions.

From: Robert Herring, PE, PMP <RHerring@pgh2o.com>
Sent: Friday, January 7, 2022 11:16 AM
To: Savich, Steven <SSavich@mbakerintl.com>
Cc: Julie Asciolla <jasciolla@pgh2o.com>
Subject: RE: Tap In Fees

Steven,

I'll defer to Julie, as she returns to work on Monday.

Thanks,

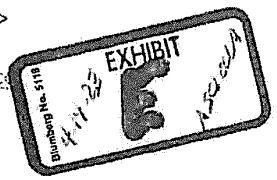
Robert Herring, PE, PMP
Senior Project Manager
Office: 412.255.8800
Ext: 5532

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: Thursday, January 6, 2022 5:23 PM
To: Robert Herring, PE, PMP <RHerring@pgh2o.c



Cc: Julie Asciolla <jasciolla@pgh2o.com>
Subject: FW: Tap In Fees

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.
Rob:

I sent the email below to Julie and got her out of office message ... Can you speak to the question below?

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 | www.mbakerintl.com

From: Savich, Steven
Sent: Thursday, January 6, 2022 5:21 PM
To: 'Julie Asciolla' <jasciolla@pgh2o.com>
Subject: Tap In Fees

Julie:

By way of another project we were notified that the policy on tap in fees is changing and will eliminate the water portion, modify the sewer and add another administration fee. It was expressed to us as a net reduction in the previous fee structure. The indication was that projects not permitted currently (or after January 1st 2022) would be subject to the new (and possibly reduced fees). Can you provide some insight into that and if it could be applied to the Lower Hill development?

If available, I can give you a call tomorrow to get a better understanding of this as the information provided was third hand at best ...

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 | www.mbakerintl.com

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 Asciolla <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 3 before responding.

PGH2O

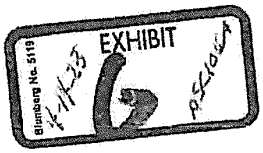
Julie Asciolla
Industry Relations Manager
Office: 412.255.8800
Ext:8019
Cell: 412.606.1233
24/7 media inquiry line: 412.420.3898

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 Asciolla <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



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.

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
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Michael Baker INTERNATIONAL | *We Make a Difference*

Pittsburgh Water & Sewer Authority

December 23, 2021

Office Partners XXII Block G1 LLC
1000 N. West Street
Wilmington DE 19801

RE: **Address TBD - 15219**
Water and Sewer Tap-in Plans

Dear Office Partners XXII Block G1 LLC,

The Pittsburgh Water and Sewer Authority (PWSA) has approved the tap-in plans for the above referenced 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.

If you have any questions, please feel free to contact me at (412) 255-8800 x8030.

Sincerely,

Wendy M. Dean
Engineering Tech II

Attachment

cc: PWSA File

Penn Liberty Plaza I
1200 Penn Avenue
Pittsburgh PA 15222

info@pgh2o.com
T 412.255.2423
F 412.255.2475

www.pgh2o.com

Customer Service /
Emergencies
412.255.2423



Pittsburgh Water & Sewer Authority

C-2060
OFFICE PARTNERS XXII BLOCK G1 LLC
Address TBD

96.53	Water EDU's	=	$214,682.72
96.53	Sewer EDU's	=	$287,466.34
(1)	6" tap	=	$1,314.43
(1)	8" tap	=	$1,349.95
(1)	4" tap	=	$1,106.35
(1)	1.5" meter	=	$492.00 – Domestic Positive Displacement
(1)	3" meter	=	$1,668.00 – Compound Domestic
(1)	5/8" x ¾" meter	=	$235.00 – Fire Line

TOTAL = $508,314.79

Please make check or money order payable to PWSA or Pittsburgh Water and Sewer Authority. The approved permit will be processed and emailed after payment has been received.

**** 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.

Penn Liberty Plaza I
1200 Penn Avenue
Pittsburgh PA 15222

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T 412.255.2422
F 412.255.2475

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@pgh2o

Customer Service / Emergencies
412.255.2423

Pittsburgh Water & Sewer Authority

C-2060
OFFICE PARTNERS XXII BLOCK G1 LLC
Address TBD

~~96.53~~95.20	Water EDU's	=	~~$214,682.72~~ 211,714.74
~~96.53~~ 95.20	Sewer EDU's	=	~~$287,466.34~~ 283,492.13

(1)	6" tap	=	$1,314.43
(1)	8" tap	=	$1,349.95
~~(1)~~	~~4" tap~~	~~=~~	~~$1,106.35~~
~~(1)~~	~~1.5" meter~~	~~=~~	~~$492.00 – Domestic Positive Displacement~~
(1)	3" meter	=	$1,668.00 – Compound Domestic
(1)	5/8" x ¾" meter	=	$235.00 – Fire Line

TOTAL = ~~$508,314.79~~ 499,744.28

Please make check or money order payable to PWSA or Pittsburgh Water and Sewer Authority. The approved permit will be processed and emailed after payment has been received.

**** 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.

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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.	)	

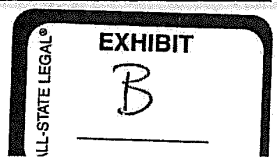
DEPOSITION OF BORIS KAPLAN

April 19, 2023

Reported by:

Michelle L. Goehring

Job no: 7062



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:

For the Claimant:

MAURICE A. NERNBERG & ASSOCIATES
by David M. Nernberg, Esq.
301 Smithfield Street
Pittsburgh, PA 15222
dmn@nernberg.com

For the Respondent:

CLARK HILL PLC
by Samuel A. Hornak Esq.
by Ashley L. Buck, Esq.
One Oxford Centre
301 Grant Street
14th Floor
Pittsburgh, PA 15219
shornak@clarkhill.com
abuck@clarkhill.com

- - -

I N D E X

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Exhibit 8	1/20/22 E-mails	66

A. I live on Cynwyd Road in Bala Cynwyd, so it confuses a lot of people.

Q. That might be one that we'll have -- I don't want to assume that the court reporter doesn't know how to spell, but I would need help spelling that.

A. C-Y-N-W-Y-D.

Q. What's your educational background, Mr. Kaplan?

A. I have an undergraduate from the University of Pittsburgh and a graduate degree and MBA from MIT.

Q. What's your undergraduate degree in?

A. In international relations.

Q. What did you study at MIT?

A. I studied financial management.

Q. When did you graduate from those two schools?

A. I graduated in 1994 from the University of Pittsburgh and 2000 from MIT, Massachusetts Institute of Technology.

Q. Who is your current employer, Mr. Kaplan?

A. I work for the Buccini/Pollin.

Q. And what's your title with

Buccini/Pollin?

A. I'm a senior vice president.

Q. How long have you been with Buccini/Pollin?

A. Since 2008, so about 15 years.

Q. And since you've been there, what roles have you filled for Buccini/Pollin?

A. Primarily in project origination and project management.

Q. Okay. Let's separate those two. Project origination is that kind of sales, business development for Buccini/Pollin?

A. Yes. It's identifying business opportunities for our company, working with owners of property on potential acquisitions for our company, and then coming up with development plans for those properties.

Q. Okay. And what roles have you filled on the project management side of your responsibilities at Buccini/Pollin?

A. I've overseen projects ranging in size from small, mixed-use info projects with several apartments over retail. I've developed a large multi-family development in the City of Philadelphia. For the past four or five years,

Baker, the Michael Baker Firm in the development of the FNB Tower?

A. So Michael Baker is an engineering firm that's worked with our team in both the development of the master plan, but also in the FNB Tower project.

They're responsible for civil engineering services and they are our principal representatives in a number of approval activities with various city and state agencies.

Q. Okay. Thank you.

I'm going ask you about a few names that Office Partners has identified through discovery. Perhaps you can give me who they work for, what their role in the development of FNB Tower has been.

A. Sure.

Q. First is Steven Savich, S-A-V-I-C-H?

A. Sure. Steven Savich is a senior engineer at Michael Baker. He has worked on development of the master plan, the engineering -- civil engineering associated with the master plan. He has also worked on various entitlement and approval efforts for

the FNB Tower.

Q. What about Toby Partridge?

A. Toby Partridge also works for Michael Baker; is a colleague of Steve Savich.

Q. Similar job responsibilities?

A. Correct.

Q. Craig Dunham?

A. Craig Dunham had been a consultant to the Pittsburgh Penguins or the local partners in this development. Currently Craig Dunham is an employee of the Pittsburgh Penguins.

Q. Okay. When he was consulting for the Pittsburgh Penguins, was he employed by someone else?

A. He had his own consulting company, Dunham Real Estate Group.

Q. Understood.

A. Dunham reGroup.

Q. What about Wesley Schwandt, S-C-H-W-A-N-D-T?

A. Wes Schwandt works for the Buccini/Pollin Group. He is a senior executive in our technical services group called BPGS.

Q. Joseph Lisicky, L-I-S-I-C-K-Y?

A. Joe Lisicky is a general counsel for the Buccini/Pollin Group.

Q. Okay. He's an attorney?

A. Correct.

Q. What about William Sittig, S-I-T-T-I-G?

A. Bill Sittig works for Sittig Cortese, a local land use attorney. He's an attorney, as well.

Q. Okay. Matt Corace, C-O-R-A-C-E?

A. Matt Corace works directly for Wes Schwandt in BPGS.

Q. Okay. The name is obviously familiar for any Pittsburgher, but what is the role of Kevin Acklin with respect to this development?

A. Sure. Kevin Acklin is a senior executive with the Pittsburgh Penguins. He had a lot of day-to-day responsibilities for the real estate development components of the project.

Q. Okay. And the last name that I have for now is Bomani, B-O-M-A-N-I, Howze, H-O-W-Z-E?

A. Bomani Howze is a vice president

paragraph-by-paragraph basis, but I just want to confirm some facts. But if you could turn to
Paragraph 6 on Page 1, which generally says that Office Partners submitted an application to tap into the PWSA infrastructure in May of 2021.

That timeline is correct, as far as you can recall?

A. As far as I can recall, yes.

Q. Is your recollection, both on your own and behalf of Office Partners, that the first interactions with the PWSA, related to the FNB Tower took place during calendar year 2021?

A. I think that's right.

Q. That's consistent with what's pled here. I just wanted to confirm that.

In Paragraph 7 the complaint reads, "Between August of 2021 until December 21 of 2021 Office Partners and the PWSA communicated regarding the plan submissions."

Did you, personally, have any role in those communications between Office Partners and the PWSA?

Have you, personally, ever communicated with PWSA about the development of the FNB Tower?

A. I don't think that I have.

Q. In the communications referenced in Paragraph 7 of the Complaint, do you know whether there was any discussion of what rate would apply to the application of Office Partners to tap into the PWSA system in 2021?

A. I don't know.

Q. Okay. Are you aware of whether any such discussions took place specific to the issue of what rate would apply?

A. I don't know the specifics.

MR. NERNBERG: I'm going to object as to form and really just to clarify the question. Are you asking specifically within that date range in Paragraph 7? That's what you're referencing?

MR. HORNAK: Yes.

BY MR. HORNAK:

Q. We can move on to Paragraph No. 8, which reads, "On December 23, 2021, the PWSA by letter accepted the tap in plans but informed Office Partners the permit would not be considered approved until the permit fees were

subdivision of the G Block?

A. I believe it was following the subdivision.

Q. Okay. There's a reference to -- specifically to the plan being rejected -- or to the application being rejected by the commonwealth agency, which you have just cast as the DEP.

Did the DEP ever explicitly advise Office Partners that its applications, either to the DEP or to the PWSA, would be rejected on the basis of a subdivision?

A. I don't recall specifically the guidance, but there were general concerns about the impact of subdivisions on prior approvals.

Q. Did any entity, external to Office Partners or its agents and representatives, explicitly warn Office Partners that an application or permit would be rejected based upon different owners or subdivision of parcels?

A. I believe that to be the case.

Q. I guess what I'm trying to get at, Mr. Kaplan, is was that the impression of Office Partners based on its experience or was

there a communication or representation made by an outside entity to Office Partners of a potential rejection?

A. I believe it was based on representations. There were extensive discussions back and forth with agents of the DEP and PWSA, submissions and letters back and forth trying to preserve the prior approvals, and an understanding that the DEP was making some level of a concession to permit our advancing of a time-sensitive project on Block G1, but that we would need future additional and costly approvals beyond those that have already been secured.

Q. But you don't remember the specifics of those representations, including when they were made, by who, to whom, or what the substance of the representations were?

A. They are just as I described to you. That's the extent of my recollection.

Q. Thank you. You just spoke about the time sensitivity of the project. What was the time sensitivity of development of the FNB Tower?

A. Sure. So the FNB Tower was and is

being developed for an anchor tenant. That anchor tenant has a lease with Office Partners. That lease has certain penalties if milestones and if delivery dates are missed, and so it's incumbent on Office Partners to proceed with the development of the project as quickly and as expeditiously as possible and avoid any possible delays and setbacks to the schedule.

Q. When did those efficiency imperatives begin for Office Partners?

So in 2021 when the application for the FNB Tower was first submitted to the PWSA, did those time sensitivities exist at that time?

A. They did. The lease predated those engagements and we were aware that there were milestones that needed to be met.

Q. So those milestones and time sensitivities existed from the start of the project to the present?

A. Correct.

Q. In -- hold on one second here -- in Exhibit 5, if you have that in front of you, at the top it's an e-mail from Matt Corace to --

MR. NERNBERG: Exhibit 5 is

the January 3, 2022 e-mail?

MR. HORNAK: That's correct.

MR. NERNBERG: Thank you.

BY MR. HORNAK:

Q. I want to direct you to a couple of things in this exhibit, which I'll represent is a chain of e-mails, and as we did in the deposition of --

MR. NERNBERG: Exhibit 5 starts with Office Partners_44?

MR. HORNAK: That's correct. It's Office Partners_44 through Office Partners_50.

BY MR. HORNAK:

Q. As we did in a deposition that Office Partners took of a PWSA representative, we'll start from the back of this e-mail. That's the way they're printed and that's probably the easiest way to go through them chronologically.

So if you could turn to Office Partners_50, there's an e-mail that actually begins on the previous page from Robert Herring to a Thomas Flanagan, who has an e-mail address listed as @pa.gov. That e-mail flows over on

to Page Office Partners_50.

Who is Mr. Flanagan? Do you recognize that name?

A. I recognize the name. I believe he was employed by the PA DEP.

Q. And other recipients copied on this e-mail are a variety of entities, including the Pittsburgh Water and Sewer Authority, Michael Baker, Buccini/Pollin, and I see that you're copied on this e-mail, as well as others.

On the last page of this exhibit, Office Partners_50, there's a paragraph that reads, "Based on the foregoing, please be advised that the PWSA takes no exception to designating the Block G flows entirely to the First National Bank Financial Tower."

Does that sentence make sense to you, based on the discussion that we just had relating to flows and subdivision?

A. It does. It relates to PWSA agreeing to prioritizing a time-sensitive project, assigning flows that had previously been approved for the entirety of that block to that one parcel, and permitting progress on subsequent approvals to advance.

A. So there had been a prior approval for a planning module, essentially, like a capacity confirmation that had been relied upon as being a completed approval.

A lot of these conversations deal with a new interpretation for -- our belief that it was a new interpretation that those approvals needed to be revisited subsequent to subdivision.

At the same time, it's my understanding that we couldn't get a tap-in permit -- a tap-in application approved until such time that there were any questions resolved with the planning module.

So they may be related, but I think there are two distinct applications and approvals that are being sought.

Q. You were copied on this specific e-mail and on this broader communication that's the subject of this exhibit, Mr. Kaplan.

Was your interpretation or the interpretation of Office Partners at this time that the PA DEP was going to stand in the way of or otherwise impede either of the applications that you just referenced, either

the planning module or the PWSA tap-in application?

A. By late December it looked like they were agreeing to our moving forward with the project.

Q. Okay. Thank you.

On Page Office Partners_47 at the top there's an e-mail that starts on the previous page, starts on Office Partners_46 from Toby Partridge to Shannon Connell from PWSA.

You are not copied on that e-mail, Mr. Kaplan, but there's a very brief exchange there between Toby and Shannon where Toby says, "Sorry for bugging you again." And then later in the e-mail Mr. Partridge asks, "When will we hear about the final tap fee amount."

This e-mail was sent on January 3, 2022, which, of course, is after the date of the December 23 letter.

At that time, at the end of December of 2022 and in the first days of January 2022 -- at the end of December 2021 and in the first days of 2022, these time sensitivities for the approval of Office Partners'

applications existed; is that correct?

A. Yes.

Q. Is that the basis, as far as you can tell, of Mr. Partridge's e-mail to Shannon Connell to, in effect, check in on the PWSA's issuance of the permits to get them expedited?

A. Yes.

Q. At the very top of this exhibit, the very first e-mail on Page Office Partners_44, Matthew Corace states that, "We have to talk tomorrow on steps with getting this check in the hands of PWSA ASAP," and in all capital letters, "HIGH PRIORITY!"

You're not on this e-mail. Do you interpret this e-mail as, again, underscoring the time sensitivity of the PWSA's approval of the permit?

A. I do.

Q. Okay. Thank you.

I'll direct you back to the Complaint here, we're still on Paragraph 10. That's on the second Page 2 of the exhibit.

I'm going to direct you here to the last sentence of Paragraph 10 which reads. "In addition, Office Partners wanted to change the

plans due to other structural considerations."

At this time what other structural considerations was Office Partners looking to change in its application?

A. I believe we also received guidance from Baker as to updated technical calculations on the respective parcels, the G1 and G4 parcels, which would change the -- the overall usage on those parcels, and I think we also reflect different fees associated with the updated technical capacity projections.

Q. When did Michael Baker provide Office Partners with those updated technical specifications? Do you remember the specific date?

A. I do not.

Q. Do you remember whether it was in December 2021? January 2022? If you don't remember, that's okay.

A. I don't remember.

Q. Okay. And you think those updated technical specifications relate to usage?

A. Yes.

Q. As you sit here today, can you remember any other updated technical

specifications that Baker provided to Office Partners?

A. I do not.

Q. Do you know when Office Partners first communicated those updated technical specifications to the PWSA?

A. I do not.

Q. Okay. Back to Exhibit 2, which is the Office Partners' discovery responses.

A. Okay.

Q. I'll refer you to Interrogatory No. 6, which is located on Page 9 of this document, which asks Office Partners to "Identify with particularity all of the reasons for your decision to attempt to withdraw your application on or about January 31, 2022."

Let me ask you a general question first before we get into Office Partners' response. Why did Office Partners attempt to withdrawal its application for a tap-in permit to the PWSA on or about January 31, 2022?

A. I think there were several factors that led to that decision. We had conversations through the end of '21 and early in 2022 related to the two parcel ownerships on

Block G.

There were many conversations throughout January related to, ultimately, the fees that were due and the rate structure that was going to be applied to that application.

And based on those conversations with staff and with leadership, we decided to proceed with withdrawing the application.

Q. When you refer to staff and leadership, are you referring to the staff and leadership of Office Partners or the PWSA?

A. I believe it was both.

Q. And you think those conversations occurred in December of 2021 and January of 2022?

A. Correct.

Q. Some of these may overlap with what you just said, Mr. Kaplan, but in Office Partners' response to Interrogatory No. 6, a number of factors are identified. One of which is the "Logistics of the project."

What logistics -- well, actually it's not a direct quote. "Logistical reasons" -- no. Strike that. It does say "logistics of the project."

What were the logistics of the project that led to Office Partners purporting to withdrawal its application?

A. I don't know.

Q. Okay. What about costs?

A. Well, certainly in January, you know, we had discussions regarding the fees associated with this application. We were aware of a new rate structure that was in effect as of January 2022, and we were seeking to find ways to have that new rate structure apply to the permit we were trying to secure from PWSA.

Q. Did Office Partners have any communications with the PWSA relating to the costs of the tap-in permit fee prior to Office Partners learning about the new tariff rate going into effect in January of 2022?

A. I believe that our representatives did. Part of their responsibilities is not just to secure permits, but also to advise us as to what those permits cost.

Q. Do you remember which of your Office Partners representatives had those conversations with the PWSA and when?

A. I don't know that any of our employees had those conversations with PWSA. I expect that our engineers did and they were advising our staff.

Q. What would those conversations have entailed? And by that I mean is was Office Partners seeking to get a discount on its tap-in permit application fee off of what was contained in the 2021 tariff?

MR. NERNBERG: Objection as to form. You can answer.

THE WITNESS: I don't believe we ever sought any kind of discounts. We wanted to pay then applicable rates.

BY MR. HORNAK:

Q. Then applicable. What is the "then" in that statement? What rate did Office Partners want to pay?

A. Whatever the prevailing rate was when we secured the permit.

Q. Okay. Did those conversation occur in 2021?

A. I don't know if they did.

Q. Okay. Office Partners' response to Interrogatory No. 6 also references ownership

structure as being one of the bases for Office Partners' attempt to withdrawal its application.

What was the implication of ownership structure on the attempt to withdrawal?

A. Again, the G1 and G4 parcels are separately owned. They were part of a single application made in 2021. There were lingering concerns about the need to bifurcate the application into the respective ownerships --

Q. Okay.

A. -- of those two parcels.

Q. Okay. What about planning module reviews with PA DEP in late 2021? What was the implication of that planning module review on Office Partners' attempt to withdrawal its application?

A. Again, the Department of Environmental Protection, PA DEP, reviewed our prior approvals for sewer planning module capacity and indicated that subdivisions that occurred after those approvals had taken place would impact the availability of the planning module approval, and so to align our

applications with that guidance from DEP, it was important to find ways to separate the applications.

Q. Okay. Office Partners' response to No. 6 also references, "Weighing the equities of paying an unreasonable fee while also having to pay higher annual usage charges on a going forward basis," and that continues but I'll stop there.

What did Office Partners mean by that phrase that I just read about weighing the equities as a basis for its attempt to withdrawal the permit application?

A. Sure. Office Partners is developing a large commercial property that's hopefully going to be around for 100 years. The new 2022 rate structure impacts not just what's paid up front but downstream usage fees.

It seemed unreasonable to me and members of our team at the time that this new project would be subjected to ongoing, increased fees over many decades and also be subject to a much higher upfront fee for tap-ins that were no longer in effect.

By no longer in effect, I mean that

by January 2022, there was a new rate structure that reduced those upfront costs. And given that we did not receive any benefit from an approval in 2021, that we hadn't received a permit, we didn't have a permit date, that we couldn't pursue other permits that we needed in 2021. All of that became possible only after potentially picking up a permit in 2022. We wanted to find ways to utilize a savings for the project.

Q. Is it Office Partners' position that any applicant, not just Office Partners, that paid a pre-2022 tap-in permit fee should be either reimbursed or relieved from the obligation of that upfront permit fee on the basis of the higher usage rates going forward?

MR. NERNBERG: Objection. You're asking him to provide a legal conclusion.

MR. HORNAK: My response to the objection is that I'm asking for Office Partners' position on it, on the central issue in this case.

MR. NERNBERG: I disagree. Office Partners' filed the Complaint on its

own behalf. It did not file a Complaint on any other applicant. This is not a policy issue, as far as outside of the four walls of the Complaint.

You can answer the question the best to your ability.

Just to the extent that you're asking for a legal conclusion, my objection stands.

MR. HORNAK: Understood. Let me ask the question a different way.

BY MR. HORNAK:

Q. If Office Partners had applied for, was approved for, and received a permit in 2020, would Office Partners be taking the same position in this case that the higher usage fees in the future are inequitable because of a high upfront application fee?

A. No.

Q. What is the difference between a potential Office Partners' application in 2020 and the application that is the basis of this case?

A. Again, we had no benefit at all to the approved plans in 2021. They occurred in

extent that you are. I don't necessarily object to position questions, but I think we're going little bit far afield as far as the Complaint.

I know you want to finish your question and I'm sorry for interrupting. If you finish it, I may object again. But I think that we need to stick to the four walls of the Complaint and the facts at hand. But I'll allow -- ask the question again, I guess.

MR. HORNAK: I'll strike the question that's open. I think I got an answer to the previous question from Mr. Kaplan.

BY MR. HORNAK:

Q. Mr. Kaplan, are you aware that there was a -- what I'll call the rate case -- there was an action pending before the Pennsylvania Public Utility Commission beginning in March of 2021 where filings have actually continued into calender year 2023 at Docket No. R2021-3024779?

Are you aware of this rate case, generally?

A. I am not.

Q. Do you know whether Office Partners ever made any filings with the PUC prior to the

filing of this Complaint relating to the PWSA's application of the 2022 tariff fees to either tap-in fees or usage fees?

A. I'm sorry. Can you just repeat that one more time?

Q. Absolutely. That was a long question. Are you aware of any filing that Office Partners made with the Pennsylvania Public Utility Commission prior to the filing of this Complaint?

A. I'm not aware of that.

Q. Do you know whether Office Partners has ever made any filing with the PUC -- whether that be an objection to the PWSA's rates or the application of various tariffs -- has Office Partners ever made any filing of that nature with the PUC?

A. I don't believe that Office Partners has.

Q. Okay. When did Office Partners first become aware that there was going to be a change in PWSA's fee structure in January of 2022?

A. I can only speak to when I became aware of it. I think in early January of 2022,

discussed?

A. I believe it is.

Q. Did any entity, whether that be the PWSA or any other entity, advise Office Partners that Office Partners was required to revise its tap-in application?

A. I don't believe that PWSA told us that it was required to revise the applications.

Q. So the basis of this pleading that the revisions were required is Office Partners' own assessment?

A. Correct.

Q. I'll turn to Paragraph 14 on that same page. "On February 22, 2022, PWSA approved the plan submitted by Office Partners."

Do you know whether that was the date when a permit was actually issued by the PWSA to Office Partners?

A. I don't believe that was the permit date. I think that was just an approval of the new plans.

Q. Okay. What I'll represent to you, Mr. Kaplan, is that the permit was actually

Q. Are you aware of any time, from the beginning of this application through the present, when Office Partners ever attempted to slow down consideration of a pending application to the PWSA?

A. I do not.

Q. In fact, it seems like the testimony today is that Office Partners, at all points, was attempting to expedite the PWSA's consideration; is that correct?

A. That is correct.

(Deposition Exhibit No. 6 was marked for identification.)

BY MR. HORNAK:

Q. Okay. I'll show you here a set of e-mails here, Mr. Kaplan, that we'll mark as Exhibit 6.

I'll direct your attention here to an e-mail that begins at the bottom of Page 753 and continues on to Office Partners_754.

MR. NERNBERG: Look at the bottom right.

BY MR. HORNAK:

Q. That's an e-mail that's from you to a number of parties, dated Thursday,

January 27, 2022. It continues on to the next page with a couple of sections numbered 1, 2, 3, and then 1, 2, 3.

I want to direct your attention to both No. 3s in that same e-mail. In the first one you are characterizing the intent of Office Partners to "Request that both applications receive a 15-day expedited review and pay the $1300 fee per application for expedited review."

What expedited review are you referring to in that e-mail?

A. I think by that date, the 27th of January, we were prepared to submit two new applications and we were also prepared to pay a fee associated with an expedited review of each of those two applications.

Q. So these e-mails relate to Office Partners' attempt to withdrawal its original application and submit what Office Partners' claims to be a new application.

Is it fair to say that Office Partners -- upon the submission of that alleged new application, Office Partners was seeking a expedited review of the revised new

application?

A. Correct.

Q. Okay. The second No. 3 in that same e-mail, you asked -- I assume your team -- to quickly confirm that "Can we use the PWSA notice from December and other approvals to keep advancing the work in the field for another couple of weeks?"

It seems like the intent there would be to use the December 23 letter, that is Exhibit 4 to today's deposition, as a basis to keep work progressing even after the submission of what Office Partners claims to be a new application?

A. I believe that's the case. That there were ongoing reviews that required PWSA final sign-off. We were trying to evidence interim reviews and interim progress to permit additional work to proceed.

Q. So Office Partners wanted to use the December 23 letter as a basis to keep work progressing for the milestones you previously identified even post withdrawal of an application during an expedited post withdrawal review?

A. I think we also referenced other approvals and any additional evidence to indicate that we can keep advancing.

Q. Okay. Can you describe, Mr. Kaplan -- and I can show you some e-mails -- can you describe the efforts that Office Partners made to communicate with either city leadership or other interested entities to convince the PWSA to apply the 2022 tariff rate to the Office Partners' application?

Do you know who Office Partners communicated with? Do you know what communications occurred?

A. I believe I do, generally. I think those communications were primarily at the staff level. There was a line of communication between our representatives and staff at the PWSA and those conversations were ongoing.

We also pursued additional conversations through our local partners with leadership at the PWSA, and also reached out to other city municipal officials to initiate conversations.

I think this is pretty standard for what we do with all agencies in terms of

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

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

A. I don't believe that I did.

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

A. Correct.

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

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

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

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

BY MR. HORNAK:

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

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

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

A. I'm ready.

Q. So the last sentence of this reads, "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."

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

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

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

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

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

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

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

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

A. Correct.

conversations to see if we had to make any modifications at that time.

Q. Okay.

A. But certainly I remember around January of 2022 is when we were really looking more intently at the possibility of a withdrawal and resubmission.

Q. Understood. You've referenced in the last couple minutes, Mr. Kaplan, the cost savings that Office Partners would realize if the 2022 tariff rate were applied versus the 2021 tariff rate, and I would like to get some information about the relative size of this permit fee and the overall budget for the Office Partners project.

What is the overall project for the FNB Tower project?

A. The overall project, which is inclusive of acquiring the land, doing all of the engineering and architectural services, building the project, improving the space with tenant improvements, is around $240 million.

Q. Okay. Throughout 2021, when Office Partners was in communications with the PWSA pressing the consideration of this tap-in

permit, what amount had Office Partners budgeted for the tap-in fee?

A. I believe the budget was in the 450 to $500,000 range.

Q. Okay. I think I just have a couple more questions for you.

A few minutes ago we were discussing Office Partners' desire to continue pressing ahead with certain approvals on the basis of the December 23, 2021 letter -- that's Exhibit 4 today -- during this withdrawal, resubmission, and expedited review process; do you remember that testimony, Mr. Kaplan?

A. I do.

Q. What was the benefit of relying on the 2021 letter and pressing other approvals ahead even during the withdrawal and resubmission process, what was the benefit to Office Partners?

A. Just would you mind restating it?

Q. I don't mind at all. I apologize for asking an unclear question.

Your testimony, as I understand it, is that Office Partners wanted to rely on the December 23, 2021 correspondence from the PWSA

Q. So during the withdrawal and resubmission process, Office Partners hoped to continue with construction and the project, generally, at, least, in part, on the basis of the 2021 approval letter?

A. I think over the course of January and February, as this was ongoing, we were told by our construction management team that they had a little more latitude regarding their schedules and, I believe, that was part of what we used to calculate and decide to do a withdrawal; that there was more -- that there was additional capacity for us to secure the PWSA approval.

Q. What do you mean by additional capacity for Office Partners to secure the PWSA approval?

A. I meant there was additional time for us to secure the tap-in approvals. By that point in time, there wasn't an immediate need to tap in and that it made sense for us to resolve the ongoing discussion with PWSA and, if necessary, withdrawal the application and file new applications.

MR. HORNAK: I don't think I

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

MR. NERNBERG: I might just have a few.

EXAMINATION

BY MR. NERNBERG:

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

A. I do.

Q. And have you managed budgets for other projects?

A. I have.

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

A. Maybe one or two.

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

A. Yes. Maybe one or two.

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

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

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

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

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

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

A. With the Item 7 at the top?

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

Could you read Paragraph 8, please?

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

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

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF ALLEGHENY)

CERTIFICATE

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

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

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

/S/Michelle L. Goehring, Notary Public
Court Reporter
My Commission Expires: July 12, 2025
Commission No. 1317058

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case.
If you do not wish to be a party to the case, consider filing an informal complaint.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Office Partners XXIII Block G1 LLC

Street/P.O. Box 1000 N. West Street, Suite 900 Apt # _____

City Wilmington State Deleware Zip 19801

County New Castle

Telephone Number(s) Where We Can Contact You During the Day (required):

_____ (home) (610) 202-8606 (mobile)

E-mail Address (required): bkaplan@bpgroup.net

Utility Account Number (from your bill)_____

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name _____

Street/P.O. Box 626 Washington Place

City Pittsburgh State PA Zip 15219

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

Pittsburgh Water and Sewer Authority

EXHIBIT
3
B. Kaplan

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

☐ ELECTRIC	☐ STORM WATER
☐ GAS	X WASTEWATER/SEWER
X WATER	☐ TELEPHONE/TELECOMMUNICATIONS (local, long distance)
☐ STEAM HEAT	☐ MOTOR CARRIER (*e.g.* taxi, moving company, limousine)

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

☐ The utility is threatening to shut off my service or has already shut off my service.

☐ I would like a payment agreement.

☐ Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.

☐ I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

X Other (explain). See Complaint being submitted herewith.

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

See Complaint being submitted herewith.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. Protection From Abuse (PFA)/ Domestic Violence

Has a court granted you a "Protection From Abuse" order or any other order which provides clear evidence of domestic violence against you that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order or any other order for your personal safety or welfare?

YES ☐

NO X

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES ☐

NO X

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES X

NO ☐

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

c. **If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.**

The issues in the complaint could not be resolved.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer **in this matter**, provide your lawyer's name, address, telephone number, and e-mail address, (all required contact information). Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name David M. Nernberg, Esq. – Maurice A. Nernberg & Associates

Street/P.O. Box 301 Smithfield Street

City Pittsburgh State PA Zip 15222

Area Code/Phone Number 412-232-0334

E-mail Address dmn@nernberg.com

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in ink. **If you do not sign the Formal Complaint, the PUC will not accept it.**

Verification:

I Boris Kaplan, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

(Signature of Complainant) 06-15-22 (Date)

Authorized Signtory
Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint is not signed by one of these individuals, the PUC will not accept it.

10. How to File Your Formal Complaint

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at http://www.puc.pa.gov/efiling/default.aspx.

Mail. **Mail the completed form with your original signature and any attachments, by certified mail, priority mail, or overnight delivery to this address and retain the tracking information as proof of submission:**

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

If you are appealing a BCS decision: **follow the directions in the cover letter you received from the Secretary's Bureau with the formal complaint form. ONLY Formal complaints appealing a BCS decision can be filed by fax, email or overnight delivery to meet filing deadlines. All other formal complaints MUST be eFiled or mailed.**

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.
Please know that your complaint form and the utility's answer will not be published to the PUC's website. Once your complaint case moves to the Office of Administrative Law Judge, any filings you make should be marked confidential if you do not want them published to the website.

PENNSYLVANIA UTILITY COMMISSION
COMPLAINT AGAINST THE PITTSBURTH WATER AND SEWER AUTHORITY
TO SET RATE FOR APPROVED PERMIT TO PETITIONER,
OFFICE PARTNERS XXII BLOCK G1, LLC

Introduction:

1. The Petitioner is Office Partners XXIII Block G1, LLC ("Office Partners"), a limited liability company with its principal place of business at 1000 N. West Street, Wilmington, DE 19801.

2. Respondent is the Pittsburgh Water and Sewer Authority ("PWSA"), a Pennsylvania municipal authority with its principal place of business at 1200 Penn Avenue, Pittsburgh, PA 15222.

3. Office Partners is developing commercial property located in the City of Pittsburgh at a major development known as the FNB Financial Center, a large project both in size and in financial investment, meant to last over 100 years and be a major hub of the City of Pittsburgh.

4. Commercial developers are required by law to obtain PWSA approval for connection to PWSA facilities.

5. PWSA policy requires an application for the connection and, once approved, a permit is issued upon payment of the then prevailing rate. Exhibits A and B, PWSA Policy and Press Release.

2021 Application Process and Withdrawal:

6. On May 11, 2021 Office Partners submitted an application to tap into PWSA infrastructure.

7. Between August of 2021 until December 21, 2021 Office Partners and the PWSA communicated regarding the plan submissions.

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

9. The fees were $508,314.79. Exhibit C.

10. The application was made by Office Partners XXII Block G1, LLC, however, Office Partners realized that the plans submitted in 2021 encompassed two separate parcels with separate owners and that the permit applications for the G1 and G4 blocks should not be combined and would risk being rejected by the Commonwealth Agencies. In addition, Office Partners wanted to change the plans due to other structural considerations.

11. On January 31, 2022, Office Partners withdrew the 2021 Permit Application (which had yet to be approved as no payment was offered or made). Exhibit D.

2022 Application Process:

12. On February 4, 2022, Office Partners submitted new tap-in plans to the PWSA. Correspondence attached hereto as Exhibit E[1]. They were separate G1 & G4 applications, distinct from the prior applications and were required.

13. On February 15, 2022, Office Partners submitted revised tap-in plans to address verbal comments made by PWSA. Attached hereto as Exhibit F.

14. On February 22, 2022, PWSA approved the plans submitted by Office Partners. Attached hereto as Exhibit G.

[1] The plans themselves are voluminous and already in PWSA's possession; as such, they need not be attached hereto but are available for this Court's review.

15. On February 23, 2022 Officer Partners again submitted revised tap-in plans to address final comments made by PWSA. Attached hereto as Exhibit H.

16. Upon submission of the revised tap-in plans, PWSA verbally informed Office Partners that those revised plans were approved but that the permit for the same would not be issued until payment was made for the permit.

17. Pursuant to PWSA's 2022 rate schedule (attached hereto as Exhibit I and on file with the Pennsylvania Public Utility Commission), the fees for the taps and meters requested by Office Partners and approved by PWSA are as follows:

a. 6" tap = $400

b. 8" tap = $400

c. 3" meter = $1,540 (Compound Domestic)

d. 5/8" x 3/4" = $250 (Fire Line)

Total =$2,590

18. Office Partners has also been advised that a $250 application fee is due.

19. Office Partners was ready, willing and able to pay the fees and has offered to do so.

20. Despite the foregoing rates, PWSA demanded payment of $508,314.79 to approve the plans submitted and issue the permit.

21. That fee does not apply pursuant to the PWSA rate schedule and PWSA policy.

Procedural History:

22. On February 25, 2022, Office Partners initiated a Mandamus Action before the Common Pleas Court of Allegheny County, Pennsylvania demanding that the PWSA issue the permit for the tendered 2022 fee schedule payment.

23. On March 9, 2022, the Parties entered into a consent order whereby they were to show cause why the Court had jurisdiction and, whereby Office Partners would pay $506,647.18 into Court to be held until a final determination was made as to the fee being due, in exchange for the issuance of the permit at that time. The amount deposited in Court represents an earlier fee structure that was superseded when utility rates were increased but tap-in fees reduced.

24. Thereafter on May 6, 2022, the Parties entered into another consent decree whereby the Parties agreed to have this matter heard before the Pennsylvania Utility Commission "PUC," with the Court holding the funds until a final, non-appealable order is made.

25. Pursuant to the consent/settlement, Office Partners was to initiate the action before the PUC.

Dispute and Matter in Controversy:

26. The purpose of this Complaint is to require the PWSA to accept payment pursuant to the 2022 fee schedule for the 2022 approved permit and for the Court to refund the deposited funds to Office Partners.

27. The 2022 tap in fees structure was implemented with the encouragement of the PUC along with the implementation of higher usage rates. The purpose was to make the PWSA fiscally sound by not impeding development with up-front fees and develop usage rates to better support PWSA operations. Thus, if PWSA is able to collect under the old fee schedule AND charge usage rates under the new rate schedule, it will be unjustly enriched. PWSA is attempting to double dip. Especially given the size of the project, the investment therein and its likely lifespan of over 100 years.

28. The applicable tap in rates are those based upon the 2022 rate schedule and usage rates will also be pursuant to the 2022 rate schedule.

WHEREFORE, it is prayed that this Honorable Court declare that the applicable fees are the 2022 fees pled in this complaint, order issuance of the permit based upon the 2022 rate schedule and order the return all funds held in Court in excess of the amount due under the rate schedule.

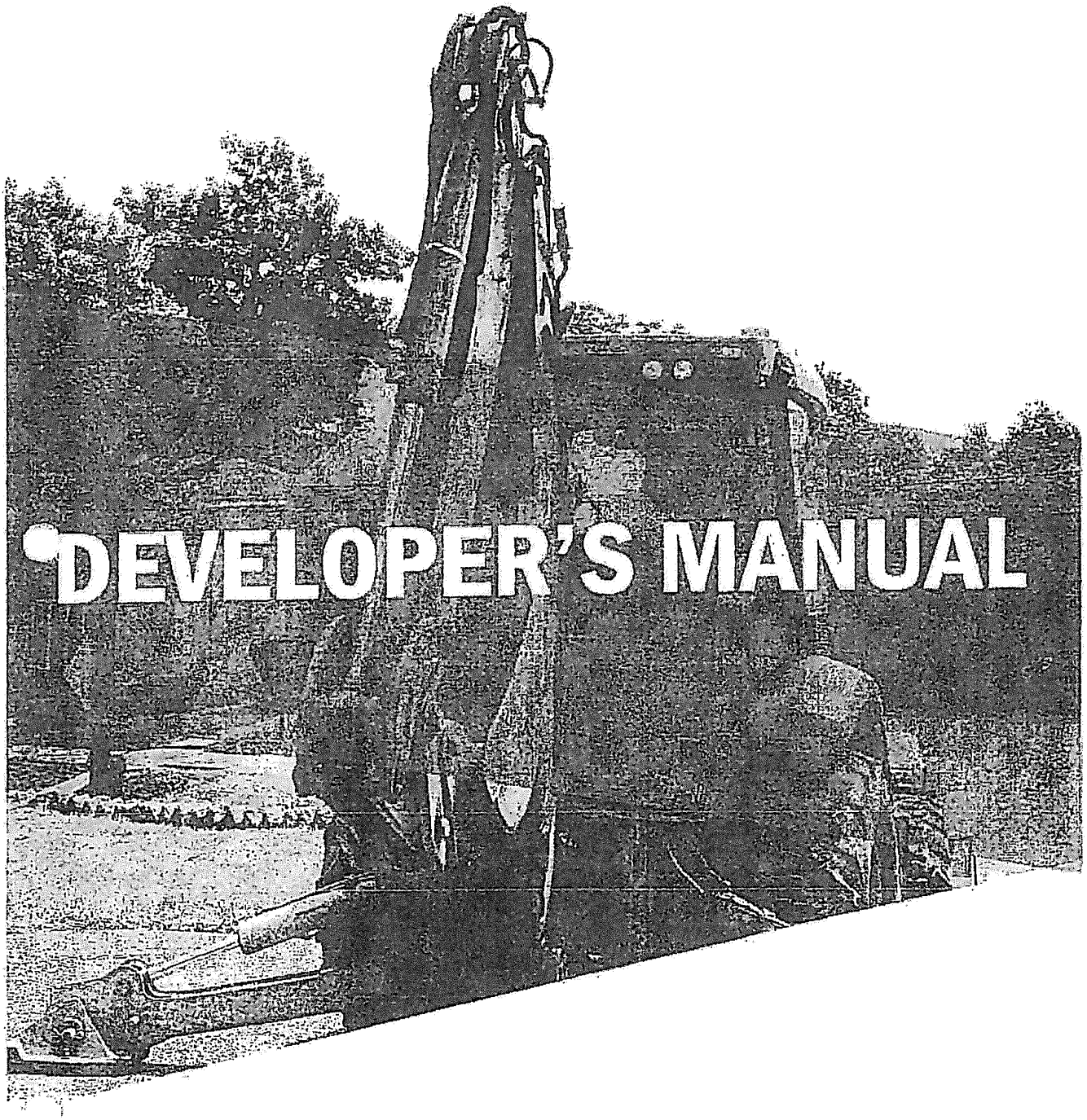
Respectfully submitted,

MAURICE A. NERNBERG & ASSOCIATES

By_____
David M. Nernberg

1200 Penn Avenue
Pittsburgh, PA 15222

PGH2O



DEVELOPER'S MANUAL

EXHIBIT A

Revised April 23, 2021

PWSA Developer's Manual

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SECTION 1: PROCESS OVERVIEW

Introduction

The Pittsburgh Water and Sewer Authority (PWSA) Developer's Manual outlines the regulations and procedures for developments connecting to public sewer or water facilities and constructing new facilities to be dedicated to PWSA. The purpose of this manual is to describe the permit application process, the requirements of the application materials, and the developer's responsibilities. To ensure timely review and approval of tap-in plans, this manual is to be used in conjunction with an open dialogue with PWSA.

More than one section of the manual may be applicable dependent upon the type of development and scope of work proposed by the applicant. In instances where the manual does not address a specific or unique site condition of a proposed development, the applicant should contact PWSA to determine if additional information is required.

PWSA is regulated by the Pennsylvania Public Utility Commission (PUC). Any standards set forth in this manual are subject to PUC review.

At minimum, this manual will be updated annually. More frequent updates may occur as procedures or regulations change.

Development Permit Process

The following steps are a general overview of the development permit process. For more detailed information, please refer to the specific sections referenced throughout the manual. Single-family homes without fire service are not subject to the following steps and should review Section One: Single-family Residential Developments for more information. All other projects must follow this process. All submissions outlined below may occur simultaneously or in succession based on the scope and timeline of the proposed development.

PWSA requires electronic submission of all applications and drawings for development projects using e-Builder. After the pre-development meeting described below, PWSA staff will provide a unique e-Builder email address which will be utilized for all submissions and reviews associated with the development. Applications and documents are not considered submitted unless sent to the e-Builder folder.

All applications must include required documentation outlined in this manual or on our website. Failure to provide will result in a delayed approval.

Step One: Pre-Development Meeting

Prior to submittal of the permit application, the applicant is required to request a pre-development meeting. A meeting request may be submitted early in the planning process or after preliminary tap-in plans have been designed. If you have engaged an engineer, it is highly recommended that they attend the meeting.

To request a meeting, submit the pre-development meeting request form found on our website to inbox@workflow.e-Builder.net. Please attach any site plans, drawings, flow calculations or other relevant documents to this email.

Step Two: Water and Sewer Availability Letter Request

All applications must include a Water and Sewer Availability Letter Request. Complete and submit the form to permitinfo@pgh2o.com. PWSA staff will review and return a Water and Sewer Availability Letter Packet that includes the completed letter request form detailing infrastructure near the site, a will-serve letter, and infrastructure maps. The letter provided is required to be submitted with any final Pennsylvania Department of Environmental Protection (DEP) applications. Some lenders may also require a will-serve letter.

The water and sewer availability letter is not a permit and all procedures set forth in this document must be completed to obtain approval.

Step Three: Water and Sewer Use Application

A PWSA Water and Sewer Use Application must be completed by an applicant for public water and sewer facilities planning. This form and its attachments are precursors to any sewage facilities planning modules required separately by the DEP.

PWSA requires that the form be completed and submitted for the following scenarios:

1. Any development located on a lot that was created after May 15, 1972
2. Any residential development larger than one (1) single-family residential dwelling
3. Any development that contains commercial, industrial, and/or institutional uses
4. Any development that is repurposing an existing structure

Detailed instructions are covered in the Water and Sewer Use Application section of this manual.

Step Four: DEP Sewage Facilities Planning Module

Any development within the PWSA service area that meets the DEP's criteria will be required to complete sewage planning. The requirement for sewage planning depends on a variety of factors, including but not limited to, the Existing Flows, Project Flows, Net Flows, date of lot creation, previous planning module approvals, etc.

Detailed instructions are covered in the DEP Sewage Facilities Planning Module section.

Step Five: Tap-in Plans

Most development projects will require water and/or sewer tap-in plans to be reviewed and approved by PWSA staff. No work on existing or new taps, including terminations, is to begin prior to obtaining this approval.

Detailed drawing requirements are covered in the Tap-in Procedures section.

Construction and/or Relocation of PWSA Facilities

A development may require an extension, relocation, or construction of PWSA facilities to provide water or sewer service. A development agreement and construction drawings will be required.

Requirements are detailed in the Private Construction of Public Facilities section.

Review Procedures and Fees

PWSA will review applications in the order received. Baseline review times are 30 days per review. Review times may vary depending on volume and complexity.

Revisions to issued permits will not be expedited and will be reviewed in the order received. Exceptions to this policy may be permitted at the discretion of PWSA.

If tap-in plans require more than 2 reviews, $250 will be required for each additional review. No additional reviews will be conducted without additional fee payments being made.

If a permit is issued, an additional $250 fee will be required for any revisions to plans.

Additional fees may be required including but not limited to:

- waterline shut permit fee
- hydrant flow test permit fee
- tapping fees
- tap and meter costs
- sewage facilities planning module review fee (DEP)
- street closure and traffic obstruction permits (DOMI)
- building permit fees (PLI)
- plumbing permit fee (ACHD)

To see a complete list of PWSA fees, review our fee schedule on our website. An explanation of fees can be found in the Tapping Fees section of this manual. PWSA does not provide a preliminary cost estimation prior to issuing the official tap-in fees.

Permit Expiration

Approved permit refers to an application that has met all the requirements as outlined in this manual and has received a final invoice. Approved permits are valid for six (6) months from date of approval. If the final invoice is not paid within six (6) months, the permit becomes invalid, and the application may be required to restart the application process.

Issued permit refers to an approved permit that has paid the final invoice and received a permit from PWSA. Issued permits are valid for a period of five (5) years from date of issuance.

Millvale Water Service Area

Developments within the Millvale PWSA water service area must meet the minimum requirements described herein for water service. Sewer service and the DEP Sewage Facilities Planning Module shall be completed according to the rules and regulations of Millvale Borough and Girty's Run Joint Sewer Authority.

SECTION 2: SINGLE-FAMILY RESIDENTIAL DEVELOPMENTS

Overview

Single-family residential developments are equal to one single-family residential unit. Single family residential units with fire service or developments on land that has been subdivided to include multiple single-family homes are not considered a single-family residential development and shall fall under the regulations set forth in the remaining sections of this manual.

Single-family residential developments are not required to submit tap-in drawings to obtain water and sewer service, but they must obtain a Residential Permit from PWSA prior to completing any water or sewer work.

Submission Requirements

To obtain a Residential Permit, the applicant is to complete and submit the residential permit application form (FORM RES). All fields must be completed and signed by owner.

All fees are to be paid at the time of permit issuance and prior to start of work. Current fees are outlined in our Tapping Fees section.

Although not subject to tap-in plan review, all water and sewer work for single-family homes are required to meet PWSA minimum standards for tap installation outlined in the Tap-in Procedure section.

Any work will also require approval from the Allegheny County Health Department. Contact information can be found on our website.

SECTION 3: WATER AND SEWER USE APPLICATION

Overview

The Water and Sewer (W/S) Use Application is to establish the water and sewer flows associated with a proposed development. The flows shall represent the peak daily flow, which is defined as the maximum volume of water/wastewater during a continuous 24-hour period, expressed in gallons per day (gpd). The approved flows shall be utilized by the PWSA for the calculation of the Tapping Fees, if required.

In addition, the approved flows shall be utilized by the Pennsylvania Department of Environmental Protection (DEP) to determine if sewage planning is required. For additional information on sewage planning, please refer to the section titled "Pennsylvania Department of Environmental Protection Sewage Facilities Planning Module". The Applicant must receive the W/S Use Approval prior to submitting the Sewage Facilities Planning Module, if required.

A W/S Use Approval shall be required for the following situations:

1. Any development located on a lot that was created after May 15, 1972
2. Any residential development larger than one (1) single-family residential dwelling
3. Any development that contains commercial, industrial, and/or institutional uses
4. Any development that is repurposing an existing structure

Submission Requirements

The Water and Sewer Use Application is to be completed and submitted electronically through e-Builder. To obtain an e-Builder folder, the applicant must have attended a pre-development meeting.

All supplemental documentation must be submitted with the W/S Use application.

Supplemental Documentation

Site Plan

The site plan shall contain the following information:

- Existing structures located within the project site and nearby vicinity
- Property lines
- Entire property, including any residual tract
- Connection to any PWSA facilities (i.e. water, sanitary and storm)
- Plan orientation

- Existing and proposed rights-of-way and easements
- Existing and proposed improvements (i.e. roadways, sidewalks, etc.)
- Waterways and wetlands

The applicant can submit the tap-in drawings in lieu of the site plan. Instructions for preparing tap-in drawings can be found in the Tap-in Procedures section. Submitting the tap-in plans as part of the w/s use application does not preclude the applicant from submitting a separate tap-in plan PDF for review.

Floor Plans

The PWSA requires floor plans to confirm the flow calculation methodology. The applicant shall provide a minimum size of 11-inch x 17-inch. The floor plans shall be drawn to scale and display the square footage of each floor, number of rooms and/or any special conditions or features.

Project Narrative

The project narrative shall provide relevant background information on the project. The Applicant shall use the narrative to "tell the story" of the development. Typically, the narrative will include descriptions on the existing and proposed conditions and uses. In addition, the Applicant may provide the project location, construction timeline, ownership group, consultant information, relevant history, adjacent PWSA infrastructure, conclusions from the PWSA predevelopment meeting, permit requirements, etc.

Flow Calculations

The flow calculations shall provide the means and methods for calculating the Existing Flows, Project Flows and Net Flows. In addition, the flow calculations shall be sealed by a Professional Engineer registered in the Commonwealth of Pennsylvania. As previously discussed, the flows shall represent the peak daily flow, which is defined as the maximum volume of water/wastewater during a continuous 24-hour period, expressed in gallons per day (gpd). As a result, the applicant shall assume full occupancy, maximum turnover, etc. We understand that the DEP flow estimates may appear much higher than anticipated usage due to the use of low-flow fixtures, etc. However, please note that the flow estimates are attempting to estimate the peak daily flow, not the average daily usage.

The PWSA may consider flow calculations based on alternative estimation methods. The applicant shall provide justification for the alternative calculation methodology. Please be advised that the flow estimates shall represent the peak daily flows.

The flow calculations shall be broken down into water demand and sanitary flows. In addition, flow calculations must be provided for each use within the development (i.e. retail, residential, office, etc.). The applicant shall include HVAC condensate in the sanitary flow calculations for any commercial, industrial and institutional uses.

Existing Flow

The PWSA defines "existing flow" as the peak daily flow within the past five (5) years. The applicant can claim existing flows if the property contains a structure that has been occupied within the past five (5) years. The existing flows shall be calculated via flow estimates established by the DEP. The applicant shall support their calculations by providing floor plans of the existing structure, and any other documentation that will support the flow calculation methodology.

The PWSA reserves the right to require historical water usage data, in lieu of the flow estimate values, to establish the existing flows. In these instances, the PWSA will allow the use of a peaking factor of 2.5 to establish the peak daily flow. The applicant shall be responsible to provide historical water usage data requested by the PWSA. The applicant can contact PWSA's Customer Service for historical water usage data for a fee of $15.

Project Flow

The PWSA defines "project flow" as the peak daily flow that will be generated by the project. The project flows shall be calculated via flow estimates established by the DEP and provided in Table 1 below. The applicant shall support their calculations by providing floor plans of the proposed structure and clearly indicating the applicable information (i.e. floor area, number of apartments, etc.). The PWSA is reviewing information supplied by others and is not responsible to conduct additional work beyond confirming the information that is submitted.

Please see below for a few common uses and the associated information that would be required for the flow calculations:

- Restaurant and/or Bar:
  - Maximum occupancy
  - Number of turnovers per day, typically three (3)
- Hotel:
  - Number of hotel rooms
  - Presence of any public retail or restaurant facilities
- Residential:
  - Number of equivalent dwelling units from single-family residences, apartments, townhouses, duplexes, and condominiums
  - Presence of public facilities, such as swimming pools, gyms, cafeterias, etc..
- Office:
  - Maximum number of employees. The applicant shall assume 150 square feet of floor space per employee. The square footage can be limited to the office space, and does not need to include hallways, shared areas, etc.
  - Number of any public restrooms, if any

Net Flow

The PWSA defines "net flow" as the difference between the project flow and existing flow, as follows:

$$Net\ Flow = Project\ Flow - Existing\ Flow$$

As a result, please note that the net flow may be positive or negative, depending on if there is a net increase or decrease in usage. In addition, please note that tapping fees are based on the net flow.

Table 3.1
Water Use and Sanitary Sewage Flow Estimates
(Flows are referenced from the PA Code Title 25 Chapter 73 Paragraph 73.17)

Type of Establishment	Projected Water Use and Sewage Flow (gallons per unit per day)
Single family dwelling (For units of 3 bedrooms or less. For each bedroom over 3, add 100 gallons.)	400
Multiple family dwellings, including townhouses, duplexes, and condominiums	400
Apartments: 1 bedroom 2 bedrooms Larger than 2 bedrooms Efficiency Apartments	 150 300 400 150
Hotels and motels (per unit)	100
Rooming houses (per unit)	200
Airline catering (per meal served)	3
Airports (per passenger—not including food)	5
Airports (per employee)	10
Beauty shops (per customer chair)	200
Bus service areas not including food (per patron and employee)	5
Country clubs not including food (per patron and employee)	30
Drive-in theaters (not including food—per space)	10
Factories and plants exclusive of industrial wastes (per employee)	35
Laundries, self-service (gallons/regular washer)	400
Laundries, self-service (gallons/front loading washer)	200
Mobile home parks, independent (per space)	400
Theaters (not including food, per auditorium seat)	5
Offices (per employee)	10
Restaurants (toilet and kitchen wastes per patron)	10
(Additional for bars and cocktail lounges)	2

Restaurants (kitchen and toilet wastes, single-service utensils/person)	8.5
Restaurant, fast food (kitchen and toilet wastes/patron)	6
Restaurants (kitchen waste only, single-service utensils/patron)	3
Stores (per public toilet)	400
Stores (per public urinal)	200
Stores (per public sink)	200
Warehouses (per employee)	35
Work or construction camps (semi-permanent) with flush toilets (per employee)	50
Work or construction camps (semi-permanent) without flush toilets (per employee)	35
Churches (per seat)	3
Churches (additional kitchen waste per meal served)	3
Churches (additional with paper service per meal served)	1.5
Hospitals (per bed space, with laundry)	300
Hospitals (per bed space, without laundry)	220
Institutional food service (per meal)	20
Institutions other than hospitals (per bed space)	125
Personal care home (per bed space)	125
Schools, boarding (per resident)	100
Schools, day (without cafeterias, gyms or showers per student and employee)	15
Schools, day (with cafeterias, but no gym or showers per student and employee)	20
Schools, day (with cafeterias, gym and showers per student and employee)	25
Camps, day (no meals served)	10
Camps, winter and summer residential (night and day) with limited plumbing including water-carried toilet wastes (per person)	50
Campgrounds, with individual sewer and water hookup (per space)	100
Campgrounds with water hookup only and/or central comfort station which includes water-carried toilet wastes (per space)	50
Fairgrounds and parks, picnic—with bathhouses, showers, and flush toilets (per person)	15
Fairgrounds and parks, picnic (toilet wastes only, per person)	5
Swimming pools and bathhouses (per person)	10
HVAC condensate from commercial, industrial & institutional facilities	Applicant to provide flow estimates that will be discharged to a PWSA sewer

Revised Water and Sewer Use Application

Applicants can request a refund for tap fees for an issued permit if actual project flows are less than the approved project flows. The applicant must resubmit a water and sewer use application and a $250 review fee. Refunds may take 6-8 weeks to process. Refunds may be requested within 5 years of permit issuance date.

Technical Checklist for Water and Sewer Use Application

The following is a list of items that shall be included with the Water and Sewer Use application. Failure to provide the required information shall result in the rejection of the submittal package.

- Application Fee
- Water and Sewer Use Application Form
- Site Plan
- Floor Plans
- Project Narrative
- Flow Calculations

SECTION 4: PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION SEWAGE FACILITIES PLANNING MODULE

Overview

The Pennsylvania Sewage Facilities Act (Act 537, as amended) requires each municipality in Pennsylvania to have an Official Sewage Facilities Plan (Official Plan) to address existing and future sewage disposal needs. Please note that the Pennsylvania Department of Environmental Protection (DEP) administers and oversees the Act 537 regulations. The Official Plan for the City of Pittsburgh was originally approved by the DEP on May 15, 1972. The Sewage Facilities Planning Module (SFPM) is the instrument for legally amending the Official Plan to account for flows from new/unforeseen subdivisions and land developments. The SFPM requires review/approval from each Facility Owner within the sewerage system, including Collection (PWSA), Conveyance (ALCOSAN) and Treatment (ALCOSAN). Please be advised that the PWSA review/approval shall be limited to the collection system portions of the SFPM. Each Facility Owner conducts a review to understand how the proposed development will impact available dry-weather capacity and whether the proposed flows will create a dry-weather hydraulic overload within the next five (5) years.

Amendments to Act 537 have created a process by which certain developments may be exempt from the planning module process. However, in accordance with 25 Pa. Code 71.51(2), the exemption process requires that the existing collection, conveyance and treatment facilities are in compliance with the Clean Streams Law. On March 2, 2011, the DEP issued a determination that, due to an ongoing consent order regarding the discharge of untreated wastewater, the PWSA and ALCOSAN do not comply with the Clean Streams Law. As a result, the DEP does not accept SFPM exemptions for any development located within the PWSA service area.

General Requirements

Any development within the PWSA service area that meets the DEP's criteria shall be required to complete sewage planning. The requirement for sewage planning depends on a variety of factors, including but not limited to, the Existing Flows, Project Flows, Net Flows, date of lot creation, previous planning module approvals, etc. Please refer to the Planning Workflow Diagram on the PWSA website for additional information.

Please note that the DEP is the governing authority that makes the final determination on whether sewage planning is required. After issuance of the Water and Sewer Use Approval Letter, the PWSA shall issue a Preliminary Determination on the Need for Sewage Planning (Preliminary Determination) to the DEP. The DEP will subsequently issue a Final Determination

on the Need for Sewage Planning (Final Determination), which will confirm or deny the findings in the Preliminary Determination.

Submission Requirements

Please note that SFPM approval requires approval from PWSA, ALCOSAN, City Planning, City Council and the DEP. As a result, the approval process, from start to finish, can take several months. PWSA aims to respond to each SFPM review within 30 days of receipt. The DEP, upon receipt of the completed SFPM, has up to 90 days to respond.

Please see below for the key steps:

1. Submit the Water and Sewer (W/S) Use Application to the PWSA. The PWSA shall provide the location of the most limited capacity sewer in the W/S Use Approval Letter. After issuance of the W/S Use Approval Letter, the PWSA shall issue the Preliminary Determination. The DEP will subsequently issue a Final Determination, which will confirm or deny the findings in the Preliminary Determination.

2. Submit the Sewage Facilities Planning Module Application Mailer to the DEP to receive the applicable SFPM forms and DEP Code Number. Forward the SFPM documentation, along with the required supporting documentation, to PWSA for review/approval. Refer to the sections that follow for detailed information on submittal requirements. Please be advised PWSA's review will be limited to the collection portion of the SFPM.

3. Submit the SFPM to ALCOSAN after receiving PWSA approval. Please coordinate with the ALCOSAN for additional information on their review process. ALCOSAN's review will be limited to the conveyance and treatment portions of the SFPM. Please refer to the PWSA website for contact information.

4. Submit the SFPM to the City Planning Department for approval after receiving ALCOSAN approval. Please coordinate with the City Planning Department for additional information on their review process. Please refer to the PWSA website for contact information.

5. The City Law Department, which receives the SFPM from the City Planning Department, will request a Resolution to be reviewed/approved by City Council.

6. Submit the completed SFPM to the DEP for final approval.

Supplemental Guidance for the SFPM Component 3 Form

The SFPM Component 3 Form is for sewage collection and treatment facilities. Please be advised that these instructions are intended as a supplement to the DEP's instructions. In the event that there is a conflict between this supplemental guidance and DEP's instructions, the Applicant shall complete the Component 3 Form per DEP instructions. This supplemental guidance is not intended to cover each section on the Component 3 Form, but rather, only the sections that directly apply to PWSA. The supplemental instructions for the SFPM Component 3 Form are as follows:

Section A	No additional comments. Please refer to the DEP Instructions.
Section B	Please note that the City of Pittsburgh and PWSA are separate and distinct entities. This section shall not be populated with PWSA information.
Section C	No additional comments. Please refer to the DEP Instructions.
Section D	No additional comments. Please refer to the DEP Instructions.
Section E	Submit a Water and Sewer Availability Letter Request Form to confirm that PWSA can provide service to the proposed development. Please refer to the Process Overview for additional information.
Section F	No additional comments. Please refer to the DEP Instructions.
Section G	The PWSA review is limited to Section G(1) – Collection System. Complete Section G(1b), as follows: Existing collection or conveyance system: [ROAD NAME – SEWER DIAM. AND MATERIAL] Owner: The Pittsburgh Water and Sewer Authority Existing Interceptor: [ALLEGHENY/MONONGAHELA/OHIO] River Interceptor Owner: The Allegheny County Sanitary Authority
Section H	No additional comments. Please refer to the DEP Instructions.
Section I	No additional comments. Please refer to the DEP Instructions.
Section J	For J(1), the Project Flows shall be identical to the Net Flows approved by the PWSA during the Water and Sewer Use Application review process. Please be advised that the Water and Sewer Use shall be approved prior to the SFPM

review. For J(2), the PWSA applicable portions of the table are limited to the "Collection" row. Refer to the sections that follow for detailed information on submittal requirements.

Section K	No additional comments. Please refer to the DEP Instructions.
Section L	No additional comments. Please refer to the DEP Instructions.
Section M	No additional comments. Please refer to the DEP Instructions.
Section N	No additional comments. Please refer to the DEP Instructions.
Section O	No additional comments. Please refer to the DEP Instructions.
Section P	No additional comments. Please refer to the DEP Instructions.
Section Q	No additional comments. Please refer to the DEP Instructions.
Section R	No additional comments. Please refer to the DEP Instructions.

Methodology to Determine the Present Flows

The flows (i.e. Existing, Project and Net) shall be reviewed and approved by the PWSA during the Water and Sewer Use Application review process. As indicated in Section J - Chapter 94 Consistency Determination of the SFPM, the average and peak existing flows shall represent the most limited capacity sewer (MLCS). Please note that the MLCS is not typically the same sewer used for the tap-in. Therefore, the PWSA shall provide the location of the MLCS as part of the Water and Sewer Use Review process. The Present Flows shall be determined, as follows:

Method No.	Project Flows, gpd	Methodology to Determine the Present Flows
Method #1	Up to and Including 4,000 gpd	Peak Flow Depth Measurements
Method #2	Greater than 4,000 gpd	Flow Monitoring

Method #1: Peak Flow Measurement

The Applicant shall take a minimum of five (5) flow depth measurements at the MLCS over a one-hour period between 6-8 AM or 6-8 PM. For example, an Applicant could take measurements at 7:00AM, 7:15AM, 7:30AM, 7:45AM and 8:00AM. The maximum of the five

flow measurements shall be utilized as the flow depth for the Manning equation calculations. All flow depths between zero and one inch shall be rounded to one-inch.

Method #2: Flow Monitoring
The Applicant shall contract with a professional flow monitoring company to monitor the Present Flows at the MLCS. The flow monitoring shall take place for a minimum period of 30 days, unless otherwise approved by the PWSA. Data should be checked for quality and analyzed to provide the present maximum monthly dry weather average flows and peak flows in gallons per day. For peak flows in the PWSA's collection systems, indicate whether the flow is peak hourly flow or peak instantaneous flow.

Calculations for Design Capacity, Present Flows and Projected Flows

General Information
The flow calculations shall be signed and sealed by a Professional Engineer licensed in the Commonwealth of Pennsylvania.

When available, the Applicant may utilize historical as-built information to determine the existing sewer slope, as indicated in the W/S Use approval. If historical as-built information is not available, the Applicant shall either utilize the minimum slope permitted per the DEP Wastewater Facilities Manual or survey the existing sewer to determine the actual sewer slope.

The Applicant shall utilize the following Manning's Roughness Coefficients (n):

Table 4.1
Manning's Roughness Coefficient

Pipe Material	Manning's Roughness Coefficient, n
Brick	0.016
Concrete	0.013
Ductile Iron	0.012
Plastic	0.010
Vitrified Clay	0.015

The Applicant shall utilize the following Peaking Factors:

Table 4.2
Peaking Factors

Type of Collection System	Peaking Factor
Combined	3.5

Separate	3.0

Flow Calculations

The Applicant shall calculate the Design and/or Permitted Capacity, Present Flows and Projected Flows in 5 Years, as follows:

Table 4.3
Flow Calculation Methodology

Flow Type	Calculation Methodology
Peak Design Capacity	Use the Manning Equation for full-flow conditions
Average Design Capacity	= Peak Design Capacity ÷ Peaking Factor
Present Peak Flow	Method #1: Use the Manning Equation for partially filled pipes
	Method #2: Analyze the flow data
Present Average Flow	Method #1: = Present Peak Flow ÷ Peaking Factor
	Method #2: Analyze the flow data
Projected Peak Flow in 5 Years	= (Present Peak Flow + Project Flow) × 1.05
Project Average Flow in 5 Years	= Projected Peak Flow in 5 Years ÷ Peaking Factor

Technical Checklist for SFPM Applications

The following is a list of items that shall be included with the SFPM application. Failure to provide the required information shall result in the rejection of the submittal package.

- Copy of the DEP Planning Module Components Letter (i.e. DEP's response to the Mailer)
- Copy of the PWSA Water and Sewer Use Approval Letter
- Copy of the Water and Sewer Availability Letter
- Project Narrative including the name of the project, location address, current and proposed use
- Plot Plan showing the existing/proposed structures and existing/proposed utilities
- Flow Calculations signed and sealed by a Professional Engineer
- Sewage Facilities Planning Module – Component 3 – Sewage Collection and Treatment Facilities

SECTION 5: TAP TERMINATIONS

Overview

All connections to PWSA public facilities which are abandoned, proposed to be abandoned, or otherwise not in use or service, must be terminated at the connection to the PWSA owned facilities per PWSA details, specifications, and/or standards at the property owner or developer's expense. All structures to be demolished must obtain a tap termination permit from PWSA. This includes but is not limited to restoration of public and private streets, sidewalks, utilities, or paving and landscaping or demolition of structures. For a water service that is active but not in use, the developer has the option of termination or to maintain a meter. If no tap termination permit is issued from PWSA, the property owner will continue to receive a monthly bill.

All tap terminations require a permit. If no new taps are proposed, a tap permit application and drawings must be submitted. Any tap terminations proposed as part of the development of a property shall be included and approved on the tap-in plans as described in the Tap-in Procedures section.

Submission Requirements

The applicable standard details must be shown on the applicant's drawings. All current standard details can be found on our website. The applicant should note on the drawing any existing account numbers and/or meter numbers associated with the tap to be terminated. Drawings are to be submitted via e-Builder. Instructions to obtain an e-Builder project folder are outlined in the Process Overview of this manual.

Termination Procedure

PWSA must field verify the termination of the existing connections. The applicant shall notify PWSA by contacting the Field Supervisor provided with their permit at least three working days in advance of the proposed termination date. A PWSA inspector must be on site during the termination procedure and witness said terminations and pipe zone backfilling. Removal of existing private portions of abandoned or unused sewer laterals and/or abandoned or unused private water service lines is the responsibility of the property owner. Absent the written agreement of the PWSA to the contrary, should the PWSA be required to remove a property owner's abandoned sewer laterals and/or abandoned or unused water service lines, the total PWSA cost of that removal shall invoice and/or lien said property. In the case of water service lines for fire or domestic use, once the service is terminated, the applicant shall return the meter and remote reading device to PWSA and provide PWSA with said meter and account numbers and the service addresses. Failure to return meter and account number/service address will have developer subject to continued billing on accounts.

Note: Please be advised there could be ferrule charges billed for unremoved taps.

Trenchless Technology

If the applicant proposes to terminate a sanitary or storm sewer connection using trenchless technology, then the applicant must submit shop drawings and calculations for method to be used and conduct NASSCO certified closed-circuit televised video (CCTV) inspections of the public sewer before and after the termination(s). Copies of the videos and related report information must be submitted to the PWSA. All CCTV inspection must be compatible with PWSA electronic media and adhere to current PWSA standards.

SECTION 6: TAP-IN PROCEDURES

Overview

All developments and/or redevelopments proposing new taps, increasing flow to existing taps, or increasing storm flow to a new or existing storm system must submit tap-in plans stamped by a Pennsylvania Certified Engineer for review by PWSA engineers. This section outlines general plan requirements and specific tapping procedures. A development may include all taps described in this section while others may only include one.

The following prerequisite conditions must be satisfied prior to the review of tap-in drawings:

- The applicant shall have submitted a PWSA Water and Sewer Availability Letter Request.
- The Water and Sewer Use Application has been approved by PWSA. A fire service only tap is does not need a Water and Sewer Use application approval.
- If applicable, DEP Sewage Facilities Planning Module must be under review by PWSA.
- $250 review fee has been submitted.

PWSA grants final approval of the tap-in drawing through an electronic review process in e-Builder. After the final review, PWSA will supply the applicant with a permit fee invoice (See tapping fees section). A digital copy of the approved drawings will be provided to the applicant when the permit is issued. A permit is not considered issued until all fees are paid.

General Requirements

General tap-in guidelines are as follows:

- Form-DEV must be completed and submitted with the tap-in plans.
- Drawing size shall be 24 inches x 36 inches in landscape.
- Plan views shall be drawn to 1"=20' or 1"=30'.
- Plan view shall be set to City monumentation and City datum unless otherwise directed.

- Drawing shall be readable and drawn to scale with a north arrow pointing to the top or the right of said sheet.
- Drawing shall include a plan view of the entire site. All existing topographic information shall be shown either 50 percent screened or half-toned.
- Existing building footprint shall be displayed and shall show the address, parcel ID, type of building, number of floors, the square footage of each floor and the total square footage of the building. If an address or parcel ID has not yet been established, use proposed address.
- Existing meter and account numbers must be shown.
- CCTV is required for all sewer lines pre and post construction when new taps, concrete work, or foundation work are proposed.
- CCTV shall be in MPEG format and include a NASSCO/PACP export of CCTV database, PDF map showing the location of manhole IDs, PDF of all CCTV inspection logs.
- Existing manholes and wyes must be shown by survey stationing matching CCTV.
- All existing sewer, storm and water lines near project location shall be displayed. Each line shall be marked private or public.
- All existing water mains, sanitary or storm sewers that will be tapped shall be displayed. The size and material type shall be shown.
- Proposed location and size of the service line shall be shown and stationed. Stationing shall be established from a fixed location such as centerline, right-of-way line, or property line. Valves and manholes are not considered a fixed location unless otherwise directed by PWSA. Proposed sewer, storm and water lateral information is to be shown in bold line weight and text.
- The appropriate scalable plan view, profiles, and details shall be displayed. Examples of the PWSA standard details can be found on our website.
- All applicable standard tapping and termination details shall be displayed. Current details are available on our website.
- All existing private water and sewer lines connected to the existing building or servicing the site including abandoned facilities. Any existing service line that will not be reused by the proposed project must be terminated by the owner. The service line must be terminated at the main as per PWSA Specifications and in a manner acceptable to the PWSA.

- All existing easements must be displayed on the plans. Documentation of easements must be provided.
- The summary table titled "Water and Sewer Flow Data" must be completed by the applicant and shown on each drawing.
- Each tap-in drawing must also include an appropriate title block in the lower right-hand corner of the drawing.
- Current PWSA approval block must be shown on each drawing. This block is to be completed by PWSA.
- A Hydrant Flow Test Results table is required for all water and fire protection service tap-in drawings. See Hydrant Flow Test procedures for more information.
- All applicable tapping, termination, and trenching details shall be shown. Any modifications to PWSA details must be explicitly called out on the plans.
- Connection to PWSA sewer can be made through an existing wye or through a new approved connection into the PWSA sewer main. If private connection is proposed to be made through an existing wye, then the location of the existing wye must be shown and stationed to the nearest PWSA manhole on the sewer tap-in drawing(s). Certain existing wye stationing can be obtained from PWSA records/video location of taps. If a new connection is proposed using a new wye, then a detail of the connection must be shown and also stationed as stated above on the sewer tap drawing. New connections must follow current PWSA specifications and standards.
- Construction of private sanitary or storm sewer laterals to tap PWSA manholes and catch basins or storm inlets is not permitted.

Sanitary and Storm Sewer Tap-in Specific Requirements

- If an existing sanitary sewer line is present, then the applicant must propose connecting the sanitary flows from the proposed development to the existing sanitary sewer unless otherwise directed by PWSA.
- If only an existing combined sewer is present, then the applicant must propose connecting both the sanitary and storm flows from the proposed development to the combined sewer with two separate laterals connecting into one wye unless otherwise directed.

- If an existing storm sewer is present, the applicant must connect the flows from the proposed development to the appropriate sewers unless otherwise directed. This includes areas where existing combination sewers are intended to become designated storm in the future as directed by the PWSA.
- Any combination, sanitary sewer, storm sewer or water taps that are being terminated by the customer must be shown on the tap-in drawings (located and/or stationed as directed). Be advised that new tap(s) will not be provided until all site related abandoned existing services are terminated and witnessed by a PWSA representative. All costs associated with the termination of existing private service lines are the responsibility of the property owner.
- It is encouraged to use best management practices (BMPs) to achieve an approved method of surface/stormwater collection, conveyance, detention, and/or retention for stormwater which may minimize or even eliminate the use of PWSA sewer conveyance conduits. Stormwater facilities on private property are usually regulated by other agencies including, but not limited to City of Pittsburgh, Allegheny County Health Department (ACHD), and Pennsylvania Department of Environmental Protection (DEP). The Stormwater Management Officer, located at the Department of City Planning for the City of Pittsburgh, can provide more information on private property surface/stormwater detention and retention requirements. Contact information for the City Stormwater Management Officer can be found on our website. The applicant must also comply with all current county/state stormwater regulations.

Water Quality Requirements

The following regulations for private stormwater connections to PWSA sewers are designed to comply with the current Pennsylvania Department of Environmental Protection's suggested guidelines for stormwater quality as expressed in the current edition of the Pennsylvania Stormwater Best Management Practices Manual (BMP Manual) . Chapter 3, Section 3.5 of this manual states "Achieve an 85 percent reduction in post-development particulate associated pollutant load (as represented by Total Suspended Solids [TSS]), an 85 percent reduction in post-development total phosphorus loads, and a 50 percent reduction in post-development solute loads (as represented by NO3-N), all based on post-development land use." Any structural or nonstructural methods of achieving the stormwater quality guidelines above are acceptable, provided that appropriate documentation and worksheets from the BMP Manual are submitted to PWSA and found to verify the claimed performance after review. All surface drainage

areas except for unoccupied elevated roof space must be captured and treated. All structural and nonstructural water quality designs must meet the following requirements:

- Design must capture grit/silt, floatable debris and/or other pollutants as noted in these specifications or as directed.
- The device must be detailed on the plans and all certified pertinent sizing information, options, weirs, orifices, settings, flow capacity, etc. must be noted. PWSA reserves the right to request design certification from an engineer registered in Pennsylvania.
- Provide documentation of required approval(s) by other private and/or government agencies.
- The property(s) owner(s) must provide a signed statement outlining the maintenance requirements as stated by the manufacturer and/or designer and agreeing to accepting responsibility for this required private maintenance. PWSA reserves the right to request a recorded copy of this document.

Due to the congested nature of development within the City of Pittsburgh, many sites will be required to use water quality filters and/or hydrodynamic devices as standalone units. If the surface drainage area excluding unoccupied roof space is less than 5000 ft^2, PWSA may grant approval to use inlet filter bags designed for permanent installation and/or maintenance. However, they must meet the same stormwater quality requirements. Water quality filters and/or hydrodynamic devices and/or inlet filter bags must meet the following minimum requirements:

- 85% total suspended solids (TSS) removal with a mean particle size distribution of 50 microns or smaller. It is assumed that removal of the smaller particles will result in the desired nitrogen and phosphorus removal.
- Design must not release previously captured pollutants during high flows or when in need of maintenance.
- Design must capture above noted grit/silt, floatable debris and/or other pollutants as directed.
- The device must be detailed on the plans and all certified pertinent sizing information, options, weirs, orifices, settings, flow capacity, etc. must be noted.
- The property owner(s) must provide a signed and/or legally recorded statement/agreement outlining the maintenance requirements as stated by an approved manufacturer and agrees to accepting responsibility for this required private maintenance.

- The stormwater quality device must be located where it is accessible for PWSA inspection and/or for maintenance by the owner.
- PWSA may request test results from an independent source.

Other private BMPs that work well in an urban environment are predominantly based on subsurface storage detention and/or retention, which are usually located beneath parking lots, landscaping, or other surface features. The surface feature may or may not be part of the BMP.

In its simplest form, subsurface storage consists of an excavated area filled with crushed stone which stormwater is directed to. The reservoiring water fills the void space between the individual stones. Perforated pipes and/or proprietary structures are often added to increase the storage capacity. The excavation is lined with geotextile to deter fine soils from entering the storage space.

Stormwater retention refers to runoff which is kept onsite and usually allowed to infiltrate into the existing earth. This is preferred over stormwater detention, but site conditions may limit the ability to infiltrate stormwater. Percolation testing should be done to verify the site conditions during design and the area protected from compaction damage during construction activities if stormwater retention is proposed.

Stormwater detention refers to the storage and slow release of stormwater. This minimizes the peak flow rate in the storm sewer and/or receiving body of water. Most BMPs are designed to retain a portion of the stormwater and detain the remainder.

The Pennsylvania DEP BMP Manual has many more specific BMPs based on the general concepts above, such as Pervious Pavement with Infiltration Bed, Infiltration Basin, Infiltration Trench, and Rain Garden. The BMP Manual also includes BMPs based on other concepts which are well adapted to an urban environment, such as Vegetated Roofs and Runoff Capture & Reuse. Many companies have developed proprietary versions of BMPs which may also be used, provided they are compliant with current local, state, and PWSA regulations. As long as sound design principals and methodologies are used, BMPs may be mixed, matched, modified, and linked together. Also refer to current municipal and Allegheny County guidance and regulations for additional information.

Water Tap-in Specific Requirements

- Plan view shall show all existing or proposed valves, thrust blocks, fire service, water service, meter and backflow location.
- Concrete blocking required for 4-inch taps and larger.

- The tap-in drawing shall show all existing water service lines connected to the existing building or servicing the site. Existing residential private service lines must be a minimum of 1-inch copper with a flow of 5 gallons per minute (GPM) to be reused. New commercial, industrial, or institutional developments may utilize existing service lines at the expense and maintenance of the owner if minimum flow requirements are met. All lines to be reused must have an Allegheny County Health Department approval in writing with application.
- It is the responsibility of the design consultants, engineers, and/or architects hired by the developer to determine the adequacy of the existing water systems to fulfill proposed needs at their time and expense. The presence of an existing PWSA water main or an existing water service line in no way implies that PWSA has adequate capacity or pressure for the proposed development.

Curb Stop Valves

Approved curb stop valves shall be provided on all new domestic water service lines 12 inches towards the property from the face of curb or edge of pavement and oriented in a straight line perpendicular to the public street right of way unless otherwise directed. For mains located in the sidewalk, curb stop valves shall be located approximately 12" from property line to the street. New taps and domestic service lines shall also be located so as not to place the curb valve within the defined limits of a driveway unless otherwise directed. All private service line materials must also comply with all required ACHD Plumbing Division directions and approvals.

Water Meters

A water meter is required for each customer service line. PWSA will supply, set and connect all water meters regardless of size to new and/or existing piping. PWSA's current policy is one meter per water service line/connection tap-in to the PWSA public water main. Each meter must be associated with a specific billing address and legally responsible individual or organization. Any private sub metering and/or division of the PWSA bill are solely the responsibility of the individual or organization mentioned above.

The water tap-in drawing shall include a schematic detail for each proposed meter and remote reading device servicing the development. This detail must show size, type, and model number of PWSA approved meter and remote reading device for each service line. The applicant must provide peak domestic water demand in gallons per minute (gpm) on the drawing. The peak domestic water demand will determine the size of the new water meter.

Meter Pits/Vaults

The PWSA recommends meter pits/vaults for all installations. PWSA requires meter pits for all residential units as directed. If the distance from the PWSA water main to the point of entry of the water service line at the building is greater than 50 feet, then the applicant is required to install a meter pit or vault. The meter pit or vault must be located at the property line no farther than 36 inches from the edge of the public right-of-way or property line that contains the PWSA water main. If the distance from the water main to the point of entry at the building is less than 50 feet, then the PWSA may permit the meter to be installed inside the building unless the building is constructed on a slab on grade. All properties constructed as slab on grade must install a meter pit.

Any meter installed inside a building must be located no more than 36 inches from the point of entry at the inside face of the exterior wall of the water service line inside the building. Where a meter is installed in a building, the remote reading device shall be installed on the outside wall of the structure or at any other location that in the PWSA's judgment is accessible under most conditions. It shall be securely attached to the building at a level between 3-1/2 and 4-1/2 feet above finished grade, outside of any fenced-in areas if possible, and clear of obstructions. It shall be located on the front of the building or on a side near the front. If two buildings are separated by a driveway, it shall be located on the sides of the buildings facing each other to facilitate reading. Exceptions to these requirements will be made only if approved by the PWSA in writing.

Service lines four inches and larger will require a vault. Vaults must meet the following requirements:

- All vaults must have two hinged doors capable of being locked open. Both doors must be large enough for human entry. One of the doors must be centered over the meter and large enough for the easy installation, removal, and maintenance of the meter. It is suggested that the second door be placed over the backflow prevention device.
- An aluminum ladder is required at each door of the vault for access.
- The property owner will own and is responsible for the vault and its maintenance.
- The vault must have a method of drainage. A drain line day lighting to open air is preferred, but a sump for pumping out the vault is the minimum requirement where a drain line is not possible (the drain line cannot be connected to the public sewer system).

- Vaults or pits located in roads, driveways, or other areas subject to traffic must be live load rated (H20). Be advised PWSA and/or ACHD do not recommend vaults/pits in street cart ways and/or driveways.
- Projects where domestic and fire lines are connected to the public main via a single tap as shown in PWSA Detail WSC-1 may use a single vault for both services. In this application, one door is required to be centered over the domestic meter and another is required to be centered over the double detector check backflow prevention device and by-pass meter used on the fire service.
- PWSA requires a cut sheet/shop drawing submittal(s) for all vaults prior to installation to ensure the above criteria is met.

Backflow Prevention

A backflow prevention device is to be installed on every service line. When applying for a new or replacement water service tap, it is required that all active existing service lines be equipped with an approved backflow prevention device. In no case will a plan be approved until all existing and new service lines are appropriately protected against backflow. The following requirements apply to all backflow prevention devices.

- Backflow prevention devices must be installed immediately after the water meter and remote reading device and before any branch lines leading off of the water service line.
- Backflow prevention devices must be installed so as to be readily accessible and with adequate space for inspection, testing, maintenance, and disassembly.
- Backflow prevention devices must be mounted in a horizontal position except for two models which permit horizontal or vertical mounting.
- Backflow prevention devices such as a reduced pressure zone (RPZ) type with a drain must be protected from freezing by installation in a heated building. Pit or vault installation is also prohibited. Such pit or vault applications must have a dual check type backflow prevention device directly after the meter within the pit or vault in addition to the RPZ type within the building.
- PWSA requires reduced pressure zone (RPZ) type backflow prevention on all non-residential developments.

- Backflow prevention devices with drains must be installed so that the relief port is always readily visible and vented to drain.
- Preferably, the backflow prevention device should be located a minimum of 18 inches from the nearest wall and the center line of the pipe and should be located between 24 inches and 48 inches off the deck for horizontal installation.
- The property owner owns and is responsible for the proper maintenance and/or protection of all backflow prevention devices. Each device is to be tested annually and results submitted to PWSA.
- Each installation has specific design problems that must be considered. However, the above guidelines and manufacturers' recommendations will be emphasized when plans are submitted for approval.

Fire Protection Service Tap-In Specific Requirements

Tap-in drawings for fire protection service are required by PWSA for all proposed developments and/or redevelopments that voluntarily install or are required to install a fire suppression system by the City of Pittsburgh Department of Permits, Licenses, and Inspections (PLI). This includes single-family homes with proposed fire service. It is the responsibility of the developer to determine if fire service is required. PWSA does not determine if fire service is required and will only review if fire service taps are included on the tap-in plans.

It is the responsibility of the design consultants, engineers, and/or architects hired by the developer to determine the adequacy of the existing water systems to fulfill proposed needs at their time and expense. The presence of an existing PWSA water main or an existing water service line in no way implies that PWSA has adequate capacity or pressure for the proposed development.

If adequate water pressure exists, fire protection systems are directed to have a separate tap from the PWSA water main. Domestic water service line(s) can be tapped onto said fire line but separated in the public right-of-way with shut-off valve, if deemed acceptable by PWSA. No irrigation or domestic lines may be tapped from a dedicated fireline.

All new shut off valves required for redundant fire service lines as determined by the City of Pittsburgh Department of Permits, Licenses, and Inspections shall be installed at the expense of the developer according to the procedures outlined in Private

Construction of Public Facilities. It is PWSA's preference that redundant fire lines are tapped to two different water mains where available.

If applicant is applying for only a fire line tap, the Water & Sewer Flow Data Table is not required.

The applicant must include the following information on the Peak Operating Water Demands Table on each tap-in drawing:

- Fire System Peak Demand (in gpm)
- Domestic System Peak Demand (in gpm)

If a fire service line feeds a hydrant on private property, the line will require a water meter and remote reading device in a meter pit/vault. A ⅝-inch x ¾-inch meter and remote reading device must be purchased from the PWSA where fireline is equipped with typical backflow assembly. PWSA will install to new and/or existing piping, and own and maintain all water meters and remote reading devices.

A backflow prevention device is to be installed on every service line. When applying for a new or replacement fire service protection service tap, it is required that all active existing service lines be equipped with an approved backflow prevention device. In no case will a plan be approved until all existing and new service lines are appropriately protected against backflow. For more information on backflow prevention requirements, review Backflow Prevention.

Hydrant Flow Test

Before any water tap-in drawings for developments including fire service or domestic service greater than one-inch can be submitted, the applicant must first apply for a hydrant permit to conduct the hydrant flow test.

The applicant should indicate the street name of the tap location on the application. PWSA will review and select two hydrants for the hydrant flow test. PWSA reserves the right to modify the hydrant selections before the hydrant flow test is completed.

If an accurate flow cannot be measured on a PWSA water main, no fireline taps will be permitted into that main unless no other options are available. The developer may install a fire hydrant as directed by PWSA at the expense of the developer according to the procedures outlined in Private Construction of Public Facilities.

- The Operations Division of PWSA will operate all valves and hydrants during the hydrant flow tests. Information on how to schedule the hydrant flow test will be given with the permit.

- The applicant must conduct the hydrant flow tests using his own equipment and personnel.
  - Compliance with NFPA 291 is required as determined by the City of Pittsburgh.
  - The pressure drop during the hydrant flow test must be 20 percent or greater as required by NFPA 291.

Ideal conditions for hydrant flow tests are when outside air temperatures are above 40°F. PWSA will typically not permit hydrant flow tests when the outside air temperature is below 40°F and falling. PWSA can authorize a hydrant flow test to be conducted only if additional safety measures are taken and permitted by the city (i.e. salt truck, etc.). Hydrant flow tests are also dependent upon the availability of the PWSA crew to operate the hydrants. Typically, results from a hydrant flow test are valid for a period of one year from the date of the test. In certain areas with heavy development, PWSA may determine that the test results are valid for only six months from the date of the test.

The applicant must complete the Hydrant Flow Test Results table with the data from the hydrant flow test and add to water tap-in drawings.

Tap Installation Procedures

Waterline Taps

No water tap will be performed unless all water meters, remote reading devices, and backflow devices have been previously installed and subsequently inspected by PWSA. PWSA must perform the waterline tap, meter and remote reading device installation, and any valve shutdowns. Forty-eight hours advance notification from the owner is required before the tap can be performed.

Listed below are the required steps for water tap-in:

- The customer is to follow all steps outlined in previous sections of this manual to obtain a development permit.
- After permit approval and the fees paid, a permit will be issued at the permit counter.
- The customer / developer may begin site prep for service line, meter, and remote device installation.
- Customer / developer shall obtain street opening permit if necessary and begin excavation to open street and expose water main.

- Customer / developer shall use the contact information provided at permit issuance to schedule meter and tap installation.
- PWSA will inspect service line / meter installation.
- PWSA will inspect excavation for tap and any tap terminations, if necessary.
- Customer / developer shall make connection from the main to the meter set.

Construction personnel employed by the applicant are responsible for all permitting, excavation, backfill, trench restoration, and domestic water service line installations from the building to the point of the tap-in at the PWSA water main. The applicant's construction personnel must have proper trench shoring and equipment on site to conduct all required work and complete the job.

The responsibility of the work is as follows:

- For customer water service lines 1 inch and 1½ inches in size, only the PWSA drills and/or connects the ferrule (corporation cock) to the PWSA water main. For new connections, the customer is responsible for installing the service line from the ferrule to the building (including all associated trenching and surface restoration). For private water service lines 1 inch in diameter or less serving a single-family residential development, PWSA assumes the maintenance responsibility made for the curb stop, the curb box, and the portion of the water service line running from the curb stop to the water main after initial connection and installation. The property owner owns and is responsible for the maintenance of that portion of the water service line running from the premises being served with PWSA water to the curb stop, including the connection to the curb stop but not the curb stop itself. If the owner of a single family residential development installs or wishes to have installed a water service line greater than 1 inch in diameter, then ownership and maintenance responsibility for the entire water service line and related appurtenances, from the premises being served with PWSA water up to and including the connection of the water service line to the PWSA water main, including the curb stop and curb box, and the corporation stop or mechanical joint tee, lies with the property owner.
- If a 2- or 3-inch service line is required, a 4-inch cut in or mechanical tapping tee/sleeve will be required. After the tapping tee/sleeve, the service line size can be reduced.
- For domestic water service lines 2 inches and larger, where the customer desires to install a tapping sleeve, the customer is responsible for installing the tapping sleeve on the PWSA water main. Then, PWSA shall drill the PWSA water main to install the connection. The customer is also responsible for

installing the private PWSA approved gate valve, curb stop with curb box, service line and related appurtenances from the tapping sleeve to the building.

- When the customer is required to install a cut-in tee, a waterline shut permit is required as outlined below. The customer is responsible for installing the cut-in tee and the private gate valve, curb stop with curb box, and service line from the tee to the building.
- One-inch connections shall have a minimum distance of 5 feet between taps when the taps are made on the same side of the water main. One-inch connections made on opposite sides of the water main require a minimum distance of 30 inches. Connections larger than one inch require a minimum distance of 5 feet between taps unless otherwise directed.

Waterline Shut Permit

- When a water main shut down is required for a tap-in, the applicant's construction personnel must apply for a Waterline Shutoff Permit.
- The contractor shall submit the waterline shutoff application at least fifteen (15) days before the shutoff is required.
- The contractor must also submit a $5000 deposit, payable by cashier's check with the completed application. The deposit payment must be separate from any other tap-in fee payments. If the contractor completes the work in the estimated timeframe, the Authority will refund $4500 to the contractor after the work is completed. A waterline shutoff permit form can be found on our website.
- If work is to occur at night, the fee is double.

Sewerline Taps

No sewer taps are to occur prior to PWSA approval.

Listed below are the required steps for sewer tap-in:

- The customer is to follow all steps outlined in previous sections of this manual to obtain a development permit.
- After permit approval and the fees paid, a permit will be issued at the permit counter.
- The customer / developer may begin site prep for service line.
- Customer / developer shall obtain street opening permit if necessary and begin excavation to open street and expose water main.
- Customer / developer shall use the contact information provided at permit issuance to schedule meter and tap installation.

- PWSA will inspect service line tap installation.
- PWSA will inspect excavation for tap and any tap terminations, if necessary.

Construction personnel employed by the applicant are responsible for all permitting, excavation, backfill, trench restoration, and sewer lateral installations from the building to the point of the tap-in at the PWSA sewer main. The applicant's construction personnel must have proper trench shoring and equipment on site to conduct all required work and complete the job.

PWSA does not accept maintenance responsibility for any private sewer laterals including the connection to the main.

SECTION 7: TAP FEES

PWSA will calculate the appropriate fees based upon the related project information submitted by the applicant in the Water and Sewer Use Application and tap-in plans. All fees are based on the amount of water demand and the sewer flows created by each development plus the cost of the taps, meters, and valve operations. The fees will be charged to new applicants of the PWSA systems to recover the cost of constructing the public water and sewer systems and related facilities. The fees support the construction and maintenance of infrastructure such as:

- Trunk and collector sewers
- Sewage pumping stations
- Water pumping stations
- Water filtration
- Water treatment
- Large diameter transmission mains
- Small dimeter water mains
- Storage reservoirs
- Storage tanks

Tap fee calculations are based on Equivalent Dwelling Units (EDUs) and Gallons Per Day (GPD). One EDU is equal to 300 GPD and is representative of the peak flow of one single-family unit. To determine the EDUs for projects that are not single-family homes, the current calculation is Net Flow GPD/300 GPD.

As an example, a development creating 1500 GPD of water demand and 1500 of sewage flow will use 1500 GPD/300 which equals 5 water EDUs and 5 sewer EDUs.

It should be noted that the DEP currently defines one EDU as 400 GPD. The number of EDUs for a development will differ for DEP submittals and PWSA fees.

Fee Schedule

All fees are established in the PWSA Water and Wastewater Tariffs and approved by the PUC. Fees are categorized by tapping, capacity, connection, and customer facilities (i.e. taps and meters) Collectively, the fees are referred to as tap fees.

Table 7.1 Fee Schedule	
Fee Type	**Fee**
Sewer	
Tapping	$1277
Capacity	$1701
Connection	$0*
Total Sewer Fee	$2,978/EDU
Water	
Capacity	$1382
Distribution	$842
Connection	See Tap Fee Schedule**
Customer Facilities	See Meter Fee Schedule***
Total Water Fee	$2,224/EDU + cost of connection + cost of customer facilities

* PWSA's current policy for sewer connections states that the customer is responsible for excavating and connecting the private sewer lateral at the PWSA main line as per current PWSA standards and specifications and installing the private service lateral from the PWSA main to the building to be served. Based on this policy, PWSA does not currently charge a sewer connection fee.

**The Water Connection Fee includes the cost of taps and valve operations. PWSA shall install all taps and operate all valves on PWSA water mains. PWSA will install the corporation stop and coupling for water service lines 1.5 inch or less in diameter. The customer is responsible for excavation and installation of the water service line from the building to be serviced to the point of connection at the PWSA main. The Connection fee charged by PWSA varies based upon the size of the service line and the type of tap-in procedures required by the PWSA and/or ACHD regulations. See current fee schedule for costs.

***The Customer Facilities Fee includes the cost water meters and remote reading devices. All meters and remote reading devices must be purchased from the PWSA. See current fee schedule for costs.

There are currently no tapping fees associated with storm connections.

PWSA will post a fee schedule on our website yearly.

Fee Credits

The tapping fees apply to all new developments and any renovations creating an increased demand for existing structures. PWSA will credit tapping fees to an existing structure or development at our discretion.

The following conditions must be met to receive fee credits:

- The existing structure has not been removed and has maintained an active connection to PWSA infrastructure as determined by the PWSA. Also, under certain conditions where the existing structure has been removed because of natural disaster such as fire, earth/foundation movement, etc. and is being replaced by the original owner with a building of the same size and footprint.
- Both existing and proposed usages and peak flows can be satisfactorily documented and calculated by the applicant. The PWSA reserves the right to determine whether said information is acceptable.
- No developments proposing subdivisions, consolidations, or any other significant modifications (as determined by the PWSA) to the legal boundaries of said existing parcel.

No credit will be granted to existing vacant lots unless determined by PWSA as meeting the criteria of a natural disaster.

If credit is granted for existing usage, the peak daily flow calculated for the existing structures is subtracted from the calculated peak daily flow for the proposed structure. The applicant will be required to pay for any additional new tapping fees.

No new accounts will be established prior to all fees being paid.

SECTION 8: PRIVATE CONSTRUCTION OF PUBLIC FACILITIES

Overview

This section is relevant to developments which require physical modifications to PWSA's existing water and sewer facilities. Please see below for a list of common examples:

- The Pittsburgh Bureau of Fire determined that there is not an existing fire hydrant within sufficient distance of a proposed development. Therefore, the developer is required to construct a new fire hydrant at a nearby intersection.
- The Department of Permits, Licenses, and Inspections of the City of Pittsburgh has determined that an upcoming development requires a dual/secondary/backup fire service. The PWSA only has a single distribution main within the project area. Therefore, the developer is required to construct a gate valve on the PWSA water main to separate the two fire connections.
- A development consists of a proposed public roadway to a residential subdivision. The developer is proposing new water and sewer facilities within the public roadway and intends to transfer ownership of the constructed facilities to PWSA.
- The PWSA is requiring a developer to terminate ten (10) unused, but open, sewer connections located on a sewer segment. The sewer is located beneath a busy street, and open-cut excavations would be difficult. The developer is proposing to terminate the connections via cured-in place pipe (CIPP).
- The PWSA has an existing sewer main that traverses the developer's property. The proposed structure is in direct conflict with the sewer main. The PWSA requires the developer to relocate the sewer main within the cartway of an adjacent street.

General Requirements

The first step for developments which contain Private Construction of Public Facilities (PCoPF) work is to submit a pre-development meeting request, as described in Section 1: Process Overview. The pre-development meeting is intended to address early-stage questions, such as:

- Is the PCoPF work required? Can the development be adequately services via existing infrastructure?

- What is PWSA's procedure for PCoPF Projects?
- What are the developer's next steps?
- Are there any immediate concerns with the proposed work?
- Are there better alternatives?

PWSA facilities in conflict with a proposed development shall be relocated at the developer's expense. If an existing structure conflicts with an existing PWSA facility, and the conflict cannot be eliminated, the PWSA shall require a Structures Over Facilities (SOF) Agreement. The SOF Agreement will include additional provisions, such as a recorded easement, and may require structural enhancements to the PWSA facilities in conflict. PWSA is to review and approve all plans and specifications prior to construction as described in this section.

Conditions of Acceptance

The PWSA will only accept the dedication of conventional water and sewer facilities, including but not limited to water main, fire hydrants, gate valves, manholes, sewer main, drainage structures, etc.

The PWSA shall not accept any facilities located within private property or private right-of-way. In such circumstances, the constructed facilities would remain privately owned. For private water mains, the PWSA would require a master meter within 50-feet of the connection with the PWSA water main. If an existing private street is adopted by the City as a public street, and said street contains privately owned water or sewer facilities, the PWSA is under no obligation to accept said facilities.

PWSA will not accept dedication of facilities that have not followed the processes contained herein. Lack of inspection by the PWSA, as-built drawings, or other requested documentation to verify the proper construction of the proposed water and/or sewer facilities may result in PWSA using funds from the performance bond to complete construction to our standards. PWSA reserves the right to require the unearthing of any completed infrastructure to ensure proper inspections take place prior to acceptance.

In any instances that PWSA cannot verify the new or relocated facilities have been constructed according to minimum standards, the facilities will remain private, and the developer will be required to obtain additional permits from the Allegheny County Health Department (ACHD) or the City of Pittsburgh. The developer is also required to properly record with the City and the County Recorder of Deeds the ownership/maintenance agreement between all parties that share use of the private utilities. The PWSA will not

permit the connection of the proposed facilities to existing PWSA public facilities if the maintenance agreement is not recorded. Copies of the ACHD variance letter, recorded easement(s), and recorded maintenance agreement must be submitted to the PWSA.

Private shared infrastructure such as detention basins serving multiple properties will require recorded Maintenance Agreements and may also require easements, variances, and other documentation as described in greater detail below.

Past work not properly permitted and/or accepted via recorded agreement by the PWSA is the responsibility of the current property owner(s). This includes a wide range of structures ranging from unauthorized private sewer taps to storm culverts. Any past maintenance and/or repairs done to said private facilities by the PWSA for the sake of public health and safety does not imply ownership by the PWSA.

Common reasons why facilities may not be accepted by PWSA are as follows:

- The facilities only serve a single customer. In such a situation, the facilities would be considered private sewer lateral(s) or private water service line(s). Documentation must be provided to PWSA that the correct permits and variances are in place for these private structures/facilities. This may include encroachment permits for facilities in the right-of-way, variances from the City of Pittsburgh/ACHD, recorded easements/agreements for other properties crossed, and other requirements depending on the specific site.
- Newly constructed roads not accepted by the City of Pittsburgh.
- Facilities that cross private property when it is not required by site conditions as interpreted by PWSA.
- Facilities that do not have all the required recorded legal agreements, easements and/or permits. It is the developer's responsibility to research and acquire at their expense all permits and/or recorded easements prior to dedication of public water and sewer facilities to PWSA.
- Facilities built do not match materials, methods, or general locations on approved plan. Any departures from approved plans must be approved in writing by PWSA.

Development Agreement

The Development Agreement is a legally binding document that defines the process for constructed facilities to be accepted by the PWSA. Upon request, the PWSA will provide

a draft Development Agreement for the developer to review and comment. Please refer to the PWSA website for a Sample Development Agreement. The developer is encouraged to review the Development Agreement with legal counsel. All proposed revisions shall be made in track-change mode for PWSA's review and approval. Under no circumstances is the developer to change any items in the recital clauses, unless otherwise directed.

Once finalized, the Development Agreement may be subject to approval at the next available PWSA Board of Directors meeting. Please note that, to be placed on the agenda, the Development Agreement needs to be finalized approximately one month prior to the regularly scheduled Board meeting.

The Development Agreement, executed by the developer and the PWSA, shall be required prior to any subsequent approvals (e.g. construction drawings, performance bond, construction cost estimate, etc.). However, the absence of an executed Development Agreement does not preclude a developer from submitting documentation for review. The Checklist of Required Approvals summarizes the typical approvals contained within the Development Agreement, as further described below.

If the proposed scope of work requires an external inspection from an on-call consultant, the procurement process typically takes approximately six (6) weeks. The following approvals shall be required by the PWSA before a determination can be made on whom will perform the inspection services:

Construction Drawings

The construction drawings must comply with the design standards contained within the latest version of the Checklist of Requirements for Construction Drawings. In addition, please see below for additional information:

- The PWSA aims to respond to each submission within 30 days of receipt. However, the actual length of time required to conduct the review is largely influenced by the quality of the submission and complexity of the project.
- The PWSA sewer collection system largely consists of combined sewers. A combined sewer conveys both stormwater (e.g. catch basins, roof leaders, storm water detention systems) and sanitary flows (e.g. toilets, showers, sinks). However, please be advised that the extension of combined sewers shall be prohibited. Sewer extensions shall require a dedicated storm sewer and sanitary sewer.
- Newly constructed facilities shall be adequately sized and positioned to account for future development.

- Typically, the PWSA Operations Department will install the proposed connections once a constructed water main is charged. However, please note that the developer's contractor is permitted to install connections per the following conditions:
    - Connections shall be contained within an approved PWSA Development Permit. Please refer to Section 6 – Tap-in Procedures for additional information.
    - Connections must be performed when the waterline is uncharged.
    - Each connection shall be connected to a PWSA meter via a service line. The developer shall remain responsible to install any corresponding meter crocks or vaults in accordance with the approved Development Permit.
    - Unmetered connections shall be prohibited. Connections for vacant properties shall require a meter, which will be set up for a developer-owned customer account.
    - The PWSA shall be responsible to set meters and remote reading devices. Taps for vacant properties must be metered and billed in the name of the contractor/developer/owner.

Construction Cost Estimate

The construction cost estimate (CCE) shall be limited to the improvements contained within the Development Agreement. The PWSA will prepare the draft CCE and share with the developer for review and comment. The CCE is calculated with unit prices derived from the average winning bidder for PWSA's publicly bid projects. The value of the CCE may differ from the value of the contract between the developer and the developer's contractor. For representative unit prices, please refer to the Estimate Spreadsheets. The CCE will be used to determine the value of the required securities (e.g. bonds, irrevocable, cash, etc.) and escrow check (e.g. CM/CI services).

Escrow Check

The developer shall fund an escrow account to compensate the PWSA for costs associated with the Development Agreement, including PWSA reviews (construction drawings, construction materials, etc.) and inspections. The initial escrow check shall be valued at 10% of the construction cost estimate, or $5,000, whichever is greater. The check shall be made payable to the PWSA.

The escrow shall be drawn upon as the PWSA incurs inspection and engineering costs. If the outstanding work exceeds the value of the escrow account, the PWSA shall request additional funds. Failure to provide the additional funds shall result in the cessation of PWSA involvement. At project completion, the developer shall be provided an application for refund to claim any unused money still contained within the escrow account.

Construction Schedule

The developer shall provide a copy of the contractor's proposed construction schedule. The PWSA will utilize the schedule to determine if the inspections will be performed internally (i.e. PWSA staff) or externally (i.e. third-party on-call consultant).

Construction Management and Construction Inspection

The developer shall coordinate with the PWSA project manager to procure construction management and construction inspection (CM/CI) services for the work contained within the Development Agreement. The PWSA will either perform the CM/CI with internal resources (i.e. PWSA staff) or external resources (i.e. on-call consultants). There are many factors that will influence how the CM/CI will be performed, including but not limited to, the scope of the work, allocation of internal resources in relation to the proposed schedule, type of work, etc. There are no exceptions to this requirement: all work shall require CM/CI oversight. Changes to the construction start date shall require input and approval from the CM/CI team to ensure availability.

The following approvals shall also be required prior to construction start-up, but are not typically on the critical path:

Performance Securities

A performance security shall be required by the PWSA to ensure the developer constructs the work in accordance with the development agreement. The developer shall furnish a performance security in the amount equal to 100 percent of the construction cost estimate. The performance security may be in the form of a performance bond or other form acceptable to PWSA. The PWSA shall be the only named oblige on the security.

Please note that the City may impose separate bonding requirements for street or sidewalk restoration.

Insurance

The Developer shall provide a Certificate of Insurance, with PWSA listed as additionally insured, in accordance with the following coverage requirements:

Commercial General Liability: $1 million per occurrence and in the aggregate

Automobile Liability: $ 1 million per occurrence and in the aggregate

The Developer's policies shall also require thirty (30) days' prior written notice to the Authority of any cancellation, amendment, or non-renewal of the policies

Executed Contract Between the Developer and Contractor

The Developer shall submit an executed contract with the selected Contractor for the proposed work.

Construction Specifications

The PWSA Project Manager shall provide the Developer the relevant specifications per the approved construction drawings. The Developer shall ensure that their Contractor performs the work in accordance with the specifications. Please see below for a typical list of relevant PWSA specifications:

- 01510 – Sewer Bypass Pumping
- 01520 – Temporary Water Service
- 02060 – Aggregates for Earthwork
- 02082 – Public Manholes and Structures
- 02085 – Water Utility Distribution Valves
- 02086 – Water Utility Fire Hydrants
- 02281 – Manhole and Catch Basin Grade Adjustment
- 02332 – Service Line Verification
- 02324 – Trenching, Backfilling and Compaction
- 02513 – Public Water Distribution Piping
- 02515 – Water Service Connections
- 02516 – Disinfection of Water Distribution Systems
- 02539 – Public Sanitary and Storm Sewer Piping
- 02630 – Storm Drainage
- 02650 – Sewer and Manhole Cleaning
- 02721 – Aggregate Base Courses
- 02951 – TV Inspection of Sewer Pipelines
- 02952 – Sewer and Manhole Testing
- 02971 – Relining of Sewers – Cured-In Place
- 03300 – Cast-in Place Concrete
- 03600 – Grout

Construction Materials

The developer shall submit the proposed construction materials (i.e. shop drawings, cut sheets, submittals) for PWSA approval. The construction materials must comply with PWSA specifications. Please be advised that the usage of rejected or unapproved materials may result in the PWSA not accepting the constructed facilities.

Third-Party Approvals

The developer shall remain responsible to obtain all third-party approvals. Please refer to the PWSA's Agency Resource and Contact Information webpage for additional information on commonly involved agencies.

Easements for Construction on Private Property

The PWSA requires the construction of new facilities to be located within the public right-of-way. In the event that the aforementioned requirement is unfeasible, and the proposed facilities need to be located on private property, the PWSA shall require a recorded easement. The developer must show recorded proof that all easements and/or encroachments exist in the records of the City and/or County Recorder of Deeds. The minimum easement width is 20-feet centered on the facility. The construction of adjacent facilities would result in a wider easement. In addition, the PWSA may request additional width for reasons including, but not limited to, the following:

- Large diameter facilities, typically defined as greater than 24-inches
- Excessive depths
- Soil conditions
- Site obstructions

Pre-Construction Meeting

The PWSA shall require a pre-construction meeting on-site. The required attendees include the PWSA Project Manager, PWSA Inspector, developer, developer's design engineer and developer's contractor. The topics of discussion shall include introductions, roles and responsibilities, inspection protocols, close-out procedures, testing requirements, open discussion, etc.

Acceptance of Privately Constructed Public Facilities

The following approvals shall also be required prior to issuance of the Notice of Acceptability letter:

As-Built Drawings

The developer shall supply as-built drawings for review and approval at project completion. The PWSA will accept redline drawings, provided the plans are in neat condition, and free from dirt, tears, staining, etc. During construction, the Contractor shall meet with the construction inspector at regular intervals to exchange as-built information. The redlines shall include, but not be limited to, invert elevations, structure locations, slopes, fitting locations, etc. The PWSA shall be provided the opportunity to capture GPS coordinates during construction to update the GIS database.

Maintenance Securities

Upon completion of the work, the developer shall furnish a maintenance bond in the amount equal to 15 percent of the construction cost estimate for a period of 18

months. The PWSA shall be the only named obligee on each security. Please note that the City may impose separate bonding requirements for street or sidewalk restoration.

Design Requirements

The PWSA design standards are contained within the Checklist of Requirements for Construction Drawings. Please refer to the PWSA website for the latest version. Please see below for additional information:

General Requirements

- The existing PWSA facilities shall be clearly indicated with the appropriate identification number, including but not limited to, sewer mains, water mains, gate valves, drainage structures, manholes, fire hydrants, etc.
- The subsurface utility engineering (SUE) performed to locate the existing utilities shall comply with a quality level C, which involves the gps surveying of visible utility facilities (e.g. manhole covers, valve boxes, drainage structure grates). This data shall be utilized to update the location of existing facilities. For example, water mains shall be shown through gate valves and sewer mains shall be shown through manholes.
- Work located within PennDOT right-of-way shall require a Highway Occupancy Permit. Please note that PennDOT shall require the PWSA to submit the permit application on behalf of the developer.
- The developer shall consider the proximity and depth of adjacent utilities to determine if the proposed work is feasible. Please note that the large majority of PWSA facilities rely upon the surrounding soil to maintain structural integrity. Close excavations, and removal of that support, often results in water main and sewer main breaks. The PWSA may require that facilities be shut down during construction. The developer would be responsible to provide temporary water services to any impacted customers.
- The private construction of public facilities shall be limited to situations where the existing infrastructure is incapable of providing the required level of service.
- The proposed facilities shall be designed and constructed in accordance with PWSA specifications.

Sewer Requirements

- Sewers shall be constructed at a depth sufficient to serve nearby basements and future growth. The PWSA may require additional depth, as directed.
- Sewer mains shall be designed in accordance with the DEP's Wastewater Facilities Manual and PWSA standards, whichever is more stringent.
- Where possible, combined and storm sewer shall be designed with a minimum slope of 2.00% and sanitary sewers shall be designed with a minimum slope of 1.00%. Please note these requirements exceed the DEP's Wastewater Facilities Manual. Exceptions are made on a case-by-case basis.

- The pipe material required is dependent upon the depth and diameter. Per the design conditions, the PWSA accepts the following types of materials: PVC (SDR 26), PVC (PS115), RCP (Class IV), DIP (Class 52, epoxy lined).
- The design shall consider the need for bypass pumping, which may necessitate flow monitoring. The developer shall ensure that upstream and downstream manhole access is available. Discharge piping shall not interfere with roadway or pedestrian traffic.
- Connections to new sewer extensions shall be made at a pre-constructed wye fitting. The use of a cored connection (e.g. Inserta Tee) shall be prohibited.
- Storm sewers need to account for the future separation of combined sewer laterals. Typically, this separate would occur at the time of property owner transfer. The developer shall be responsible to extend a lateral stub to the curb line of the street and GPS locate the terminus.

Manhole Requirements

- The barrel and cone sections of the manhole be constructed of pre-cast concrete. For vertical grade adjustments up to 3-inches, the developer shall use rubber adjustment rings. For vertical grade adjustments up to 12-inches, the developer shall use pre-cast concrete adjustment rings. Riser rings shall not extend more than 12-inches from the cone section.
- The PWSA will accept either a cast-in place base or a pre-cast concrete base. However, please be advised that cast-in place bases are strongly advised, as they offer greater construction flexibility. The PWSA only constructs cast-in place bases for our capital improvement projects.
- For situations where the inflowing sewer diameter is smaller than the outflowing sewer diameter, the manhole shall be constructed in such a way that the crown of the inflowing pipe is level with the crown of the outflowing sewer.

Drainage Structure Requirements

- The construction of drainage structures in-series shall be prohibited. Each drainage structure shall have a separate connection to either a manhole or the sewer main. As such, if a drainage structure becomes clogged with debris, it will not impact the performance of any upstream drainage structures.
- The PWSA recognizes two types of drainage structures: inlets and catch basins. Please note that both inlets and catch basins require a 20-inch sump for the collection of debris. The principal difference is that a catch basin requires a stench plate to prevent malodors from permeating out the drainage structure. Inlets are typically required on storm sewer connections, and catch basins are required on combined sewer and sanitary sewer connections.

Cured-in Place Pipe (CIPP) Requirements

- The PWSA accepts CIPP as a suitable method to terminate active lateral connections. Typically, this methodology is useful when PWSA sewers are located under highly trafficked streets.
- The use of point lining shall be prohibited.

- Please be advised that not all sewers are adequate candidates for CIPP. The developer shall provide CCTV of the host sewer to confirm eligibility.

Water Main Requirements

- The proposed water main shall be looped; dead end mains shall be prohibited.
- The main material shall be ductile iron pipe, class 52, zinc coated. The minimum diameter shall be 8-inches.
- The water main shall require a pressure test and bacteriological test prior to acceptance by the PWSA. The proposed design shall include gate valves at strategic locations to isolate the main to perform these tests.
- For services up to and including 1-inches, the PWSA owns the service from the water main to the curb stop and curb box.
- The developer shall be prohibited from reconnecting a private lead service line to a newly constructed water main. As such, the developer shall be required to replace the lead service line at their cost. The PWSA can assist with notification procedures, etc.

Fire Hydrant Requirements

- The developer may be required to construct fire hydrants, as directed by the PWSA or City, depending on the proximity of the nearest hydrant and the length of the proposed extension.
- The hydrant gate valve shall be directly mounted onto the swivel tee.

Profile Requirements

- Profiles shall be required for sewer mains, drainage structure laterals and water mains.
- Profiles shall indicate the location of crossed utilities, which shall be drawn per the outside diameter. Please note that the outside diameter can be significantly different than the nominal diameter. For instance, a 24" reinforced concrete pipe has an internal diameter of 24-inches and an outside diameter of 30-inches. Crossed utilities shall have a minimum vertical clearance of 18-ninches from outer surface to outer surface.
- For sewer, the profile shall include lateral design information including the minimum depth to serve customer connections via gravity flow.
- For water, the crown of the main shall be 4-feet from the ground surface

Tap-in Drawings

Tap-in drawings <u>are</u> required when the development includes <u>all</u> the following:

- Development of lots,
- Construction of public storm sewer and/or sanitary sewer and/or waterline,
- Construction of building(s),

- Construction of laterals and service lines from building(s) to the new sewer and/or water lines, and
- Change in use of an existing facility (Redevelopment).

Tap-in drawings **are not** required when the development is **limited to** the following:

- Development of lots, and
- Construction of public storm sewer and/or sanitary sewer and/or waterline.

Under the second scenario where the developer only develops the lots and constructs the PWSA facilities, the responsibility of applying for sewer and water taps falls on the future property owner whenever that owner decides to connect to the PWSA facilities.

Tap-in drawings for storm sewers, sanitary sewers, and waterlines can be submitted at any time but cannot be approved until the private construction drawings have been approved by PWSA. Please refer to the Tap-in Procedures of this manual.

NOTICE

Close

Due to the COVID-19 pandemic, our downtown office at 1200 Penn Avenue is closed until further notice.

PGH2O Pittsburgh Water & Sewer Authority

Menu

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PWSA Announces Approval of New Rate Structure Including Stormwater Fee

11/18/2021

Changes to provide greater equity and prioritize stormwater management investment.

Today, the Pittsburgh Water and Sewer Authority announces that changes to water and wastewater conveyance rates and the adoption of a new stormwater fee were approved by the Pennsylvania Public Utility Commission (PUC) during their November

18th public meeting. The new rates will go into effect on January 12, 2022. This is the final step in the ratemaking process that started with PWSA's rate request submitted on April 13, 2021.

The new rates, including the stormwater fee, will generate $21 million in additional revenue phased in over two years. In 2022, revenue will increase by $17 million, and in 2023 it will increase by an additional $4 million. The average residential customer using 3,000 gallons of water per month will see an increase of $5.65 in 2022 and an increase of $1.44 in 2023.

With the approval of the new rates, the typical residential customer enrolled in our low-income customer assistance Bill Discount Program using 3,000 gallons of water per month will increase to $43.09 in 2022 or by $1.32 per month. In 2023 this will increase to $44.15 or by $1.06 per month. The approval also includes enhancements to our customer assistance programs and a financial incentive for consumers to enroll in auto-pay.

"Today's approval of our new rates and the stormwater fee reflect the ongoing renewal of our water and sewer infrastructure and will significantly change how we fund stormwater improvements," stated Will Pickering, PWSA's Chief Executive Officer.

"With input from the PUC and community stakeholders, we developed a balanced rate settlement that prioritizes the needs of our most vulnerable customers and the investment we must make to ensure the safety and reliability of our water, sewer, and stormwater systems," Pickering stated. "We appreciate their participation and the continued support from our customers. As a publicly owned and operated utility, every dollar we receive from our ratepayers is reinvested to provide the water services Pittsburgh expects and deserves."

Expanded Customer Assistance Programs

With any rate increase, we must consider the affordability of rates and provide our most vulnerable customers with the assistance they need. The PUC approval provides additional enhancements to existing customer assistance programs that will help

customers reduce outstanding balances, save on their monthly bill, and expand current programs to more customers.

Among other benefits, PWSA will double the monthly arrearage forgiveness credit from $15 to $30 for on-time payments made by customers who are enrolled in the Bill Discount Program and on an active payment plan; very low-income customers enrolled in the Bill Discount Program will receive a 50% discount on water usage charges, and all customers enrolled in the Bill Discount Program will receive an 85% discount on the stormwater charge. Additionally, PWSA will continue to waive reconnection fees for all customers in 2022. We are also expanding the Hardship Grant Program to include sewage-only customers, and all verified low-income customers will automatically be enrolled in the Winter Shutoff Moratorium.

The PGH2O Cares team, established earlier this year, will continue its proactive outreach and education to customers who are eligible for our customer assistance programs. Their one-on-one interaction with customers is providing the extra boost many need to enroll in our programs to receive the support they deserve. PGH2O Cares is an essential feature of our existing customer assistance programs, and we are seeing that their efforts are working to build awareness and increase enrollment.

The Stormwater Fee: A notable change for Pittsburgh

Historically, we have funded our stormwater services from wastewater rates that are based on water usage. The new stormwater fee is based on the hard or impervious surfaces on a property. This ensures that all property owners in Pittsburgh contribute a share that is proportional to the amount of runoff generated by their property. Establishing a fee that is based on hard surfaces such as roofs, pavement, and asphalt is a more equitable way to charge for stormwater.

As part of the implementation of the new stormwater fee, wastewater conveyance rates will decrease since the new stormwater fee will begin to recover the stormwater costs previously included.

The new stormwater fee is a significant change to our rate structure. It provides a dedicated funding source for stormwater management and puts us on the path to, over time, increase investment in stormwater projects that include improvements to our sewer system and green infrastructure like rain gardens and street planters to help catch, retain, and filter stormwater runoff.

Outreach and education remain a priority as we implement the stormwater fee and advance the strategic planning that is currently underway. We will continue to engage with community members and stakeholders to provide a basic understanding of the fee and to seek input on the stormwater issues that are of most concern in their neighborhoods. Community engagement and education is essential to ensure the success of our stormwater planning efforts, provide a reasonable level of protection from intense and heavy rains, and to understand how we can work together to improve the health and well-being of Pittsburgh neighborhoods.

For more information about the stormwater program, please visit www.pgh2ostormwater.com.

Calculating the Stormwater Fee

Impervious surface is the hard surface on a property such as roofs, concrete, and asphalt that do not absorb stormwater. These hard surfaces generate stormwater runoff that collect trash and send polluted water into local waterways. Runoff can also overwhelm our sewer system causing streets to flood, basements to backup, and sewage to overflow into rivers and streams.

In Pittsburgh, the average amount of impervious surface on a property is approximately 1,650 square feet. This is equal to one equivalent residential unit (ERU) of impervious surface, which is the unit of measurement for calculating the stormwater fee and is accepted as the industry standard for determining a stormwater fee. The stormwater fee will be applied to all residential and non-residential properties in Pittsburgh in the following way:

Stormwater Monthly Fees (Based on Impervious Surface)	ERUs	2022	2023
Residential Tier 1 (>=400 to <1,015 sf)	.5	$2.98	$3.98
Residential Tier 2 (>=1,015 to <2,710 sf)	1	$5.96	$7.95
Residential Tier 3 (>=2,710 sf)	2	$11.92	$15.90
Non-Residential	Per ERU	$5.96	$7.95

70% of all Pittsburgh homeowners fall into Residential Tier 2

As part of implementing the stormwater fee, a credits program will be available to residential and non-residential properties. Residential property owners can reduce their stormwater fee by installing certain measures to control stormwater runoff from their properties, such as redirecting downspouts into street planters where applicable or installing a rain garden. Non-residential customers can receive up to a 60% maximum credit by meeting the City's 2019 stormwater development standards.

Additionally, customers will have access to an online searchable database to view their property, the amount of impervious surface, and the number of ERUs charged to the property. An appeals process will also be available if you believe that the total number of ERUs and associated stormwater fee should be different. These resources, along with the application process to apply for the stormwater credit, will be available when the stormwater fee goes into effect next year.

For more information about the stormwater fee, please visit www.pgh2o.com/stormwater-fee.

How Will Your Bill Change?

PWSA's rate increase is carefully allocated to increase revenue where it is needed most. The typical residential customer using 3,000 gallons of water per month currently pays $79.34 per month under the existing rates. When the new rates go into effect in early 2022, this is expected to increase to $84.99 in 2022 or by $5.65 per month. In 2023, this will increase to $86.43 or by $1.44 per month.

Proposed Rates: Residential Customers with DSIC

Minimum Charges	Monthly Usage	2021 Existing Water	2021 Existing Wastewater Conveyance	2021 DSIC	2021 Existing Total	2022 Proposed Water	2022 Proposed Wastewater Conveyance	2022 Proposed Stormwater	2022 DSIC	2022 Proposed Total	Monthly Impact $
5/8"	1,000 gal	$27.27	$8.51	$1.79	$37.57	$27.00	$8.09	$5.96	$1.75	$42.80	$5.23
5/8"	3,000 gal	$51.77	$23.79	$3.78	$79.34	$53.20	$22.07	$5.96	$3.76	$84.99	$5.65
5/8"	5,000 gal	$76.27	$39.07	$5.77	$121.11	$79.40	$36.05	$5.96	$5.77	$127.18	$6.07
5/8"	7,000 gal	$100.77	$54.35	$7.76	$162.88	$105.60	$50.03	$5.96	$7.78	$169.37	$6.49
5/8"	12,000 gal	$162.02	$92.55	$12.73	$267.30	$171.10	$84.98	$5.96	$12.80	$274.84	$7.54
1"	20,000 gal	$273.57	$155.52	$21.45	$450.54	$290.67	$139.86	$5.96	$21.53	$458.02	$7.48

The typical residential customer enrolled in our low-income customer assistance Bill Discount Program using 3,000 gallons of water per month currently pays $41.77 per month under the existing rates. With the approval of the new rates, this will change to $43.09 in 2022 or by $1.32 per month. In 2023 this will increase to $44.15 or by $1.06 per month.

Proposed Rates: Customers Eligible for Bill Discount Program

Minimum Charges	Monthly Usage	2021 Existing Water	2021 Existing Wastewater Conveyance	2021 DSIC	2021 Existing Total	2022 Proposed Water	2022 Proposed Wastewater Conveyance	2022 Proposed Stormwater	2022 DSIC	2022 Proposed Total	Monthly Impact $
5/8"	1,000 gal	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.90	$0.00	$0.90	$0.90
5/8"	2,000 gal	$12.25	$7.64	$0.99	$20.88	$13.10	$8.99	$0.90	$1.00	$21.99	$1.11
5/8"	3,000 gal	$24.50	$15.28	$1.99	$41.77	$26.20	$13.98	$0.90	$2.01	$43.09	$1.32
5/8"	4,000 gal	$36.75	$22.92	$2.98	$62.65	$39.30	$20.97	$0.90	$3.01	$64.18	$1.53
5/8"	5,000 gal	$49.00	$30.56	$3.98	$83.54	$52.40	$27.96	$0.90	$4.02	$85.28	$1.74

Ongoing Investment in Water and Wastewater Systems

To provide customers with safe and reliable water, sewer, and stormwater services, we must invest in the infrastructure we use each day. We are currently implementing an ambitious $1.2 billion capital program that includes replacing water mains, rehabilitating aging sewer lines, constructing new stormwater infrastructure, and implementing the Water Reliability Plan—a series of once-in-a-generation projects to renew key components of our water production and distribution systems.

As a publicly owned and managed water, sewer, and stormwater authority, every dollar we receive from ratepayers is reinvested back into our infrastructure and the improvements we are making to provide high-quality services to our customers.

For more information on the new rates approved today and our plans for renewing our water, sewer, and stormwater infrastructure, please visit www.pgh2o.com/ourwaterfuture.

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Pittsburgh Water & Sewer Authority

December 23, 2021

Office Partners XXII Block G1 LLC
1000 N. West Street
Wilmington DE 19801

RE: **Address TBD - 15219**
Water and Sewer Tap-in Plans

Dear Office Partners XXII Block G1 LLC,

The Pittsburgh Water and Sewer Authority (PWSA) has approved the tap-in plans for the above referenced 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.

If you have any questions, please feel free to contact me at (412) 255-8800 x8030.

Sincerely,

Wendy M. Dean
Engineering Tech II

Attachment

cc: PWSA File

Exhibit C

Penn Liberty Plaza I
1200 Penn Avenue
Pittsburgh PA 15222

info@pgh2o.com
T 412.255.2423
F 412.255.2475

www.pgh2o.com
@pgh2o

Customer Service /
Emergencies:
412.255.2423

Pittsburgh Water & Sewer Authority

C-2060
OFFICE PARTNERS XXII BLOCK G1 LLC
Address TBD

96.53	Water EDU's	=	$214,682.72
96.53	Sewer EDU's	=	$287,466.34
(1)	6" tap	=	$1,314.43
(1)	8" tap	=	$1,349.95
(1)	4" tap	=	$1,106.35
(1)	1.5" meter	=	$492.00 – Domestic Positive Displacement
(1)	3" meter	=	$1,668.00 – Compound Domestic
(1)	5/8" x ¾" meter	=	$235.00 – Fire Line

TOTAL = $508,314.79

Please make check or money order payable to PWSA or Pittsburgh Water and Sewer Authority. The approved permit will be processed and emailed after payment has been received.

**** 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.

Penn Liberty Plaza I
1200 Penn Avenue
Pittsburgh PA 15222

info@pgh2o.com
T 412.255.2423
F 412.255.2475

www.pgh2o.com
@pgh2o

Customer Service /
Emergencies:
412.255.2423

Erin M. Spencer

Subject: FW: Lower Hill G1/G4 Tap In Application

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

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 | www.mbakerintl.com

Exhibit D

Partridge, Toby

From:	Partridge, Toby
Sent:	Friday, February 4, 2022 4:49 PM
To:	Robert Herring, PE, PMP; Shannon Connell
Cc:	Developer_Tap_in_Pe.20014.72_Washington_Place_and_Bedford_Avenue@docs.e-builder.net; Julie Asciolla; Savich, Steven
Subject:	Lower Hill - Revised Tap-in Plans
Attachments:	Lower Hill - Proposed Water and Sanitary Calculations (Block G1) - 2022.02.04.pdf; Lower Hill - G1 Tap Plans - 2022.02.04.pdf; Lower Hill - G4 Tap Plans - 2022.02.04.pdf

Rob and Shannon,
The revised Tap-in plans for the Lower Hill Block G1 and G4 are attached. Please note that the plans have been split into two sets, one for parcel G1 and one for parcel G4. We also removed the G4 parcel water and sanitary taps as the program for that parcel is still being developed.

I have also included updated Water and Sewer Use calculations for the G1 parcel only.

Please let me know if you have any questions,
Toby

Toby Partridge | Technical Manager - Civil and Environmental
Michael Baker International | *We Make a Difference*
100 Airside Drive, Airside Business Park | Moon Township, PA 15108
[O] 412-375-3186
tpartridge@mbakerintl.com | www.mbakerintl.com

Exhibit E

Partridge, Toby

From:	Partridge, Toby
Sent:	Tuesday, February 15, 2022 12:16 PM
To:	Shannon Connell, EIT
Cc:	Robert Herring, PE, PMP; Savich, Steven; Developer_Tap_in_Pe.20014.72 _Washington_Place_and_Bedford_Avenue@docs.e-builder.net
Subject:	RE: EXTERNAL: RE: Lower Hill Development - Revised Tap-in Plans
Attachments:	C-2060 Washington Pl and Bedford Ave_Rev Feb 14 2022.docx; Lower Hill - G1 Tap Plans - Rev 2022.02.15.pdf

Hi Shannon,
The revised Tap-in plans are attached. Please note that the left most kiosk needs to remain. It is a utility kiosk/building for various other utilities.

I also took a stab at calculating the new Tap-in fee based on these drawings. Can you confirm the amount?

Thanks,
Toby

From: Shannon Connell, EIT <SConnell@pgh2o.com>
Sent: Friday, February 11, 2022 4:49 PM
To: Partridge, Toby <TPartridge@mbakerintl.com>; Savich, Steven <SSavich@mbakerintl.com>
Cc: Robert Herring, PE, PMP <RHerring@pgh2o.com>
Subject: EXTERNAL: RE: Lower Hill Development - Revised Tap-in Plans

Per our conversation earlier today, please see the attached markup with my comments of the changes needed for the revised tap-in plans.

Have a good weekend!
Shannon

Shannon Connell, EIT
Engineer III
Ext: 5523

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

https://pgh2o.com

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Exhibit F

Pittsburgh
Water & Sewer
Authority

February 22, 2022

Mr. Thomas Flanagan
PA Department of Environmental Protection
Clean Water Program
400 Waterfront Drive
Pittsburgh, PA 15222

Subject: Tap Allocation Authorization Letter

Dear Mr. Flanagan:

Please be advised that the Pittsburgh Water and Sewer Authority (PWSA) authorizes the tap allocations associated with the following Project:

Project Name:	Washington Place and Bedford Avenue - Revised
Project Address:	626 Washington Place Pittsburgh, PA 15219
Net Flow, gpd:	29,250
EDU's, 400gpd/EDU:	73.13

Our review is based on information provided by others under the assumption that this information was accurate and complete. Should you have any questions, please do not hesitate to contact me directly at x5523 or SConnell@pgh2o.com.

Sincerely,

Shannon Connell

Shannon Connell, EIT
Engineer III

cc: Barry King, PE, PMP – PWSA (via email)
Kate Mechler, PE – PWSA (via email)
Robert Herring, PE, PMP – PWSA (via email)
Toby Partridge– Applicant (via email)
Regis Ryan – DEP (via email)
eBuilder – Filing System (via email)

Exhibit G

Penn Liberty Plaza I
1200 Penn Avenue
Pittsburgh PA 15222

Info@pgh2o.com
T 412.255.2423
F 412.255.2475

www.pgh2o.com
@pgh2o

Customer Service /
Emergencies:
412.255.2423

Pittsburgh
Water & Sewer
Authority

February 22, 2022

Toby Partridge
Michael Baker International
110 Airside Drive
Moon Twp, PA 15108

Subject: Water and Sewer (W&S) Use Approval
Project Name: Washington Pl and Bedford Ave – REVISED (Project)
PWSA Project No.: 20014.72

Dear Toby:

The W&S Use Application for the Project has been approved, as summarized below:

Type of Flow	Sanitary, gpd	Water, gpd
Project Flow	29,250	28,559
Existing Flow	0	0
Net Flow	29,250	28,559

Our review was based on information provided by others under the assumption that this information was accurate and complete. Should you have any questions, please do not hesitate to contact me directly at 412-255-8800 x5523 or SConnell@pgh2o.com.

Sincerely,

Shannon Connell

Shannon Connell, EIT
Engineer III

Enclosure(s)
cc: Barry King, PE, PMP – PWSA (via email)
Kate Mechler, PE – PWSA (via email)
Robert Herring, PE, PMP – PWSA (via email)
eBuilder – Filing System (via email)

5/2021

Partridge, Toby

From: Partridge, Toby
Sent: Wednesday, February 23, 2022 1:46 PM
To: Shannon Connell, EIT; Robert Herring, PE, PMP
Cc: Developer_Tap_in_Pe.20014.72_Washington_Place_and_Bedford_Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: PWSA Development Application - Tap-in Plan Review Comments - Revised Washington Pl and Bedford Ave
Attachments: Lower Hill - G1 Tap Plans - Rev 2022.02.23.pdf

Thanks Shannon,
The attached drawings have been revised as requested below.

Thanks,
Toby

Toby Partridge | Technical Manager - Civil and Environmental
100 Airside Drive, Airside Business Park | Moon Township, PA 15108 | [O] 412-375-3186
tpartridge@mbakerintl.com | www.mbakerintl.com

Michael Baker INTERNATIONAL | *We Make a Difference*

From: Shannon Connell, EIT <SConnell@pgh2o.com>
Sent: Wednesday, February 23, 2022 11:27 AM
To: Partridge, Toby <TPartridge@mbakerintl.com>; Robert Herring, PE, PMP <RHerring@pgh2o.com>
Cc: Developer_Tap_in_Pe.20014.72_Washington_Place_and_Bedford_Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: PWSA Development Application - Tap-in Plan Review Comments - Revised Washington Pl and Bedford Ave

Hi Toby,

Per our Developer's Manual: "If a permit is issued, an additional $250 fee will be required for any revisions to plans."

Because revisions were made to the approved Water & Sewer Use application and to the approved Tap-in Plans, a second review fee is required.

Thanks,
Shannon

PGH2O

Shannon Connell, EIT
Engineer III
Ext: 5523

Exhibit H

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

https://pgh2o.com

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From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Wednesday, February 23, 2022 10:30 AM
To: Robert Herring, PE, PMP <RHerring@pgh2o.com>; Shannon Connell, EIT <SConnell@pgh2o.com>
Cc: Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: PWSA Development Application - Tap-in Plan Review Comments - Revised Washington Pl and Bedford Ave

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.
Hi Rob,
Understood and my apologies for being tiresome. I was just looking for a quick 5-10 minute conversation, not a long meeting, to make sure this round of review captured everything required for approval.

Can you provide the reason for the additional review fee? The Developer will want to know.

We'll have the drawings resubmitted this morning. No need for a call.

Toby

From: Robert Herring, PE, PMP <RHerring@pgh2o.com>
Sent: Wednesday, February 23, 2022 9:35 AM
To: Partridge, Toby <TPartridge@mbakerintl.com>; Shannon Connell, EIT <SConnell@pgh2o.com>
Cc: Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: PWSA Development Application - Tap-in Plan Review Comments - Revised Washington Pl and Bedford Ave

Toby,

I reviewed the markups and they are self-explanatory. Do you have a specific question? We are tired of meeting over every minor issue associated with this Project.

PGH2O

Robert Herring, PE, PMP

Senior Project Manager
Office: 412.255.8800
Ext: 5532

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

https://pgh2o.com



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From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Tuesday, February 22, 2022 5:20 PM
To: Shannon Connell, EIT <SConnell@pgh2o.com>
Cc: Robert Herring, PE, PMP <RHerring@pgh2o.com>;
Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: PWSA Development Application - Tap-in Plan Review Comments - Revised Washington Pl and Bedford Ave

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.
Shannon,
Do have 10 minutes for a quick call tomorrow morning around 8:30? I need to make sure that these drawings get everything required on them so they can be approved.

Thanks,
Toby

From: Shannon Connell, EIT <SConnell@pgh2o.com>
Sent: Tuesday, February 22, 2022 4:04 PM
To: Partridge, Toby <TPartridge@mbakerintl.com>
Cc: Robert Herring, PE, PMP <RHerring@pgh2o.com>;
Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: EXTERNAL: PWSA Development Application - Tap-in Plan Review Comments - Revised Washington Pl and Bedford Ave

Toby,

We have reviewed the Tap-in Plan for the Revised Washington Pl and Bedford Ave Project. Please address the following comments:

- The Development Application is administratively incomplete. Please submit the application fee in the amount of $250 to Wendy Dean (wdean@pgh2o.com). The application fee may be hand-delivered or mailed.
- Please revise the Tap-In Plan in accordance with the enclosed mark-ups.

Should you have any questions, please do not hesitate to contact me directly.

Thanks,

Shannon Connell, EIT
Engineer III
Ext: 5523

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

https://pgh2o.com

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PGHAO

2022 Fee Schedule

Residential Tap-In Permit*	$40.00
Water and Sewer Availability Letter Request Only	$40.00
Tap Termination Only Permit	$260.00
Hydrant Flow Test	$410.00
Maps and Records Request	$40.00

* There is no fee for party line separations.

Development Permit (includes W/S Availability Letter, DEP SFPM Review, and tap-in plan review)	$740.00
**Expedited	$1,290.00
DEP Sewage Facilities Planning Module Review Only	$320.00
**Expedited	$550.00
Tap-In Drawing Review Only	$420.00
**Expedited	$740.00
Development Permit Revisions	$140.00
Private Construction of Public Facilities Review	$580.00
**Expedited	$1,190.00

**Expedited guarantees review within 15 business days of payment

Waterline Shut (based on size of waterline in inches)	
During normal business hours	
4-12"	$300.00
16-48"	$410.00
After normal business hours	
4-12"	$430.00
16-48"	$600.00

Hydrant Use with Meter Permit (based on meter size in inches)	
5/8"	$250.00
5/8 x 3/4"	$250.00
3/4" (Positive displacement)	$270.00
3/4" (Electromagnetic or Ultrasonic)	$280.00
1" (Positive Displacement)	$300.00
1" (Electromagnetic or Ultrasonic)	$310.00
2 1/2"	$970.00

Connection Fee (based on size of tap in inches, fees are 1.5x for work performed outside business hrs.)	
1"	$340.00
4"	$400.00
6"	$400.00
8"	$400.00
10"	$400.00
12"	$400.00

Water Meters (based on size of meter in inches, purchased from and installed by PWSA)	
Domestic	
5/8"	$190.00
5/8 x 3/4"	$190.00
3/4" (Positive displacement)	$210.00
3/4" (Electromagnetic or Ultrasonic)	$220.00
1" (Positive Displacement)	$240.00
1-1/2"	$660.00
2"	$840.00
Domestic (Turbine)	
3"	$1,480.00
4"	$1,600.00
6"	$2,550.00
8"	$3,850.00
10"	$5,560.00
12"	$6,490.00
16"	$9,090.00
Domestic (Compound)	
3"	$1,540.00
4"	$1,730.00
6"	$2,900.00
8"	$9,580.00
Fire Systems (Turbine)	
3"	$2,320.00
4"	$2,670.00
6"	$3,420.00
8"	$6,120.00
10"	$10,740.00
Fire Systems (Compound)	
4"	$4,460.00
6"	$5,990.00
8"	$9,370.00
10"	$10,570.00

Exhibit I

CERTIFICATE OF SERVICE

I, David M. Nemberg, hereby certify that a true and correct copy of the within **Formal Complaint** was served upon all parties to the within matter, this date, by email, addressed as follows:

Samuel A. Hornak, Esq.
CLARK HILL PLC
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219
shornak@clarkhill.com

Date: 6/7/22

David M. Nemberg

IN THE PENNSYLVANIA UTILITY COMMISSION

OFFICE PARTNERS XXII BLOCK G1 LLC, No._____

Petitioner,

v.

PITTSBURGH WATER AND SEWER AUTHORITY,

Respondent.

ORDER

AND NOW, this _____ day of _____, 2022 it is hereby ORDERED that the applicable fees are the 2022 fees pled in this complaint, and the permit is issued based upon the 2022 rate schedule and all funds held in Court in excess of the amount due under the rate schedule be returned to Office Partners.

BY THE COURT

_____, J.

Pittsburgh Water & Sewer Authority

December 23, 2021

Office Partners XXII Block G1 LLC
1000 N. West Street
Wilmington DE 19801

RE: Address TBD - 15219
Water and Sewer Tap-in Plans

Dear Office Partners XXII Block G1 LLC,

The Pittsburgh Water and Sewer Authority (PWSA) has approved the tap-in plans for the above referenced 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.

If you have any questions, please feel free to contact me at (412) 255-8800 x8030.

Sincerely,

Wendy M. Dean
Engineering Tech II

Attachment

cc: PWSA File

EXHIBIT
tabbies
4
B. Kaplan

Penn Liberty Plaza I
1200 Penn Avenue
Pittsburgh PA 15222

info@pgh2o.com
T 412.255.2423
F 412.255.2475

www.pgh2o.com
@pgh2o

Customer Service /
Emergencies:
412.255.2423

David M. Nernberg

From: Matt Corace
Sent: Monday, January 3, 2022 4:28 PM
To: toby Partridge
Subject: FW: [EXT] C-2060 Washington Pl and Bedford Avenue Final Approval Letter
Attachments: Washington Pl and Bedford Avenue Final Approval.docx

This & the following the only items received by Wendy.

Matthew Corace

BPGS

1000 N. West Street, Suite 850
WILMINGTON, DE 19801
W 302.691.2126
C 302.383.9005
F 302.691.2099

WWW.BPGSCONSTRUCTION.COM

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From: Wendy Dean <bounces@e-builder.net>
Sent: Thursday, December 23, 2021 10:32 AM
To: Matt Corace <mcorace@bpgsconstruction.com>
Subject: [EXT] C-2060 Washington Pl and Bedford Avenue Final Approval Letter

Developer Tap in Permits

From	Wendy Dean
To	mcorace@bpgsconstruction.com;
CC	

C-2060 Washington Pl and Bedford Ave. Fee Sheet to follow

Documents attached to this email

1. Washington Pl and Bedford Avenue Final Approval.docx

e-Builder Technical Support
phone: 1-888-288-5717 fax: 1-888-576-9322
support@e-builder.net

David M. Nernberg

From: Matt Corace
Sent: Monday, January 3, 2022 4:29 PM
To: toby Partridge
Subject: FW: [EXT] C-2060 Washington Pl and Bedford Avenue Fee Sheet
Attachments: C-2060 Washington Pl and Bedford Ave.docx

2 of 2.

Matthew Corace

BPGS

1000 N. West Street, Suite 850
WILMINGTON, DE 19801
W 302.691.2126
C 302.383.9005
F 302.691.2099

WWW.BPGSCONSTRUCTION.COM

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From: Wendy Dean <bounces@e-builder.net>
Sent: Thursday, December 23, 2021 10:33 AM
To: Matt Corace <mcorace@bpgsconstruction.com>
Subject: [EXT] C-2060 Washington Pl and Bedford Avenue Fee Sheet

Developer Tap in Permits

From	Wendy Dean
To	mcorace@bpgsconstruction.com;
CC	

Please see attached

Documents attached to this email

1. C-2060 Washington Pl and Bedford Ave.docx

e-Builder Technical Support
phone: 1-888-288-5717 fax: 1-888-576-9322
support@e-builder.net

David M. Nernberg

From: Matt Corace
Sent: Monday, January 3, 2022 4:36 PM
To: Olivia Grunseich
Subject: FW: [EXT] C-2060 Washington Pl and Bedford Avenue Fee Sheet
Attachments: C-2060 Washington Pl and Bedford Ave.docx

The official request / summary for tap fees

Matthew Corace

BPGS

1000 N. West Street, Suite 850
WILMINGTON, DE 19801
302.691.2126
302.383.9005
302.691.2099

WEB: BPGSCONSTRUCTION.COM

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From: Wendy Dean <bounces@e-builder.net>
Sent: Thursday, December 23, 2021 10:33 AM
To: Matt Corace <mcorace@bpgsconstruction.com>
Subject: [EXT] C-2060 Washington Pl and Bedford Avenue Fee Sheet

Developer Tap in Permits

From	Wendy Dean
To	mcorace@bpgsconstruction.com;
CC	

Please see attached

Documents attached to this email

1. C-2060 Washington Pl and Bedford Ave.docx

e-Builder Technical Support
phone: 1-888-288-5717 fax: 1-888-576-9322
support@e-builder.net

David M. Nernberg

From: Matt Corace
Sent: Monday, January 3, 2022 4:38 PM
To: Bill.Hartle@pjdick.com; ERSKINE
Subject: FW: [EXT] C-2060 Washington Pl and Bedford Avenue Final Approval Letter
Attachments: Washington Pl and Bedford Avenue Final Approval.docx

Good Afternoon – wanted to share attached for your reference.

Matthew Corace

BPGS

1000 N. West Street, Suite 850
WILMINGTON, DE 19801
M 302.691.2126
C 302.383.9005
F 302.691.2099

WWW.BPGSCONSTRUCTION.COM

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From: Wendy Dean <bounces@e-builder.net>
Sent: Thursday, December 23, 2021 10:32 AM
To: Matt Corace <mcorace@bpgsconstruction.com>
Subject: [EXT] C-2060 Washington Pl and Bedford Avenue Final Approval Letter

Developer Tap in Permits

From	Wendy Dean
To	mcorace@bpgsconstruction.com;
CC	

C-2060 Washington Pl and Bedford Ave. Fee Sheet to follow

Documents attached to this email

1. Washington Pl and Bedford Avenue Final Approval.docx

e-Builder Technical Support
phone: 1-888-288-5717 fax: 1-888-576-9322
support@e-builder.net

David M. Nernberg

From: Matt Corace
Sent: Monday, January 3, 2022 5:05 PM
To: Olivia Grunseich
Subject: FW: [EXT] FW: EXTERNAL: C-2060 Washington Place and Bedford Avenue Fee Sheet and Final Approval Letter

FYI – we have to talk tomorrow on next steps with getting this check in in hands of PWSA ASAP. HIGH PRIORITY!

Until then,

Matthew Corace

BPGS

1000 N. West Street, Suite 850
WILMINGTON, DE 19801
P 302.691.2126
C 302.383.9005
F 302.691.2099

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From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Monday, January 3, 2022 5:01 PM
To: Matt Corace <mcorace@bpgsconstruction.com>
Subject: [EXT] FW: EXTERNAL: C-2060 Washington Place and Bedford Avenue Fee Sheet and Final Approval Letter

Drawings/permits not issued until fees are paid.

From: Wendy Dean <WDean@pgh2o.com>
Sent: Monday, January 3, 2022 4:50 PM
To: Partridge, Toby <TPartridge@mbakerintl.com>
Subject: RE: EXTERNAL: C-2060 Washington Place and Bedford Avenue Fee Sheet and Final Approval Letter

Toby,

When fees are paid approved drawings and permits will be emailed.

EXHIBIT
tabbies
5
B. Kaplan

Wendy Dean
Engineering Technician II
Office: 412.255.8800
Ext: 8030

Pittsburgh Water and Sewer Authority
1200 Penn Ave,Pittsburgh,PA15222

https://pgh2o.com

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From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Monday, January 3, 2022 3:26 PM
To: Wendy Dean <WDean@pgh2o.com>
Subject: RE: EXTERNAL: C-2060 Washington Place and Bedford Avenue Fee Sheet and Final Approval Letter

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Thanks Wendy. Are there drawings with a permit number or stamp that will follow this approval letter?

Toby

From: Wendy Dean <WDean@pgh2o.com>
Sent: Monday, January 3, 2022 12:32 PM
To: Partridge, Toby <TPartridge@mbakerintl.com>
Subject: EXTERNAL: C-2060 Washington Place and Bedford Avenue Fee Sheet and Final Approval Letter

Good Afternoon,

Please see attached Final Approval Letter and Fee Sheet.

Wendy Dean
Engineering Technician II
Office: 412.255.8800
Ext: 8030

Pittsburgh Water and Sewer Authority
1200 Penn Ave,Pittsburgh,PA15222

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From: Shannon Connell <SConnell@pgh2o.com>
Sent: Monday, January 3, 2022 12:12 PM
To: Wendy Dean <WDean@pgh2o.com>
Subject: FW: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

Hi Wendy!

I hope you had a good time over the holidays! I noticed that you uploaded the approval letter and tap-in fee sheet for 20014.72 Washington Pl and Bedford Avenue to the e-builder folder on December 23rd. Can you please forward that email to Toby Partridge (TPartridge@mbakerintl.com) so he can be looped in?

Have a Happy New Year!
Shannon

Shannon Connell
Engineer III
Ext: 5523

Pittsburgh Water and Sewer Authority
1200 Penn Ave.Pittsburgh,PA15222

https://pgh2o.com



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From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Monday, January 3, 2022 12:05 PM
To: Shannon Connell <SConnell@pgh2o.com>
Cc: Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net; Robert Herring, PE, PMP <RHerring@pgh2o.com>

Subject: RE: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

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Shannon,
Sorry for bugging you again...but know that your help through this has been greatly appreciated!

Realizing a lot of people were off for the last week or so, any idea when we will hear from the Permits Department?

Also, when will we hear about the final tap fee amount? And when is it due? It will take our client a little bit of time to process the withdrawal/check for the tap fees.

Thanks,
Toby

Toby Partridge | Technical Manager - Civil and Environmental
100 Airside Drive, Airside Business Park | Moon Township, PA 15108 | [O] 412-375-3186
tpartridge@mbakerintl.com | www.mbakerintl.com

From: Shannon Connell <SConnell@pgh2o.com>
Sent: Tuesday, December 21, 2021 8:44 AM
To: Partridge, Toby <TPartridge@mbakerintl.com>; Robert Herring, PE, PMP <RHerring@pgh2o.com>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Boris Kaplan <bkaplan@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>; Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

Toby,

I sent the signed Tap-in Plans for final processing yesterday. You should be hearing from our Permits Department shortly.

Thanks,
Shannon

PGH2O

Shannon Connell
Engineer III
Ext: 5523

Pittsburgh Water and Sewer Authority
1200 Penn Ave,Pittsburgh,PA15222

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From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Tuesday, December 21, 2021 8:42 AM
To: Robert Herring, PE, PMP <RHerring@pgh2o.com>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Shannon Connell <SConnell@pgh2o.com>; Boris Kaplan <bkaplan@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>; Barry King, PE, PMP <BKing@pgh2o.com>; Kate Mechler, PE <KMechler@pgh2o.com>;
Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

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Rob,
Do you now have what you need to move the development permit for the water and sewer taps forward to approval? If so, any chance you have a timeline for when we might have the signed drawings?

Thanks,
Toby

From: Flanagan, Thomas <thflanagan@pa.gov>
Sent: Tuesday, December 21, 2021 7:36 AM
To: Partridge, Toby <TPartridge@mbakerintl.com>; Robert Herring, PE, PMP <RHerring@pgh2o.com>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Shannon Connell <SConnell@pgh2o.com>; Boris Kaplan <bkaplan@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>; howard.wein@bipc.com; Barry King, PE, PMP <BKing@pgh2o.com>; Kate Mechler, PE <KMechler@pgh2o.com>;
Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

The tract is the entire site. The flow (roughly 839 gpd) was approved for the entire site and since this is the first development for the entire site, in order to move this project forward, the Department is not going to recognized that the lot has been subdivided until an additional lot is created at which time the applicant should identify the lot that was created for the FNB Financial Center. If the PWSA wants to maintain the flow for each block this decision should not affect that consideration.

From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Monday, December 20, 2021 3:15 PM
To: Flanagan, Thomas <thflanagan@pa.gov>; Robert Herring, PE, PMP <RHerring@pgh2o.com>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Shannon Connell <SConnell@pgh2o.com>; Boris Kaplan <bkaplan@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>; howard.wein@bipc.com; Barry King, PE,

PMP <BKing@pgh2o.com>; Kate Mechler, PE <KMechler@pgh2o.com>;
Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

Tom and Rob,
To confirm, the email below is in reference to the development of the G Block only. The tract referenced would be the G Block, right? Thus, the original flows assigned to the G Block (roughly 184k gpd) will now be assigned to this project. Not the flows for the entire Lower Hill development (roughly 839k gpd). The remainder of the 839k gpd will remain with the blocks as shown in the original Planning Module, correct?

I wanted to confirm that I understood correctly.

Thanks,
Toby

From: Flanagan, Thomas <thflanagan@pa.gov>
Sent: Monday, December 20, 2021 2:39 PM
To: Robert Herring, PE, PMP <RHerring@pgh2o.com>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Shannon Connell <SConnell@pgh2o.com>; Boris Kaplan <bkaplan@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>; howard.wein@bipc.com; Partridge, Toby <TPartridge@mbakerintl.com>; Barry King, PE, PMP <BKing@pgh2o.com>; Kate Mechler, PE <KMechler@pgh2o.com>; Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

Based on the submitted information and the discussions with the developer, the Department has determined that this development does not require sewage planning. This is based on the fact that this is the initial development of the entire tract. Any future development on any portion of the entire tract will require sewage planning.

From: Robert Herring, PE, PMP <RHerring@pgh2o.com>
Sent: Friday, December 17, 2021 4:06 PM
To: Flanagan, Thomas <thflanagan@pa.gov>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Shannon Connell <SConnell@pgh2o.com>; Boris Kaplan <bkaplan@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>; howard.wein@bipc.com; Partridge, Toby <tpartridge@mbakerintl.com>; Barry King, PE, PMP <BKing@pgh2o.com>; Kate Mechler, PE <KMechler@pgh2o.com>; Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

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Hi Tom,

Per an email from the development team for the proposed First National Bank Tower at the intersection of Washington Place and Bedford Avenue, we understand the following:

- There was a meeting earlier today to discuss the issue of sewage planning for the proposed development.

- The development team presented an option to deduct flows from a master planning module, however, the DEP wasn't comfortable with the idea since the blocks have not yet been subdivided.
- In an effort to minimize delays, both parties were agreeable to designating 100% of the Block G flows (175,000 gal) on the existing planning module to the subdivided lot for the FNB Financial Center (29,650 gpd), conditioned upon the PWSA not taking any issue.

Based on the foregoing, please be advised that the PWSA takes no exception to designating the Block G flows entirely to the First National Bank Financial Tower. We have enclosed for your use the revised Preliminary Determination on the Need for Sewage Planning. The revision mainly consisted of removing attachments which referenced the deduction of flows from the overall planning module. Furthermore, we understand that future developments within Block G shall require a separate planning module.

Should you have any questions, or if you feel that we have misunderstood the results of your meeting with the development team, please do not hesitate to contact us directly.

Thanks,

PGH2O

Robert Herring, PE, PMP
Project Manager
Office: 412.255.8800
Ext: 5532

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

https://pgh2o.com

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From: Wesley Schwandt
Sent: Friday, January 28, 2022 8:51 AM
To: Partridge, Toby; Boris Kaplan; Savich, Steven; Matt Corace; Craig Dunham
Cc: Bomani Howze
Subject: RE: EXTERNAL: FW: [EXT] FW: PWSA

We don't have the G4 program confirmed at this time. We need to address the G4 piece after

H. WESLEY SCHWANDT
PRESIDENT

BPGS

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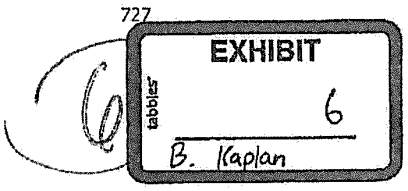
From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Thursday, January 27, 2022 5:36 PM
To: Boris Kaplan <bkaplan@bpgroup.net>; Savich, Steven <SSavich@mbakerintl.com>; Matt Corace <mcorace@bpgsconstruction.com>; Craig Dunham <dunham@dunhamregroup.com>
Cc: Wesley Schwandt <wschwandt@bpgsconstruction.com>; Bomani Howze <bhowze@bpgroup.net>
Subject: RE: EXTERNAL: FW: [EXT] FW: PWSA

Adding to Steve's comments for #2, we may have justification for splitting the tap in plans based on the flow allocations. I'll try to keep this at 10,000 feet, but right now the tap in plans show a combined flow rate that includes both G1 and G4. Based on our conversations with PADEP, we may want to split out the flow rate for the two parcels. I also am not sure what the implications would be for developing G4 because we would need to sort out the planning module issue. This approach might allow us to get the building permit now and then address G4 after. I'm not sure if this just muddies the water more or not, but it is a thought.

From: Boris Kaplan <bkaplan@bpgroup.net>
Sent: Thursday, January 27, 2022 5:05 PM
To: Savich, Steven <SSavich@mbakerintl.com>; Matt Corace <mcorace@bpgsconstruction.com>; Craig Dunham <dunham@dunhamregroup.com>; Partridge, Toby <TPartridge@mbakerintl.com>
Cc: Wesley Schwandt <wschwandt@bpgsconstruction.com>; Bomani Howze <bhowze@bpgroup.net>
Subject: RE: EXTERNAL: FW: [EXT] FW: PWSA

Hearing no further objections, we're on track to break apart the tap in plan into G1 and G4 components. As for execution:

727



OfficePartners_000752

- How quickly can we prep the updated submissions?
- Should someone call Julie Asciolla to let her know how we are moving forward?

Boris Kaplan
Senior Vice President

The Buccini/Pollin Group
M 610-202-8606

www.bpgroup.net

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From: Savich, Steven <SSavich@mbakerintl.com>
Sent: Thursday, January 27, 2022 4:31 PM
To: Boris Kaplan <bkaplan@bpgroup.net>; Matt Corace <mcorace@bpgsconstruction.com>; Craig Dunham <dunham@dunhamregroup.com>; Partridge, Toby <TPartridge@mbakerintl.com>
Cc: Wesley Schwandt <wschwandt@bpgsconstruction.com>; Bomani Howze <bhowze@bpgroup.net>
Subject: RE: EXTERNAL: FW: [EXT] FW: PWSA

1) splitting the application into G1 and G4 components won't have an unintended ripple impact on completed PWSA agreements, bonds, etc? If those supporting documents have to change as well, we'd likely be facing a more protracted delay than the 15 days review process. The bonds and Developer Agreement are for public facilities being transferred to PWSA and not for any of the taps ... so no will not.
2) Is there a different plan update that we should consider instead of splitting apart the G1 and G4 parcels? Nothing else really needs to change – Toby any thoughts?
3) Can we use the PWSA notice from December and other approvals to keep advancing the work in the field for another couple of weeks? My opinion, I think we still advance with Allegheny Plumbing with that letter to get the initial review and inspection schedule set with a promise of providing the balance of the information once received by PWSA.

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 | www.mbakerintl.com

From: Boris Kaplan <bkaplan@bpgroup.net>
Sent: Thursday, January 27, 2022 10:41 AM
To: Matt Corace <mcorace@bpgsconstruction.com>; Craig Dunham <dunham@dunhamregroup.com>; Savich, Steven <SSavich@mbakerintl.com>; Partridge, Toby <TPartridge@mbakerintl.com>
Cc: Wesley Schwandt <wschwandt@bpgsconstruction.com>; Bomani Howze <bhowze@bpgroup.net>
Subject: EXTERNAL: FW: [EXT] FW: PWSA
Importance: High

Good morning. After the OAC yesterday, we discussed our path forward with PWSA. We said that we would notify PWSA staff and Director Pickering of our intent to:

1) Withdraw the current tap-in fee application
2) Submit revised applications and tap plans that separate parcels G1 and G4
3) Request that both applications receive the 15-day expedited review and pay the $1300 fee per application for expedited review

Before we send a follow up communication to PWSA, can we quickly confirm that

1) splitting the application into G1 and G4 components won't have an unintended ripple impact on completed PWSA agreements, bonds, etc? If those supporting documents have to change as well, we'd likely be facing a more protracted delay than the 15 days review process.
2) Is there a different plan update that we should consider instead of splitting apart the G1 and G4 parcels?
3) Can we use the PWSA notice from December and other approvals to keep advancing the work in the field for another couple of weeks?

Thanks,
Boris

Boris Kaplan
Senior Vice President

The Buccini/Pollin Group
M 610-202-9606

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From: Boris Kaplan
Sent: Wednesday, January 26, 2022 1:30 PM
To: Matt Corace <mcorace@bpgsconstruction.com>; Wesley Schwandt <wschwandt@bpgsconstruction.com>; Chris Buccini <CBuccini@bpgroup.net>
Cc: Bomani Howze <bhowze@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>
Subject: Fwd: [EXT] FW: PWSA

Bomani and I just heard from Kevin that his outreach to PWSA has not been successful to get the new few structure applied. Do we have sufficient approvals of trade permits and work in field to work with Baker on an amendment to the plan that would be eligible for approval under the new structure? I heard at OAC that we do not have flexibility to throw this back into PWSA review. Can you confirm that we're going with higher fees?

Sent from my iPhone

Begin forwarded message:

> **From:** Kevin Acklin <kacklin@pittsburghpenguins.com>
> **Date:** January 26, 2022 at 1:11:06 PM EST
> **To:** Boris Kaplan <bkaplan@bpgroup.net>, "Bomani Howze (bhowze@olmecdevelopment.com)" <bhowze@olmecdevelopment.com>
> **Cc:** Grant Gittlen <ggittlen@pittsburghpenguins.com>
> **Subject: [EXT] FW: PWSA**

I wish I had better news. They are bound by the PUC regulations and don't have any flexibility

From: Will Pickering <WPickering@pgh2o.com>
Sent: Wednesday, January 26, 2022 12:59 PM
To: Kevin Acklin <kacklin@pittsburghpenguins.com>
Subject: RE: PWSA

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Hi Kevin –

It's always good to hear from you! I researched this issue with our team, and I believe we're on solid ground applying the tap fees. PWSA officially approved the tap plan in late December when our previous PUC-approved fee structure was applicable. The confusion seems to be that we do not "issue" the permit until the developer pays the fee. There is no more analysis required on our end, and we made an effort to expedite our review at the developer's request late last year.

Let me know if you need anything else, and I really appreciate your support. As you know, the fee revenue will undoubtedly be put to good use as we try to rebuild our water and sewer system.

Best,

Will

PGH2O

Will Pickering
Chief Executive Officer
Office: 412.255.2099
Cell: 412.657.4031

Pittsburgh Water and Sewer Authority
1200 Penn Ave,Pittsburgh,PA15222

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Kevin Acklin
Chief Operating Officer and General Counsel
Pittsburgh Penguins
kacklin@pittsburghpenguins.com

Office: 412-255-1921 | Fax: 412-255-1982 | Cell: 412-303-1295
PPG Paints Arena | 1001 Fifth Avenue | Pittsburgh, PA | 15219

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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.

Get Outlook for iOS

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.

BPG
Boris Kaplan
Senior Vice President
The Buccini/Pollin Group
M 610-202-8500
www.bpgroup.net
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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
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Kevin, Grant,

484 EXHIBIT tabbies 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 a 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

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

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

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

From: Matt Corace <mcorace@bpgsconstruction.com>
Sent: Tuesday, January 18, 2022 5:46 PM
To: Craig Dunham <dunham@dunhamregroup.com>; Kevin Acklin <kacklin@pittsburghpenguins.com>; gGittlen <ggittlen@pittsburghpenguins.com>
Cc: Boris Kaplan <bkaplan@bpgroup.net>; Wesley Schwandt <wschwandt@bpgsconstruction.com>; Bomani Howze <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, PLI & 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 Asciolla, 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

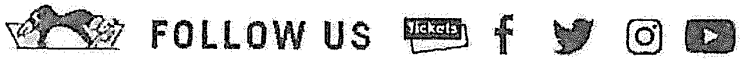
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Kevin Acklin
Chief Operating Officer and General Counsel
Pittsburgh Penguins
kacklin@pittsburghpenguins.com
Office: 412-255-1921 | Fax: 412-255-1982 | Cell: 412-303-1295

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David M. Nernberg

From: Matt Corace
Sent: Wednesday, January 5, 2022 4:43 PM
To: Savich, Steven; Partridge, Toby
Subject: RE: EXTERNAL: RE: [EXT] RE: Possible Good News

Please & Thank you!

Matthew Corace

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From: Savich, Steven <SSavich@mbakerintl.com>
Sent: Wednesday, January 5, 2022 4:41 PM
To: Matt Corace <mcorace@bpgsconstruction.com>; Partridge, Toby <TPartridge@mbakerintl.com>
Subject: RE: EXTERNAL: RE: [EXT] RE: Possible Good News

I take this to mean that the EDU based fee for sewer will remain and possibly increase some. The fees for taps (by size) of waterlines and the EDU based water fees will go away. I expect the meter costs to remain as well. I have only gotten some partial information on this but will look to confirm with Julie at PWSA tomorrow ...

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 | www.mbakerintl.com

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From: Matt Corace <mcorace@bpgsconstruction.com>
Sent: Wednesday, January 5, 2022 4:38 PM

EXHIBIT C

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To: Savich, Steven <SSavich@mbakerintl.com>; Partridge, Toby <TPartridge@mbakerintl.com>
Subject: EXTERNAL: RE: [EXT] RE: Possible Good News

Agreed.. When we write tap in fees what value are we talking about?

Matthew Corace

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302.691.2099

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From: Savich, Steven <SSavich@mbakerintl.com>
Sent: Wednesday, January 5, 2022 4:24 PM
To: Partridge, Toby <TPartridge@mbakerintl.com>; Matt Corace <mcorace@bpgsconstruction.com>
Subject: [EXT] RE: Possible Good News

Possibly this is where we can use some of the political capital to sway the consideration of what is approved ...

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ssavich@mbakerintl.com | www.mbakerintl.com

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From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Wednesday, January 5, 2022 4:20 PM
To: Savich, Steven <SSavich@mbakerintl.com>; mcorace@bpgsconstruction.com
Subject: RE: Possible Good News

We received approval of the tap-in plans on 12/23, however the letter says that the permit is not considered issued until the permit fees are paid. I imagine there will be some nuance to the language when announced, but it is worth a question.

From: Savich, Steven <SSavich@mbakerintl.com>
Sent: Wednesday, January 5, 2022 4:12 PM
To: mcorace@bpgsconstruction.com
Cc: Partridge, Toby <TPartridge@mbakerintl.com>
Subject: Possible Good News

FYI.

I just had got a notice from one of my staff who met with PWSA on a separate project ... they are cancelling all tap in fees for all projects effective Jan 1st. If a project was previously issued a permit then it still has to pay the fee. Was the PWSA permit issued after January 1?

There will be a public announcement within a week or two, so maybe this is an opportunity to at least ask the question ...

However, there will be an updated sewage fee and application fee which will offset some of the savings, but overall it will not be nearly as much as the current tap in fees.

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PWSA_OP_MST_0242

David M. Nernberg

From: Matt Corace
Sent: Thursday, January 20, 2022 3:08 PM
To: Boris Kaplan
Subject: RE: [EXT] Re: PWSA tap-in fees

I am sorry Boris, don't know what more to write Boris..

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  - Since the building will be held to higher usage rates downstream we will feel the burden at both ends.
- This PWSA approval is critical and time-sensitive, as several additional permits we are currently seeking directly tie to a resolution.

Matthew Corace

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D 302.691.2099

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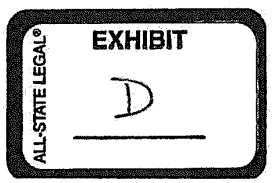
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From: Boris Kaplan <bkaplan@bpgroup.net>
Sent: Thursday, January 20, 2022 12:32 PM
To: Matt Corace <mcorace@bpgsconstruction.com>
Subject: RE: [EXT] Re: PWSA tap-in fees

Need a high level summary that explains why this is important: "I'm reaching out to see if you might be able to lead me in the right direction regarding PWSA's new tap-in fees. I believe the issue can be resolved if we're able to get a meeting with the Dir. Will Pickering." It's 2-3 sentences pulled from what you sent Kevin and underscores that we're not seeking any favorable treatment of consideration – just for the permit date (yet to be determined) to trigger the fee structure that went into effect 1/12/22.

Kevin said that he will reach out Director Pickering before the larger call given his relationship.



OfficePartners_000563

We should get feedback from Steve on any reasonable/plan modifications that can also help supersede the correspondence from late December.

Boris Kaplan
Senior Vice President

The Buccini/Pollin Group
M 610-202-8606

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From: Matt Corace <mcorace@bpgsconstruction.com>
Sent: Thursday, January 20, 2022 11:34 AM
To: Boris Kaplan <bkaplan@bpgroup.net>
Subject: FW: [EXT] Re: PWSA tap-in fees

Who should respond to this?

Matthew Corace

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From: Will Pickering <WPickering@pgh2o.com>
Sent: Thursday, January 20, 2022 11:32 AM
To: Bomani Howze <bhowze@bpgroup.net>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Jennifer Presutti <JPresutti@pgh2o.com>; Matt Corace <mcorace@bpgsconstruction.com>
Subject: RE: [EXT] Re: PWSA tap-in fees

Hi Diamonte – Thank you for making the connection. I've moved you and David to the bcc on this thread for now while we work on logistics.

OfficePartners_000564

OfficePartners_000563

PWSA_OP_MST_0244

Mr. Howze – Can you please give me a better sense of the issues you'd like to discuss? I want to make sure the appropriate members of the PWSA team are included in the conversation.

Best,

Will

Will Pickering
Chief Executive Officer
Office: 412.255.2099
Cell: 412.657.4031

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

https://pgh2o.com

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From: Bomani Howze <bhowze@bpgroup.net>
Sent: Wednesday, January 19, 2022 9:53 AM
To: Diamonte Walker <dwalker@ura.org>
Cc: Matt Corace <mcorace@bpgsconstruction.com>; Will Pickering <WPickering@pgh2o.com>; David Geiger <dgeiger@ura.org>
Subject: RE: [EXT] Re: PWSA tap-in fees

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Thanks much, Diamonte!
David, it is my pleasure to virtually meet.

Director Pickering,
I hope this email finds you well. Per the matter described below, I'd like to arrange a time for my colleague, Matt Corace, Senior Project Manager and I to meet with you to discuss challenges to obtaining approvals/permitting for the FNB Financial Center.

Can you have your admin help us find times to meet?

Thank you, kindly!

From: Diamonte Walker <dwalker@ura.org>
Sent: Wednesday, January 19, 2022 8:06 AM
To: Bomani Howze <bhowze@bpgroup.net>
Cc: Matt Corace <mcorace@bpgsconstruction.com>; Will Pickering <WPickering@pgh2o.com>; David Geiger <dgeiger@ura.org>
Subject: [EXT] Re: PWSA tap-in fees

Good Morning Bomani,

I'm not wholly familiar with PWSA tap in fee protocols but I have copied Director Pickering to this email for more direct communication with PWSA.

I've also copied David Geiger, the URA's Senior Advisor for visibility as he's quite adroit at helping to navigate these matters.

Director Pickering, Please see the inquiry below.

Best,

Diamonte

Dr. Diamonte Walker
Deputy Executive Director
Urban Redevelopment Authority of Pittsburgh
412 Blvd of the Allies, 9th Floor
Pittsburgh, PA 15219
412.255.6610 OFFICE

ura.org

twitter.com/urapgh

From: Bomani Howze <bhowze@bpgroup.net>
Sent: Wednesday, January 19, 2022 7:32 AM
To: Diamonte Walker <dwalker@ura.org>
Cc: Matt Corace <mcorace@bpgsconstruction.com>
Subject: PWSA tap-in fees

Dep. Dir. Walker,
I hope the New Year is off to a productive start and already treating you well.
I'm reaching out to see if you might be able to lead me in the right direction regarding PWSA's new tap-in fees. I believe the issue can be resolved if we're able to get a meeting with the Dir. Will Pickering.
Do you have a relationship with him or a high level staffer that can arrange a meeting?

Bomani M. Howze
Vice President of Development

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Matthew Corace

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Who should respond to this?

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Deputy Executive Director
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- We want our payment to align with current fee structure.
  - Due to the timing/date of Permit Issuance
  - Since the building will be held to higher usage rates downstream we will feel the burden at both ends.
- This PWSA approval is critical and time-sensitive, as several additional permits we are currently seeking directly tie to a resolution.

Matthew Corace

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From: Boris Kaplan <bkaplan@bpgroup.net>
Sent: Thursday, January 20, 2022 12:32 PM
To: Matt Corace <mcorace@bpgsconstruction.com>
Subject: RE: [EXT] Re: PWSA tap-in fees

Need a high level summary that explains why this is important: "I'm reaching out to see if you might be able to lead me in the right direction regarding PWSA's new tap-in fees. I believe the issue can be resolved if we're able to get a meeting with the Dir. Will Pickering." It's 2-3 sentences pulled from what you sent Kevin and underscores that we're not seeking any favorable treatment of consideration – just for the permit date (yet to be determined) to trigger the fee structure that went into effect 1/12/22.

Kevin said that he will reach out Director Pickering before the larger call given his relationship.

We should get feedback from Steve on any reasonable/plan modifications that can also help supersede the correspondence from late December.

Boris Kaplan
Senior Vice President

The Buccini/Pollin Group
M 610-202-8606

www.bpgroup.net

MISSION
VALUES
COMMUNITY

From: Matt Corace <mcorace@bpgsconstruction.com>
Sent: Thursday, January 20, 2022 11:34 AM
To: Boris Kaplan <bkaplan@bpgroup.net>
Subject: FW: [EXT] Re: PWSA tap-in fees

Who should respond to this?

Matthew Corace

BPGS

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From: Will Pickering <WPickering@pgh2o.com>
Sent: Thursday, January 20, 2022 11:32 AM
To: Bomani Howze <bhowze@bpgroup.net>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Jennifer Presutti <JPresutti@pgh2o.com>; Matt Corace <mcorace@bpgsconstruction.com>
Subject: RE: [EXT] Re: PWSA tap-in fees

Hi Diamonte – Thank you for making the connection. I've moved you and David to the bcc on this thread for now while we work on logistics.

Mr. Howze – Can you please give me a better sense of the issues you'd like to discuss? I want to make sure the appropriate members of the PWSA team are included in the conversation.

Best,

Will

Will Pickering
Chief Executive Officer
Office: 412.255.2099
Cell: 412.657.4031

Pittsburgh Water and Sewer Authority
1200 Penn Ave,Pittsburgh,PA15222

https://pgh2o.com

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From: Bomani Howze <bhowze@bpgroup.net>
Sent: Wednesday, January 19, 2022 9:53 AM
To: Diamonte Walker <dwalker@ura.org>
Cc: Matt Corace <mcorace@bpgsconstruction.com>; Will Pickering <WPickering@pgh2o.com>; David Geiger <dgeiger@ura.org>
Subject: RE: [EXT] Re: PWSA tap-in fees

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.
Thanks much, Diamonte!
David, it is my pleasure to virtually meet.

Director Pickering,
I hope this email finds you well. Per the matter described below, I'd like to arrange a time for my colleague, Matt Corace, Senior Project Manager and I to meet with you to discuss challenges to obtaining approvals/permitting for the FNB Financial Center.

Can you have your admin help us find times to meet?

Thank you, kindly!

From: Diamonte Walker <dwalker@ura.org>
Sent: Wednesday, January 19, 2022 8:06 AM
To: Bomani Howze <bhowze@bpgroup.net>
Cc: Matt Corace <mcorace@bpgsconstruction.com>; Will Pickering <WPickering@pgh2o.com>; David Geiger <dgeiger@ura.org>
Subject: [EXT] Re: PWSA tap-in fees

Good Morning Bomani,

I'm not wholly familiar with PWSA tap in fee protocols but I have copied Director Pickering to this email for more direct communication with PWSA.

I've also copied David Geiger, the URA's Senior Advisor for visibility as he's quite adroit at helping to navigate these matters.

Director Pickering, Please see the inquiry below.

Best,

Diamonte

Dr. Diamonte Walker
Deputy Executive Director
Urban Redevelopment Authority of Pittsburgh
412 Blvd of the Allies, 9th Floor
Pittsburgh, PA 15219
412.255.6610 OFFICE

ura.org

twitter.com/urapgh

From: Bomani Howze <bhowze@bpgroup.net>
Sent: Wednesday, January 19, 2022 7:32 AM
To: Diamonte Walker <dwalker@ura.org>
Cc: Matt Corace <mcorace@bpgsconstruction.com>
Subject: PWSA tap-in fees

Dep. Dir. Walker,
I hope the New Year is off to a productive start and already treating you well.
I'm reaching out to see if you might be able to lead me in the right direction regarding PWSA's new tap-in fees. I believe the issue can be resolved if we're able to get a meeting with the Dir. Will Pickering.
Do you have a relationship with him or a high level staffer that can arrange a meeting?

Bomani M. Howze
Vice President of Development

The Buccini/Pollin Group
www.bpgroup.net

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David M. Nernberg

From: Matt Corace
Sent: Wednesday, January 5, 2022 4:49 PM
To: Wesley Schwandt
Subject: FW: EXTERNAL: RE: [EXT] RE: Possible Good News

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From: Matt Corace <mcorace@bpgsconstruction.com>
Sent: Wednesday, January 5, 2022 4:38 PM

EXHIBIT E

OfficePartners_000091

To: Savich, Steven <SSavich@mbakerintl.com>; Partridge, Toby <TPartridge@mbakerintl.com>
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OfficePartners_000091

PWSA_OP_MST_0260

David M. Nernberg

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PWSA_OP_MST_0263

David M. Nernberg

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PWSA_OP_MST_0266

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONDENT THE PITTSBURGH WATER AND SEWER AUTHORITY'S MOTION FOR SUMMARY JUDGMENT** was served electronically via the Commission's electronic filing system, as well as by courtesy copy via electronic mail, this 26th day of May, 2023, upon the following:

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

/s/ Ashley L. Buck
Ashley L. Buck

271733205.v1

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

THE PITTSBURGH WATER AND SEWER AUTHORITY'S ANSWER AND BRIEF IN OPPOSITION TO OFFICE PARTNERS' MOTION FOR SUMMARY JUDGMENT

Pursuant to 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 Summary Judgment ("Motion") in the above-captioned numbers.[1]

INTRODUCTION

Office Partners admits that this case is a "relatively simple matter" in which the Pennsylvania Public Utility Commission (the "Commission") and the PWSA agreed to reduce tap-in fees "***beginning in 2022 for all customers***." Motion, p. 1, emphasis added. The pertinent analysis essentially begins and ends there, as the Office Partners application underlying this matter (the "Application") was applied for and approved in 2021. A new tariff took effect on January 13,

[1] While the PWSA submits that an answer pursuant to 52 Pa. Code § 5.102, § 1.36, and/or § 5.61 is not necessary 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 the sworn and/or verified parts of the record.



2022, which had the effect of eliminating the tap-in fees and changing the PWSA's overall rate structure (the "2022 PUC Tariff").[2] 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. The PWSA declined to deviate from the Governing PUC Tariff (defined below) 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.

The PWSA's actions at all relevant times are consistent with the Rules and Regulations approved by the Commission after significant public comment and participation, manifest in the 2022 PUC Tariff. In its Motion, and generally in this action, Office Partners nevertheless asks the Commission to re-write the 2022 PUC Tariff after the fact and to mandate the PWSA's deviation from the Governing PUC Tariff in order to provide Office Partners with financial savings at the expense of ratepayers—all in derogation of the filed rate doctrine and the PWSA's consistent treatment of similar applications, and without a substantial basis in law or fact. For the reasons set forth herein, the Motion must be denied.

COUNTER-STATEMENT OF THE CASE

The PUC Tariff that forms the basis of this matter was effective March 1, 2019, and is set forth at PUC Docket No. R-2018-3002647 (the "Governing PUC Tariff"), providing the following Tapping Fee:

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

[2] The docket for the Commission's consideration and approval of the 2022 PUC Tariff (the "Rate Case") is R-2021-3024779.

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

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. Separately, the 2022 PUC Tariff went into effect on January 13, 2022.

Office Partners is developing commercial property known as the FNB Financial Center ("FNB Tower Project"), which had a total project budget of approximately $240,000,000.00, and a specific tap-in budget consistent with the fees ultimately charged by the PWSA.[3] *See* Complaints, ¶ 3; Kaplan Dep. 68:16-69:4. The relevant timeline is not in dispute. Office Partners agrees that it submitted the Application to tap in to the PWSA's infrastructure in 2021. Motion, p. 1; *see also* Asciolla Dep. at 17:4-18:2.[4] Throughout the application process, Office Partners sought to expedite—not to delay—the PWSA's consideration and approval of the Application, and

[3] It bears mentioning that Office Partners is not suffering a "loss" as described in its Motion because, at all relevant times hereto, Office Partners budgeted for the amount that is in dispute. Motion, p. 2. In fact, the fee in dispute is a mere attempt at after-the-fact cost savings on the FNB Tower Project. Mr. Kaplan stated that, as project manager, "it's my duty to keep identifying reasonable savings that could be realized in a way that offsets potential increases that occur across the rest of the budget." *See* Kaplan Dep. 72:21-73:10. A true and correct copy of the pertinent portions of the deposition transcript of Boris Kaplan ("Kaplan Dep.") is attached hereto as Exhibit B.

Furthermore, Office Partners has already paid the fee in dispute. On March 15, 2022, as part of a consent process that resulted in the stay of an action initiated by Office Partners before the Allegheny County Court of Common Pleas and the initiation of this Action, Office Partners paid into escrow the full amount invoiced by the PWSA upon approval of the Application into the Allegheny County Court of Common Pleas. To prevent any delay in the development of the FNB Project on the basis of this dispute, the PWSA issued the subject permit on the same date as Office Partners' payment into escrow. Office Partners' contention that it "reluctantly" paid the escrow amount is at odds with the fact that Office Partners acted pursuant to a ***Consent Order.***

[4] A true and correct copy of the pertinent portions of the deposition transcript of Julie Asciolla ("Asciolla Dep.") is attached hereto as Exhibit A.

the PWSA took steps to expedite the consideration of the Application. *See* Asciolla Dep. at 63:8-64:3; Kaplan Dep. 35:21-36:21, 38:6-38:25, 42:7-43:18, 59:1-11 and Exhibit 5 to Kaplan Dep.

There is no dispute that the PWSA ultimately approved[5] the Application on December 23, 2021, identifying the fees due and owing as $508,314.79.[6] *See* Motion, p. 2; Asciolla Dep. at pp. 51:5-23, 64:4-8 and Exhibit J to Asciolla Dep; Kaplan Dep. at 8:2-9, 22:4-22, 25:8-28:10 and Exhibit 4 to Kaplan Dep.; Complaints, ¶ 8, Exhibit C thereto. Of note, 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* Asciolla Dep. at 14:16-15:23, 17:16-18:3.[7]

The PWSA has no experience with an attempted withdrawal of a tap-in application, and there is no process in place for such purported withdrawal because unperfected applications can remain open in the PWSA system indefinitely. *See* Asciolla Dep. 20:12-14, 48:5-49:21. Yet, following the PWSA's approval on December 23, 2021, Office Partners attempted to "withdraw" the Application upon learning that the effectiveness of the 2022 PUC Tariff in January 2022 could

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[5] 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* Asciolla Dep. at 18:5-12.

[6] This amount was revised to $506,647.18 (the "Escrow Amount"), on the basis of a recalculation of the amount of flow implicated by the Application. *See* Asciolla Dep. 56:16-57:1.

[7] 53 Pa.C.S.A. § 5607(d)(24) provides, in relevant part: "Fees ***shall be based upon the duly adopted fee schedule which is in effect at the time of payment and shall be payable at the time of application for connection*** or at a time to which the property owner and the authority agree." (Emphasis added.) Per the PWSA's Developer's Manual in effect at all relevant times: "All fees are established in the PWSA Water and Wastewater Tariffs and approved by the [Commission]," and the Developer's Manual further provides that the "PWSA will calculate the appropriate fees based upon the related project information submitted by the applicant." *See* Complaints, Exhibit A thereto, p. 35. Moreover, the PWSA Developer's Manual states, at all relevant times, that "[a]fter the final review, PWSA will supply the applicant with a permit fee invoice." *See* Complaints, Exhibit A thereto, p. 20.

offer a pathway to a reduced rate on its Application. *See* Motion p. 2; *see also* Complaints, ¶ 11, Exhibit D thereto; communications produced by Office Partners through discovery and bates labeled at OfficePartners_000888, attached in full hereto as Exhibit C.[8] 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* Kaplan Dep. 63:20-65:25,73:7-10 and Exhibit 7 to Kaplan Dep.:

> 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.

See Exhibit 7 to Kaplan Dep., communication from Mr. Kaplan to another stakeholder in Office Partners, attached hereto as part of Exhibit B. In an effort to circumvent the PWSA's consistent policy, and to shop for a preferable rate, Office Partners attempted to assert pretextual reasons[9] for its "new" application:

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[8] At the relevant times hereto, each of the participants on the email were working with and/or on behalf of Office Partners. *See* Kaplan Dep. 16:3-17:1, 17:22-18:12, 17:2-6.

[9] Office Partners contends that the purportedly withdrawn application was a "new" application because it was amended to clarify or modify the ownership status of the subject parcel, to effect other "structural considerations," or to make changes necessary to secure regulatory approval. Kaplan Dep. 43:19-44:45:3, 47:1-4; 48:24-49:13, 50:4-51:10. However, the evidence is clear that these claims are mere pretext for Office Partners' real objective: securing a more favorable fee. *See* Kaplan Dep. 45:17-46:8, 47:1-13, 50:4-51:10; 57:10-13, 64:24-65:25 and Exhibit 7 to Kaplan Dep. The evidence is clear that changes or differences in ownership would ***not*** require a new application (Asciolla Dep. at 19:8-23), and that the subject regulator (the Pennsylvania Department of Environmental Protection) not only approved of the Application, but was actually willing to assist in expediting the Application as it was submitted in 2021. Kaplan Dep. 34:9-35-20, 41:18-42:5 and Exhibit 5 to Kaplan Dep. When pressed, Office Partners was unable to identify a single "structural consideration" requiring a new application. Kaplan Dep. 43:23-45:7 and Exhibit 3 to Kaplan Dep., Paragraph 10 of the Complaints. Put differently, Office Partners has not asserted a single evidentiary basis for attempting to withdraw its Application, other than its desire for a reduced fee.

Need a high level summary that explains why this is important: "I'm reaching out to see if you might be able to lead me in the right direction regarding PWSA's new tap-in fees. I believe the issue can be resolved if we're able to get a meeting with the Dir. Will Pickering." It's 2-3 sentences pulled from what you sent Kevin and underscores that we're not seeking any favorable treatment of consideration – just for the permit date (yet to be determined) to trigger the fee structure that went into effect 1/12/22.

Kevin said that he will reach out Director Pickering before the larger call given his relationship.

We should get feedback from Steve on any reasonable/plan modifications that can also help supersede the correspondence from late December.

See communication from Mr. Kaplan to Matthew Corace, included among documents produced through discovery by Office Partners and bates labeled as OfficePartners_000563, attached hereto as Exhibit D. Office Partners admits that a "major reason" and a "central component" for the attempted re-submission of a tap-in application was the realization of cost savings; that the decision to attempt the withdrawal of the Application rested with Office Partners alone; and was not based upon any requirement or statement from the PWSA or any government entity. *See* Kaplan Dep. 47:1-13, 57:10-13, 64:24-65:25 and Exhibit 7 to Kaplan Dep.

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. *See* Asciolla Dep. at pp. 39:5-41:19 and Exhibit E to Asciolla Dep. The PWSA's treatment of the Application was consistent in all respects with its treatment of similarly-situated applicants. *See* Asciolla Dep. 64:9-22, 66:16-67:12.

ARGUMENT

I. Standard.

The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable

inferences. *First Mortgage Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. Ct. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Commw. Ct. 1976). The non-moving party in a motion for summary judgment must allege facts showing that an issue for trial exists. *First Mortgage Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. Ct. 1983); *Commonwealth v. Diamond Shamrock Chemical Co.*, 391 A.2d 1333 (Pa. Commw. Ct. 1978); *Stover v. The United Telephone Co. of Pa.*, Docket No. C-00923833 (Order entered July 21, 1992).

II. The pertinent "time of payment" to determine Office Partners' tap-in fees is December 2021.

Office Partners' argument its payment date controls the amount due is a misreading of 53 Pa.C.S.A. § 5607(d)(24). Of note, the statute provides 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.*** As a result, the fees that apply to this dispute are those in effect at the time of Office Partners' application, and it is undisputed that that was 2021. Thus, the Governing PUC Tariff applies. *See also* 2021 PUC Tariff ("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 the Authority agree."). The parties entered into the Consent Order as a way to allow Office Partners to secure the subject permit and pay the Escrow Amount while the parties litigated the amount ultimately due under the Tariff. Office Partners' contention that the Consent Order somehow changes the date when fees were payable to the PWSA is disingenuous and inequitable.

Furthermore, Office Partners' argument is at odds with the facts, since the PWSA's consistent (and PUC-approved) policies were: (1) 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; and (2) to allow for late, post-expiration payments to perfect a permit application, as long as the system had sufficient flow capacity in its system at the time in which the post-expiration payment was made. *See* Asciolla Dep. at 14:16-15:23, 17:16-18:3, 20:12-22:10, 61:4-62:16. Moreover, the evidence is clear that the ***only*** effort Office Partners took to stall progress on the Application was the post-approval attempt to withdraw of the Application, which was—incredibly—to be followed by a request for expedited treatment of the "new" application, all while relying on the PWSA's prior approval as a basis to keep work on the FNB Tower Project proceeding apace during the withdrawal process. *See* Kaplan Dep. 60:4-62:3, 71:1-24 and Exhibit 6 to Kaplan Dep. Put differently, throughout the longevity of the Application, Office Partners attempted to expedite consideration and approval and then—once approval was granted—sought to withdraw its Application in a "Hail Mary" attempt at cost savings. Then, having attempted to stall the process, Office Partners requested that the PWSA again expedite its consideration of the "new" application, which was essentially the same as the initial Application.

There is no evidence that the PWSA deviated from the applicable Tariff. To the contrary, there is substantial evidence that Office Partners sought (but was not granted) special treatment. At a minimum, Office Partners' conduct raises equitable issues that render Office Partners' Motion legally and factually insufficient for a grant of summary judgment, and the Motion must be denied.[10]

[10] By comparison, the PWSA's pending Motion for Summary Judgment relies on undisputed issues of fact and the language of the publicly-filed tariffs. Accordingly, while Office Partners' Motion is substantively and procedurally improper for a grant of summary judgment, the PWSA's Motion for Summary Judgment stands in an appropriate posture and is based upon sufficient undisputed evidence to merit the entry of judgment as a matter of law.

III. Office Partners does not present any evidence that the PWSA's consistent application of its policy contravenes any approved tariff, rule or regulation, and Office Partners' clams are barred by the filed rate doctrine.

Office Partners bears the burden of proving that the PWSA violated a Commission regulation or order. *See* 66 Pa. C.S.A. § 332(a). Yet, Office Partners fails to establish such a violation in its Motion or otherwise.

The Pennsylvania Public Utility Code, Act of July 1, 1988, P.L. 598, No. 116, 66 P.S. §§ 501, *et seq.*, provides for the establishment of a regulatory body to supervise and regulate all public utilities doing business in Pennsylvania. The Public Utility Code unequivocally grants to the Commission the exclusive jurisdiction to regulate, *inter alia*, public utilities rates. *See* 66 P.S. § 1501. The Public Utility Code also provides that "[e]very rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission." 66 P.S. § 1301. As a public utility, the PWSA must file tariffs with the Commission showing all schedules of rates, regulations, practices, or contracts with the jurisdiction of the Commission. See 66 P.S. §§ 102, 1302. In the instant matter, at all relevant times, the PWSA charged fees to Office Partners under the terms of the Tariff as approved by the Commission.

Pursuant to the filed rate doctrine, a party cannot collaterally attack a rate that has been established and deemed reasonable by an agency, such as the Commission. *See, e.g., Am. Tel. & Tel. Co. v. Central Office Tel., Inc.*, 524 U.S. 214 (1998). The purpose of the doctrine is two-fold: to (i) preserve the regulatory agency's authority to determine the reasonableness of rates and (ii) ensure that the regulated agencies charge only those rates that the agency has approved or been made aware of as the law may require. *Milkman v. Am. Travellers Life Ins. Co.*, 2002 WL 778272, at *14 (Phil. Ct. Com. Pl. April 1, 2002) (citing *H.J., Inc. v. Nw. Bell Tel. Co.*, 954 F.2d 485, 488

(8th Cir. 1992). The filed rate doctrine thus prevents the questioning or changing of approved rates to prevent rate discrimination among members of the class of rate payors and to preserve the role of the regulatory agency as rate setter, *i.e.*, the reasonableness of an agency approved rate is nonjusticiable. *Keogh v. Chicago & Northwestern Railway Co.*, 60 U.S. 156 (1922). The moment of the filed rate doctrine is particularly important where, as here, there is no credible evidence that Office Partners made any submissions to the PUC in connection with the PUC's consideration of the subject tariffs. *See* Kaplan Dep. 24:10-13, 54:24-55:19.

"Tariffs have the force of law and are binding on both the utility and the customer." *Pennsylvania Elec. Co v. Pennsylvania Pub Util Comm'n*, 663 A.2d 281, 284 (Pa. Commw. Ct. 1995). Unless the Commission grants an exception, a public utility cannot charge any rate other than that set forth in the tariff. *See Bell Telephone Co of Pennsylvania v. Pub. Util. Comm'n*, 417 A.2d 827, 828-29 (Pa. Commw. Ct. 1980); 66 P.S. § 1303 ("No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto."); 66 P.S. § 1304 ("No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage."). The question of the reasonableness of rates and the difference between rates in their respective classes is an administrative question for the Commission. *Park Towne v. Pennsylvania Public Utility Commission*, 433 A.2d 610 (Pa. Commw. Ct. 1981). Rate structure is a matter peculiarly within the Commission's "flexible limit of judgment." *Id.* at 614. Any attempt to vary the terms

of the tariff, even by agreement with the customer, is not effective. *See Bell Telephone Co*, 417 A.2d at 829.[11]

Here, it is without dispute that the rates utilized by the PWSA are strictly regulated by the Commission pursuant to the settled legal principles underlying the filed rate doctrine. It is further undisputed that the Commission considered and ultimately approved all of the Tariffs at issue in this matter. It is fundamental that Tariffs have the force of law and are binding on both the PWSA and Office Partners; and unless the Commission grants an exception, the PWSA cannot charge any other rate than that set forth in the Tariff. Furthermore, preferences in rates may not be given; the question of the reasonableness of rates and the difference between rates is an administrative question for the Commission; the rate structure is a matter solely within the ambit of the Commission; and any attempt to vary the terms of the Tariff is not effective. As a result, Office Partners cannot collaterally attack the Tariffs that have been established and deemed reasonable by the Commission. Moreover, Office Partners cannot be treated differently than any other consumer served under the Tariffs.

Office Partners claims that, by adhering to the Governing PUC Tariff, which was approved by the PUC following extensive public consideration, the PWSA somehow reaps a windfall. To the contrary, the only "windfall" that could possibly occur in this case is in favor of Office Partners,

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[11] Pennsylvania courts routinely apply the filed rate doctrine. *See, e.g., Pa. Suburban Water Auth. v. Pa. Public Util. Comm'n*, 808 A.2d 1044 (Pa. Commw. Ct. 2002) (holding that the agency approved rate is the only lawful charge and that a utility may not deviate from the filed rate); *Pa. Power Co. v. Pa. Public Util. Comm'n*, 561 A.2d 43 (Pa. Commw. Ct. 1989), *aff'd*, 587 A.2d 312 (Pa. 1991) (holding that rates approved by the Federal Energy Commission must be given binding effect by the state utility regulator). Pennsylvania courts also hold that the filed rate doctrine bars civil actions where, as here, the Complaints collaterally attack the filed rate. For example, in *Knipmeyer v. Bell Atl Corp.*, 2001 WL 117945, *4 (Phil. Ct. Com. Pl. May 22, 2001), the court dismissed a class action filed against Bell Atlantic for various tort and contract claims. The court concluded that the filed rate doctrine barred the claims because the plaintiffs essentially were attacking the approved rate and seeking a different rate.

as Office Partners has admitted that a discounted tap-in fee would represent substantial cost-savings to the FNB Tower Project, notwithstanding that it budgeted for the Escrow Amount.

The concept of a "windfall" has been defined as follows:

> "Windfall" is not defined in *Black's Law Dictionary* and, similar to "mutual benefit", is only defined by case law in context. Relevant to this appeal, a windfall is the product of unjust enrichment. *See Sevast v. Kakouras,* 915 A.2d 1147 (Pa. 2007); *Wilson Area School Dist. v. Skepton,* 895 A.2d 1250 (Pa. 2006).
>
> However, windfall it is defined in general dictionaries. A windfall is a "sudden, unexpected piece of good fortune or personal gain," as defined in the *American Heritage Dictionary of English Language,* Fourth Ed., Houghton Mifflin Co., 2000. Similarly, it is a "piece of unexpected good fortune, especially financial gain," pursuant to the *Collins English Dictionary Complete and Unabridged,* HarperCollins, 2003.

Mid-State Const., Inc. v. Ritchey, No. 1428 WDA 2013, 2014 WL 10789951, at *3 (Pa. Super. Ct. Oct. 10, 2014). The PWSA's fidelity to the Governing PUC Tariff protects the interests of all rate payers. The benefit of Office Partners' tap-in fees is passed on to the PWSA's rate payers either to defray rate increases or to pay for expenditures. Because no benefit is being conferred upon the PWSA by virtue of collecting the appropriately due tap-in fee from Office Partners, and the benefit is instead conferred on the ratepayers the PWSA represents, the PWSA cannot be unjustly enriched and, therefore, payment could not represent a resultant windfall. Office Partners' claims in this regard are unsupported by any credible evidence.

Office Partners deliberately ignores the harmful result to the public that would result from depriving the PWSA and its ratepayers of the amounts that are due under the fee structure in place when Office Partners applied (and was approved) for the subject permit. The PWSA is simply upholding its obligations to its rate payers and exercising fidelity to the applicable tariff, rules and regulations of the Commission by requiring Office Partners to pay the fees in effect upon the

Application's approval, as the PWSA uniformly has done with other applicants whose application processes were conducted entirely within a single tariff rate/structure.

Additionally, Office Partners' purported recitation of Ms. Asciolla's deposition testimony is inaccurate. To be sure, the PWSA has no experience with an attempted withdrawal of a tap-in application, and there is no process in place for such purported withdrawal because withdrawal is unnecessary when unperfected applications can remain open in the PWSA system indefinitely. *See* Asciolla Dep. 20:12-14, 48:5-49:21. In fact, to benefit applicants like Office Partners, the PWSA's consistent policy was to allow for late, post-expiration payments to perfect a permit application, as long as the system had sufficient flow capacity at the time when the post-expiration payment was made. *See* Asciolla Dep. at 20:12-22:10, 61:4-62:16.

Moreover, the PWSA's treatment of the Application was consistent in all respects with its treatment of similarly-situated applicants. *See* Asciolla Dep. 64:9-22, 66:16-67:12. 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. These voluminous documents, not individually cited or attached hereto, support the undisputed fact that the PWSA 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. Office Partners has not cited, and cannot cite, evidence to the contrary. In evaluating and ultimately denying Office Partners' requests to benefit from the lower 2022 PUC Tariff Rate, the PWSA applied its policy uniformly to all similarly-situated applications. This imperative was addressed and approved at both the approval level with Ms. Asciolla, and at the executive level of the PWSA. *See* Asciolla Dep. at pp. 40:13-41:19, 46:11-47:3 and Exhibit G to Asciolla Dep.

It is disingenuous for Office Partners to submit that it "would not benefit from the payment of the 2021 fees," when, at all relevant times hereto, Office Partners used its 2021 approval to continue construction on the FNB Tower Project during the withdrawal dispute. *See* Kaplan Dep. 60:4-62:3, 71:1-24 and Exhibit 6 to Kaplan Dep. Office Partners continued to rely on the very approval it contends to be a nullity even as it sought to withdraw that application and approval in its quest for after-the-fact cost savings.

There is no evidence that the PWSA deviated from the applicable Tariff or from its consistent treatment of similar applicants. To the contrary, there is substantial evidence that Office Partners sought, and was not granted, special treatment. At a minimum, Office Partners' conduct raises equitable issues that render Office Partners' Motion legally and factually insufficient for a grant of summary judgment, and the Motion must be denied.

CONCLUSION

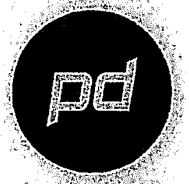
In sum, Office Partners' request that the Commission permit Office Partners to exempt itself from a mandatory statute requiring the payment of the fees set forth in the Governing PUC Tariff, which was in effect at the time of the submission, consideration and approval of the Application is at odds with both the facts and law applicable to this matter. As a result, the Motion must be denied.

Dated: June 23, 2023

/s/ Samuel A. Hornak, Esq.

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EXHIBIT A



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Transcript of Julie Asciolla, Corporate Designee

Date: April 14, 2023
Case: Office Partners XXIII Block GI, LLC -v- The Pittsburgh Water & Sewer Authority

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

OFFICE PARTNERS XXIII BLOCK GI LLC	:	Docket Nos.
Complainant,	:	C-2022-3033251
-v-	:	C-2022-3033266
THE PITTSBURGH WATER AND SEWER AUTHORITY,	:	
Respondent.	:	

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

Deposition of JULIE ASCIOLLA, held at the offices of:

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(412) 232-0334

Pursuant to Notice, before Keith G. Shreckengast, Registered Professional Reporter and Notary Public in and for the Commonwealth of Pennsylvania.

A P P E A R A N C E S

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C O N T E N T S

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E X H I B I T S

(Attached to transcript)

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

EXHIBITS CONTINUED

Ex. D	PWSA_OfficePartners_002917-2918. 1/7/22 email from Robert Herring to Steven Savich	36
Ex. E	PWSA_OfficePartners_002574-2575. 1/10/22 email from Julie Asciolla to Robert Herring, Steven Savich	40
Ex. F	PWSA_OfficePartners_002746-2747. Documents/Project Submittals/20015.10 540 North Lang Avenue	42
Ex. G	PWSA_OfficePrtners_002923-2924. 1/31/22 email from WPickering to Julie Asciolla	43
Ex. H	PWSA_OfficePartners_002748-2749. 2/1/22 email from Julie Asciolla to Steven Savich	47
Ex. I	PWSA_OfficePartners)--2587-2589. 2/3/22 email from Will Pickering to Julie Asciolla	50
Ex. J	PWSA_OfficePartners_000985, 000854 (and 1 non Bates numbered pg.) 12/23/21 letter from Wendy M. Dean to Office Partners XXII Block G1 LLC	51

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

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. Asciolla?

A Julie is fine.

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

A Julie Asciolla.

Q Julie Asciolla, 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?

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

A Okay.

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

A Okay, I'm good.

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

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

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

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

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

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

A That is correct.

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

A No, it is not a permit.

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

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

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

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

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

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

Q Okay.

A Just as documents come in.

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

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

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

A No.

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

A No.

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

A Correct. Correct.

Q Has an applicant ever just walked away?

A Yes.

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

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

you know, if there's a new development on that property, in -- that process is initiated.

Q If the applicant -- is there any point in time where there's a letter sent that the application is no longer active, or something to that effect?

A No. We don't send a letter.

Q Okay. You said if there was a new development or something on that property. What -- would it pertain to the application that you had on file, or would they start the process over again?

A It would depend on the nature of that development. So we would take a look at the application that had previously been approved, and then what the new development is proposing. And if they were different projects, then the application process would start over.

Q Okay. What about if there were different ownership groups?

A If it was different ownership, but the same project, same thing was going to be constructed, we would remain with the original approved application, even if the ownership changed.

Q Are there insurance requirements to provide the permit?

A I'm not sure what you mean.
Q Does PWSA require a developer to have insurance before issuing a permit?
A No, we do not.
Q In 2021 or 2022, were there any written policies with regard to this application process?
A Say that one more time.
Q Were there any written policies in 2021 or 2022 with regard to the application process?
A We have the developer's manual, which contained our written policies for the process.
Q Were there any written policies related to the withdrawal of a permit?
A No.
Q Were there any written policies related to the expiration of a permit approval?
A Yes.
Q And do you recall what those policies are, or were, sorry, in 2021 and 2022?
A Yes. So in 2021, that policy was that approved permit would expire after six months. Which we had that in place because the DEP limited the amount of flow we can add to the system every year. So we had to examine those projects to make sure we had enough flow before issuing the permit.

And we didn't reserve flow for projects that didn't pay. So, yes.

Q And when a -- is there any notice when a permit expires, or an approval expires I should say?

A So on the invoice that we send out after approval, there is a note that lets applicants know that that approval does expire six months from the date of approval.

Q Has that -- was it ever a shorter or longer time period?

A Yes.

Q When was that?

A So during Covid in 2020, we did not have an expiration date. Because we knew projects were having trouble moving forward. So we wanted to give them time to come in and pay. And then prior to that, around, like -- I don't know the exact dates, but prior to that there was a two month expiration date at some point.

Q Has an approved party ever obtained a permit after the expiration --

A Yes.

Q -- for the same work?

A Yes.

Q And have they had to restart the process?

A No.

Q So is it safe to say that PWSA doesn't enforce the expiration policy?

A So I think it's safe to say that we take it on a case-by-case basis. If an applicant comes and says they would like to receive this permit, we'll look at it, make sure the -- we still have the flow available in the system for those applications. And if we do, we would issue the permit, rather than start the application over.

Q In 2021 and -- I guess 2020 and 2021, can you explain what the purpose of the application fees, or the permit fees, are for the permits that are subject matter of this action.

A Say that one more time.

Q Prior to 2022, as you're aware, you can confirm or not, that this charging scheme for tap-in permits changed in 2022; is that correct?

A That is correct, yes.

Q So prior to that change, there was a fee for tap-in permits. Once approved, you had to pay a fee. Do you know what that fee was for? What was the purpose of the fee?

A So there were a few fees that an applicant had to pay at the time of approval. Which

I'll defer to Julie as she returns to work on Monday. Is that yourself, you believe, he's referring to?

A Yes.

Q And at the top, it looks like you responded to Steven Savich saying the new tariff goes into effect January 12th, '22. Within the new tariff there are several changes to development fees, including the removal of tap fees and new application fees. Any permits approved in 2021 are subject to the 2021 tap fees. Any projects approved in 2022 will be subject to the 2022 tariffs and new fees. The Lower Hill project was approved on December 23rd, 2021, so the project does not fall under the new 2022 fees. Let me know if you have any more questions.

MR. HORNAK: And, sorry, I don't think that's on the exact Exhibit D that we have. I think our Exhibit D starts with the January 7th, 2022 at 4:16:27 p.m. email from Robert Herring to Steven Savich, copying Julie. I think you're referring to a later email.

MR. NERNBERG: We'll just make this Exhibit E, then. Sorry, I jumped ahead.

MR. HORNAK: No problem. Sorry, I didn't

want to cut you off when you were reciting --

MR. NERNBERG: No, I appreciate that.

(Exhibit E was marked for identification.)

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

MR. HORNAK: No problem.

Q If you could review that.

A Okay.

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

A Yes.

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

A There was no written policy, no.

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

A Yes.

Q Who did you consult?

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

Q I won't ask you about your conversations

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

A It's Will Pickering.

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

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

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

A Yes.

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

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

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

A I don't know.

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

been the same in 2022 and 2023, then yes.

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

A Correct.

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

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

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

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

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

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

A I don't know.

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

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

MR. NERNBERG: Yes, it is G.

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

A I don't think I suggested that.

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

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

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

A I'm confused.

Q This will be Exhibit H.

(Exhibit H was marked for identification.)

Q If you could please review again.

A Okay.

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

be your response to Steven Savich with regard to his request to separate the applications. Is that correct?

A Yes.

Q Okay. And you wrote, we don't have any existing policies to withdraw an application. Did you have any existing policies against withdrawing an application?

A No, not explicitly.

Q All permits under review have the option to submit revised applications, planning modules, and tap-in plans without restarting an application. What would be the other option, or any other options?

MR. HORNAK: Object to the form. You can answer.

A I don't think there would have been another option. Just to abandon the application.

Q What would happen if they submitted a revision and it was rejected by PWSA?

A Typically revisions will go through a review process between PWSA engineers and the project engineer, to come to a point that they are approved. So typically they aren't outright rejected.

Q Let's say -- let's not use our client, but just a random -- any individual developer. If a developer had submitted plans, they're approved, paid the permit fee, and the permit was issued, could they revise the plans after the permit was issued?

A Yes.

Q And if those revised plans were not accepted -- if they were accepted, would a revised permit be issued?

A Not a new permit. It would -- the original permit would remain in existence, and the tap-in plans would be updated for that permit.

Q Okay. And if the revisions were not accepted, would the tap-in plans be revised in that situation?

A Yeah, I don't -- I can't think of a scenario where they would not be accepted. Again, the engineers would work back and forth until they are approved, until they're at a point acceptable to PWSA.

Q To the best of your knowledge, has a developer, someone desiring to tap-in, ever abandoned a revision, because it was not able to complete it to their satisfaction, or for some other

A If we don't have that email in your records, then it wasn't by email.

(Exhibit J was marked for identification.)

Q We marked this as Exhibit J. This is a three page document. And I'll ask you about each page individually. I believe you discussed an approval of my client's permit. This letter on top that's dated December 23rd, 2021, is this the approval that you're referring to?

A Yes.

Q And it states that the tap-in plans for the project have been calculated and approved; is that right?

A Yes.

Q And it says the fees have been calculated and are attached for your reference. Permits are not considered issued until permit fees are paid; is that correct?

A Correct.

Q And is that consistent, to the best of your knowledge, with your prior testimony today?

A Yes.

Q If we could go to page 2, please.

MR. HORNAK: You're referring to

being Bates stamped. And my guess is that they are also part of a larger Bates stamp production, one way or the other.

MR. HORNAK: Understood.

Q So let me know when you've been able to review them.

A I'm good.

Q Let's just start with the first page. This appears to be similar to the 12-23 rate chart that we reviewed previously. At the bottom here it notes payment for permits must be received within six months from 3-3-21. Would this relate to the revised permit by Office Partners?

A You would think so, but that date does not match up.

Q You did testify previously that the permit was issued after funds were placed into escrow; is that correct?

A Correct.

Q So we'll start with the first page. The total is $506,647.18. That is slightly less than the prior billing, correct?

A Correct.

Q And would that be based in part upon the EDUs?

A Correct. Yes.
Q And if we go to the second page, this appears to be a signed Development Permit Form. Is this something that's created by the PWSA?
A It was at the time, yes.
Q At the time, I guess that is, thank you. And it says Permit Number 2022-0021; is that correct?
A Correct.
Q So would that be for permits issued in 2022?
A Yes.
Q Okay. And the next page -- and the next page appears to be a continuation of that; is that correct?
A Yes.
Q And it's dated 3-15-2022, correct, at the bottom right?
A Correct.
Q And if you look at the amount, the check amount, it says -- or amount due, 506,647.18?
A Yes.
Q Is that the same as the first page?
A Yes.
Q And then if we go to what I'll say is the

THE WITNESS: No, let's just get it done.

EXAMINATION

BY MR. HORNAK:

Q And I may jump around a little bit. I just wanted to clarify a couple of answers that you gave throughout the course of your deposition. I believe earlier you gave some representation about whether PWSA has a policy relating to whether an approval would, on its face, purportedly expire after two, three, six months, or perhaps not at all during Covid. Did the PWSA have a written policy about that practice, or was that based on just consistent treatment of similarly situated applicants?

A At some point we did put it in the Developers Manual. But prior to that point, it was just applied consistently across applicants.

Q To the extent that the PWSA had written policies about tap-in fees during 2021, into 2022, were those written policies articulated in the applicable Developers Agreement?

A Developers Manual?

Q Or Developers Manual, yes.

A Yes.

Q As well as the PWSA's PUC approved rules

and regulations; is that correct?

A Yes.

Q Towards the very end of your deposition, and I'm still asking about that two, three, six month expiration period, you testified, I believe, that the intent was that that two, three or six month time period be applied across the board. Do you remember that testimony?

A Yes.

Q When you say the intent was that it be applied across the board, did you mean, is it correct to say that the PWSA intended to apply the same time period as articulated at the bottom of an approval letter, to any applicant on a particular date?

A Yes.

Q Between the time when a permit is approved, and a tap-in ultimately occurs, and there is actual usage, does the PWSA apply any flat fees or non-usage based fees to a property?

A No.

Q Okay. I'd like to -- I'll show you Exhibit F. If you take a look at this, I think you testified that that is a set of screenshots from the PWSA's EBuilder system. And there were some

questions about certain entries on this, including dates that seemed to appear on this document. Is it possible that those dates are associated with when various documents are uploaded to EBuilder, rather than when such documents are either created or submitted to the PWSA?

A Correct.

Q In the middle of your deposition testimony there were some questions about revisions, and the back and forth discussion process between the PWSA and various developers. I don't think that questioning was confined just to Office Partners. Is it your general experience that developers want to work with PWSA toward ultimate approval of either an underlying application, or to the revisions to a previously approved application?

A Yes.

Q Is it your general experience that developers want to expedite the PWSA's consideration of projects, and want to expedite the PWSA's ultimate approval of those projects?

A Yes.

Q Based on your personal involvement with the Office Partners application, and based upon your review of records, is it your understanding that

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

A Yes.

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

A Yes.

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

A Yes.

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

A No, I'm not aware.

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

A No.

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

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

A Yes. Yes.

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

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

MR. NERNBERG: That's all I have.

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

THE WITNESS: No.

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

BY MR. NERNBERG:

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

A Correct.

MR. NERNBERG: That's all I have.

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.

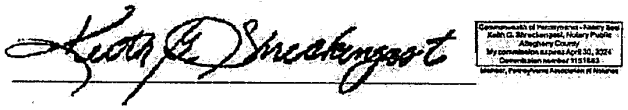
(Off the record at 11:05 a.m.)

CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

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

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

My commission expires April 30, 2024.



NOTARY PUBLIC IN AND FOR THE
COMMONWEALTH OF PENNSYLVANIA

Message

From: jasciolla@pgh2o.com [jasciolla@pgh2o.com]
Sent: 1/10/2022 2:47:04 PM
To: RHerring@pgh2o.com; SSavich@mbakerintl.com
Subject: RE: Tap In Fees

Hi Steven,
The new tariff goes into effect January 12th, 2022. Within the new tariff, there are several changes to development fees including the removal of tap fees and new application fees.
Any permits approved in 2021 are subject to the 2021 tap fees. Any projects approved in 2022 will be subject to the 2022 tariff and new fees.
The Lower Hill Project was approved on December 23rd, 2021 so the project does not fall under the new 2022 fees.
Let me know if you have any more questions.

From: Robert Herring, PE, PMP <RHerring@pgh2o.com>
Sent: Friday, January 7, 2022 11:16 AM
To: Savich, Steven <SSavich@mbakerintl.com>
Cc: Julie Asciolla <jasciolla@pgh2o.com>
Subject: RE: Tap In Fees

Steven,

I'll defer to Julie, as she returns to work on Monday.

Thanks,

PGH2O

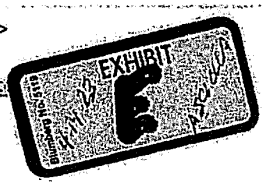
Robert Herring, PE, PMP
Senior Project Manager
Office: 412.255.8800
Ext: 5532

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: Thursday, January 6, 2022 5:23 PM
To: Robert Herring, PE, PMP <RHerring@pgh2o.c



Cc: Julie Asciolla <jasciolla@pgh2o.com>
Subject: FW: Tap In Fees

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.
Rob:

I sent the email below to Julie and got her out of office message ... Can you speak to the question below?

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 | www.mbakerintl.com

From: Savich, Steven
Sent: Thursday, January 6, 2022 5:21 PM
To: 'Julie Asciolla' <jasciolla@pgh2o.com>
Subject: Tap In Fees

Julie:

By way of another project we were notified that the policy on tap in fees is changing and will eliminate the water portion, modify the sewer and add another administration fee. It was expressed to us as a net reduction in the previous fee structure. The indication was that projects not permitted currently (or after January 1st 2022) would be subject to the new (and possibly reduced fees). Can you provide some insight into that and if it could be applied to the Lower Hill development?

If available, I can give you a call tomorrow to get a better understanding of this as the information provided was third hand at best ...

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 | www.mbakerintl.com

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 Asciolla <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 3 before responding.

Julie Asciolla
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 Asciolla <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



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.

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 | www.mbakerintl.com

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Pittsburgh Water & Sewer Authority

December 23, 2021

Office Partners XXII Block G1 LLC
1000 N. West Street
Wilmington DE 19801

RE: Address TBD - 15219
Water and Sewer Tap-in Plans

Dear Office Partners XXII Block G1 LLC,

The Pittsburgh Water and Sewer Authority (PWSA) has approved the tap-in plans for the above referenced 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.

If you have any questions, please feel free to contact me at (412) 255-8800 x8030.

Sincerely,

Wendy M. Dean
Engineering Tech II

Attachment

cc: PWSA File

Penn Liberty Plaza I
1200 Penn Avenue
Pittsburgh PA 15222

Info@pgh2o.com
T 412.255.2423
F 412.255.2475

www.pgh2o.com

Customer Service /
Emergencies
412.255.2423

EXHIBIT

Pittsburgh Water & Sewer Authority

C-2060
OFFICE PARTNERS XXII BLOCK G1 LLC
Address TBD

96.53	Water EDU's	=	$214,682.72
96.53	Sewer EDU's	=	$287,466.34
(1)	6" tap	=	$1,314.43
(1)	8" tap	=	$1,349.95
(1)	4" tap	=	$1,106.35
(1)	1.5" meter	=	$492.00 – Domestic Positive Displacement
(1)	3" meter	=	$1,668.00 – Compound Domestic
(1)	5/8" x ¾" meter	=	$235.00 – Fire Line

TOTAL = $508,314.79

Please make check or money order payable to PWSA or Pittsburgh Water and Sewer Authority. The approved permit will be processed and emailed after payment has been received.

**** 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.

Penn Liberty Plaza I
1200 Penn Avenue
Pittsburgh PA 15222

info@pgh2o.com
T 412.255.2423
F 412.255.2475

www.pgh2o.com
@pgh2o

Customer Service /
Emergencies:
412.255.2423

Pittsburgh Water & Sewer Authority

C-2060
OFFICE PARTNERS XXII BLOCK G1 LLC
Address TBD

~~96.53~~95.20	Water EDU's	=	~~$214,682.72~~ 211,714.74
~~96.53~~ 95.20	Sewer EDU's	=	~~$287,466.34~~ 283,492.13

(1)	6" tap	=	$1,314.43
(1)	8" tap	=	$1,349.95
~~(1)~~	~~4" tap~~	~~=~~	~~$1,106.35~~
~~(1)~~	~~1.5" meter~~	~~=~~	~~$492.00 – Domestic Positive Displacement~~
(1)	3" meter	=	$1,668.00 – Compound Domestic
(1)	5/8" x ¾" meter	=	$235.00 – Fire Line

TOTAL = ~~$508,314.79~~ 499,744.28

Please make check or money order payable to PWSA or Pittsburgh Water and Sewer Authority. The approved permit will be processed and emailed after payment has been received.

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EXHIBIT B

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

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:

For the Claimant:

MAURICE A. NERNBERG & ASSOCIATES
by David M. Nernberg, Esq.
301 Smithfield Street
Pittsburgh, PA 15222
dmn@nernberg.com

For the Respondent:

CLARK HILL PLC
by Samuel A. Hornak Esq.
by Ashley L. Buck, Esq.
One Oxford Centre
301 Grant Street
14th Floor
Pittsburgh, PA 15219
shornak@clarkhill.com
abuck@clarkhill.com

- - -

I N D E X

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E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 1	Notice of Deposition	9
Exhibit 2	First set of Interrogatories and Request for Production	19
Exhibit 3	PPUC Formal Complaint	20
Exhibit 4	12/23/21 Letter & 1/3/22 Emails	25
Exhibit 5	1/3/22 E-mails	29
Exhibit 6	1/28/22 E-mails	59
Exhibit 7	1/19/22 E-mails	63
Exhibit 8	1/20/22 E-mails	66

PROCEEDINGS

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

EXAMINATION

BY MR. HORNAK:

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

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

A. Yes.

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

A. Yes.

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

verbally yes, no. You can't mhmm or huh-huh. Things like that.

Also for the benefit of the court reporter, only one of us can speak at a time. So I have a bad habit of sometimes speaking over people when I'm asking questions. I will do my very best not to do that today. I would ask that you let me finish the question before you start your answer.

I'm not asking you to guess at anything today. Based on the substance of today's deposition, a lot of the material may require you to recollect certain things. If you don't remember, I don't want you to guess.

So can we agree that if you answer a question today, it's because you remember the answer and you're giving your best impression from your recollection.

A. Yes.

Q. If you need a break at any time, I'm certainly happy to accommodate that. This is not meant to be an endurance contest, and as I said before we went on the record today, I don't anticipate that we'll be here for an extremely long time.

Buccini/Pollin?

A. I'm a senior vice president.

Q. How long have you been with Buccini/Pollin?

A. Since 2008, so about 15 years.

Q. And since you've been there, what roles have you filled for Buccini/Pollin?

A. Primarily in project origination and project management.

Q. Okay. Let's separate those two. Project origination is that kind of sales, business development for Buccini/Pollin?

A. Yes. It's identifying business opportunities for our company, working with owners of property on potential acquisitions for our company, and then coming up with development plans for those properties.

Q. Okay. And what roles have you filled on the project management side of your responsibilities at Buccini/Pollin?

A. I've overseen projects ranging in size from small, mixed-use info projects with several apartments over retail. I've developed a large multi-family development in the City of Philadelphia. For the past four or five years,

Baker, the Michael Baker Firm in the development of the FNB Tower?

A. So Michael Baker is an engineering firm that's worked with our team in both the development of the master plan, but also in the FNB Tower project.

They're responsible for civil engineering services and they are our principal representatives in a number of approval activities with various city and state agencies.

Q. Okay. Thank you.

I'm going ask you about a few names that Office Partners has identified through discovery. Perhaps you can give me who they work for, what their role in the development of FNB Tower has been.

A. Sure.

Q. First is Steven Savich, S-A-V-I-C-H?

A. Sure. Steven Savich is a senior engineer at Michael Baker. He has worked on development of the master plan, the engineering -- civil engineering associated with the master plan. He has also worked on various entitlement and approval efforts for

the FNB Tower.

Q. What about Toby Partridge?

A. Toby Partridge also works for Michael Baker; is a colleague of Steve Savich.

Q. Similar job responsibilities?

A. Correct.

Q. Craig Dunham?

A. Craig Dunham had been a consultant to the Pittsburgh Penguins or the local partners in this development. Currently Craig Dunham is an employee of the Pittsburgh Penguins.

Q. Okay. When he was consulting for the Pittsburgh Penguins, was he employed by someone else?

A. He had his own consulting company, Dunham Real Estate Group.

Q. Understood.

A. Dunham reGroup.

Q. What about Wesley Schwandt, S-C-H-W-A-N-D-T?

A. Wes Schwandt works for the Buccini/Pollin Group. He is a senior executive in our technical services group called BPGS.

Q. Joseph Lisicky, L-I-S-I-C-K-Y?

A. Joe Lisicky is a general counsel for the Buccini/Pollin Group.

Q. Okay. He's an attorney?

A. Correct.

Q. What about William Sittig, S-I-T-T-I-G?

A. Bill Sittig works for Sittig Cortese, a local land use attorney. He's an attorney, as well.

Q. Okay. Matt Corace, C-O-R-A-C-E?

A. Matt Corace works directly for Wes Schwandt in BPGS.

Q. Okay. The name is obviously familiar for any Pittsburgher, but what is the role of Kevin Acklin with respect to this development?

A. Sure. Kevin Acklin is a senior executive with the Pittsburgh Penguins. He had a lot of day-to-day responsibilities for the real estate development components of the project.

Q. Okay. And the last name that I have for now is Bomani, B-O-M-A-N-I, Howze, H-O-W-Z-E?

A. Bomani Howze is a vice president

paragraph-by-paragraph basis, but I just want to confirm some facts. But if you could turn to Paragraph 6 on Page 1, which generally says that Office Partners submitted an application to tap into the PWSA infrastructure in May of 2021.

That timeline is correct, as far as you can recall?

A. As far as I can recall, yes.

Q. Is your recollection, both on your own and behalf of Office Partners, that the first interactions with the PWSA, related to the FNB Tower took place during calendar year 2021?

A. I think that's right.

Q. That's consistent with what's pled here. I just wanted to confirm that.

In Paragraph 7 the complaint reads, "Between August of 2021 until December 21 of 2021 Office Partners and the PWSA communicated regarding the plan submissions."

Did you, personally, have any role in those communications between Office Partners and the PWSA?

Have you, personally, ever communicated with PWSA about the development of the FNB Tower?

A. I don't think that I have.

Q. In the communications referenced in Paragraph 7 of the Complaint, do you know whether there was any discussion of what rate would apply to the application of Office Partners to tap into the PWSA system in 2021?

A. I don't know.

Q. Okay. Are you aware of whether any such discussions took place specific to the issue of what rate would apply?

A. I don't know the specifics.

MR. NERNBERG: I'm going to object as to form and really just to clarify the question. Are you asking specifically within that date range in Paragraph 7? That's what you're referencing?

MR. HORNAK: Yes.

BY MR. HORNAK:

Q. We can move on to Paragraph No. 8, which reads, "On December 23, 2021, the PWSA by letter accepted the tap in plans but informed Office Partners the permit would not be considered approved until the permit fees were

paid."

What's the basis for Office Partners' allegations in Paragraph 8 that a permit would not be considered approved until the permit fees were paid?

A. I believe the basis is the actual letter that was sent to us by PWSA.

(Deposition Exhibit No. 4 was marked for identification.)

BY MR. HORNAK:

Q. Okay. Let's pull that out here.

So I have here what I will mark as Exhibit 4. This was a document that was produced to the PWSA through discovery in this action with Bates label Office Partners_1142 at the bottom.

Do you recognize this letter, Mr. Kaplan?

A. I do.

Q. And is this letter the one that you were just referring to in your testimony as the basis for Office Partners' allegation in Paragraph 8 of the complaint?

A. Yes, it is.

Q. Please feel free to take a second to

read the letter that's marked as Exhibit 4. It's relatively short.

Are you able to identify, after review, what language in this letter gave Office Partners the impression that a permit would not be considered approved until the permit fees were paid?

A. I'm looking at the second paragraph in the letter. The second sentence of that second paragraph reads, "Permits are not considered issued until permit fees are paid."

Q. Okay. I won't belabor the point, but can we agree there is a slight difference between the language in the letter and the language in the Complaint, insofar as the letter reads that permits are not considered issued, whereas the language in the Complaint says that permits are not considered approved?

A. The letter does read, "Permits are not considered issued until permit fees are paid."

Q. Okay. So the basis -- what was the basis of Office Partners' interpretation that permits not being issued is the same as permits not being approved?

A. The permits -- the plain language says the permits are not considered issued. The reality is we don't have a permit number, we don't have a permit date.

We don't consider, you know, having a permit until you have some of those additional components of the final permit.

Q. Understood. Are you aware, Mr. Kaplan, of the date on which Office Partners received the letter that's been marked as Exhibit 4?

A. I don't know the specific date, but this letter, I believe, was sent to us by mail and I don't think we became aware of this letter until sometime in early January of 2022.

Q. Okay. I'm going to give you another document that I would actually like to make part of Exhibit No. 4. So when it's marked, we'll put this after the letter itself.

Feel free to take a second and look through this. Again, this is a document that was produced by Office Partners at Office Partners Page 26.

A. Okay.

Q. And it's a collection of e-mails

produced by Office Partners.

I would direct your attention to the bottom of Page 1, so Office Partners Page 26, where there's an e-mail from a Wendy Dean, who I will represent to you works and at the time worked for PWSA, to Matt Corace.

Based on that e-mail, do you have any reason to think Mr. Corace did not receive a copy of this approval letter on December 23?

A. Looks like it was received.

Q. Okay. I'll just put that in the back of Document No. 4 -- Exhibit No. 4.

Sorry to make you jump around. Do you have Exhibit No. 2 before you, which would be the Office Partners' responses to discovery?

A. I do.

Q. I'm going to direct your attention to Interrogatory No. 8, which is on Page 10 of the document. This Interrogatory asks Office Partners to, "Identify each and every occasion the PWSA advised you that your permit would not be considered 'approved' until the permit fees were paid as alleged in Paragraph 8 of your Complaint."

And in Office Partners' Answer there

subdivision of the G Block?

A. I believe it was following the subdivision.

Q. Okay. There's a reference to -- specifically to the plan being rejected -- or to the application being rejected by the commonwealth agency, which you have just cast as the DEP.

Did the DEP ever explicitly advise Office Partners that its applications, either to the DEP or to the PWSA, would be rejected on the basis of a subdivision?

A. I don't recall specifically the guidance, but there were general concerns about the impact of subdivisions on prior approvals.

Q. Did any entity, external to Office Partners or its agents and representatives, explicitly warn Office Partners that an application or permit would be rejected based upon different owners or subdivision of parcels?

A. I believe that to be the case.

Q. I guess what I'm trying to get at, Mr. Kaplan, is was that the impression of Office Partners based on its experience or was

there a communication or representation made by an outside entity to Office Partners of a potential rejection?

A. I believe it was based on representations. There were extensive discussions back and forth with agents of the DEP and PWSA, submissions and letters back and forth trying to preserve the prior approvals, and an understanding that the DEP was making some level of a concession to permit our advancing of a time-sensitive project on Block G1, but that we would need future additional and costly approvals beyond those that have already been secured.

Q. But you don't remember the specifics of those representations, including when they were made, by who, to whom, or what the substance of the representations were?

A. They are just as I described to you. That's the extent of my recollection.

Q. Thank you. You just spoke about the time sensitivity of the project. What was the time sensitivity of development of the FNB Tower?

A. Sure. So the FNB Tower was and is

being developed for an anchor tenant. That anchor tenant has a lease with Office Partners. That lease has certain penalties if milestones and if delivery dates are missed, and so it's incumbent on Office Partners to proceed with the development of the project as quickly and as expeditiously as possible and avoid any possible delays and setbacks to the schedule.

Q. When did those efficiency imperatives begin for Office Partners?

So in 2021 when the application for the FNB Tower was first submitted to the PWSA, did those time sensitivities exist at that time?

A. They did. The lease predated those engagements and we were aware that there were milestones that needed to be met.

Q. So those milestones and time sensitivities existed from the start of the project to the present?

A. Correct.

Q. In -- hold on one second here -- in Exhibit 5, if you have that in front of you, at the top it's an e-mail from Matt Corace to --

MR. NERNBERG: Exhibit 5 is

to Page Office Partners_50.

Who is Mr. Flanagan? Do you recognize that name?

A. I recognize the name. I believe he was employed by the PA DEP.

Q. And other recipients copied on this e-mail are a variety of entities, including the Pittsburgh Water and Sewer Authority, Michael Baker, Buccini/Pollin, and I see that you're copied on this e-mail, as well as others.

On the last page of this exhibit, Office Partners_50, there's a paragraph that reads, "Based on the foregoing, please be advised that the PWSA takes no exception to designating the Block G flows entirely to the First National Bank Financial Tower."

Does that sentence make sense to you, based on the discussion that we just had relating to flows and subdivision?

A. It does. It relates to PWSA agreeing to prioritizing a time-sensitive project, assigning flows that had previously been approved for the entirety of that block to that one parcel, and permitting progress on subsequent approvals to advance.

A. So there had been a prior approval for a planning module, essentially, like a capacity confirmation that had been relied upon as being a completed approval.

A lot of these conversations deal with a new interpretation for -- our belief that it was a new interpretation that those approvals needed to be revisited subsequent to subdivision.

At the same time, it's my understanding that we couldn't get a tap-in permit -- a tap-in application approved until such time that there were any questions resolved with the planning module.

So they may be related, but I think there are two distinct applications and approvals that are being sought.

Q. You were copied on this specific e-mail and on this broader communication that's the subject of this exhibit, Mr. Kaplan.

Was your interpretation or the interpretation of Office Partners at this time that the PA DEP was going to stand in the way of or otherwise impede either of the applications that you just referenced, either

the planning module or the PWSA tap-in application?

A. By late December it looked like they were agreeing to our moving forward with the project.

Q. Okay. Thank you.

On Page Office Partners_47 at the top there's an e-mail that starts on the previous page, starts on Office Partners_46 from Toby Partridge to Shannon Connell from PWSA.

You are not copied on that e-mail, Mr. Kaplan, but there's a very brief exchange there between Toby and Shannon where Toby says, "Sorry for bugging you again." And then later in the e-mail Mr. Partridge asks, "When will we hear about the final tap fee amount."

This e-mail was sent on January 3, 2022, which, of course, is after the date of the December 23 letter.

At that time, at the end of December of 2022 and in the first days of January 2022 -- at the end of December 2021 and in the first days of 2022, these time sensitivities for the approval of Office Partners'

applications existed; is that correct?

A. Yes.

Q. Is that the basis, as far as you can tell, of Mr. Partridge's e-mail to Shannon Connell to, in effect, check in on the PWSA's issuance of the permits to get them expedited?

A. Yes.

Q. At the very top of this exhibit, the very first e-mail on Page Office Partners_44, Matthew Corace states that, "We have to talk tomorrow on steps with getting this check in the hands of PWSA ASAP," and in all capital letters, "HIGH PRIORITY!"

You're not on this e-mail. Do you interpret this e-mail as, again, underscoring the time sensitivity of the PWSA's approval of the permit?

A. I do.

Q. Okay. Thank you.

I'll direct you back to the Complaint here, we're still on Paragraph 10. That's on the second Page 2 of the exhibit.

I'm going to direct you here to the last sentence of Paragraph 10 which reads. "In addition, Office Partners wanted to change the

plans due to other structural considerations."

At this time what other structural considerations was Office Partners looking to change in its application?

A. I believe we also received guidance from Baker as to updated technical calculations on the respective parcels, the G1 and G4 parcels, which would change the -- the overall usage on those parcels, and I think we also reflect different fees associated with the updated technical capacity projections.

Q. When did Michael Baker provide Office Partners with those updated technical specifications? Do you remember the specific date?

A. I do not.

Q. Do you remember whether it was in December 2021? January 2022? If you don't remember, that's okay.

A. I don't remember.

Q. Okay. And you think those updated technical specifications relate to usage?

A. Yes.

Q. As you sit here today, can you remember any other updated technical

specifications that Baker provided to Office Partners?

A. I do not.

Q. Do you know when Office Partners first communicated those updated technical specifications to the PWSA?

A. I do not.

Q. Okay. Back to Exhibit 2, which is the Office Partners' discovery responses.

A. Okay.

Q. I'll refer you to Interrogatory No. 6, which is located on Page 9 of this document, which asks Office Partners to "Identify with particularity all of the reasons for your decision to attempt to withdraw your application on or about January 31, 2022."

Let me ask you a general question first before we get into Office Partners' response. Why did Office Partners attempt to withdrawal its application for a tap-in permit to the PWSA on or about January 31, 2022?

A. I think there were several factors that led to that decision. We had conversations through the end of '21 and early in 2022 related to the two parcel ownerships on

Block G.

There were many conversations throughout January related to, ultimately, the fees that were due and the rate structure that was going to be applied to that application.

And based on those conversations with staff and with leadership, we decided to proceed with withdrawing the application.

Q. When you refer to staff and leadership, are you referring to the staff and leadership of Office Partners or the PWSA?

A. I believe it was both.

Q. And you think those conversations occurred in December of 2021 and January of 2022?

A. Correct.

Q. Some of these may overlap with what you just said, Mr. Kaplan, but in Office Partners' response to Interrogatory No. 6, a number of factors are identified. One of which is the "Logistics of the project."

What logistics -- well, actually it's not a direct quote. "Logistical reasons" -- no. Strike that. It does say "logistics of the project."

What were the logistics of the project that led to Office Partners purporting to withdrawal its application?

A. I don't know.

Q. Okay. What about costs?

A. Well, certainly in January, you know, we had discussions regarding the fees associated with this application. We were aware of a new rate structure that was in effect as of January 2022, and we were seeking to find ways to have that new rate structure apply to the permit we were trying to secure from PWSA.

Q. Did Office Partners have any communications with the PWSA relating to the costs of the tap-in permit fee prior to Office Partners learning about the new tariff rate going into effect in January of 2022?

A. I believe that our representatives did. Part of their responsibilities is not just to secure permits, but also to advise us as to what those permits cost.

Q. Do you remember which of your Office Partners representatives had those conversations with the PWSA and when?

A. I don't know that any of our employees had those conversations with PWSA. I expect that our engineers did and they were advising our staff.

Q. What would those conversations have entailed? And by that I mean is was Office Partners seeking to get a discount on its tap-in permit application fee off of what was contained in the 2021 tariff?

MR. NERNBERG: Objection as to form. You can answer.

THE WITNESS: I don't believe we ever sought any kind of discounts. We wanted to pay then applicable rates.

BY MR. HORNAK:

Q. Then applicable. What is the "then" in that statement? What rate did Office Partners want to pay?

A. Whatever the prevailing rate was when we secured the permit.

Q. Okay. Did those conversation occur in 2021?

A. I don't know if they did.

Q. Okay. Office Partners' response to Interrogatory No. 6 also references ownership

structure as being one of the bases for Office Partners' attempt to withdrawal its application.

What was the implication of ownership structure on the attempt to withdrawal?

A. Again, the G1 and G4 parcels are separately owned. They were part of a single application made in 2021. There were lingering concerns about the need to bifurcate the application into the respective ownerships --

Q. Okay.

A. -- of those two parcels.

Q. Okay. What about planning module reviews with PA DEP in late 2021? What was the implication of that planning module review on Office Partners' attempt to withdrawal its application?

A. Again, the Department of Environmental Protection, PA DEP, reviewed our prior approvals for sewer planning module capacity and indicated that subdivisions that occurred after those approvals had taken place would impact the availability of the planning module approval, and so to align our

applications with that guidance from DEP, it was important to find ways to separate the applications.

Q. Okay. Office Partners' response to No. 6 also references, "Weighing the equities of paying an unreasonable fee while also having to pay higher annual usage charges on a going forward basis," and that continues but I'll stop there.

What did Office Partners mean by that phrase that I just read about weighing the equities as a basis for its attempt to withdrawal the permit application?

A. Sure. Office Partners is developing a large commercial property that's hopefully going to be around for 100 years. The new 2022 rate structure impacts not just what's paid up front but downstream usage fees.

It seemed unreasonable to me and members of our team at the time that this new project would be subjected to ongoing, increased fees over many decades and also be subject to a much higher upfront fee for tap-ins that were no longer in effect.

By no longer in effect, I mean that

by January 2022, there was a new rate structure that reduced those upfront costs. And given that we did not receive any benefit from an approval in 2021, that we hadn't received a permit, we didn't have a permit date, that we couldn't pursue other permits that we needed in 2021. All of that became possible only after potentially picking up a permit in 2022. We wanted to find ways to utilize a savings for the project.

Q. Is it Office Partners' position that any applicant, not just Office Partners, that paid a pre-2022 tap-in permit fee should be either reimbursed or relieved from the obligation of that upfront permit fee on the basis of the higher usage rates going forward?

MR. NERNBERG: Objection. You're asking him to provide a legal conclusion.

MR. HORNAK: My response to the objection is that I'm asking for Office Partners' position on it, on the central issue in this case.

MR. NERNBERG: I disagree. Office Partners' filed the Complaint on its

extent that you are. I don't necessarily object to position questions, but I think we're going little bit far afield as far as the Complaint.

I know you want to finish your question and I'm sorry for interrupting. If you finish it, I may object again. But I think that we need to stick to the four walls of the Complaint and the facts at hand. But I'll allow -- ask the question again, I guess.

MR. HORNAK: I'll strike the question that's open. I think I got an answer to the previous question from Mr. Kaplan.

BY MR. HORNAK:

Q. Mr. Kaplan, are you aware that there was a -- what I'll call the rate case -- there was an action pending before the Pennsylvania Public Utility Commission beginning in March of 2021 where filings have actually continued into calender year 2023 at Docket No. R2021-3024779?

Are you aware of this rate case, generally?

A. I am not.

Q. Do you know whether Office Partners ever made any filings with the PUC prior to the

filing of this Complaint relating to the PWSA's application of the 2022 tariff fees to either tap-in fees or usage fees?

A. I'm sorry. Can you just repeat that one more time?

Q. Absolutely. That was a long question. Are you aware of any filing that Office Partners made with the Pennsylvania Public Utility Commission prior to the filing of this Complaint?

A. I'm not aware of that.

Q. Do you know whether Office Partners has ever made any filing with the PUC -- whether that be an objection to the PWSA's rates or the application of various tariffs -- has Office Partners ever made any filing of that nature with the PUC?

A. I don't believe that Office Partners has.

Q. Okay. When did Office Partners first become aware that there was going to be a change in PWSA's fee structure in January of 2022?

A. I can only speak to when I became aware of it. I think in early January of 2022,

discussed?

A. I believe it is.

Q. Did any entity, whether that be the PWSA or any other entity, advise Office Partners that Office Partners was required to revise its tap-in application?

A. I don't believe that PWSA told us that it was required to revise the applications.

Q. So the basis of this pleading that the revisions were required is Office Partners' own assessment?

A. Correct.

Q. I'll turn to Paragraph 14 on that same page. "On February 22, 2022, PWSA approved the plan submitted by Office Partners."

Do you know whether that was the date when a permit was actually issued by the PWSA to Office Partners?

A. I don't believe that was the permit date. I think that was just an approval of the new plans.

Q. Okay. What I'll represent to you, Mr. Kaplan, is that the permit was actually

Q. Are you aware of any time, from the beginning of this application through the present, when Office Partners ever attempted to slow down consideration of a pending application to the PWSA?

A. I do not.

Q. In fact, it seems like the testimony today is that Office Partners, at all points, was attempting to expedite the PWSA's consideration; is that correct?

A. That is correct.

(Deposition Exhibit No. 6 was marked for identification.)

BY MR. HORNAK:

Q. Okay. I'll show you here a set of e-mails here, Mr. Kaplan, that we'll mark as Exhibit 6.

I'll direct your attention here to an e-mail that begins at the bottom of Page 753 and continues on to Office Partners_754.

MR. NERNBERG: Look at the bottom right.

BY MR. HORNAK:

Q. That's an e-mail that's from you to a number of parties, dated Thursday,

January 27, 2022. It continues on to the next page with a couple of sections numbered 1, 2, 3, and then 1, 2, 3.

I want to direct your attention to both No. 3s in that same e-mail. In the first one you are characterizing the intent of Office Partners to "Request that both applications receive a 15-day expedited review and pay the $1300 fee per application for expedited review."

What expedited review are you referring to in that e-mail?

A. I think by that date, the 27th of January, we were prepared to submit two new applications and we were also prepared to pay a fee associated with an expedited review of each of those two applications.

Q. So these e-mails relate to Office Partners' attempt to withdrawal its original application and submit what Office Partners' claims to be a new application.

Is it fair to say that Office Partners -- upon the submission of that alleged new application, Office Partners was seeking a expedited review of the revised new

application?

A. Correct.

Q. Okay. The second No. 3 in that same e-mail, you asked -- I assume your team -- to quickly confirm that "Can we use the PWSA notice from December and other approvals to keep advancing the work in the field for another couple of weeks?"

It seems like the intent there would be to use the December 23 letter, that is Exhibit 4 to today's deposition, as a basis to keep work progressing even after the submission of what Office Partners claims to be a new application?

A. I believe that's the case. That there were ongoing reviews that required PWSA final sign-off. We were trying to evidence interim reviews and interim progress to permit additional work to proceed.

Q. So Office Partners wanted to use the December 23 letter as a basis to keep work progressing for the milestones you previously identified even post withdrawal of an application during an expedited post withdrawal review?

A. I think we also referenced other approvals and any additional evidence to indicate that we can keep advancing.

Q. Okay. Can you describe, Mr. Kaplan -- and I can show you some e-mails -- can you describe the efforts that Office Partners made to communicate with either city leadership or other interested entities to convince the PWSA to apply the 2022 tariff rate to the Office Partners' application?

Do you know who Office Partners communicated with? Do you know what communications occurred?

A. I believe I do, generally. I think those communications were primarily at the staff level. There was a line of communication between our representatives and staff at the PWSA and those conversations were ongoing.

We also pursued additional conversations through our local partners with leadership at the PWSA, and also reached out to other city municipal officials to initiate conversations.

I think this is pretty standard for what we do with all agencies in terms of

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

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

A. I don't believe that I did.

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

A. Correct.

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

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

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

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

BY MR. HORNAK:

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

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

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

A. I'm ready.

Q. So the last sentence of this reads, "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."

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

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

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

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

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

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

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

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

A. Correct.

conversations to see if we had to make any modifications at that time.

Q. Okay.

A. But certainly I remember around January of 2022 is when we were really looking more intently at the possibility of a withdrawal and resubmission.

Q. Understood. You've referenced in the last couple minutes, Mr. Kaplan, the cost savings that Office Partners would realize if the 2022 tariff rate were applied versus the 2021 tariff rate, and I would like to get some information about the relative size of this permit fee and the overall budget for the Office Partners project.

What is the overall project for the FNB Tower project?

A. The overall project, which is inclusive of acquiring the land, doing all of the engineering and architectural services, building the project, improving the space with tenant improvements, is around $240 million.

Q. Okay. Throughout 2021, when Office Partners was in communications with the PWSA pressing the consideration of this tap-in

permit, what amount had Office Partners budgeted for the tap-in fee?

A. I believe the budget was in the 450 to $500,000 range.

Q. Okay. I think I just have a couple more questions for you.

A few minutes ago we were discussing Office Partners' desire to continue pressing ahead with certain approvals on the basis of the December 23, 2021 letter -- that's Exhibit 4 today -- during this withdrawal, resubmission, and expedited review process; do you remember that testimony, Mr. Kaplan?

A. I do.

Q. What was the benefit of relying on the 2021 letter and pressing other approvals ahead even during the withdrawal and resubmission process, what was the benefit to Office Partners?

A. Just would you mind restating it?

Q. I don't mind at all. I apologize for asking an unclear question.

Your testimony, as I understand it, is that Office Partners wanted to rely on the December 23, 2021 correspondence from the PWSA

Q. So during the withdrawal and resubmission process, Office Partners hoped to continue with construction and the project, generally, at, least, in part, on the basis of the 2021 approval letter?

A. I think over the course of January and February, as this was ongoing, we were told by our construction management team that they had a little more latitude regarding their schedules and, I believe, that was part of what we used to calculate and decide to do a withdrawal; that there was more -- that there was additional capacity for us to secure the PWSA approval.

Q. What do you mean by additional capacity for Office Partners to secure the PWSA approval?

A. I meant there was additional time for us to secure the tap-in approvals. By that point in time, there wasn't an immediate need to tap in and that it made sense for us to resolve the ongoing discussion with PWSA and, if necessary, withdrawal the application and file new applications.

MR. HORNAK: I don't think I

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

MR. NERNBERG: I might just have a few.

EXAMINATION

BY MR. NERNBERG:

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

A. I do.

Q. And have you managed budgets for other projects?

A. I have.

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

A. Maybe one or two.

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

A. Yes. Maybe one or two.

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

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

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

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

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

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

A. With the Item 7 at the top?

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

Could you read Paragraph 8, please?

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

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

Q. And you can't, generally, recollect any communication between Office Partners and the PWSA, is that correct, relating to withdrawing the application prior to Office Partners learning about the change in fees?

A. Yes.

MR. HORNAK: Okay. I don't have any further questions.

MR. NERNBERG: I have nothing further. We'll read.

THE COURT REPORTER: Are both parties ordering a copy of the transcript?

MR. NERNBERG: Yes. I'll take an electronic copy.

MR. HORNAK: I'll take an electronic as well. Thanks.

(The deposition was concluded at 11:37 a.m., and signature was not waived.)

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF ALLEGHENY)

CERTIFICATE

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

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

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

/S/Michelle L. Goehring, Notary Public
Court Reporter
My Commission Expires: July 12, 2025
Commission No. 1317058

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case.
If you do not wish to be a party to the case, consider filing an informal complaint.

To complete this form, please type or print legibly in ink.

1. **Customer (Complainant) Information**

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Office Partners XXIII Block G1 LLC

Street/P.O. Box 1000 N. West Street, Suite 900 Apt # _____

City Wilmington State Deleware Zip 19801

County New Castle

Telephone Number(s) Where We Can Contact You During the Day (required):

_____ (home) (610) 202-8606 (mobile)

E-mail Address (required): bkaplan@bpgroup.net

Utility Account Number (from your bill)_____

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name _____

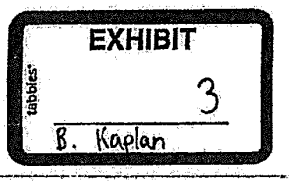
Street/P.O. Box 626 Washington Place

City Pittsburgh State PA Zip 15219

2. **Name of Utility or Company (Respondent)**

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

Pittsburgh Water and Sewer Authority



3. **Type of Utility Service**

Check the box listing the type of utility service that is the subject of your complaint (check only one):

☐ ELECTRIC	☐ STORM WATER
☐ GAS	X WASTEWATER/SEWER
X WATER	☐ TELEPHONE/TELECOMMUNICATIONS (local, long distance)
☐ STEAM HEAT	☐ MOTOR CARRIER (*e.g.* taxi, moving company, limousine)

4. **Reason for Complaint**

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

☐ The utility is threatening to shut off my service or has already shut off my service.

☐ I would like a payment agreement.

☐ Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.

☐ I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

X Other (explain). See Complaint being submitted herewith.

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

See Complaint being submitted herewith.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. Protection From Abuse (PFA)/ Domestic Violence

Has a court granted you a "Protection From Abuse" order or any other order which provides clear evidence of domestic violence against you that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order or any other order for your personal safety or welfare?

YES ☐

NO X

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES ☐

NO X

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES X

NO ☐

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

The issues in the complaint could not be resolved.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer **in this matter**, provide your lawyer's name, address, telephone number, and e-mail address, (all required contact information). Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name David M. Nernberg, Esq. – Maurice A. Nernberg & Associates

Street/P.O. Box 301 Smithfield Street

City Pittsburgh State PA Zip 15222

Area Code/Phone Number 412-232-0334

E-mail Address dmn@nernberg.com

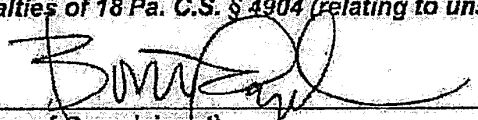
Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. **Verification and Signature**

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink.** **If you do not sign the Formal Complaint, the PUC will not accept it.**

Verification:

I Boris Kaplan, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



06-15-22

(Signature of Complainant) **(Date)**

Authorized Signtory

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint is not signed by one of these individuals, the PUC will not accept it.

10. **How to File Your Formal Complaint**

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at http://www.puc.pa.gov/efiling/default.aspx.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, priority mail, or overnight delivery to this address and retain the tracking information as proof of submission:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

If you are appealing a BCS decision: follow the directions in the cover letter you received from the Secretary's Bureau with the formal complaint form. ONLY Formal complaints appealing a BCS decision can be filed by fax, email or overnight delivery to meet filing deadlines. All other formal complaints MUST be eFiled or mailed.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.
Please know that your complaint form and the utility's answer will not be published to the PUC's website. Once your complaint case moves to the Office of Administrative Law Judge, any filings you make should be marked confidential if you do not want them published to the website.

PENNSYLVANIA UTILITY COMMISSION
COMPLAINT AGAINST THE PITTSBURTH WATER AND SEWER AUTHORITY
TO SET RATE FOR APPROVED PERMIT TO PETITIONER,
OFFICE PARTNERS XXII BLOCK G1, LLC

Introduction:

1. The Petitioner is Office Partners XXIII Block G1, LLC ("Office Partners"), a limited liability company with its principal place of business at 1000 N. West Street, Wilmington, DE 19801.

2. Respondent is the Pittsburgh Water and Sewer Authority ("PWSA"), a Pennsylvania municipal authority with its principal place of business at 1200 Penn Avenue, Pittsburgh, PA 15222.

3. Office Partners is developing commercial property located in the City of Pittsburgh at a major development known as the FNB Financial Center, a large project both in size and in financial investment, meant to last over 100 years and be a major hub of the City of Pittsburgh.

4. Commercial developers are required by law to obtain PWSA approval for connection to PWSA facilities.

5. PWSA policy requires an application for the connection and, once approved, a permit is issued upon payment of the then prevailing rate. Exhibits A and B, PWSA Policy and Press Release.

2021 Application Process and Withdrawal:

6. On May 11, 2021 Office Partners submitted an application to tap into PWSA infrastructure.

7. Between August of 2021 until December 21, 2021 Office Partners and the PWSA communicated regarding the plan submissions.

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

9. The fees were $508,314.79. Exhibit C.

10. The application was made by Office Partners XXII Block G1, LLC, however, Office Partners realized that the plans submitted in 2021 encompassed two separate parcels with separate owners and that the permit applications for the G1 and G4 blocks should not be combined and would risk being rejected by the Commonwealth Agencies. In addition, Office Partners wanted to change the plans due to other structural considerations.

11. On January 31, 2022, Office Partners withdrew the 2021 Permit Application (which had yet to be approved as no payment was offered or made). Exhibit D.

2022 Application Process:

12. On February 4, 2022, Office Partners submitted new tap-in plans to the PWSA. Correspondence attached hereto as Exhibit E[1]. They were separate G1 & G4 applications, distinct from the prior applications and were required.

13. On February 15, 2022, Office Partners submitted revised tap-in plans to address verbal comments made by PWSA. Attached hereto as Exhibit F.

14. On February 22, 2022, PWSA approved the plans submitted by Office Partners. Attached hereto as Exhibit G.

[1] The plans themselves are voluminous and already in PWSA's possession; as such, they need not be attached hereto but are available for this Court's review.

15. On February 23, 2022 Officer Partners again submitted revised tap-in plans to address final comments made by PWSA. Attached hereto as Exhibit H.

16. Upon submission of the revised tap-in plans, PWSA verbally informed Office Partners that those revised plans were approved but that the permit for the same would not be issued until payment was made for the permit.

17. Pursuant to PWSA's 2022 rate schedule (attached hereto as Exhibit I and on file with the Pennsylvania Public Utility Commission), the fees for the taps and meters requested by Office Partners and approved by PWSA are as follows:

a. 6" tap = $400

b. 8" tap = $400

c. 3" meter = $1,540 (Compound Domestic)

d. 5/8" x 3/4" = $250 (Fire Line)

Total = $2,590

18. Office Partners has also been advised that a $250 application fee is due.

19. Office Partners was ready, willing and able to pay the fees and has offered to do so.

20. Despite the foregoing rates, PWSA demanded payment of $508,314.79 to approve the plans submitted and issue the permit.

21. That fee does not apply pursuant to the PWSA rate schedule and PWSA policy.

Procedural History:

22. On February 25, 2022, Office Partners initiated a Mandamus Action before the Common Pleas Court of Allegheny County, Pennsylvania demanding that the PWSA issue the permit for the tendered 2022 fee schedule payment.

23. On March 9, 2022, the Parties entered into a consent order whereby they were to show cause why the Court had jurisdiction and, whereby Office Partners would pay $506,647.18 into Court to be held until a final determination was made as to the fee being due, in exchange for the issuance of the permit at that time. The amount deposited in Court represents an earlier fee structure that was superseded when utility rates were increased but tap-in fees reduced.

24. Thereafter on May 6, 2022, the Parties entered into another consent decree whereby the Parties agreed to have this matter heard before the Pennsylvania Utility Commission "PUC," with the Court holding the funds until a final, non-appealable order is made.

25. Pursuant to the consent/settlement, Office Partners was to initiate the action before the PUC.

Dispute and Matter in Controversy:

26. The purpose of this Complaint is to require the PWSA to accept payment pursuant to the 2022 fee schedule for the 2022 approved permit and for the Court to refund the deposited funds to Office Partners.

27. The 2022 tap in fees structure was implemented with the encouragement of the PUC along with the implementation of higher usage rates. The purpose was to make the PWSA fiscally sound by not impeding development with up-front fees and develop usage rates to better support PWSA operations. Thus, if PWSA is able to collect under the old fee schedule AND charge usage rates under the new rate schedule, it will be unjustly enriched. PWSA is attempting to double dip. Especially given the size of the project, the investment therein and its likely lifespan of over 100 years.

28. The applicable tap in rates are those based upon the 2022 rate schedule and usage rates will also be pursuant to the 2022 rate schedule.

WHEREFORE, it is prayed that this Honorable Court declare that the applicable fees are the 2022 fees pled in this complaint, order issuance of the permit based upon the 2022 rate schedule and order the return all funds held in Court in excess of the amount due under the rate schedule.

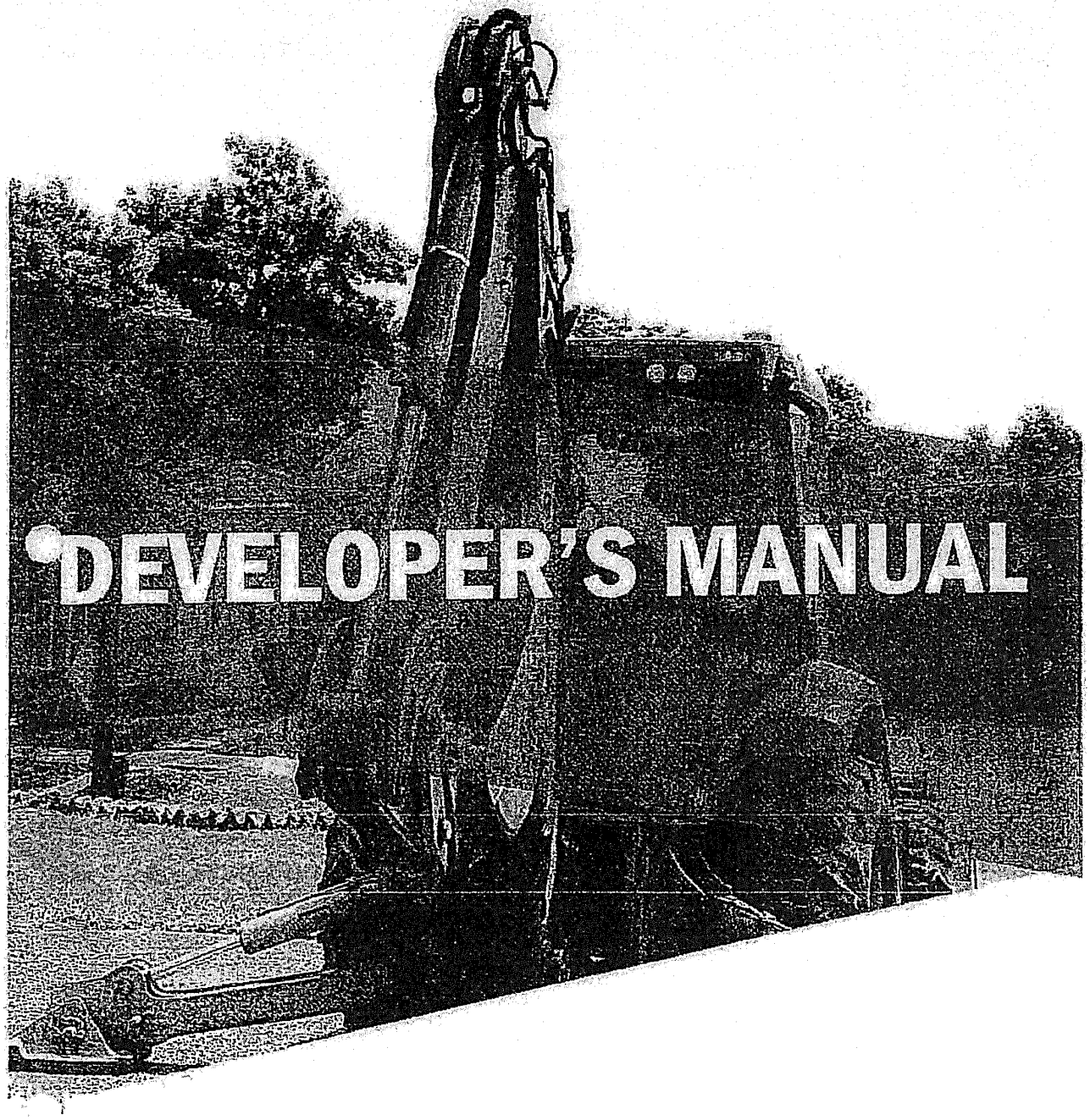
Respectfully submitted,

MAURICE A. NERNBERG & ASSOCIATES

By_____
David M. Nernberg

1200 Penn Avenue
Pittsburgh, PA 15222

PGH2O



DEVELOPER'S MANUAL

EXHIBIT A

Revised April 23, 2021

PWSA Developer's Manual

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SECTION 1: PROCESS OVERVIEW

Introduction

The Pittsburgh Water and Sewer Authority (PWSA) Developer's Manual outlines the regulations and procedures for developments connecting to public sewer or water facilities and constructing new facilities to be dedicated to PWSA. The purpose of this manual is to describe the permit application process, the requirements of the application materials, and the developer's responsibilities. To ensure timely review and approval of tap-in plans, this manual is to be used in conjunction with an open dialogue with PWSA.

More than one section of the manual may be applicable dependent upon the type of development and scope of work proposed by the applicant. In instances where the manual does not address a specific or unique site condition of a proposed development, the applicant should contact PWSA to determine if additional information is required.

PWSA is regulated by the Pennsylvania Public Utility Commission (PUC). Any standards set forth in this manual are subject to PUC review.

At minimum, this manual will be updated annually. More frequent updates may occur as procedures or regulations change.

Development Permit Process

The following steps are a general overview of the development permit process. For more detailed information, please refer to the specific sections referenced throughout the manual. Single-family homes without fire service are not subject to the following steps and should review Section One: Single-family Residential Developments for more information. All other projects must follow this process. All submissions outlined below may occur simultaneously or in succession based on the scope and timeline of the proposed development.

PWSA requires electronic submission of all applications and drawings for development projects using e-Builder. After the pre-development meeting described below, PWSA staff will provide a unique e-Builder email address which will be utilized for all submissions and reviews associated with the development. Applications and documents are not considered submitted unless sent to the e-Builder folder.

All applications must include required documentation outlined in this manual or on our website. Failure to provide will result in a delayed approval.

Step One: Pre-Development Meeting
Prior to submittal of the permit application, the applicant is required to request a pre-development meeting. A meeting request may be submitted early in the planning process or after preliminary tap-in plans have been designed. If you have engaged an engineer, it is highly recommended that they attend the meeting.

To request a meeting, submit the pre-development meeting request form found on our website to inbox@workflow.e-Builder.net. Please attach any site plans, drawings, flow calculations or other relevant documents to this email.

Step Two: Water and Sewer Availability Letter Request
All applications must include a Water and Sewer Availability Letter Request. Complete and submit the form to permitinfo@pgh2o.com. PWSA staff will review and return a Water and Sewer Availability Letter Packet that includes the completed letter request form detailing infrastructure near the site, a will-serve letter, and infrastructure maps. The letter provided is required to be submitted with any final Pennsylvania Department of Environmental Protection (DEP) applications. Some lenders may also require a will-serve letter.

The water and sewer availability letter is not a permit and all procedures set forth in this document must be completed to obtain approval.

Step Three: Water and Sewer Use Application
A PWSA Water and Sewer Use Application must be completed by an applicant for public water and sewer facilities planning. This form and its attachments are precursors to any sewage facilities planning modules required separately by the DEP.

PWSA requires that the form be completed and submitted for the following scenarios:

1. Any development located on a lot that was created after May 15, 1972
2. Any residential development larger than one (1) single-family residential dwelling
3. Any development that contains commercial, industrial, and/or institutional uses
4. Any development that is repurposing an existing structure

Detailed instructions are covered in the Water and Sewer Use Application section of this manual.

Step Four: DEP Sewage Facilities Planning Module
Any development within the PWSA service area that meets the DEP's criteria will be required to complete sewage planning. The requirement for sewage planning depends on a variety of factors, including but not limited to, the Existing Flows, Project Flows, Net Flows, date of lot creation, previous planning module approvals, etc.

Detailed instructions are covered in the DEP Sewage Facilities Planning Module section.

Step Five: Tap-in Plans

Most development projects will require water and/or sewer tap-in plans to be reviewed and approved by PWSA staff. No work on existing or new taps, including terminations, is to begin prior to obtaining this approval.

Detailed drawing requirements are covered in the Tap-in Procedures section.

Construction and/or Relocation of PWSA Facilities

A development may require an extension, relocation, or construction of PWSA facilities to provide water or sewer service. A development agreement and construction drawings will be required.

Requirements are detailed in the Private Construction of Public Facilities section.

Review Procedures and Fees

PWSA will review applications in the order received. Baseline review times are 30 days per review. Review times may vary depending on volume and complexity.

Revisions to issued permits will not be expedited and will be reviewed in the order received. Exceptions to this policy may be permitted at the discretion of PWSA.

If tap-in plans require more than 2 reviews, $250 will be required for each additional review. No additional reviews will be conducted without additional fee payments being made.

If a permit is issued, an additional $250 fee will be required for any revisions to plans.

Additional fees may be required including but not limited to:

- waterline shut permit fee
- hydrant flow test permit fee
- tapping fees
- tap and meter costs
- sewage facilities planning module review fee (DEP)
- street closure and traffic obstruction permits (DOMI)
- building permit fees (PLI)
- plumbing permit fee (ACHD)

To see a complete list of PWSA fees, review our fee schedule on our website. An explanation of fees can be found in the Tapping Fees section of this manual. PWSA does not provide a preliminary cost estimation prior to issuing the official tap-in fees.

Permit Expiration
Approved permit refers to an application that has met all the requirements as outlined in this manual and has received a final invoice. Approved permits are valid for six (6) months from date of approval. If the final invoice is not paid within six (6) months, the permit becomes invalid, and the application may be required to restart the application process.

Issued permit refers to an approved permit that has paid the final invoice and received a permit from PWSA. Issued permits are valid for a period of five (5) years from date of issuance.

Millvale Water Service Area
Developments within the Millvale PWSA water service area must meet the minimum requirements described herein for water service. Sewer service and the DEP Sewage Facilities Planning Module shall be completed according to the rules and regulations of Millvale Borough and Girty's Run Joint Sewer Authority.

SECTION 2: SINGLE-FAMILY RESIDENTIAL DEVELOPMENTS

Overview

Single-family residential developments are equal to one single-family residential unit. Single family residential units with fire service or developments on land that has been subdivided to include multiple single-family homes are not considered a single-family residential development and shall fall under the regulations set forth in the remaining sections of this manual.

Single-family residential developments are not required to submit tap-in drawings to obtain water and sewer service, but they must obtain a Residential Permit from PWSA prior to completing any water or sewer work.

Submission Requirements

To obtain a Residential Permit, the applicant is to complete and submit the residential permit application form (FORM RES). All fields must be completed and signed by owner.

All fees are to be paid at the time of permit issuance and prior to start of work. Current fees are outlined in our Tapping Fees section.

Although not subject to tap-in plan review, all water and sewer work for single-family homes are required to meet PWSA minimum standards for tap installation outlined in the Tap-in Procedure section.

Any work will also require approval from the Allegheny County Health Department. Contact information can be found on our website.

SECTION 3: WATER AND SEWER USE APPLICATION

Overview

The Water and Sewer (W/S) Use Application is to establish the water and sewer flows associated with a proposed development. The flows shall represent the peak daily flow, which is defined as the maximum volume of water/wastewater during a continuous 24-hour period, expressed in gallons per day (gpd). The approved flows shall be utilized by the PWSA for the calculation of the Tapping Fees, if required.

In addition, the approved flows shall be utilized by the Pennsylvania Department of Environmental Protection (DEP) to determine if sewage planning is required. For additional information on sewage planning, please refer to the section titled "Pennsylvania Department of Environmental Protection Sewage Facilities Planning Module". The Applicant must receive the W/S Use Approval prior to submitting the Sewage Facilities Planning Module, if required.

A W/S Use Approval shall be required for the following situations:

1. Any development located on a lot that was created after May 15, 1972
2. Any residential development larger than one (1) single-family residential dwelling
3. Any development that contains commercial, industrial, and/or institutional uses
4. Any development that is repurposing an existing structure

Submission Requirements

The Water and Sewer Use Application is to be completed and submitted electronically through e-Builder. To obtain an e-Builder folder, the applicant must have attended a pre-development meeting.

All supplemental documentation must be submitted with the W/S Use application.

Supplemental Documentation

Site Plan

The site plan shall contain the following information:

- Existing structures located within the project site and nearby vicinity
- Property lines
- Entire property, including any residual tract
- Connection to any PWSA facilities (i.e. water, sanitary and storm)
- Plan orientation

- Existing and proposed rights-of-way and easements
- Existing and proposed improvements (i.e. roadways, sidewalks, etc.)
- Waterways and wetlands

The applicant can submit the tap-in drawings in lieu of the site plan. Instructions for preparing tap-in drawings can be found in the Tap-in Procedures section. Submitting the tap-in plans as part of the w/s use application does not preclude the applicant from submitting a separate tap-in plan PDF for review.

Floor Plans

The PWSA requires floor plans to confirm the flow calculation methodology. The applicant shall provide a minimum size of 11-inch x 17-inch. The floor plans shall be drawn to scale and display the square footage of each floor, number of rooms and/or any special conditions or features.

Project Narrative

The project narrative shall provide relevant background information on the project. The Applicant shall use the narrative to "tell the story" of the development. Typically, the narrative will include descriptions on the existing and proposed conditions and uses. In addition, the Applicant may provide the project location, construction timeline, ownership group, consultant information, relevant history, adjacent PWSA infrastructure, conclusions from the PWSA predevelopment meeting, permit requirements, etc.

Flow Calculations

The flow calculations shall provide the means and methods for calculating the Existing Flows, Project Flows and Net Flows. In addition, the flow calculations shall be sealed by a Professional Engineer registered in the Commonwealth of Pennsylvania. As previously discussed, the flows shall represent the peak daily flow, which is defined as the maximum volume of water/wastewater during a continuous 24-hour period, expressed in gallons per day (gpd). As a result, the applicant shall assume full occupancy, maximum turnover, etc. We understand that the DEP flow estimates may appear much higher than anticipated usage due to the use of low-flow fixtures, etc. However, please note that the flow estimates are attempting to estimate the peak daily flow, not the average daily usage.

The PWSA may consider flow calculations based on alternative estimation methods. The applicant shall provide justification for the alternative calculation methodology. Please be advised that the flow estimates shall represent the peak daily flows.

The flow calculations shall be broken down into water demand and sanitary flows. In addition, flow calculations must be provided for each use within the development (i.e. retail, residential, office, etc.). The applicant shall include HVAC condensate in the sanitary flow calculations for any commercial, industrial and institutional uses.

Existing Flow

The PWSA defines "existing flow" as the peak daily flow within the past five (5) years. The applicant can claim existing flows if the property contains a structure that has been occupied within the past five (5) years. The existing flows shall be calculated via flow estimates established by the DEP. The applicant shall support their calculations by providing floor plans of the existing structure, and any other documentation that will support the flow calculation methodology.

The PWSA reserves the right to require historical water usage data, in lieu of the flow estimate values, to establish the existing flows. In these instances, the PWSA will allow the use of a peaking factor of 2.5 to establish the peak daily flow. The applicant shall be responsible to provide historical water usage data requested by the PWSA. The applicant can contact PWSA's Customer Service for historical water usage data for a fee of $15.

Project Flow

The PWSA defines "project flow" as the peak daily flow that will be generated by the project. The project flows shall be calculated via flow estimates established by the DEP and provided in Table 1 below. The applicant shall support their calculations by providing floor plans of the proposed structure and clearly indicating the applicable information (i.e. floor area, number of apartments, etc.). The PWSA is reviewing information supplied by others and is not responsible to conduct additional work beyond confirming the information that is submitted.

Please see below for a few common uses and the associated information that would be required for the flow calculations:

- Restaurant and/or Bar:
  - Maximum occupancy
  - Number of turnovers per day, typically three (3)
- Hotel:
  - Number of hotel rooms
  - Presence of any public retail or restaurant facilities
- Residential:
  - Number of equivalent dwelling units from single-family residences, apartments, townhouses, duplexes, and condominiums
  - Presence of public facilities, such as swimming pools, gyms, cafeterias, etc..
- Office:
  - Maximum number of employees. The applicant shall assume 150 square feet of floor space per employee. The square footage can be limited to the office space, and does not need to include hallways, shared areas, etc.
  - Number of any public restrooms, if any

Net Flow

The PWSA defines "net flow" as the difference between the project flow and existing flow, as follows:

$$Net\ Flow = Project\ Flow - Existing\ Flow$$

As a result, please note that the net flow may be positive or negative, depending on if there is a net increase or decrease in usage. In addition, please note that tapping fees are based on the net flow.

Table 3.1
Water Use and Sanitary Sewage Flow Estimates
(Flows are referenced from the PA Code Title 25 Chapter 73 Paragraph 73.17).

Type of Establishment	Projected Water Use and Sewage Flow (gallons per unit per day)
Single family dwelling (For units of 3 bedrooms or less. For each bedroom over 3, add 100 gallons.)	400
Multiple family dwellings, including townhouses, duplexes, and condominiums	400
Apartments: 1 bedroom 2 bedrooms Larger than 2 bedrooms Efficiency Apartments	 150 300 400 150
Hotels and motels (per unit)	100
Rooming houses (per unit)	200
Airline catering (per meal served)	3
Airports (per passenger—not including food)	5
Airports (per employee)	10
Beauty shops (per customer chair)	200
Bus service areas not including food (per patron and employee)	5
Country clubs not including food (per patron and employee)	30
Drive-in theaters (not including food—per space)	10
Factories and plants exclusive of industrial wastes (per employee)	35
Laundries, self-service (gallons/regular washer)	400
Laundries, self-service (gallons/front loading washer)	200
Mobile home parks, independent (per space)	400
Theaters (not including food, per auditorium seat)	5
Offices (per employee)	10
Restaurants (toilet and kitchen wastes per patron)	10
(Additional for bars and cocktail lounges)	2

Restaurants (kitchen and toilet wastes, single-service utensils/person)	8.5
Restaurant, fast food (kitchen and toilet wastes/patron)	6
Restaurants (kitchen waste only, single-service utensils/patron)	3
Stores (per public toilet)	400
Stores (per public urinal)	200
Stores (per public sink)	200
Warehouses (per employee)	35
Work or construction camps (semi-permanent) with flush toilets (per employee)	50
Work or construction camps (semi-permanent) without flush toilets (per employee)	35
Churches (per seat)	3
Churches (additional kitchen waste per meal served)	3
Churches (additional with paper service per meal served)	1.5
Hospitals (per bed space, with laundry)	300
Hospitals (per bed space, without laundry)	220
Institutional food service (per meal)	20
Institutions other than hospitals (per bed space)	125
Personal care home (per bed space)	125
Schools, boarding (per resident)	100
Schools, day (without cafeterias, gyms or showers per student and employee)	15
Schools, day (with cafeterias, but no gym or showers per student and employee)	20
Schools, day (with cafeterias, gym and showers per student and employee)	25
Camps, day (no meals served)	10
Camps, winter and summer residential (night and day) with limited plumbing including water-carried toilet wastes (per person)	50
Campgrounds, with individual sewer and water hookup (per space)	100
Campgrounds with water hookup only and/or central comfort station which includes water-carried toilet wastes (per space)	50
Fairgrounds and parks, picnic—with bathhouses, showers, and flush toilets (per person)	15
Fairgrounds and parks, picnic (toilet wastes only, per person)	5
Swimming pools and bathhouses (per person)	10
HVAC condensate from commercial, industrial & institutional facilities	Applicant to provide flow estimates that will be discharged to a PWSA sewer

Revised Water and Sewer Use Application

Applicants can request a refund for tap fees for an issued permit if actual project flows are less than the approved project flows. The applicant must resubmit a water and sewer use application and a $250 review fee. Refunds may take 6-8 weeks to process. Refunds may be requested within 5 years of permit issuance date.

Technical Checklist for Water and Sewer Use Application

The following is a list of items that shall be included with the Water and Sewer Use application. Failure to provide the required information shall result in the rejection of the submittal package.

- Application Fee
- Water and Sewer Use Application Form
- Site Plan
- Floor Plans
- Project Narrative
- Flow Calculations

SECTION 4: PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION SEWAGE FACILITIES PLANNING MODULE

Overview

The Pennsylvania Sewage Facilities Act (Act 537, as amended) requires each municipality in Pennsylvania to have an Official Sewage Facilities Plan (Official Plan) to address existing and future sewage disposal needs. Please note that the Pennsylvania Department of Environmental Protection (DEP) administers and oversees the Act 537 regulations. The Official Plan for the City of Pittsburgh was originally approved by the DEP on May 15, 1972. The Sewage Facilities Planning Module (SFPM) is the instrument for legally amending the Official Plan to account for flows from new/unforeseen subdivisions and land developments. The SFPM requires review/approval from each Facility Owner within the sewerage system, including Collection (PWSA), Conveyance (ALCOSAN) and Treatment (ALCOSAN). Please be advised that the PWSA review/approval shall be limited to the collection system portions of the SFPM. Each Facility Owner conducts a review to understand how the proposed development will impact available dry-weather capacity and whether the proposed flows will create a dry-weather hydraulic overload within the next five (5) years.

Amendments to Act 537 have created a process by which certain developments may be exempt from the planning module process. However, in accordance with 25 Pa. Code 71.51(2), the exemption process requires that the existing collection, conveyance and treatment facilities are in compliance with the Clean Streams Law. On March 2, 2011, the DEP issued a determination that, due to an ongoing consent order regarding the discharge of untreated wastewater, the PWSA and ALCOSAN do not comply with the Clean Streams Law. As a result, the DEP does not accept SFPM exemptions for any development located within the PWSA service area.

General Requirements

Any development within the PWSA service area that meets the DEP's criteria shall be required to complete sewage planning. The requirement for sewage planning depends on a variety of factors, including but not limited to, the Existing Flows, Project Flows, Net Flows, date of lot creation, previous planning module approvals, etc. Please refer to the Planning Workflow Diagram on the PWSA website for additional information.

Please note that the DEP is the governing authority that makes the final determination on whether sewage planning is required. After issuance of the Water and Sewer Use Approval Letter, the PWSA shall issue a Preliminary Determination on the Need for Sewage Planning (Preliminary Determination) to the DEP. The DEP will subsequently issue a Final Determination

on the Need for Sewage Planning (Final Determination), which will confirm or deny the findings in the Preliminary Determination.

Submission Requirements

Please note that SFPM approval requires approval from PWSA, ALCOSAN, City Planning, City Council and the DEP. As a result, the approval process, from start to finish, can take several months. PWSA aims to respond to each SFPM review within 30 days of receipt. The DEP, upon receipt of the completed SFPM, has up to 90 days to respond.

Please see below for the key steps:

1. Submit the Water and Sewer (W/S) Use Application to the PWSA. The PWSA shall provide the location of the most limited capacity sewer in the W/S Use Approval Letter. After issuance of the W/S Use Approval Letter, the PWSA shall issue the Preliminary Determination. The DEP will subsequently issue a Final Determination, which will confirm or deny the findings in the Preliminary Determination.

2. Submit the Sewage Facilities Planning Module Application Mailer to the DEP to receive the applicable SFPM forms and DEP Code Number. Forward the SFPM documentation, along with the required supporting documentation, to PWSA for review/approval. Refer to the sections that follow for detailed information on submittal requirements. Please be advised PWSA's review will be limited to the collection portion of the SFPM.

3. Submit the SFPM to ALCOSAN after receiving PWSA approval. Please coordinate with the ALCOSAN for additional information on their review process. ALCOSAN's review will be limited to the conveyance and treatment portions of the SFPM. Please refer to the PWSA website for contact information.

4. Submit the SFPM to the City Planning Department for approval after receiving ALCOSAN approval. Please coordinate with the City Planning Department for additional information on their review process. Please refer to the PWSA website for contact information.

5. The City Law Department, which receives the SFPM from the City Planning Department, will request a Resolution to be reviewed/approved by City Council.

6. Submit the completed SFPM to the DEP for final approval.

Supplemental Guidance for the SFPM Component 3 Form

The SFPM Component 3 Form is for sewage collection and treatment facilities. Please be advised that these instructions are intended as a supplement to the DEP's instructions. In the event that there is a conflict between this supplemental guidance and DEP's instructions, the Applicant shall complete the Component 3 Form per DEP instructions. This supplemental guidance is not intended to cover each section on the Component 3 Form, but rather, only the sections that directly apply to PWSA. The supplemental instructions for the SFPM Component 3 Form are as follows:

Section A	No additional comments. Please refer to the DEP Instructions.
Section B	Please note that the City of Pittsburgh and PWSA are separate and distinct entities. This section shall not be populated with PWSA information.
Section C	No additional comments. Please refer to the DEP Instructions.
Section D	No additional comments. Please refer to the DEP Instructions.
Section E	Submit a Water and Sewer Availability Letter Request Form to confirm that PWSA can provide service to the proposed development. Please refer to the Process Overview for additional information.
Section F	No additional comments. Please refer to the DEP Instructions.
Section G	The PWSA review is limited to Section G(1) – Collection System. Complete Section G(1b), as follows: Existing collection or conveyance system: [ROAD NAME – SEWER DIAM. AND MATERIAL] Owner: The Pittsburgh Water and Sewer Authority Existing Interceptor: [ALLEGHENY/MONONGAHELA/OHIO] River Interceptor Owner: The Allegheny County Sanitary Authority
Section H	No additional comments. Please refer to the DEP Instructions.
Section I	No additional comments. Please refer to the DEP Instructions.
Section J	For J(1), the Project Flows shall be identical to the Net Flows approved by the PWSA during the Water and Sewer Use Application review process. Please be advised that the Water and Sewer Use shall be approved prior to the SFPM

review. For J(2), the PWSA applicable portions of the table are limited to the "Collection" row. Refer to the sections that follow for detailed information on submittal requirements.

Section K	No additional comments. Please refer to the DEP Instructions.
Section L	No additional comments. Please refer to the DEP Instructions.
Section M	No additional comments. Please refer to the DEP Instructions.
Section N	No additional comments. Please refer to the DEP Instructions.
Section O	No additional comments. Please refer to the DEP Instructions.
Section P	No additional comments. Please refer to the DEP Instructions.
Section Q	No additional comments. Please refer to the DEP Instructions.
Section R	No additional comments. Please refer to the DEP Instructions.

Methodology to Determine the Present Flows

The flows (i.e. Existing, Project and Net) shall be reviewed and approved by the PWSA during the Water and Sewer Use Application review process. As indicated in Section J - Chapter 94 Consistency Determination of the SFPM, the average and peak existing flows shall represent the most limited capacity sewer (MLCS). Please note that the MLCS is not typically the same sewer used for the tap-in. Therefore, the PWSA shall provide the location of the MLCS as part of the Water and Sewer Use Review process. The Present Flows shall be determined, as follows:

Method No.	Project Flows, gpd	Methodology to Determine the Present Flows
Method #1	Up to and Including 4,000 gpd	Peak Flow Depth Measurements
Method #2	Greater than 4,000 gpd	Flow Monitoring

Method #1: Peak Flow Measurement

The Applicant shall take a minimum of five (5) flow depth measurements at the MLCS over a one-hour period between 6-8 AM or 6-8 PM. For example, an Applicant could take measurements at 7:00AM, 7:15AM, 7:30AM, 7:45AM and 8:00AM. The maximum of the five

flow measurements shall be utilized as the flow depth for the Manning equation calculations. All flow depths between zero and one inch shall be rounded to one-inch.

Method #2: Flow Monitoring
The Applicant shall contract with a professional flow monitoring company to monitor the Present Flows at the MLCS. The flow monitoring shall take place for a minimum period of 30 days, unless otherwise approved by the PWSA. Data should be checked for quality and analyzed to provide the present maximum monthly dry weather average flows and peak flows in gallons per day. For peak flows in the PWSA's collection systems, indicate whether the flow is peak hourly flow or peak instantaneous flow.

Calculations for Design Capacity, Present Flows and Projected Flows

General Information
The flow calculations shall be signed and sealed by a Professional Engineer licensed in the Commonwealth of Pennsylvania.

When available, the Applicant may utilize historical as-built information to determine the existing sewer slope, as indicated in the W/S Use approval. If historical as-built information is not available, the Applicant shall either utilize the minimum slope permitted per the DEP Wastewater Facilities Manual or survey the existing sewer to determine the actual sewer slope.

The Applicant shall utilize the following Manning's Roughness Coefficients (n):

Table 4.1
Manning's Roughness Coefficient

Pipe Material	Manning's Roughness Coefficient, n
Brick	0.016
Concrete	0.013
Ductile Iron	0.012
Plastic	0.010
Vitrified Clay	0.015

The Applicant shall utilize the following Peaking Factors:

Table 4.2
Peaking Factors

Type of Collection System	Peaking Factor
Combined	3.5

Separate	3.0

Flow Calculations
The Applicant shall calculate the Design and/or Permitted Capacity, Present Flows and Projected Flows In 5 Years, as follows:

Table 4.3
Flow Calculation Methodology

Flow Type	Calculation Methodology
Peak Design Capacity	Use the Manning Equation for full-flow conditions
Average Design Capacity	= Peak Design Capacity ÷ Peaking Factor
Present Peak Flow	Method #1: Use the Manning Equation for partially filled pipes
	Method #2: Analyze the flow data
Present Average Flow	Method #1: = Present Peak Flow ÷ Peaking Factor
	Method #2: Analyze the flow data
Projected Peak Flow in 5 Years	= (Present Peak Flow + Project Flow) × 1.05
Project Average Flow in 5 Years	= Projected Peak Flow in 5 Years ÷ Peaking Factor

Technical Checklist for SFPM Applications

The following is a list of items that shall be included with the SFPM application. Failure to provide the required information shall result in the rejection of the submittal package.

- Copy of the DEP Planning Module Components Letter (i.e. DEP's response to the Mailer)
- Copy of the PWSA Water and Sewer Use Approval Letter
- Copy of the Water and Sewer Availability Letter
- Project Narrative including the name of the project, location address, current and proposed use
- Plot Plan showing the existing/proposed structures and existing/proposed utilities
- Flow Calculations signed and sealed by a Professional Engineer
- Sewage Facilities Planning Module – Component 3 – Sewage Collection and Treatment Facilities

SECTION 5: TAP TERMINATIONS

Overview

All connections to PWSA public facilities which are abandoned, proposed to be abandoned, or otherwise not in use or service, must be terminated at the connection to the PWSA owned facilities per PWSA details, specifications, and/or standards at the property owner or developer's expense. All structures to be demolished must obtain a tap termination permit from PWSA. This includes but is not limited to restoration of public and private streets, sidewalks, utilities, or paving and landscaping or demolition of structures. For a water service that is active but not in use, the developer has the option of termination or to maintain a meter. If no tap termination permit is issued from PWSA, the property owner will continue to receive a monthly bill.

All tap terminations require a permit. If no new taps are proposed, a tap permit application and drawings must be submitted. Any tap terminations proposed as part of the development of a property shall be included and approved on the tap-in plans as described in the Tap-in Procedures section.

Submission Requirements

The applicable standard details must be shown on the applicant's drawings. All current standard details can be found on our website. The applicant should note on the drawing any existing account numbers and/or meter numbers associated with the tap to be terminated. Drawings are to be submitted via e-Builder. Instructions to obtain an e-Builder project folder are outlined in the Process Overview of this manual.

Termination Procedure

PWSA must field verify the termination of the existing connections. The applicant shall notify PWSA by contacting the Field Supervisor provided with their permit at least three working days in advance of the proposed termination date. A PWSA inspector must be on site during the termination procedure and witness said terminations and pipe zone backfilling. Removal of existing private portions of abandoned or unused sewer laterals and/or abandoned or unused private water service lines is the responsibility of the property owner. Absent the written agreement of the PWSA to the contrary, should the PWSA be required to remove a property owner's abandoned sewer laterals and/or abandoned or unused water service lines, the total PWSA cost of that removal shall invoice and/or lien said property. In the case of water service lines for fire or domestic use, once the service is terminated, the applicant shall return the meter and remote reading device to PWSA and provide PWSA with said meter and account numbers and the service addresses. Failure to return meter and account number/service address will have developer subject to continued billing on accounts.

Note: Please be advised there could be ferrule charges billed for unremoved taps.

Trenchless Technology

If the applicant proposes to terminate a sanitary or storm sewer connection using trenchless technology, then the applicant must submit shop drawings and calculations for method to be used and conduct NASSCO certified closed-circuit televised video (CCTV) inspections of the public sewer before and after the termination(s). Copies of the videos and related report information must be submitted to the PWSA. All CCTV inspection must be compatible with PWSA electronic media and adhere to current PWSA standards.

SECTION 6: TAP-IN PROCEDURES

Overview

All developments and/or redevelopments proposing new taps, increasing flow to existing taps, or increasing storm flow to a new or existing storm system must submit tap-in plans stamped by a Pennsylvania Certified Engineer for review by PWSA engineers. This section outlines general plan requirements and specific tapping procedures. A development may include all taps described in this section while others may only include one.

The following prerequisite conditions must be satisfied prior to the review of tap-in drawings:

- The applicant shall have submitted a PWSA Water and Sewer Availability Letter Request.
- The Water and Sewer Use Application has been approved by PWSA. A fire service only tap is does not need a Water and Sewer Use application approval.
- If applicable, DEP Sewage Facilities Planning Module must be under review by PWSA.
- $250 review fee has been submitted.

PWSA grants final approval of the tap-in drawing through an electronic review process in e-Builder. After the final review, PWSA will supply the applicant with a permit fee invoice (See tapping fees section). A digital copy of the approved drawings will be provided to the applicant when the permit is issued. A permit is not considered issued until all fees are paid.

General Requirements

General tap-in guidelines are as follows:

- Form-DEV must be completed and submitted with the tap-in plans.
- Drawing size shall be 24 inches x 36 inches in landscape.
- Plan views shall be drawn to 1"=20' or 1"=30'.
- Plan view shall be set to City monumentation and City datum unless otherwise directed.

- Drawing shall be readable and drawn to scale with a north arrow pointing to the top or the right of said sheet.
- Drawing shall include a plan view of the entire site. All existing topographic information shall be shown either 50 percent screened or half-toned.
- Existing building footprint shall be displayed and shall show the address, parcel ID, type of building, number of floors, the square footage of each floor and the total square footage of the building. If an address or parcel ID has not yet been established, use proposed address.
- Existing meter and account numbers must be shown.
- CCTV is required for all sewer lines pre and post construction when new taps, concrete work, or foundation work are proposed.
- CCTV shall be in MPEG format and include a NASSCO/PACP export of CCTV database, PDF map showing the location of manhole IDs, PDF of all CCTV inspection logs.
- Existing manholes and wyes must be shown by survey stationing matching CCTV.
- All existing sewer, storm and water lines near project location shall be displayed. Each line shall be marked private or public.
- All existing water mains, sanitary or storm sewers that will be tapped shall be displayed. The size and material type shall be shown.
- Proposed location and size of the service line shall be shown and stationed. Stationing shall be established from a fixed location such as centerline, right-of-way line, or property line. Valves and manholes are not considered a fixed location unless otherwise directed by PWSA. Proposed sewer, storm and water lateral information is to be shown in bold line weight and text.
- The appropriate scalable plan view, profiles, and details shall be displayed. Examples of the PWSA standard details can be found on our website.
- All applicable standard tapping and termination details shall be displayed. Current details are available on our website.
- All existing private water and sewer lines connected to the existing building or servicing the site including abandoned facilities. Any existing service line that will not be reused by the proposed project must be terminated by the owner. The service line must be terminated at the main as per PWSA Specifications and in a manner acceptable to the PWSA.

- All existing easements must be displayed on the plans. Documentation of easements must be provided.
- The summary table titled "Water and Sewer Flow Data" must be completed by the applicant and shown on each drawing.
- Each tap-in drawing must also include an appropriate title block in the lower right-hand corner of the drawing.
- Current PWSA approval block must be shown on each drawing. This block is to be completed by PWSA.
- A Hydrant Flow Test Results table is required for all water and fire protection service tap-in drawings. See Hydrant Flow Test procedures for more information.
- All applicable tapping, termination, and trenching details shall be shown. Any modifications to PWSA details must be explicitly called out on the plans.
- Connection to PWSA sewer can be made through an existing wye or through a new approved connection into the PWSA sewer main. If private connection is proposed to be made through an existing wye, then the location of the existing wye must be shown and stationed to the nearest PWSA manhole on the sewer tap-in drawing(s). Certain existing wye stationing can be obtained from PWSA records/video location of taps. If a new connection is proposed using a new wye, then a detail of the connection must be shown and also stationed as stated above on the sewer tap drawing. New connections must follow current PWSA specifications and standards.
- Construction of private sanitary or storm sewer laterals to tap PWSA manholes and catch basins or storm inlets is not permitted.

Sanitary and Storm Sewer Tap-in Specific Requirements

- If an existing sanitary sewer line is present, then the applicant must propose connecting the sanitary flows from the proposed development to the existing sanitary sewer unless otherwise directed by PWSA.
- If only an existing combined sewer is present, then the applicant must propose connecting both the sanitary and storm flows from the proposed development to the combined sewer with two separate laterals connecting into one wye unless otherwise directed.

- If an existing storm sewer is present, the applicant must connect the flows from the proposed development to the appropriate sewers unless otherwise directed. This includes areas where existing combination sewers are intended to become designated storm in the future as directed by the PWSA.
- Any combination, sanitary sewer, storm sewer or water taps that are being terminated by the customer must be shown on the tap-in drawings (located and/or stationed as directed). Be advised that new tap(s) will not be provided until all site related abandoned existing services are terminated and witnessed by a PWSA representative. All costs associated with the termination of existing private service lines are the responsibility of the property owner.
- It is encouraged to use best management practices (BMPs) to achieve an approved method of surface/stormwater collection, conveyance, detention, and/or retention for stormwater which may minimize or even eliminate the use of PWSA sewer conveyance conduits. Stormwater facilities on private property are usually regulated by other agencies including, but not limited to City of Pittsburgh, Allegheny County Health Department (ACHD), and Pennsylvania Department of Environmental Protection (DEP). The Stormwater Management Officer, located at the Department of City Planning for the City of Pittsburgh, can provide more information on private property surface/stormwater detention and retention requirements. Contact information for the City Stormwater Management Officer can be found on our website. The applicant must also comply with all current county/state stormwater regulations.

Water Quality Requirements

The following regulations for private stormwater connections to PWSA sewers are designed to comply with the current Pennsylvania Department of Environmental Protection's suggested guidelines for stormwater quality as expressed in the current edition of the Pennsylvania Stormwater Best Management Practices Manual (BMP Manual) . Chapter 3, Section 3.5 of this manual states "Achieve an 85 percent reduction in post-development particulate associated pollutant load (as represented by Total Suspended Solids [TSS]), an 85 percent reduction in post-development total phosphorus loads, and a 50 percent reduction in post-development solute loads (as represented by NO3-N), all based on post-development land use." Any structural or nonstructural methods of achieving the stormwater quality guidelines above are acceptable, provided that appropriate documentation and worksheets from the BMP Manual are submitted to PWSA and found to verify the claimed performance after review. All surface drainage

areas except for unoccupied elevated roof space must be captured and treated. All structural and nonstructural water quality designs must meet the following requirements:

- Design must capture grit/silt, floatable debris and/or other pollutants as noted in these specifications or as directed.
- The device must be detailed on the plans and all certified pertinent sizing information, options, weirs, orifices, settings, flow capacity, etc. must be noted. PWSA reserves the right to request design certification from an engineer registered in Pennsylvania.
- Provide documentation of required approval(s) by other private and/or government agencies.
- The property(s) owner(s) must provide a signed statement outlining the maintenance requirements as stated by the manufacturer and/or designer and agreeing to accepting responsibility for this required private maintenance. PWSA reserves the right to request a recorded copy of this document.

Due to the congested nature of development within the City of Pittsburgh, many sites will be required to use water quality filters and/or hydrodynamic devices as standalone units. If the surface drainage area excluding unoccupied roof space is less than 5000 ft^2, PWSA may grant approval to use inlet filter bags designed for permanent installation and/or maintenance. However, they must meet the same stormwater quality requirements. Water quality filters and/or hydrodynamic devices and/or inlet filter bags must meet the following minimum requirements:

- 85% total suspended solids (TSS) removal with a mean particle size distribution of 50 microns or smaller. It is assumed that removal of the smaller particles will result in the desired nitrogen and phosphorus removal.
- Design must not release previously captured pollutants during high flows or when in need of maintenance.
- Design must capture above noted grit/silt, floatable debris and/or other pollutants as directed.
- The device must be detailed on the plans and all certified pertinent sizing information, options, weirs, orifices, settings, flow capacity, etc. must be noted.
- The property owner(s) must provide a signed and/or legally recorded statement/agreement outlining the maintenance requirements as stated by an approved manufacturer and agrees to accepting responsibility for this required private maintenance.

- The stormwater quality device must be located where it is accessible for PWSA inspection and/or for maintenance by the owner.
- PWSA may request test results from an independent source.

Other private BMPs that work well in an urban environment are predominantly based on subsurface storage detention and/or retention, which are usually located beneath parking lots, landscaping, or other surface features. The surface feature may or may not be part of the BMP.

In its simplest form, subsurface storage consists of an excavated area filled with crushed stone which stormwater is directed to. The reservoiring water fills the void space between the individual stones. Perforated pipes and/or proprietary structures are often added to increase the storage capacity. The excavation is lined with geotextile to deter fine soils from entering the storage space.

Stormwater retention refers to runoff which is kept onsite and usually allowed to infiltrate into the existing earth. This is preferred over stormwater detention, but site conditions may limit the ability to infiltrate stormwater. Percolation testing should be done to verify the site conditions during design and the area protected from compaction damage during construction activities if stormwater retention is proposed.

Stormwater detention refers to the storage and slow release of stormwater. This minimizes the peak flow rate in the storm sewer and/or receiving body of water. Most BMPs are designed to retain a portion of the stormwater and detain the remainder.

The Pennsylvania DEP BMP Manual has many more specific BMPs based on the general concepts above, such as Pervious Pavement with Infiltration Bed, Infiltration Basin, Infiltration Trench, and Rain Garden. The BMP Manual also includes BMPs based on other concepts which are well adapted to an urban environment, such as Vegetated Roofs and Runoff Capture & Reuse. Many companies have developed proprietary versions of BMPs which may also be used, provided they are compliant with current local, state, and PWSA regulations. As long as sound design principals and methodologies are used, BMPs may be mixed, matched, modified, and linked together. Also refer to current municipal and Allegheny County guidance and regulations for additional information.

Water Tap-in Specific Requirements

- Plan view shall show all existing or proposed valves, thrust blocks, fire service, water service, meter and backflow location.
- Concrete blocking required for 4-inch taps and larger.

- The tap-in drawing shall show all existing water service lines connected to the existing building or servicing the site. Existing residential private service lines must be a minimum of 1-inch copper with a flow of 5 gallons per minute (GPM) to be reused. New commercial, industrial, or institutional developments may utilize existing service lines at the expense and maintenance of the owner if minimum flow requirements are met. All lines to be reused must have an Allegheny County Health Department approval in writing with application.
- It is the responsibility of the design consultants, engineers, and/or architects hired by the developer to determine the adequacy of the existing water systems to fulfill proposed needs at their time and expense. The presence of an existing PWSA water main or an existing water service line in no way implies that PWSA has adequate capacity or pressure for the proposed development.

Curb Stop Valves

Approved curb stop valves shall be provided on all new domestic water service lines 12 inches towards the property from the face of curb or edge of pavement and oriented in a straight line perpendicular to the public street right of way unless otherwise directed. For mains located in the sidewalk, curb stop valves shall be located approximately 12" from property line to the street. New taps and domestic service lines shall also be located so as not to place the curb valve within the defined limits of a driveway unless otherwise directed. All private service line materials must also comply with all required ACHD Plumbing Division directions and approvals.

Water Meters

A water meter is required for each customer service line. PWSA will supply, set and connect all water meters regardless of size to new and/or existing piping. PWSA's current policy is one meter per water service line/connection tap-in to the PWSA public water main. Each meter must be associated with a specific billing address and legally responsible individual or organization. Any private sub metering and/or division of the PWSA bill are solely the responsibility of the individual or organization mentioned above.

The water tap-in drawing shall include a schematic detail for each proposed meter and remote reading device servicing the development. This detail must show size, type, and model number of PWSA approved meter and remote reading device for each service line. The applicant must provide peak domestic water demand in gallons per minute (gpm) on the drawing. The peak domestic water demand will determine the size of the new water meter.

Meter Pits/Vaults

The PWSA recommends meter pits/vaults for all installations. PWSA requires meter pits for all residential units as directed. If the distance from the PWSA water main to the point of entry of the water service line at the building is greater than 50 feet, then the applicant is required to install a meter pit or vault. The meter pit or vault must be located at the property line no farther than 36 inches from the edge of the public right-of-way or property line that contains the PWSA water main. If the distance from the water main to the point of entry at the building is less than 50 feet, then the PWSA may permit the meter to be installed inside the building unless the building is constructed on a slab on grade. All properties constructed as slab on grade must install a meter pit.

Any meter installed inside a building must be located no more than 36 inches from the point of entry at the inside face of the exterior wall of the water service line inside the building. Where a meter is installed in a building, the remote reading device shall be installed on the outside wall of the structure or at any other location that in the PWSA's judgment is accessible under most conditions. It shall be securely attached to the building at a level between 3-1/2 and 4-1/2 feet above finished grade, outside of any fenced-in areas if possible, and clear of obstructions. It shall be located on the front of the building or on a side near the front. If two buildings are separated by a driveway, it shall be located on the sides of the buildings facing each other to facilitate reading. Exceptions to these requirements will be made only if approved by the PWSA in writing.

Service lines four inches and larger will require a vault. Vaults must meet the following requirements:

- All vaults must have two hinged doors capable of being locked open. Both doors must be large enough for human entry. One of the doors must be centered over the meter and large enough for the easy installation, removal, and maintenance of the meter. It is suggested that the second door be placed over the backflow prevention device.
- An aluminum ladder is required at each door of the vault for access.
- The property owner will own and is responsible for the vault and its maintenance.
- The vault must have a method of drainage. A drain line day lighting to open air is preferred, but a sump for pumping out the vault is the minimum requirement where a drain line is not possible (the drain line cannot be connected to the public sewer system).

- Vaults or pits located in roads, driveways, or other areas subject to traffic must be live load rated (H20). Be advised PWSA and/or ACHD do not recommend vaults/pits in street cart ways and/or driveways.
- Projects where domestic and fire lines are connected to the public main via a single tap as shown in PWSA Detail WSC-1 may use a single vault for both services. In this application, one door is required to be centered over the domestic meter and another is required to be centered over the double detector check backflow prevention device and by-pass meter used on the fire service.
- PWSA requires a cut sheet/shop drawing submittal(s) for all vaults prior to installation to ensure the above criteria is met.

Backflow Prevention

A backflow prevention device is to be installed on every service line. When applying for a new or replacement water service tap, it is required that all active existing service lines be equipped with an approved backflow prevention device. In no case will a plan be approved until all existing and new service lines are appropriately protected against backflow. The following requirements apply to all backflow prevention devices.

- Backflow prevention devices must be installed immediately after the water meter and remote reading device and before any branch lines leading off of the water service line.
- Backflow prevention devices must be installed so as to be readily accessible and with adequate space for inspection, testing, maintenance, and disassembly.
- Backflow prevention devices must be mounted in a horizontal position except for two models which permit horizontal or vertical mounting.
- Backflow prevention devices such as a reduced pressure zone (RPZ) type with a drain must be protected from freezing by installation in a heated building. Pit or vault installation is also prohibited. Such pit or vault applications must have a dual check type backflow prevention device directly after the meter within the pit or vault in addition to the RPZ type within the building.
- PWSA requires reduced pressure zone (RPZ) type backflow prevention on all non-residential developments.

- Backflow prevention devices with drains must be installed so that the relief port is always readily visible and vented to drain.
- Preferably, the backflow prevention device should be located a minimum of 18 inches from the nearest wall and the center line of the pipe and should be located between 24 inches and 48 inches off the deck for horizontal installation.
- The property owner owns and is responsible for the proper maintenance and/or protection of all backflow prevention devices. Each device is to be tested annually and results submitted to PWSA.
- Each installation has specific design problems that must be considered. However, the above guidelines and manufacturers' recommendations will be emphasized when plans are submitted for approval.

Fire Protection Service Tap-In Specific Requirements

Tap-in drawings for fire protection service are required by PWSA for all proposed developments and/or redevelopments that voluntarily install or are required to install a fire suppression system by the City of Pittsburgh Department of Permits, Licenses, and Inspections (PLI). This includes single-family homes with proposed fire service. It is the responsibility of the developer to determine if fire service is required. PWSA does not determine if fire service is required and will only review if fire service taps are included on the tap-in plans.

It is the responsibility of the design consultants, engineers, and/or architects hired by the developer to determine the adequacy of the existing water systems to fulfill proposed needs at their time and expense. The presence of an existing PWSA water main or an existing water service line in no way implies that PWSA has adequate capacity or pressure for the proposed development.

If adequate water pressure exists, fire protection systems are directed to have a separate tap from the PWSA water main. Domestic water service line(s) can be tapped onto said fire line but separated in the public right-of-way with shut-off valve, if deemed acceptable by PWSA. No irrigation or domestic lines may be tapped from a dedicated fireline.

All new shut off valves required for redundant fire service lines as determined by the City of Pittsburgh Department of Permits, Licenses, and Inspections shall be installed at the expense of the developer according to the procedures outlined in Private

Construction of Public Facilities. It is PWSA's preference that redundant fire lines are tapped to two different water mains where available.

If applicant is applying for only a fire line tap, the Water & Sewer Flow Data Table is not required.

The applicant must include the following information on the Peak Operating Water Demands Table on each tap-in drawing:

- Fire System Peak Demand (in gpm)
- Domestic System Peak Demand (in gpm)

If a fire service line feeds a hydrant on private property, the line will require a water meter and remote reading device in a meter pit/vault. A ⅝-inch x ¾-inch meter and remote reading device must be purchased from the PWSA where fireline is equipped with typical backflow assembly. PWSA will install to new and/or existing piping, and own and maintain all water meters and remote reading devices.

A backflow prevention device is to be installed on every service line. When applying for a new or replacement fire service protection service tap, it is required that all active existing service lines be equipped with an approved backflow prevention device. In no case will a plan be approved until all existing and new service lines are appropriately protected against backflow. For more information on backflow prevention requirements, review Backflow Prevention.

Hydrant Flow Test

Before any water tap-in drawings for developments including fire service or domestic service greater than one-inch can be submitted, the applicant must first apply for a hydrant permit to conduct the hydrant flow test.

The applicant should indicate the street name of the tap location on the application. PWSA will review and select two hydrants for the hydrant flow test. PWSA reserves the right to modify the hydrant selections before the hydrant flow test is completed.

If an accurate flow cannot be measured on a PWSA water main, no fireline taps will be permitted into that main unless no other options are available. The developer may install a fire hydrant as directed by PWSA at the expense of the developer according to the procedures outlined in Private Construction of Public Facilities.

- The Operations Division of PWSA will operate all valves and hydrants during the hydrant flow tests. Information on how to schedule the hydrant flow test will be given with the permit.

- The applicant must conduct the hydrant flow tests using his own equipment and personnel.
  - Compliance with NFPA 291 is required as determined by the City of Pittsburgh.
  - The pressure drop during the hydrant flow test must be 20 percent or greater as required by NFPA 291.

Ideal conditions for hydrant flow tests are when outside air temperatures are above 40°F. PWSA will typically not permit hydrant flow tests when the outside air temperature is below 40°F and falling. PWSA can authorize a hydrant flow test to be conducted only if additional safety measures are taken and permitted by the city (i.e. salt truck, etc.). Hydrant flow tests are also dependent upon the availability of the PWSA crew to operate the hydrants. Typically, results from a hydrant flow test are valid for a period of one year from the date of the test. In certain areas with heavy development, PWSA may determine that the test results are valid for only six months from the date of the test.

The applicant must complete the Hydrant Flow Test Results table with the data from the hydrant flow test and add to water tap-in drawings.

Tap Installation Procedures

Waterline Taps

No water tap will be performed unless all water meters, remote reading devices, and backflow devices have been previously installed and subsequently inspected by PWSA. PWSA must perform the waterline tap, meter and remote reading device installation, and any valve shutdowns. Forty-eight hours advance notification from the owner is required before the tap can be performed.

Listed below are the required steps for water tap-in:

- The customer is to follow all steps outlined in previous sections of this manual to obtain a development permit.
- After permit approval and the fees paid, a permit will be issued at the permit counter.
- The customer / developer may begin site prep for service line, meter, and remote device installation.
- Customer / developer shall obtain street opening permit if necessary and begin excavation to open street and expose water main.

- Customer / developer shall use the contact information provided at permit issuance to schedule meter and tap installation.
- PWSA will inspect service line / meter installation.
- PWSA will inspect excavation for tap and any tap terminations, if necessary.
- Customer / developer shall make connection from the main to the meter set.

Construction personnel employed by the applicant are responsible for all permitting, excavation, backfill, trench restoration, and domestic water service line installations from the building to the point of the tap-in at the PWSA water main. The applicant's construction personnel must have proper trench shoring and equipment on site to conduct all required work and complete the job.

The responsibility of the work is as follows:

- For customer water service lines 1 inch and 1½ inches in size, only the PWSA drills and/or connects the ferrule (corporation cock) to the PWSA water main. For new connections, the customer is responsible for installing the service line from the ferrule to the building (including all associated trenching and surface restoration). For private water service lines 1 inch in diameter or less serving a single-family residential development, PWSA assumes the maintenance responsibility made for the curb stop, the curb box, and the portion of the water service line running from the curb stop to the water main after initial connection and installation. The property owner owns and is responsible for the maintenance of that portion of the water service line running from the premises being served with PWSA water to the curb stop, including the connection to the curb stop but not the curb stop itself. If the owner of a single family residential development installs or wishes to have installed a water service line greater than 1 inch in diameter, then ownership and maintenance responsibility for the entire water service line and related appurtenances, from the premises being served with PWSA water up to and including the connection of the water service line to the PWSA water main, including the curb stop and curb box, and the corporation stop or mechanical joint tee, lies with the property owner.
- If a 2- or 3-inch service line is required, a 4-inch cut in or mechanical tapping tee/sleeve will be required. After the tapping tee/sleeve, the service line size can be reduced.
- For domestic water service lines 2 inches and larger, where the customer desires to install a tapping sleeve, the customer is responsible for installing the tapping sleeve on the PWSA water main. Then, PWSA shall drill the PWSA water main to install the connection. The customer is also responsible for

installing the private PWSA approved gate valve, curb stop with curb box, service line and related appurtenances from the tapping sleeve to the building.

- When the customer is required to install a cut-in tee, a waterline shut permit is required as outlined below. The customer is responsible for installing the cut-in tee and the private gate valve, curb stop with curb box, and service line from the tee to the building.
- One-inch connections shall have a minimum distance of 5 feet between taps when the taps are made on the same side of the water main. One-inch connections made on opposite sides of the water main require a minimum distance of 30 inches. Connections larger than one inch require a minimum distance of 5 feet between taps unless otherwise directed.

Waterline Shut Permit

- When a water main shut down is required for a tap-in, the applicant's construction personnel must apply for a Waterline Shutoff Permit.
- The contractor shall submit the waterline shutoff application at least fifteen (15) days before the shutoff is required.
- The contractor must also submit a $5000 deposit, payable by cashier's check with the completed application. The deposit payment must be separate from any other tap-in fee payments. If the contractor completes the work in the estimated timeframe, the Authority will refund $4500 to the contractor after the work is completed. A waterline shutoff permit form can be found on our website.
- If work is to occur at night, the fee is double.

Sewerline Taps

No sewer taps are to occur prior to PWSA approval.

Listed below are the required steps for sewer tap-in:

- The customer is to follow all steps outlined in previous sections of this manual to obtain a development permit.
- After permit approval and the fees paid, a permit will be issued at the permit counter.
- The customer / developer may begin site prep for service line.
- Customer / developer shall obtain street opening permit if necessary and begin excavation to open street and expose water main.
- Customer / developer shall use the contact information provided at permit issuance to schedule meter and tap installation.

- PWSA will inspect service line tap installation.
- PWSA will inspect excavation for tap and any tap terminations, if necessary.

Construction personnel employed by the applicant are responsible for all permitting, excavation, backfill, trench restoration, and sewer lateral installations from the building to the point of the tap-in at the PWSA sewer main. The applicant's construction personnel must have proper trench shoring and equipment on site to conduct all required work and complete the job.

PWSA does not accept maintenance responsibility for any private sewer laterals including the connection to the main.

SECTION 7: TAP FEES

PWSA will calculate the appropriate fees based upon the related project information submitted by the applicant in the Water and Sewer Use Application and tap-in plans. All fees are based on the amount of water demand and the sewer flows created by each development plus the cost of the taps, meters, and valve operations. The fees will be charged to new applicants of the PWSA systems to recover the cost of constructing the public water and sewer systems and related facilities. The fees support the construction and maintenance of infrastructure such as:

- Trunk and collector sewers
- Sewage pumping stations
- Water pumping stations
- Water filtration
- Water treatment
- Large diameter transmission mains
- Small dimeter water mains
- Storage reservoirs
- Storage tanks

Tap fee calculations are based on Equivalent Dwelling Units (EDUs) and Gallons Per Day (GPD). One EDU is equal to 300 GPD and is representative of the peak flow of one single-family unit. To determine the EDUs for projects that are not single-family homes, the current calculation is Net Flow GPD/300 GPD.

As an example, a development creating 1500 GPD of water demand and 1500 of sewage flow will use 1500 GPD/300 which equals 5 water EDUs and 5 sewer EDUs.

It should be noted that the DEP currently defines one EDU as 400 GPD. The number of EDUs for a development will differ for DEP submittals and PWSA fees.

Fee Schedule

All fees are established in the PWSA Water and Wastewater Tariffs and approved by the PUC. Fees are categorized by tapping, capacity, connection, and customer facilities (i.e. taps and meters) Collectively, the fees are referred to as tap fees.

Table 7.1 Fee Schedule	
Fee Type	**Fee**
Sewer	
Tapping	$1277
Capacity	$1701
Connection	$0*
Total Sewer Fee	$2,978/EDU
Water	
Capacity	$1382
Distribution	$842
Connection	See Tap Fee Schedule**
Customer Facilities	See Meter Fee Schedule***
Total Water Fee	$2,224/EDU + cost of connection + cost of customer facilities

* PWSA's current policy for sewer connections states that the customer is responsible for excavating and connecting the private sewer lateral at the PWSA main line as per current PWSA standards and specifications and installing the private service lateral from the PWSA main to the building to be served. Based on this policy, PWSA does not currently charge a sewer connection fee.

**The Water Connection Fee includes the cost of taps and valve operations. PWSA shall install all taps and operate all valves on PWSA water mains. PWSA will install the corporation stop and coupling for water service lines 1.5 inch or less in diameter. The customer is responsible for excavation and installation of the water service line from the building to be serviced to the point of connection at the PWSA main. The Connection fee charged by PWSA varies based upon the size of the service line and the type of tap-in procedures required by the PWSA and/or ACHD regulations. See current fee schedule for costs.

***The Customer Facilities Fee includes the cost water meters and remote reading devices. All meters and remote reading devices must be purchased from the PWSA. See current fee schedule for costs.

There are currently no tapping fees associated with storm connections.

PWSA will post a fee schedule on our website yearly.

Fee Credits

The tapping fees apply to all new developments and any renovations creating an increased demand for existing structures. PWSA will credit tapping fees to an existing structure or development at our discretion.

The following conditions must be met to receive fee credits:

- The existing structure has not been removed and has maintained an active connection to PWSA infrastructure as determined by the PWSA. Also, under certain conditions where the existing structure has been removed because of natural disaster such as fire, earth/foundation movement, etc. and is being replaced by the original owner with a building of the same size and footprint.
- Both existing and proposed usages and peak flows can be satisfactorily documented and calculated by the applicant. The PWSA reserves the right to determine whether said information is acceptable.
- No developments proposing subdivisions, consolidations, or any other significant modifications (as determined by the PWSA) to the legal boundaries of said existing parcel.

No credit will be granted to existing vacant lots unless determined by PWSA as meeting the criteria of a natural disaster.

If credit is granted for existing usage, the peak daily flow calculated for the existing structures is subtracted from the calculated peak daily flow for the proposed structure. The applicant will be required to pay for any additional new tapping fees.

No new accounts will be established prior to all fees being paid.

SECTION 8: PRIVATE CONSTRUCTION OF PUBLIC FACILITIES

Overview

This section is relevant to developments which require physical modifications to PWSA's existing water and sewer facilities. Please see below for a list of common examples:

- The Pittsburgh Bureau of Fire determined that there is not an existing fire hydrant within sufficient distance of a proposed development. Therefore, the developer is required to construct a new fire hydrant at a nearby intersection.
- The Department of Permits, Licenses, and Inspections of the City of Pittsburgh has determined that an upcoming development requires a dual/secondary/backup fire service. The PWSA only has a single distribution main within the project area. Therefore, the developer is required to construct a gate valve on the PWSA water main to separate the two fire connections.
- A development consists of a proposed public roadway to a residential subdivision. The developer is proposing new water and sewer facilities within the public roadway and intends to transfer ownership of the constructed facilities to PWSA.
- The PWSA is requiring a developer to terminate ten (10) unused, but open, sewer connections located on a sewer segment. The sewer is located beneath a busy street, and open-cut excavations would be difficult. The developer is proposing to terminate the connections via cured-in place pipe (CIPP).
- The PWSA has an existing sewer main that traverses the developer's property. The proposed structure is in direct conflict with the sewer main. The PWSA requires the developer to relocate the sewer main within the cartway of an adjacent street.

General Requirements

The first step for developments which contain Private Construction of Public Facilities (PCoPF) work is to submit a pre-development meeting request, as described in Section 1: Process Overview. The pre-development meeting is intended to address early-stage questions, such as:

- Is the PCoPF work required? Can the development be adequately services via existing infrastructure?

- What is PWSA's procedure for PCoPF Projects?
- What are the developer's next steps?
- Are there any immediate concerns with the proposed work?
- Are there better alternatives?

PWSA facilities in conflict with a proposed development shall be relocated at the developer's expense. If an existing structure conflicts with an existing PWSA facility, and the conflict cannot be eliminated, the PWSA shall require a Structures Over Facilities (SOF) Agreement. The SOF Agreement will include additional provisions, such as a recorded easement, and may require structural enhancements to the PWSA facilities in conflict. PWSA is to review and approve all plans and specifications prior to construction as described in this section.

Conditions of Acceptance

The PWSA will only accept the dedication of conventional water and sewer facilities, including but not limited to water main, fire hydrants, gate valves, manholes, sewer main, drainage structures, etc.

The PWSA shall not accept any facilities located within private property or private right-of-way. In such circumstances, the constructed facilities would remain privately owned. For private water mains, the PWSA would require a master meter within 50-feet of the connection with the PWSA water main. If an existing private street is adopted by the City as a public street, and said street contains privately owned water or sewer facilities, the PWSA is under no obligation to accept said facilities.

PWSA will not accept dedication of facilities that have not followed the processes contained herein. Lack of inspection by the PWSA, as-built drawings, or other requested documentation to verify the proper construction of the proposed water and/or sewer facilities may result in PWSA using funds from the performance bond to complete construction to our standards. PWSA reserves the right to require the unearthing of any completed infrastructure to ensure proper inspections take place prior to acceptance.

In any instances that PWSA cannot verify the new or relocated facilities have been constructed according to minimum standards, the facilities will remain private, and the developer will be required to obtain additional permits from the Allegheny County Health Department (ACHD) or the City of Pittsburgh. The developer is also required to properly record with the City and the County Recorder of Deeds the ownership/maintenance agreement between all parties that share use of the private utilities. The PWSA will not

permit the connection of the proposed facilities to existing PWSA public facilities if the maintenance agreement is not recorded. Copies of the ACHD variance letter, recorded easement(s), and recorded maintenance agreement must be submitted to the PWSA.

Private shared infrastructure such as detention basins serving multiple properties will require recorded Maintenance Agreements and may also require easements, variances, and other documentation as described in greater detail below.

Past work not properly permitted and/or accepted via recorded agreement by the PWSA is the responsibility of the current property owner(s). This includes a wide range of structures ranging from unauthorized private sewer taps to storm culverts. Any past maintenance and/or repairs done to said private facilities by the PWSA for the sake of public health and safety does not imply ownership by the PWSA.

Common reasons why facilities may not be accepted by PWSA are as follows:

- The facilities only serve a single customer. In such a situation, the facilities would be considered private sewer lateral(s) or private water service line(s). Documentation must be provided to PWSA that the correct permits and variances are in place for these private structures/facilities. This may include encroachment permits for facilities in the right-of-way, variances from the City of Pittsburgh/ACHD, recorded easements/agreements for other properties crossed, and other requirements depending on the specific site.
- Newly constructed roads not accepted by the City of Pittsburgh.
- Facilities that cross private property when it is not required by site conditions as interpreted by PWSA.
- Facilities that do not have all the required recorded legal agreements, easements and/or permits. It is the developer's responsibility to research and acquire at their expense all permits and/or recorded easements prior to dedication of public water and sewer facilities to PWSA.
- Facilities built do not match materials, methods, or general locations on approved plan. Any departures from approved plans must be approved in writing by PWSA.

Development Agreement

The Development Agreement is a legally binding document that defines the process for constructed facilities to be accepted by the PWSA. Upon request, the PWSA will provide

a draft Development Agreement for the developer to review and comment. Please refer to the PWSA website for a Sample Development Agreement. The developer is encouraged to review the Development Agreement with legal counsel. All proposed revisions shall be made in track-change mode for PWSA's review and approval. Under no circumstances is the developer to change any items in the recital clauses, unless otherwise directed.

Once finalized, the Development Agreement may be subject to approval at the next available PWSA Board of Directors meeting. Please note that, to be placed on the agenda, the Development Agreement needs to be finalized approximately one month prior to the regularly scheduled Board meeting.

The Development Agreement, executed by the developer and the PWSA, shall be required prior to any subsequent approvals (e.g. construction drawings, performance bond, construction cost estimate, etc.). However, the absence of an executed Development Agreement does not preclude a developer from submitting documentation for review. The Checklist of Required Approvals summarizes the typical approvals contained within the Development Agreement, as further described below.

If the proposed scope of work requires an external inspection from an on-call consultant, the procurement process typically takes approximately six (6) weeks. The following approvals shall be required by the PWSA before a determination can be made on whom will perform the inspection services:

Construction Drawings

The construction drawings must comply with the design standards contained within the latest version of the Checklist of Requirements for Construction Drawings. In addition, please see below for additional information:

- The PWSA aims to respond to each submission within 30 days of receipt. However, the actual length of time required to conduct the review is largely influenced by the quality of the submission and complexity of the project.
- The PWSA sewer collection system largely consists of combined sewers. A combined sewer conveys both stormwater (e.g. catch basins, roof leaders, storm water detention systems) and sanitary flows (e.g. toilets, showers, sinks). However, please be advised that the extension of combined sewers shall be prohibited. Sewer extensions shall require a dedicated storm sewer and sanitary sewer.
- Newly constructed facilities shall be adequately sized and positioned to account for future development.

- Typically, the PWSA Operations Department will install the proposed connections once a constructed water main is charged. However, please note that the developer's contractor is permitted to install connections per the following conditions:
  - Connections shall be contained within an approved PWSA Development Permit. Please refer to Section 6 – Tap-in Procedures for additional information.
  - Connections must be performed when the waterline is uncharged.
  - Each connection shall be connected to a PWSA meter via a service line. The developer shall remain responsible to install any corresponding meter crocks or vaults in accordance with the approved Development Permit.
  - Unmetered connections shall be prohibited. Connections for vacant properties shall require a meter, which will be set up for a developer-owned customer account.
  - The PWSA shall be responsible to set meters and remote reading devices. Taps for vacant properties must be metered and billed in the name of the contractor/developer/owner.

Construction Cost Estimate

The construction cost estimate (CCE) shall be limited to the improvements contained within the Development Agreement. The PWSA will prepare the draft CCE and share with the developer for review and comment. The CCE is calculated with unit prices derived from the average winning bidder for PWSA's publicly bid projects. The value of the CCE may differ from the value of the contract between the developer and the developer's contractor. For representative unit prices, please refer to the Estimate Spreadsheets. The CCE will be used to determine the value of the required securities (e.g. bonds, irrevocable, cash, etc.) and escrow check (e.g. CM/CI services).

Escrow Check

The developer shall fund an escrow account to compensate the PWSA for costs associated with the Development Agreement, including PWSA reviews (construction drawings, construction materials, etc.) and inspections. The initial escrow check shall be valued at 10% of the construction cost estimate, or $5,000, whichever is greater. The check shall be made payable to the PWSA.

The escrow shall be drawn upon as the PWSA incurs inspection and engineering costs. If the outstanding work exceeds the value of the escrow account, the PWSA shall request additional funds. Failure to provide the additional funds shall result in the cessation of PWSA involvement. At project completion, the developer shall be provided an application for refund to claim any unused money still contained within the escrow account.

Construction Schedule
The developer shall provide a copy of the contractor's proposed construction schedule. The PWSA will utilize the schedule to determine if the inspections will be performed internally (i.e. PWSA staff) or externally (i.e. third-party on-call consultant).

Construction Management and Construction Inspection

The developer shall coordinate with the PWSA project manager to procure construction management and construction inspection (CM/CI) services for the work contained within the Development Agreement. The PWSA will either perform the CM/CI with internal resources (i.e. PWSA staff) or external resources (i.e. on-call consultants). There are many factors that will influence how the CM/CI will be performed, including but not limited to, the scope of the work, allocation of internal resources in relation to the proposed schedule, type of work, etc. There are no exceptions to this requirement: all work shall require CM/CI oversight. Changes to the construction start date shall require input and approval from the CM/CI team to ensure availability.

The following approvals shall also be required prior to construction start-up, but are not typically on the critical path:

Performance Securities
A performance security shall be required by the PWSA to ensure the developer constructs the work in accordance with the development agreement. The developer shall furnish a performance security in the amount equal to 100 percent of the construction cost estimate. The performance security may be in the form of a performance bond or other form acceptable to PWSA. The PWSA shall be the only named oblige on the security.
Please note that the City may impose separate bonding requirements for street or sidewalk restoration.

Insurance
The Developer shall provide a Certificate of Insurance, with PWSA listed as additionally insured, in accordance with the following coverage requirements:

Commercial General Liability: $1 million per occurrence and in the aggregate

Automobile Liability: $ 1 million per occurrence and in the aggregate

The Developer's policies shall also require thirty (30) days' prior written notice to the Authority of any cancellation, amendment, or non-renewal of the policies

Executed Contract Between the Developer and Contractor
The Developer shall submit an executed contract with the selected Contractor for the proposed work.

Construction Specifications

The PWSA Project Manager shall provide the Developer the relevant specifications per the approved construction drawings. The Developer shall ensure that their Contractor performs the work in accordance with the specifications. Please see below for a typical list of relevant PWSA specifications:

- 01510 – Sewer Bypass Pumping
- 01520 – Temporary Water Service
- 02060 – Aggregates for Earthwork
- 02082 – Public Manholes and Structures
- 02085 – Water Utility Distribution Valves
- 02086 – Water Utility Fire Hydrants
- 02281 – Manhole and Catch Basin Grade Adjustment
- 02332 – Service Line Verification
- 02324 – Trenching, Backfilling and Compaction
- 02513 – Public Water Distribution Piping
- 02515 – Water Service Connections
- 02516 – Disinfection of Water Distribution Systems
- 02539 – Public Sanitary and Storm Sewer Piping
- 02630 – Storm Drainage
- 02650 – Sewer and Manhole Cleaning
- 02721 – Aggregate Base Courses
- 02951 – TV Inspection of Sewer Pipelines
- 02952 – Sewer and Manhole Testing
- 02971 – Relining of Sewers – Cured-In Place
- 03300 – Cast-in Place Concrete
- 03600 – Grout

Construction Materials

The developer shall submit the proposed construction materials (i.e. shop drawings, cut sheets, submittals) for PWSA approval. The construction materials must comply with PWSA specifications. Please be advised that the usage of rejected or unapproved materials may result in the PWSA not accepting the constructed facilities.

Third-Party Approvals

The developer shall remain responsible to obtain all third-party approvals. Please refer to the PWSA's Agency Resource and Contact Information webpage for additional information on commonly involved agencies.

Easements for Construction on Private Property

The PWSA requires the construction of new facilities to be located within the public right-of-way. In the event that the aforementioned requirement is unfeasible, and the proposed facilities need to be located on private property, the PWSA shall require a recorded easement. The developer must show recorded proof that all easements and/or encroachments exist in the records of the City and/or County Recorder of Deeds. The minimum easement width is 20-feet centered on the facility. The construction of adjacent facilities would result in a wider easement. In addition, the PWSA may request additional width for reasons including, but not limited to, the following:

- Large diameter facilities, typically defined as greater than 24-inches
- Excessive depths
- Soil conditions
- Site obstructions

Pre-Construction Meeting

The PWSA shall require a pre-construction meeting on-site. The required attendees include the PWSA Project Manager, PWSA Inspector, developer, developer's design engineer and developer's contractor. The topics of discussion shall include introductions, roles and responsibilities, inspection protocols, close-out procedures, testing requirements, open discussion, etc.

Acceptance of Privately Constructed Public Facilities

The following approvals shall also be required prior to issuance of the Notice of Acceptability letter:

As-Built Drawings

The developer shall supply as-built drawings for review and approval at project completion. The PWSA will accept redline drawings, provided the plans are in neat condition, and free from dirt, tears, staining, etc. During construction, the Contractor shall meet with the construction inspector at regular intervals to exchange as-built information. The redlines shall include, but not be limited to, invert elevations, structure locations, slopes, fitting locations, etc. The PWSA shall be provided the opportunity to capture GPS coordinates during construction to update the GIS database.

Maintenance Securities

Upon completion of the work, the developer shall furnish a maintenance bond in the amount equal to 15 percent of the construction cost estimate for a period of 18

months. The PWSA shall be the only named obligee on each security. Please note that the City may impose separate bonding requirements for street or sidewalk restoration.

Design Requirements

The PWSA design standards are contained within the Checklist of Requirements for Construction Drawings. Please refer to the PWSA website for the latest version. Please see below for additional information:

General Requirements

- The existing PWSA facilities shall be clearly indicated with the appropriate identification number, including but not limited to, sewer mains, water mains, gate valves, drainage structures, manholes, fire hydrants, etc.
- The subsurface utility engineering (SUE) performed to locate the existing utilities shall comply with a quality level C, which involves the gps surveying of visible utility facilities (e.g. manhole covers, valve boxes, drainage structure grates). This data shall be utilized to update the location of existing facilities. For example, water mains shall be shown through gate valves and sewer mains shall be shown through manholes.
- Work located within PennDOT right-of-way shall require a Highway Occupancy Permit. Please note that PennDOT shall require the PWSA to submit the permit application on behalf of the developer.
- The developer shall consider the proximity and depth of adjacent utilities to determine if the proposed work is feasible. Please note that the large majority of PWSA facilities rely upon the surrounding soil to maintain structural integrity. Close excavations, and removal of that support, often results in water main and sewer main breaks. The PWSA may require that facilities be shut down during construction. The developer would be responsible to provide temporary water services to any impacted customers.
- The private construction of public facilities shall be limited to situations where the existing infrastructure is incapable of providing the required level of service.
- The proposed facilities shall be designed and constructed in accordance with PWSA specifications.

Sewer Requirements

- Sewers shall be constructed at a depth sufficient to serve nearby basements and future growth. The PWSA may require additional depth, as directed.
- Sewer mains shall be designed in accordance with the DEP's Wastewater Facilities Manual and PWSA standards, whichever is more stringent.
- Where possible, combined and storm sewer shall be designed with a minimum slope of 2.00% and sanitary sewers shall be designed with a minimum slope of 1.00%. Please note these requirements exceed the DEP's Wastewater Facilities Manual. Exceptions are made on a case-by-case basis.

- The pipe material required is dependent upon the depth and diameter. Per the design conditions, the PWSA accepts the following types of materials: PVC (SDR 26), PVC (PS115), RCP (Class IV), DIP (Class 52, epoxy lined).
- The design shall consider the need for bypass pumping, which may necessitate flow monitoring. The developer shall ensure that upstream and downstream manhole access is available. Discharge piping shall not interfere with roadway or pedestrian traffic.
- Connections to new sewer extensions shall be made at a pre-constructed wye fitting. The use of a cored connection (e.g. Inserta Tee) shall be prohibited.
- Storm sewers need to account for the future separation of combined sewer laterals. Typically, this separate would occur at the time of property owner transfer. The developer shall be responsible to extend a lateral stub to the curb line of the street and GPS locate the terminus.

Manhole Requirements

- The barrel and cone sections of the manhole be constructed of pre-cast concrete. For vertical grade adjustments up to 3-inches, the developer shall use rubber adjustment rings. For vertical grade adjustments up to 12-inches, the developer shall use pre-cast concrete adjustment rings. Riser rings shall not extend more than 12-inches from the cone section.
- The PWSA will accept either a cast-in place base or a pre-cast concrete base. However, please be advised that cast-in place bases are strongly advised, as they offer greater construction flexibility. The PWSA only constructs cast-in place bases for our capital improvement projects.
- For situations where the inflowing sewer diameter is smaller than the outflowing sewer diameter, the manhole shall be constructed in such a way that the crown of the inflowing pipe is level with the crown of the outflowing sewer.

Drainage Structure Requirements

- The construction of drainage structures in-series shall be prohibited. Each drainage structure shall have a separate connection to either a manhole or the sewer main. As such, if a drainage structure becomes clogged with debris, it will not impact the performance of any upstream drainage structures.
- The PWSA recognizes two types of drainage structures: inlets and catch basins. Please note that both inlets and catch basins require a 20-inch sump for the collection of debris. The principal difference is that a catch basin requires a stench plate to prevent malodors from permeating out the drainage structure. Inlets are typically required on storm sewer connections, and catch basins are required on combined sewer and sanitary sewer connections.

Cured-in Place Pipe (CIPP) Requirements

- The PWSA accepts CIPP as a suitable method to terminate active lateral connections. Typically, this methodology is useful when PWSA sewers are located under highly trafficked streets.
- The use of point lining shall be prohibited.

- Please be advised that not all sewers are adequate candidates for CIPP. The developer shall provide CCTV of the host sewer to confirm eligibility.

Water Main Requirements

- The proposed water main shall be looped; dead end mains shall be prohibited.
- The main material shall be ductile iron pipe, class 52, zinc coated. The minimum diameter shall be 8-inches.
- The water main shall require a pressure test and bacteriological test prior to acceptance by the PWSA. The proposed design shall include gate valves at strategic locations to isolate the main to perform these tests.
- For services up to and including 1-inches, the PWSA owns the service from the water main to the curb stop and curb box.
- The developer shall be prohibited from reconnecting a private lead service line to a newly constructed water main. As such, the developer shall be required to replace the lead service line at their cost. The PWSA can assist with notification procedures, etc.

Fire Hydrant Requirements

- The developer may be required to construct fire hydrants, as directed by the PWSA or City, depending on the proximity of the nearest hydrant and the length of the proposed extension.
- The hydrant gate valve shall be directly mounted onto the swivel tee.

Profile Requirements

- Profiles shall be required for sewer mains, drainage structure laterals and water mains.
- Profiles shall indicate the location of crossed utilities, which shall be drawn per the outside diameter. Please note that the outside diameter can be significantly different than the nominal diameter. For instance, a 24" reinforced concrete pipe has an internal diameter of 24-inches and an outside diameter of 30-inches. Crossed utilities shall have a minimum vertical clearance of 18-ninches from outer surface to outer surface.
- For sewer, the profile shall include lateral design information including the minimum depth to serve customer connections via gravity flow.
- For water, the crown of the main shall be 4-feet from the ground surface

Tap-in Drawings

Tap-in drawings **are** required when the development includes **all** the following:

- Development of lots,
- Construction of public storm sewer and/or sanitary sewer and/or waterline,
- Construction of building(s),

- Construction of laterals and service lines from building(s) to the new sewer and/or water lines, and
- Change in use of an existing facility (Redevelopment).

Tap-in drawings **are not** required when the development is **limited to** the following:

- Development of lots, and
- Construction of public storm sewer and/or sanitary sewer and/or waterline.

Under the second scenario where the developer only develops the lots and constructs the PWSA facilities, the responsibility of applying for sewer and water taps falls on the future property owner whenever that owner decides to connect to the PWSA facilities.

Tap-in drawings for storm sewers, sanitary sewers, and waterlines can be submitted at any time but cannot be approved until the private construction drawings have been approved by PWSA. Please refer to the Tap-in Procedures of this manual.

Close

NOTICE

Due to the COVID-19 pandemic, our downtown office at 1200 Penn Avenue is closed until further notice.

PWSA Announces Approval of New Rate Structure Including Stormwater Fee

11/18/2021

Changes to provide greater equity and prioritize stormwater management investment.

Today, the Pittsburgh Water and Sewer Authority announces that changes to water and wastewater conveyance rates and the adoption of a new stormwater fee were approved by the Pennsylvania Public Utility Commission (PUC) during their November

18th public meeting. The new rates will go into effect on January 12, 2022. This is the final step in the ratemaking process that started with PWSA's rate request submitted on April 13, 2021.

The new rates, including the stormwater fee, will generate $21 million in additional revenue phased in over two years. In 2022, revenue will increase by $17 million, and in 2023 it will increase by an additional $4 million. The average residential customer using 3,000 gallons of water per month will see an increase of $5.65 in 2022 and an increase of $1.44 in 2023.

With the approval of the new rates, the typical residential customer enrolled in our low-income customer assistance Bill Discount Program using 3,000 gallons of water per month will increase to $43.09 in 2022 or by $1.32 per month. In 2023 this will increase to $44.15 or by $1.06 per month. The approval also includes enhancements to our customer assistance programs and a financial incentive for consumers to enroll in auto-pay.

"Today's approval of our new rates and the stormwater fee reflect the ongoing renewal of our water and sewer infrastructure and will significantly change how we fund stormwater improvements," stated Will Pickering, PWSA's Chief Executive Officer.

"With input from the PUC and community stakeholders, we developed a balanced rate settlement that prioritizes the needs of our most vulnerable customers and the investment we must make to ensure the safety and reliability of our water, sewer, and stormwater systems," Pickering stated. "We appreciate their participation and the continued support from our customers. As a publicly owned and operated utility, every dollar we receive from our ratepayers is reinvested to provide the water services Pittsburgh expects and deserves."

Expanded Customer Assistance Programs

With any rate increase, we must consider the affordability of rates and provide our most vulnerable customers with the assistance they need. The PUC approval provides additional enhancements to existing customer assistance programs that will help

customers reduce outstanding balances, save on their monthly bill, and expand current programs to more customers.

Among other benefits, PWSA will double the monthly arrearage forgiveness credit from $15 to $30 for on-time payments made by customers who are enrolled in the Bill Discount Program and on an active payment plan; very low-income customers enrolled in the Bill Discount Program will receive a 50% discount on water usage charges, and all customers enrolled in the Bill Discount Program will receive an 85% discount on the stormwater charge. Additionally, PWSA will continue to waive reconnection fees for all customers in 2022. We are also expanding the Hardship Grant Program to include sewage-only customers, and all verified low-income customers will automatically be enrolled in the Winter Shutoff Moratorium.

The PGH2O Cares team, established earlier this year, will continue its proactive outreach and education to customers who are eligible for our customer assistance programs. Their one-on-one interaction with customers is providing the extra boost many need to enroll in our programs to receive the support they deserve. PGH2O Cares is an essential feature of our existing customer assistance programs, and we are seeing that their efforts are working to build awareness and increase enrollment.

The Stormwater Fee: A notable change for Pittsburgh

Historically, we have funded our stormwater services from wastewater rates that are based on water usage. The new stormwater fee is based on the hard or impervious surfaces on a property. This ensures that all property owners in Pittsburgh contribute a share that is proportional to the amount of runoff generated by their property. Establishing a fee that is based on hard surfaces such as roofs, pavement, and asphalt is a more equitable way to charge for stormwater.

As part of the implementation of the new stormwater fee, wastewater conveyance rates will decrease since the new stormwater fee will begin to recover the stormwater costs previously included.

The new stormwater fee is a significant change to our rate structure. It provides a dedicated funding source for stormwater management and puts us on the path to, over time, increase investment in stormwater projects that include improvements to our sewer system and green infrastructure like rain gardens and street planters to help catch, retain, and filter stormwater runoff.

Outreach and education remain a priority as we implement the stormwater fee and advance the strategic planning that is currently underway. We will continue to engage with community members and stakeholders to provide a basic understanding of the fee and to seek input on the stormwater issues that are of most concern in their neighborhoods. Community engagement and education is essential to ensure the success of our stormwater planning efforts, provide a reasonable level of protection from intense and heavy rains, and to understand how we can work together to improve the health and well-being of Pittsburgh neighborhoods.

For more information about the stormwater program, please visit www.pgh2ostormwater.com.

Calculating the Stormwater Fee

Impervious surface is the hard surface on a property such as roofs, concrete, and asphalt that do not absorb stormwater. These hard surfaces generate stormwater runoff that collect trash and send polluted water into local waterways. Runoff can also overwhelm our sewer system causing streets to flood, basements to backup, and sewage to overflow into rivers and streams.

In Pittsburgh, the average amount of impervious surface on a property is approximately 1,650 square feet. This is equal to one equivalent residential unit (ERU) of impervious surface, which is the unit of measurement for calculating the stormwater fee and is accepted as the industry standard for determining a stormwater fee. The stormwater fee will be applied to all residential and non-residential properties in Pittsburgh in the following way:

Stormwater Monthly Fees (Based on Impervious Surface)	ERUs	2022	2023
Residential Tier 1 (>=400 to <1,015 sf)	.5	$2.98	$3.98
Residential Tier 2 (>=1,015 to <2,710 sf)	1	$5.96	$7.95
Residential Tier 3 (>=2,710 sf)	2	$11.92	$15.90
Non-Residential	Per ERU	$5.96	$7.95

70% of all Pittsburgh homeowners fall into Residential Tier 2

As part of implementing the stormwater fee, a credits program will be available to residential and non-residential properties. Residential property owners can reduce their stormwater fee by installing certain measures to control stormwater runoff from their properties, such as redirecting downspouts into street planters where applicable or installing a rain garden. Non-residential customers can receive up to a 60% maximum credit by meeting the City's 2019 stormwater development standards.

Additionally, customers will have access to an online searchable database to view their property, the amount of impervious surface, and the number of ERUs charged to the property. An appeals process will also be available if you believe that the total number of ERUs and associated stormwater fee should be different. These resources, along with the application process to apply for the stormwater credit, will be available when the stormwater fee goes into effect next year.

For more information about the stormwater fee, please visit www.pgh2o.com/stormwater-fee.

How Will Your Bill Change?

PWSA's rate increase is carefully allocated to increase revenue where it is needed most. The typical residential customer using 3,000 gallons of water per month currently pays $79.34 per month under the existing rates. When the new rates go into effect in early 2022, this is expected to increase to $84.99 in 2022 or by $5.65 per month. In 2023, this will increase to $86.43 or by $1.44 per month.

Proposed Rates: Residential Customers with DSIC

Minimum Charges	Monthly Usage	2021 Existing Water	2021 Existing Wastewater Conveyance	2021 DSIC	2021 Existing Total	2022 Proposed Water	2022 Proposed Wastewater Conveyance	2022 Proposed Stormwater	2022 DSIC	2022 Proposed Total	Monthly Impact $
5/8	1,000 gal	$27.27	$8.51	$1.79	$37.57	$27.00	$8.09	$5.96	$1.75	$42.80	$5.23
5/8	3,000 gal	$51.77	$23.79	$3.78	$79.34	$53.20	$22.07	$5.96	$3.76	$84.99	$5.65
5/8	5,000 gal	$76.27	$39.07	$5.77	$121.11	$79.40	$36.05	$5.96	$5.77	$127.18	$6.07
5/8	7,000 gal	$100.77	$54.35	$7.76	$162.88	$105.60	$50.03	$5.96	$7.78	$169.37	$6.49
5/8	12,000 gal	$162.02	$92.55	$12.73	$267.30	$171.10	$84.98	$5.96	$12.80	$274.84	$7.54
1"	20,000 gal	$273.57	$155.52	$21.45	$450.54	$290.67	$139.86	$5.96	$21.53	$458.02	$7.48

The typical residential customer enrolled in our low-income customer assistance Bill Discount Program using 3,000 gallons of water per month currently pays $41.77 per month under the existing rates. With the approval of the new rates, this will change to $43.09 in 2022 or by $1.32 per month. In 2023 this will increase to $44.15 or by $1.06 per month.

Proposed Rates: Customers Eligible for Bill Discount Program

Minimum Charges	Monthly Usage	2021 Existing Water	2021 Existing Wastewater Conveyance	2021 DSIC	2021 Existing Total	2022 Proposed Water	2022 Proposed Wastewater Conveyance	2022 Proposed Stormwater	2022 DSIC	2022 Proposed Total	Monthly Impact $
5/8	1,000 gal	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.90	$0.00	$0.90	$0.90
5/8	2,000 gal	$12.25	$7.64	$0.99	$20.88	$13.10	$6.99	$0.90	$1.00	$21.99	$1.11
5/8	3,000 gal	$24.50	$15.28	$1.99	$41.77	$26.20	$13.98	$0.90	$2.01	$43.09	$1.32
5/8	4,000 gal	$36.75	$22.92	$2.98	$62.65	$39.30	$20.97	$0.90	$3.01	$64.18	$1.53
5/8	5,000 gal	$49.00	$30.56	$3.98	$83.54	$52.40	$27.96	$0.90	$4.02	$85.28	$1.74

Ongoing Investment in Water and Wastewater Systems

To provide customers with safe and reliable water, sewer, and stormwater services, we must invest in the infrastructure we use each day. We are currently implementing an ambitious $1.2 billion capital program that includes replacing water mains, rehabilitating aging sewer lines, constructing new stormwater infrastructure, and implementing the Water Reliability Plan—a series of once-in-a-generation projects to renew key components of our water production and distribution systems.

As a publicly owned and managed water, sewer, and stormwater authority, every dollar we receive from ratepayers is reinvested back into our infrastructure and the improvements we are making to provide high-quality services to our customers.

For more information on the new rates approved today and our plans for renewing our water, sewer, and stormwater infrastructure, please visit www.pgh2o.com/ourwaterfuture.

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PGH2O Pittsburgh Water & Sewer Authority

December 23, 2021

Office Partners XXII Block G1 LLC
1000 N. West Street
Wilmington DE 19801

RE: Address TBD - 15219
Water and Sewer Tap-in Plans

Dear Office Partners XXII Block G1 LLC,

The Pittsburgh Water and Sewer Authority (PWSA) has approved the tap-in plans for the above referenced 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.

If you have any questions, please feel free to contact me at (412) 255-8800 x8030.

Sincerely,

Wendy M. Dean
Engineering Tech II

Attachment

cc: PWSA File

Exhibit C

Penn Liberty Plaza I
1200 Penn Avenue
Pittsburgh PA 15222

info@pgh2o.com
T 412.255.2423
F 412.255.2475

www.pgh2o.com
@pgh2o

Customer Service /
Emergencies:
412.255.2423

Pittsburgh Water & Sewer Authority

C-2060
OFFICE PARTNERS XXII BLOCK G1 LLC
Address TBD

96.53	Water EDU's	=	$214,682.72
96.53	Sewer EDU's	=	$287,466.34
(1)	6" tap	=	$1,314.43
(1)	8" tap	=	$1,349.95
(1)	4" tap	=	$1,106.35
(1)	1.5" meter	=	$492.00 – Domestic Positive Displacement
(1)	3" meter	=	$1,668.00 – Compound Domestic
(1)	5/8" x ¾" meter	=	$235.00 – Fire Line

TOTAL = $508,314.79

Please make check or money order payable to PWSA or Pittsburgh Water and Sewer Authority. The approved permit will be processed and emailed after payment has been received.

**** 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.

Penn Liberty Plaza I
1200 Penn Avenue
Pittsburgh PA 15222

Info@pgh2o.com
T 412.255.2423
F 412.255.2475

www.pgh2o.com
@pgh2o

Customer Service /
Emergencies:
412.255.2423

Erin M. Spencer

Subject: FW: Lower Hill G1/G4 Tap In Application

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

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 | www.mbakerintl.com

Exhibit D

Partridge, Toby

From:	Partridge, Toby
Sent:	Friday, February 4, 2022 4:49 PM
To:	Robert Herring, PE, PMP; Shannon Connell
Cc:	Developer_Tap_in_Pe.20014.72_Washington_Place_and_Bedford_Avenue@docs.e-builder.net; Julie Asciolla; Savich, Steven
Subject:	Lower Hill - Revised Tap-in Plans
Attachments:	Lower Hill - Proposed Water and Sanitary Calculations (Block G1) - 2022.02.04.pdf; Lower Hill - G1 Tap Plans - 2022.02.04.pdf; Lower Hill - G4 Tap Plans - 2022.02.04.pdf

Rob and Shannon,
The revised Tap-in plans for the Lower Hill Block G1 and G4 are attached. Please note that the plans have been split into two sets, one for parcel G1 and one for parcel G4. We also removed the G4 parcel water and sanitary taps as the program for that parcel is still being developed.

I have also included updated Water and Sewer Use calculations for the G1 parcel only.

Please let me know if you have any questions,
Toby

Toby Partridge | Technical Manager - Civil and Environmental
Michael Baker International | *We Make a Difference*
100 Airside Drive, Airside Business Park | Moon Township, PA 15108
[O] 412-375-3186
tpartridge@mbakerintl.com | www.mbakerintl.com

Exhibit E

Partridge, Toby

From: Partridge, Toby
Sent: Tuesday, February 15, 2022 12:16 PM
To: Shannon Connell, EIT
Cc: Robert Herring, PE, PMP; Savich, Steven; Developer_Tap_In_Pe.20014.72_Washington_Place_and_Bedford_Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: RE: Lower Hill Development - Revised Tap-In Plans
Attachments: C-2060 Washington Pl and Bedford Ave_Rev Feb 14 2022.docx; Lower Hill - G1 Tap Plans - Rev 2022.02.15.pdf

Hi Shannon,
The revised Tap-In plans are attached. Please note that the left most kiosk needs to remain. It is a utility kiosk/building for various other utilities.

I also took a stab at calculating the new Tap-in fee based on these drawings. Can you confirm the amount?

Thanks,
Toby

From: Shannon Connell, EIT <SConnell@pgh2o.com>
Sent: Friday, February 11, 2022 4:49 PM
To: Partridge, Toby <TPartridge@mbakerintl.com>; Savich, Steven <SSavich@mbakerintl.com>
Cc: Robert Herring, PE, PMP <RHerring@pgh2o.com>
Subject: EXTERNAL: RE: Lower Hill Development - Revised Tap-In Plans

Per our conversation earlier today, please see the attached markup with my comments of the changes needed for the revised tap-in plans.

Have a good weekend!
Shannon

PGH2O

Shannon Connell, EIT
Engineer III
Ext: 5523

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

https://pgh2o.com

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Exhibit F

PGH2O Pittsburgh Water & Sewer Authority

February 22, 2022

Mr. Thomas Flanagan
PA Department of Environmental Protection
Clean Water Program
400 Waterfront Drive
Pittsburgh, PA 15222

Subject: Tap Allocation Authorization Letter

Dear Mr. Flanagan:

Please be advised that the Pittsburgh Water and Sewer Authority (PWSA) authorizes the tap allocations associated with the following Project:

Project Name:	Washington Place and Bedford Avenue - Revised
Project Address:	626 Washington Place Pittsburgh, PA 15219
Net Flow, gpd:	29,250
EDU's, 400gpd/EDU:	73.13

Our review is based on information provided by others under the assumption that this information was accurate and complete. Should you have any questions, please do not hesitate to contact me directly at x5523 or SConnell@pgh2o.com.

Sincerely,

Shannon Connell

Shannon Connell, EIT
Engineer III

cc: Barry King, PE, PMP – PWSA (via email)
Kate Mechler, PE – PWSA (via email)
Robert Herring, PE, PMP – PWSA (via email)
Toby Partridge– Applicant (via email)
Regis Ryan – DEP (via email)
eBuilder – Filing System (via email)

Exhibit G

Penn Liberty Plaza I
1200 Penn Avenue
Pittsburgh PA 15222

Info@pgh2o.com
T 412.255.2423
F 412.255.2475

www.pgh2o.com
@pgh2o

Customer Service /
Emergencies:
412.255.2423

Pittsburgh Water & Sewer Authority

February 22, 2022

Toby Partridge
Michael Baker International
110 Airside Drive
Moon Twp, PA 15108

Subject: Water and Sewer (W&S) Use Approval
Project Name: Washington Pl and Bedford Ave – REVISED (Project)
PWSA Project No.: 20014.72

Dear Toby:

The W&S Use Application for the Project has been approved, as summarized below:

Type of Flow	Sanitary, gpd	Water, gpd
Project Flow	29,250	28,559
Existing Flow	0	0
Net Flow	29,250	28,559

Our review was based on information provided by others under the assumption that this information was accurate and complete. Should you have any questions, please do not hesitate to contact me directly at 412-255-8800 x5523 or SConnell@pgh2o.com.

Sincerely,

Shannon Connell

Shannon Connell, EIT
Engineer III

Enclosure(s)
cc: Barry King, PE, PMP – PWSA (via email)
Kate Mechler, PE – PWSA (via email)
Robert Herring, PE, PMP – PWSA (via email)
eBuilder – Filing System (via email)

Partridge, Toby

From: Partridge, Toby
Sent: Wednesday, February 23, 2022 1:46 PM
To: Shannon Connell, EIT; Robert Herring, PE, PMP
Cc: Developer_Tap_in_Pe.20014.72_Washington_Place_and_Bedford_Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: PWSA Development Application - Tap-in Plan Review Comments - Revised Washington Pl and Bedford Ave
Attachments: Lower Hill - G1 Tap Plans - Rev 2022.02.23.pdf

Thanks Shannon,
The attached drawings have been revised as requested below.

Thanks,
Toby

Toby Partridge | Technical Manager - Civil and Environmental
100 Airside Drive, Airside Business Park | Moon Township, PA 15108 | [O] 412-375-3186
tpartridge@mbakerintl.com | www.mbakerintl.com

Michael Baker INTERNATIONAL | *We Make a Difference*

From: Shannon Connell, EIT <SConnell@pgh2o.com>
Sent: Wednesday, February 23, 2022 11:27 AM
To: Partridge, Toby <TPartridge@mbakerintl.com>; Robert Herring, PE, PMP <RHerring@pgh2o.com>
Cc: Developer_Tap_in_Pe.20014.72_Washington_Place_and_Bedford_Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: PWSA Development Application - Tap-in Plan Review Comments - Revised Washington Pl and Bedford Ave

Hi Toby,

Per our Developer's Manual: "If a permit is issued, an additional $250 fee will be required for any revisions to plans."

Because revisions were made to the approved Water & Sewer Use application and to the approved Tap-in Plans, a second review fee is required.

Thanks,
Shannon

PGH2O

Shannon Connell, EIT
Engineer III
Ext: 5523

Exhibit H

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

https://pgh2o.com

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From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Wednesday, February 23, 2022 10:30 AM
To: Robert Herring, PE, PMP <RHerring@pgh2o.com>; Shannon Connell, EIT <SConnell@pgh2o.com>
Cc: Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: PWSA Development Application - Tap-in Plan Review Comments - Revised Washington Pl and Bedford Ave

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.
Hi Rob,
Understood and my apologies for being tiresome. I was just looking for a quick 5-10 minute conversation, not a long meeting, to make sure this round of review captured everything required for approval.

Can you provide the reason for the additional review fee? The Developer will want to know.

We'll have the drawings resubmitted this morning. No need for a call.

Toby

From: Robert Herring, PE, PMP <RHerring@pgh2o.com>
Sent: Wednesday, February 23, 2022 9:35 AM
To: Partridge, Toby <TPartridge@mbakerintl.com>; Shannon Connell, EIT <SConnell@pgh2o.com>
Cc: Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: PWSA Development Application - Tap-in Plan Review Comments - Revised Washington Pl and Bedford Ave

Toby,

I reviewed the markups and they are self-explanatory. Do you have a specific question? We are tired of meeting over every minor issue associated with this Project.

PGH2O

Robert Herring, PE, PMP

Senior Project Manager
Office: 412.255.8800
Ext: 5532

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

https://pgh2o.com



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From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Tuesday, February 22, 2022 5:20 PM
To: Shannon Connell, EIT <SConnell@pgh2o.com>
Cc: Robert Herring, PE, PMP <RHerring@pgh2o.com>;
Developer Tap In Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: PWSA Development Application - Tap-in Plan Review Comments - Revised Washington Pl and Bedford Ave

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.
Shannon,
Do have 10 minutes for a quick call tomorrow morning around 8:30? I need to make sure that these drawings get everything required on them so they can be approved.

Thanks,
Toby

From: Shannon Connell, EIT <SConnell@pgh2o.com>
Sent: Tuesday, February 22, 2022 4:04 PM
To: Partridge, Toby <TPartridge@mbakerintl.com>
Cc: Robert Herring, PE, PMP <RHerring@pgh2o.com>;
Developer Tap In Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: EXTERNAL: PWSA Development Application - Tap-in Plan Review Comments - Revised Washington Pl and Bedford Ave

Toby,

We have reviewed the Tap-in Plan for the Revised Washington Pl and Bedford Ave Project. Please address the following comments:

- The Development Application is administratively incomplete. Please submit the application fee in the amount of $250 to Wendy Dean (wdean@pgh2o.com). The application fee may be hand-delivered or mailed.
- Please revise the Tap-In Plan in accordance with the enclosed mark-ups.

Should you have any questions, please do not hesitate to contact me directly.

Thanks,

PGH2O

Shannon Connell, EIT
Engineer III
Ext: 5523

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

https://pgh2o.com

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PGH2O

2022 Fee Schedule

Residential Tap-In Permit*	$40.00
Water and Sewer Availability Letter Request Only	$40.00
Tap Termination Only Permit	$250.00
Hydrant Flow Test	$410.00
Maps and Records Request	$40.00

* There is no fee for party line separations.

Development Permit (Includes W/S Availability Letter, DEP SFPM Review, and tap-in plan review)	$740.00
**Expedited	$1,290.00
DEP Sewage Facilities Planning Module Review Only	$320.00
**Expedited	$550.00
Tap-In Drawing Review Only	$420.00
**Expedited	$740.00
Development Permit Revisions	$140.00
Private Construction of Public Facilities Review	$680.00
**Expedited	$1,190.00

**Expedited guarantees review within 15 business days of payment

Waterline Shut (based on size of waterline in inches)	
During normal business hours	
4-12"	$300.00
16-48"	$410.00
After normal business hours	
4-12"	$430.00
16-48"	$600.00

Hydrant Use with Meter Permit (based on meter size in inches)	
5/8"	$250.00
5/8 x 3/4"	$250.00
3/4" (Positive displacement)	$270.00
3/4" (Electromagnetic or Ultrasonic)	$280.00
1" (Positive Displacement)	$300.00
1" (Electromagnetic or Ultrasonic)	$310.00
2 1/2"	$970.00

Connection Fee (based on size of tap in inches, fees are 1.5x for work performed outside business hrs.)	
1"	$340.00
4"	$400.00
6"	$400.00
8"	$400.00
10"	$400.00
12"	$400.00

Water Meters (based on size of meter in inches, purchased from and installed by PWSA)	
Domestic	
5/8"	$190.00
5/8 x 3/4"	$190.00
3/4" (Positive displacement)	$210.00
3/4" (Electromagnetic or Ultrasonic)	$220.00
1" (Positive Displacement)	$240.00
1-1/2"	$660.00
2"	$840.00
Domestic (Turbine)	
3"	$1,480.00
4"	$1,600.00
6"	$2,560.00
8"	$3,850.00
10"	$5,560.00
12"	$6,490.00
16"	$9,090.00
Domestic (Compound)	
3"	$1,540.00
4"	$1,730.00
6"	$2,900.00
8"	$9,580.00
Fire Systems (Turbine)	
3"	$2,320.00
4"	$2,670.00
6"	$3,420.00
8"	$6,120.00
10"	$10,740.00
Fire Systems (Compound)	
4"	$4,460.00
6"	$5,990.00
8"	$9,370.00
10"	$10,570.00

Exhibit I

CERTIFICATE OF SERVICE

I, David M. Nernberg, hereby certify that a true and correct copy of the within **Formal Complaint** was served upon all parties to the within matter, this date, by email, addressed as follows:

Samuel A. Hornak, Esq.
CLARK HILL PLC
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219
shornak@clarkhill.com

Date: 6/17/22

David M. Nernberg

IN THE PENNSYLVANIA UTILITY COMMISSION

OFFICE PARTNERS XXII BLOCK G1 LLC, No._____

Petitioner,

v.

PITTSBURGH WATER AND SEWER AUTHORITY,

Respondent.

ORDER

AND NOW, this _____ day of _____, 2022 it is hereby ORDERED that the applicable fees are the 2022 fees pled in this complaint, and the permit is issued based upon the 2022 rate schedule and all funds held in Court in excess of the amount due under the rate schedule be returned to Office Partners.

BY THE COURT

_____, J.

PGH2O Pittsburgh Water & Sewer Authority

December 23, 2021

Office Partners XXII Block G1 LLC
1000 N. West Street
Wilmington DE 19801

RE: Address TBD - 15219
Water and Sewer Tap-in Plans

Dear Office Partners XXII Block G1 LLC,

The Pittsburgh Water and Sewer Authority (PWSA) has approved the tap-in plans for the above referenced 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.

If you have any questions, please feel free to contact me at (412) 255-8800 x8030.

Sincerely,

Wendy M. Dean
Engineering Tech II

Attachment

cc: PWSA File

EXHIBIT
4
B. Kaplan

Penn Liberty Plaza I
1200 Penn Avenue
Pittsburgh PA 15222

Info@pgh2o.com
T 412.255.2423
F 412.255.2475

www.pgh2o.com
@pgh2o

Customer Service /
Emergencies:
412.255.2423

David M. Nernberg

From: Matt Corace
Sent: Monday, January 3, 2022 4:28 PM
To: toby Partridge
Subject: FW: [EXT] C-2060 Washington Pl and Bedford Avenue Final Approval Letter
Attachments: Washington Pl and Bedford Avenue Final Approval.docx

This & the following the only items received by Wendy

Matthew Corace

BPGS

1000 N. West Street, Suite 850
WILMINGTON, DE 19801
W 302.691.2126
C 302.383.9005
F 302.691.2099

WWW.BPGSCONSTRUCTION.COM

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From: Wendy Dean <bounces@e-builder.net>
Sent: Thursday, December 23, 2021 10:32 AM
To: Matt Corace <mcorace@bpgsconstruction.com>
Subject: [EXT] C-2060 Washington Pl and Bedford Avenue Final Approval Letter

Developer Tap in Permits

From	Wendy Dean
To	mcorace@bpgsconstruction.com;
CC	

C-2060 Washington Pl and Bedford Ave. Fee Sheet to follow

Documents attached to this email:

1. Washington Pl and Bedford Avenue Final Approval.docx

e-Builder Technical Support
phone: 1-888-288-5717 fax: 1-888-576-9322
support@e-builder.net

OfficePartners_000027

David M. Nernberg

From: Matt Corace
Sent: Monday, January 3, 2022 4:29 PM
To: toby Partridge
Subject: FW: [EXT] C-2060 Washington Pl and Bedford Avenue Fee Sheet
Attachments: C-2060 Washington Pl and Bedford Ave.docx

2 of 2

Matthew Corace

BPGS

1000 N. West Street, Suite 850
WILMINGTON, DE 19801
W 302.691.2126
C 302.383.9005
F 302.691.2099

WWW.BPGSCONSTRUCTION.COM

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From: Wendy Dean <bounces@e-builder.net>
Sent: Thursday, December 23, 2021 10:33 AM
To: Matt Corace <mcorace@bpgsconstruction.com>
Subject: [EXT] C-2060 Washington Pl and Bedford Avenue Fee Sheet

Developer Tap in Permits

From	Wendy Dean
To	mcorace@bpgsconstruction.com;
CC	

Please see attached

Documents attached to this email

1. C-2060 Washington Pl and Bedford Ave.docx

e-Builder Technical Support
phone: 1-888-288-5717 fax: 1-888-576-9322
support@e-builder.net

OfficePartners_000029

David M. Nernberg

From: Matt Corace
Sent: Monday, January 3, 2022 4:36 PM
To: Olivia Grunseich
Subject: FW: [EXT] C-2060 Washington Pl and Bedford Avenue Fee Sheet
Attachments: C-2060 Washington Pl and Bedford Ave.docx

The official request / summary for tap fees

Matthew Corace

BPGS

1000 N. West Street, Suite 850
WILMINGTON, DE 19801
O 302.691.2126
C 302.383.9005
F 302.691.2099

WWW.BPGSCONSTRUCTION.COM

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From: Wendy Dean <bounces@e-builder.net>
Sent: Thursday, December 23, 2021 10:33 AM
To: Matt Corace <mcorace@bpgsconstruction.com>
Subject: [EXT] C-2060 Washington Pl and Bedford Avenue Fee Sheet

Developer Tap in Permits

From	Wendy Dean
To	mcorace@bpgsconstruction.com;
CC	

Please see attached

Documents attached to this email

1. C-2060 Washington Pl and Bedford Ave.docx

e-Builder Technical Support
phone: 1-888-288-5717 fax: 1-888-576-9322
support@e-builder.net

David M. Nernberg

From: Matt Corace
Sent: Monday, January 3, 2022 4:38 PM
To: Bill.Hartle@pjdick.com; ERSKINE
Subject: FW: [EXT] C-2060 Washington Pl and Bedford Avenue Final Approval Letter
Attachments: Washington Pl and Bedford Avenue Final Approval.docx

Good Afternoon – wanted to share attached for your reference.

Matthew Corace

BPGS

1000 N. West Street, Suite 850
WILMINGTON, DE 19801
W 302.691.2126
C 302.383.9005
F 302.691.2099

WWW.BPGSCONSTRUCTION.COM

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From: Wendy Dean <bounces@e-builder.net>
Sent: Thursday, December 23, 2021 10:32 AM
To: Matt Corace <mcorace@bpgsconstruction.com>
Subject: [EXT] C-2060 Washington Pl and Bedford Avenue Final Approval Letter

Developer Tap in Permits

From	Wendy Dean
To	mcorace@bpgsconstruction.com;
CC	

C-2060 Washington Pl and Bedford Ave. Fee Sheet to follow.

Documents attached to this email

1. Washington Pl and Bedford Avenue Final Approval.docx

e-Builder Technical Support
phone: 1-888-288-5717 fax: 1-888-576-9322
support@e-builder.net

David M. Nernberg

From: Matt Corace
Sent: Monday, January 3, 2022 5:05 PM
To: Olivia Grunseich
Subject: FW: [EXT] FW: EXTERNAL: C-2060 Washington Place and Bedford Avenue Fee Sheet and Final Approval Letter

FYI – we have to talk tomorrow on next steps with getting this check in in hands of PWSA ASAP. HIGH PRIORITY!

Until then,

Matthew Corace

BPGS

1000 N. West Street, Suite 850
WILMINGTON, DE 19801
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F 302.691.2099

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From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Monday, January 3, 2022 5:01 PM
To: Matt Corace <mcorace@bpgsconstruction.com>
Subject: [EXT] FW: EXTERNAL: C-2060 Washington Place and Bedford Avenue Fee Sheet and Final Approval Letter

Drawings/permits not issued until fees are paid.

From: Wendy Dean <WDean@pgh2o.com>
Sent: Monday, January 3, 2022 4:50 PM
To: Partridge, Toby <TPartridge@mbakerintl.com>
Subject: RE: EXTERNAL: C-2060 Washington Place and Bedford Avenue Fee Sheet and Final Approval Letter

Toby,

When fees are paid approved drawings and permits will be emailed.

EXHIBIT
5
B. Kaplan

Wendy Dean
Engineering Technician II
Office: 412.255.8800
Ext: 8030

Pittsburgh Water and Sewer Authority
1200 Penn Ave,Pittsburgh,PA15222

https://pgh2o.com

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From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Monday, January 3, 2022 3:26 PM
To: Wendy Dean <WDean@pgh2o.com>
Subject: RE: EXTERNAL: C-2060 Washington Place and Bedford Avenue Fee Sheet and Final Approval Letter

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Thanks Wendy. Are there drawings with a permit number or stamp that will follow this approval letter?

Toby

From: Wendy Dean <WDean@pgh2o.com>
Sent: Monday, January 3, 2022 12:32 PM
To: Partridge, Toby <TPartridge@mbakerintl.com>
Subject: EXTERNAL: C-2060 Washington Place and Bedford Avenue Fee Sheet and Final Approval Letter

Good Afternoon,

Please see attached Final Approval Letter and Fee Sheet.

Wendy Dean
Engineering Technician II
Office: 412.255.8800
Ext: 8030

Pittsburgh Water and Sewer Authority
1200 Penn Ave,Pittsburgh,PA15222

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From: Shannon Connell <SConnell@pgh2o.com>
Sent: Monday, January 3, 2022 12:12 PM
To: Wendy Dean <WDean@pgh2o.com>
Subject: FW: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

Hi Wendy!

I hope you had a good time over the holidays! I noticed that you uploaded the approval letter and tap-in fee sheet for 20014.72 Washington Pl and Bedford Avenue to the e-builder folder on December 23rd. Can you please forward that email to Toby Partridge (TPartridge@mbakerintl.com) so he can be looped in?

Have a Happy New Year!
Shannon

Shannon Connell
Engineer III
Ext. 5523

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

https://pgh2o.com

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From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Monday, January 3, 2022 12:05 PM
To: Shannon Connell <SConnell@pgh2o.com>
Cc: Developer Tap In Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net; Robert Herring, PE, PMP <RHerring@pgh2o.com>

Subject: RE: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

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Shannon,
Sorry for bugging you again...but know that your help through this has been greatly appreciated!

Realizing a lot of people were off for the last week or so, any idea when we will hear from the Permits Department?

Also, when will we hear about the final tap fee amount? And when is it due? It will take our client a little bit of time to process the withdrawal/check for the tap fees.

Thanks,
Toby

Toby Partridge | Technical Manager - Civil and Environmental
100 Airside Drive, Airside Business Park | Moon Township, PA 15108 | [O] 412-375-3186
tpartridge@mbakerintl.com | www.mbakerintl.com

From: Shannon Connell <SConnell@pgh2o.com>
Sent: Tuesday, December 21, 2021 8:44 AM
To: Partridge, Toby <TPartridge@mbakerintl.com>; Robert Herring, PE, PMP <RHerring@pgh2o.com>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Boris Kaplan <bkaplan@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>; Developer Tap In Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

Toby,

I sent the signed Tap-In Plans for final processing yesterday. You should be hearing from our Permits Department shortly.

Thanks,
Shannon

Shannon Connell
Engineer III
Ext. 5523

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

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From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Tuesday, December 21, 2021 8:42 AM
To: Robert Herring, PE, PMP <RHerring@pgh2o.com>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Shannon Connell <SConnell@pgh2o.com>; Boris Kaplan <bkaplan@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>; Barry King, PE, PMP <BKing@pgh2o.com>; Kate Mechler, PE <KMechler@pgh2o.com>;
Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

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Rob,
Do you now have what you need to move the development permit for the water and sewer taps forward to approval? If so, any chance you have a timeline for when we might have the signed drawings?

Thanks,
Toby

From: Flanagan, Thomas <thflanagan@pa.gov>
Sent: Tuesday, December 21, 2021 7:36 AM
To: Partridge, Toby <TPartridge@mbakerintl.com>; Robert Herring, PE, PMP <RHerring@pgh2o.com>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Shannon Connell <SConnell@pgh2o.com>; Boris Kaplan <bkaplan@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>; howard.wein@bipc.com; Barry King, PE, PMP <BKing@pgh2o.com>; Kate Mechler, PE <KMechler@pgh2o.com>;
Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

The tract is the entire site. The flow (roughly 839 gpd) was approved for the entire site and since this is the first development for the entire site, in order to move this project forward, the Department is not going to recognized that the lot has been subdivided until an additional lot is created at which time the applicant should identify the lot that was created for the FNB Financial Center. If the PWSA wants to maintain the flow for each block this decision should not affect that consideration.

From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Monday, December 20, 2021 3:15 PM
To: Flanagan, Thomas <thflanagan@pa.gov>; Robert Herring, PE, PMP <RHerring@pgh2o.com>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Shannon Connell <SConnell@pgh2o.com>; Boris Kaplan <bkaplan@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>; howard.wein@bipc.com; Barry King, PE,

PMP <BKing@pgh2o.com>; Kate Mechler, PE <KMechler@pgh2o.com>;
Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: RE: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

Tom and Rob,
To confirm, the email below is in reference to the development of the G Block only. The tract referenced would be the G Block, right? Thus, the original flows assigned to the G Block (roughly 184k gpd) will now be assigned to this project. Not the flows for the entire Lower Hill development (roughly 839k gpd). The remainder of the 839k gpd will remain with the blocks as shown in the original Planning Module, correct?

I wanted to confirm that I understood correctly.

Thanks,
Toby

From: Flanagan, Thomas <thflanagan@pa.gov>
Sent: Monday, December 20, 2021 2:39 PM
To: Robert Herring, PE, PMP <RHerring@pgh2o.com>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Shannon Connell <SConnell@pgh2o.com>; Boris Kaplan <bkaplan@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>; howard.wein@bipc.com; Partridge, Toby <TPartridge@mbakerintl.com>; Barry King, PE, PMP <BKing@pgh2o.com>; Kate Mechler, PE <KMechler@pgh2o.com>; Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: EXTERNAL: RE: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

Based on the submitted information and the discussions with the developer, the Department has determined that this development does not require sewage planning. This is based on the fact that this is the initial development of the entire tract. Any future development on any portion of the entire tract will require sewage planning.

From: Robert Herring, PE, PMP <RHerring@pgh2o.com>
Sent: Friday, December 17, 2021 4:06 PM
To: Flanagan, Thomas <thflanagan@pa.gov>
Cc: Julie Asciolla <jasciolla@pgh2o.com>; Shannon Connell <SConnell@pgh2o.com>; Boris Kaplan <bkaplan@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>; howard.wein@bipc.com; Partridge, Toby <tpartridge@mbakerintl.com>; Barry King, PE, PMP <BKing@pgh2o.com>; Kate Mechler, PE <KMechler@pgh2o.com>; Developer Tap in Pe.20014.72 Washington Place and Bedford Avenue@docs.e-builder.net
Subject: [External] REVISED Preliminary Determination on the Need for Sewage Planning - FNB Financial Center at Washington Place and Bedford Avenue

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Hi Tom,

Per an email from the development team for the proposed First National Bank Tower at the intersection of Washington Place and Bedford Avenue, we understand the following:

- There was a meeting earlier today to discuss the issue of sewage planning for the proposed development.

- The development team presented an option to deduct flows from a master planning module, however, the DEP wasn't comfortable with the idea since the blocks have not yet been subdivided.
- In an effort to minimize delays, both parties were agreeable to designating 100% of the Block G flows (175,000 gal) on the existing planning module to the subdivided lot for the FNB Financial Center (29,650 gpd), conditioned upon the PWSA not taking any issue.

Based on the foregoing, please be advised that the PWSA takes no exception to designating the Block G flows entirely to the First National Bank Financial Tower. We have enclosed for your use the revised Preliminary Determination on the Need for Sewage Planning. The revision mainly consisted of removing attachments which referenced the deduction of flows from the overall planning module. Furthermore, we understand that future developments within Block G shall require a separate planning module.

Should you have any questions, or if you feel that we have misunderstood the results of your meeting with the development team, please do not hesitate to contact us directly.

Thanks,

Robert Herring, PE, PMP
Project Manager
Office: 412.255.8800
Ext: 5532

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

https://pgh2o.com

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...avid M. Nernberg

From: Wesley Schwandt
Sent: Friday, January 28, 2022 8:51 AM
To: Partridge, Toby; Boris Kaplan; Savich, Steven; Matt Corace; Craig Dunham
Cc: Bomani Howze
Subject: RE: EXTERNAL: FW: [EXT] FW: PWSA

We don't have the G4 program confirmed at this time. We need to address the G4 piece after

H. WESLEY SCHWANDT
PRINCIPAL

BPGS

1000 N. West Street, Suite 850
WILMINGTON, DE 19801
T: 302.691.2124
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C: 302.420.4420
WWW.BPGSCONSTRUCTION.COM

CONNECT WITH US:

From: Partridge, Toby <TPartridge@mbakerintl.com>
Sent: Thursday, January 27, 2022 5:36 PM
To: Boris Kaplan <bkaplan@bpgroup.net>; Savich, Steven <SSavich@mbakerintl.com>; Matt Corace <mcorace@bpgsconstruction.com>; Craig Dunham <dunham@dunhamregroup.com>
Cc: Wesley Schwandt <wschwandt@bpgsconstruction.com>; Bomani Howze <bhowze@bpgroup.net>
Subject: RE: EXTERNAL: FW: [EXT] FW: PWSA

Adding to Steve's comments for #2, we may have justification for splitting the tap in plans based on the flow allocations. I'll try to keep this at 10,000 feet, but right now the tap in plans show a combined flow rate that includes both G1 and G4. Based on our conversations with PADEP, we may want to split out the flow rate for the two parcels. I also am not sure what the implications would be for developing G4 because we would need to sort out the planning module issue. This approach might allow us to get the building permit now and then address G4 after. I'm not sure if this just muddies the water more or not, but it is a thought.

From: Boris Kaplan <bkaplan@bpgroup.net>
Sent: Thursday, January 27, 2022 5:05 PM
To: Savich, Steven <SSavich@mbakerintl.com>; Matt Corace <mcorace@bpgsconstruction.com>; Craig Dunham <dunham@dunhamregroup.com>; Partridge, Toby <TPartridge@mbakerintl.com>
Cc: Wesley Schwandt <wschwandt@bpgsconstruction.com>; Bomani Howze <bhowze@bpgroup.net>
Subject: RE: EXTERNAL: FW: [EXT] FW: PWSA

Hearing no further objections, we're on track to break apart the tap in plan into G1 and G4 components. As for execution:

727

EXHIBIT
6
B. Kaplan

OfficePartners_000752

- How quickly can we prep the updated submissions?
- Should someone call Julie Asciolla to let her know how we are moving forward?

Boris Kaplan
Senior Vice President

The Buccini/Pollin Group
M 610-202-8606

www.bpgroup.net

MISSION VALUES COMMUNITY

From: Savich, Steven <SSavich@mbakerintl.com>
Sent: Thursday, January 27, 2022 4:31 PM
To: Boris Kaplan <bkaplan@bpgroup.net>; Matt Corace <mcorace@bpgsconstruction.com>; Craig Dunham <dunham@dunhamregroup.com>; Partridge, Toby <TPartridge@mbakerintl.com>
Cc: Wesley Schwandt <wschwandt@bpgsconstruction.com>; Bomani Howze <bhowze@bpgroup.net>
Subject: RE: EXTERNAL: FW: [EXT] FW: PWSA

1) splitting the application into G1 and G4 components won't have an unintended ripple impact on completed PWSA agreements, bonds, etc? If those supporting documents have to change as well, we'd likely be facing a more protracted delay than the 15 days review process. The bonds and Developer Agreement are for public facilities being transferred to PWSA and not for any of the taps ... so no will not.
2) Is there a different plan update that we should consider instead of splitting apart the G1 and G4 parcels? Nothing else really needs to change – Toby any thoughts?
3) Can we use the PWSA notice from December and other approvals to keep advancing the work in the field for another couple of weeks? My opinion, I think we still advance with Allegheny Plumbing with that letter to get the initial review and inspection schedule set with a promise of providing the balance of the information once received by PWSA.

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 | www.mbakerintl.com

From: Boris Kaplan <bkaplan@bpgroup.net>
Sent: Thursday, January 27, 2022 10:41 AM
To: Matt Corace <mcorace@bpgsconstruction.com>; Craig Dunham <dunham@dunhamregroup.com>; Savich, Steven <SSavich@mbakerintl.com>; Partridge, Toby <TPartridge@mbakerintl.com>
Cc: Wesley Schwandt <wschwandt@bpgsconstruction.com>; Bomani Howze <bhowze@bpgroup.net>
Subject: EXTERNAL: FW: [EXT] FW: PWSA
Importance: High

Good morning. After the OAC yesterday, we discussed our path forward with PWSA. We said that we would notify PWSA staff and Director Pickering of our intent to:

1) Withdraw the current tap-in fee application
2) Submit revised applications and tap plans that separate parcels G1 and G4
3) Request that both applications receive the 15-day expedited review and pay the $1300 fee per application for expedited review

Before we send a follow up communication to PWSA, can we quickly confirm that
1) splitting the application into G1 and G4 components won't have an unintended ripple impact on completed PWSA agreements, bonds, etc? If those supporting documents have to change as well, we'd likely be facing a more protracted delay than the 15 days review process.
2) Is there a different plan update that we should consider instead of splitting apart the G1 and G4 parcels?
3) Can we use the PWSA notice from December and other approvals to keep advancing the work in the field for another couple of weeks?

Thanks,
Boris

Boris Kaplan
Senior Vice President

The Buccini/Pollin Group
M 610-202-8606

www.bpgroup.net

MISSION VALUES COMMUNITY

From: Boris Kaplan
Sent: Wednesday, January 26, 2022 1:30 PM
To: Matt Corace <mcorace@bpgsconstruction.com>; Wesley Schwandt <wschwandt@bpgsconstruction.com>; Chris Buccini <CBuccini@bpgroup.net>
Cc: Bomani Howze <bhowze@bpgroup.net>; Craig Dunham <dunham@dunhamregroup.com>
Subject: Fwd: [EXT] FW: PWSA

Bomani and I just heard from Kevin that his outreach to PWSA has not been successful to get the new few structure applied. Do we have sufficient approvals of trade permits and work in field to work with Baker on an amendment to the plan that would be eligible for approval under the new structure? I heard at OAC that we do not have flexibility to throw this back into PWSA review. Can you confirm that we're going with higher fees?

Sent from my iPhone

Begin forwarded message:

> **From:** Kevin Acklin <kacklin@pittsburghpenguins.com>
> **Date:** January 26, 2022 at 1:11:06 PM EST
> **To:** Boris Kaplan <bkaplan@bpgroup.net>, "Bomani Howze (bhowze@olmecdevelopment.com)" <bhowze@olmecdevelopment.com>
> **Cc:** Grant Gittlen <ggittlen@pittsburghpenguins.com>
> **Subject:** [EXT] FW: PWSA

I wish I had better news. They are bound by the PUC regulations and don't have any flexibility.

From: Will Pickering <WPickering@pgh2o.com>
Sent: Wednesday, January 26, 2022 12:59 PM
To: Kevin Acklin <kacklin@pittsburghpenguins.com>
Subject: RE: PWSA

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Hi Kevin –

It's always good to hear from you! I researched this issue with our team, and I believe we're on solid ground applying the tap fees. PWSA officially approved the tap plan in late December when our previous PUC-approved fee structure was applicable. The confusion seems to be that we do not "issue" the permit until the developer pays the fee. There is no more analysis required on our end, and we made an effort to expedite our review at the developer's request late last year.

Let me know if you need anything else, and I really appreciate your support. As you know, the fee revenue will undoubtedly be put to good use as we try to rebuild our water and sewer system.

Best,

Will

Will Pickering
Chief Executive Officer
Office: 412.255.2099
Cell: 412.657.4031

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

https://pgh2o.com

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Kevin Acklin
Chief Operating Officer and General Counsel
Pittsburgh Penguins
kacklin@pittsburghpenguins.com

Office: 412-255-1921 | Fax: 412-255-1982 | Cell: 412-303-1295
PPG Paints Arena | 1001 Fifth Avenue | Pittsburgh, PA | 15219

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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.

Get Outlook for iOS

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.

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

MISSION VALUES COMMUNITY

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 a 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

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

MISSION VALUES COMMUNITY

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

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

MISSION VALUES COMMUNITY

OfficePartners_000510

From: Matt Corace <mcorace@bpgsconstruction.com>
Sent: Tuesday, January 18, 2022 5:46 PM
To: Craig Dunham <dunham@dunhamregroup.com>; Kevin Acklin <kacklin@pittsburghpenguins.com>; gGittlen <ggittlen@pittsburghpenguins.com>
Cc: Boris Kaplan <bkaplan@bpgroup.net>; Wesley Schwandt <wschwandt@bpgsconstruction.com>; Bomani Howze <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, PLI & 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 Asciolla, 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

BPGS

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Kevin Acklin
Chief Operating Officer and General Counsel
Pittsburgh Penguins
kacklin@pittsburghpenguins.com
Office: 412-255-1921 | Fax: 412-255-1982 | Cell: 412-303-1295

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EXHIBIT C

David M. Nernberg

From: Savich, Steven <SSavich@mbakerintl.com>
Sent: Monday, January 31, 2022 3:01 PM
To: Julie Asciolla
Cc: Partridge, Toby; Matt Corace; Boris Kaplan
Subject: [EXT] Lower Hill G1/G4 Tap In Application

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 | www.mbakerintl.com

EXHIBIT D

David M. Nernberg

From: Matt Corace
Sent: Thursday, January 20, 2022 3:08 PM
To: Boris Kaplan
Subject: RE: [EXT] Re: PWSA tap-in fees

I am sorry Boris, don't know what more to write Boris..

- We want to pick up our PWSA approved drawings & permit.
- We want our payment to align with current fee structure.
  - Due to the timing/date of Permit Issuance
  - Since the building will be held to higher usage rates downstream we will feel the burden at both ends.
- This PWSA approval is critical and time-sensitive, as several additional permits we are currently seeking directly tie to a resolution.

Matthew Corace

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F 302.691.2099

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From: Boris Kaplan <bkaplan@bpgroup.net>
Sent: Thursday, January 20, 2022 12:32 PM
To: Matt Corace <mcorace@bpgsconstruction.com>
Subject: RE: [EXT] Re: PWSA tap-in fees

Need a high level summary that explains why this is important: "I'm reaching out to see if you might be able to lead me in the right direction regarding PWSA's new tap-in fees. I believe the issue can be resolved if we're able to get a meeting with the Dir. Will Pickering." It's 2-3 sentences pulled from what you sent Kevin and underscores that we're not seeking any favorable treatment of consideration – just for the permit date (yet to be determined) to trigger the fee structure that went into effect 1/12/22.

Kevin said that he will reach out Director Pickering before the larger call given his relationship.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **THE PITTSBURGH WATER AND SEWER AUTHORITY'S ANSWER AND BRIEF IN OPPOSITION TO OFFICE PARTNERS' MOTION FOR SUMMARY JUDGMENT** was served electronically via the Commission's electronic filing system, as well as by courtesy copy via electronic mail, this 30th day of June, 2023, upon the following:

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

/s/ Samuel A. Hornak
Samuel A. Hornak

271979673.v1

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

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.[1]

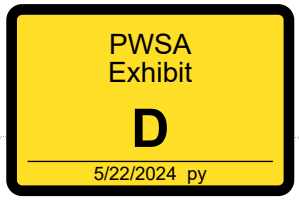
INTRODUCTION

Office Partners views this entire action as a "Hail Mary."[2] The PWSA respectfully submits that Office Partners' filing of the Motion is another step in that process, whereby Office Partners

[1] 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.

[2] 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.[3] 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."

[3] 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.[4]

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 Commissions unwillingness

[4] 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.[5]

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

[5] 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).[6]

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

[6] 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 Asciolla (the "Asciolla 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* Asciolla 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.[7]

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.[8]

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. Asciolla, and at the executive level of the PWSA. *See* Asciolla Dep. at pp. 40:13-41:19, 46:11-47:3 and Exhibit G to Asciolla Dep. The PWSA's treatment of the Application was consistent in all respects with its treatment of similarly-situated applicants. *See* Asciolla Dep. 64:9-22, 66:16-67:12.[9]

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[7] 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.

[8] 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.

[9] 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.[10] 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

[10] 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.[11]

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.

Samuel A. Hornak, Esquire
Pa. I.D. No. 312360
Ashley L. Buck, Esquire
Pa. I.D. No. 320537
CLARK HILL PLC
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425
(412) 394-7711
Attorneys for Respondent,
The Pittsburgh Water and Sewer Authority

[11] 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



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:

For the Claimant:

MAURICE A. NERNBERG & ASSOCIATES
by David M. Nernberg, Esq.
301 Smithfield Street
Pittsburgh, PA 15222
dmn@nernberg.com

For the Respondent:

CLARK HILL PLC
by Samuel A. Hornak Esq.
by Ashley L. Buck, Esq.
One Oxford Centre
301 Grant Street
14th Floor
Pittsburgh, PA 15219
shornak@clarkhill.com
abuck@clarkhill.com

- - -

I N D E X

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EXHIBIT	DESCRIPTION	PAGE
Exhibit 1	Notice of Deposition	9
Exhibit 2	First set of Interrogatories and Request for Production	19
Exhibit 3	PPUC Formal Complaint	20
Exhibit 4	12/23/21 Letter & 1/3/22 Emails	25
Exhibit 5	1/3/22 E-mails	29
Exhibit 6	1/28/22 E-mails	59
Exhibit 7	1/19/22 E-mails	63
Exhibit 8	1/20/22 E-mails	66

PROCEEDINGS

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

EXAMINATION

BY MR. HORNAK:

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

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

A. Yes.

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

A. Yes.

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

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

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

A. I don't believe that I did.

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

A. Correct.

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

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

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

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

BY MR. HORNAK:

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

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

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

A. I'm ready.

Q. So the last sentence of this reads, "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."

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

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

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

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

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

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

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

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

A. Correct.

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

MR. NERNBERG: I might just have a few.

EXAMINATION

BY MR. NERNBERG:

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

A. I do.

Q. And have you managed budgets for other projects?

A. I have.

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

A. Maybe one or two.

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

A. Yes. Maybe one or two.

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

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

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

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

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

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

A. With the Item 7 at the top?

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

Could you read Paragraph 8, please?

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

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

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF ALLEGHENY)

CERTIFICATE

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

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

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

/S/Michelle L. Goehring, Notary Public
Court Reporter
My Commission Expires: July 12, 2025
Commission No. 1317058

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.

Get Outlook for iOS

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.

BPG
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 a 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

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

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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

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

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OfficePartners_000510

From: Matt Corace <mcorace@bpgsconstruction.com>
Sent: Tuesday, January 18, 2022 5:46 PM
To: Craig Dunham <dunham@dunhamregroup.com>; Kevin Acklin <kacklin@pittsburghpenguins.com>; gGittlen <ggittlen@pittsburghpenguins.com>
Cc: Boris Kaplan <bkaplan@bpgroup.net>; Wesley Schwandt <wschwandt@bpgsconstruction.com>; Bomani Howze <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, PLI & 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 Ascioli, 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

BPGS

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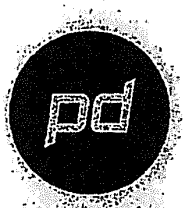
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Kevin Acklin
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kacklin@pittsburghpenguins.com
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Transcript of Julie Asciolla, Corporate Designee

Date: April 14, 2023
Case: Office Partners XXIII Block GI, LLC -v- The Pittsburgh Water & Sewer Authority

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EXHIBIT
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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

OFFICE PARTNERS XXIII BLOCK GI LLC	:	Docket Nos.
	:	C-2022-3033251
Complainant,	:	C-2022-3033266
-v-	:	
THE PITTSBURGH WATER AND SEWER AUTHORITY,	:	
Respondent.	:	

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

Deposition of JULIE ASCIOLLA, held at the offices of:

NERNBERG and ASSOCIATES
301 Smithfield Street
Pittsburgh, Pennsylvania 15222
(412) 232-0334

Pursuant to Notice, before Keith G. Shreckengast, Registered Professional Reporter and Notary Public in and for the Commonwealth of Pennsylvania.

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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(Attached to transcript)

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

EXHIBITS CONTINUED

Ex. D	PWSA_OfficePartners_002917-2918. 1/7/22 email from Robert Herring to Steven Savich	36
Ex. E	PWSA_OfficePartners_002574-2575. 1/10/22 email from Julie Asciolla to Robert Herring, Steven Savich	40
Ex. F	PWSA_OfficePartners_002746-2747. Documents/Project Submittals/20015.10 540 North Lang Avenue	42
Ex. G	PWSA_OfficePrtners_002923-2924. 1/31/22 email from WPickering to Julie Asciolla	43
Ex. H	PWSA_OfficePartners_002748-2749. 2/1/22 email from Julie Asciolla to Steven Savich	47
Ex. I	PWSA_OfficePartners)--2587-2589. 2/3/22 email from Will Pickering to Julie Asciolla	50
Ex. J	PWSA_OfficePartners_000985, 000854 (and 1 non Bates numbered pg.) 12/23/21 letter from Wendy M. Dean to Office Partners XXII Block G1 LLC	51

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

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. Asciolla?

A Julie is fine.

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

A Julie Asciolla.

Q Julie Asciolla, 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?

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

A Okay.

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

A Okay, I'm good.

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

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

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

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

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

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

A That is correct.

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

A No, it is not a permit.

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

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

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

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

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

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

Q Okay.

A Just as documents come in.

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

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

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

A No.

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

A No.

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

A Correct. Correct.

Q Has an applicant ever just walked away?

A Yes.

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

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

want to cut you off when you were reciting --

MR. NERNBERG: No, I appreciate that.

(Exhibit E was marked for identification.)

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

MR. HORNAK: No problem.

Q If you could review that.

A Okay.

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

A Yes.

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

A There was no written policy, no.

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

A Yes.

Q Who did you consult?

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

Q I won't ask you about your conversations

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

A It's Will Pickering.

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

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

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

A Yes.

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

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

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

A I don't know.

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

been the same in 2022 and 2023, then yes.

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

A Correct.

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

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

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

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

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

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

A I don't know.

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

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

MR. NERNBERG: Yes, it is G.

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

A I don't think I suggested that.

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

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

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

A I'm confused.

Q This will be Exhibit H.

(Exhibit H was marked for identification.)

Q If you could please review again.

A Okay.

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

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

A Yes.

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

A Yes.

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

A Yes.

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

A No, I'm not aware.

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

A No.

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

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

A Yes. Yes.

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

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

MR. NERNBERG: That's all I have.

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

THE WITNESS: No.

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

BY MR. NERNBERG:

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

A Correct.

MR. NERNBERG: That's all I have.

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.)

CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

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

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

My commission expires April 30, 2024.



NOTARY PUBLIC IN AND FOR THE
COMMONWEALTH OF PENNSYLVANIA

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 Asciolla <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 3 before responding.

Julie Asciolla
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 Asciolla <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 | www.mbakerintl.com

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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>
Sent: Tuesday, July 18, 2023 11:44 AM
To: Tracy Smith <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

https://pgh2o.com

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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>
Subject: RE: 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.
Tracy,

I was recently informed you sent a formal response on July 11, 2023. I did no receive it. Can you please confirm and resend.

Thanks,

David.

From: Right To Know <righttoknow@pgh2o.com>
Sent: Thursday, July 6, 2023 2:26 PM
To: David M. Nernberg <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>
Sent: Wednesday, June 28, 2023 11:30 AM
To: Right To Know <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

PGH2O 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.

Sincerely,

Tracy Smith

Tracy Smith

Penn Liberty Plaza I
1200 Penn Avenue
Pittsburgh PA 15222

info@pgh2o.com
T 412.255.2423
F 412.255.2475

www.pgh2o.com
@pgh2o

Customer Service /
Emergencies:
412.255.2423

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
Attorneys for Complainant,
Office Partners XXIII Block G1, LLC

/s/ Samuel A. Hornak
Samuel A. Hornak

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

OFFICE PARTNERS XXIII BLOCK G1 LLC,	)	
Complainant,	)	
vs.	)	Docket Nos. C-2022-3033251 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*

PWSA
Exhibit
E
5/22/2024 py

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 Asciolla 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 Asciolla 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 Asciolla, 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

/s/ Ashley L. Buck, Esq.
Samuel A. Hornak, Esquire
Pa. I.D. No. 312360
Ashley L. Buck, Esquire
Pa. I.D. No. 320537
CLARK HILL PLC
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425
(412) 394-7711
Attorneys for Respondent,
The Pittsburgh Water and Sewer Authority

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 Stipulated Issues of Fact on Behalf of Office Partners XXIII Block G1, LLC was served via email upon the following:

Samuel A. Hornak, Esq.
Ashley L. Buck, Esq.
CLARK HILL PLC
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219
shornak@clarkhill.com
abuck@clarkhill.com

Dated: May 3, 2024

/s/ David M. Nernberg, Esq.
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

THE PITTSBURGH WATER AND SEWER AUTHORITY'S PROPOSED FINDINGS OF FACT

AND NOW comes Respondent, The Pittsburgh Water and Sewer Authority (the "PWSA"), and, the PWSA hereby submits these Proposed Findings of Fact, moves for adoption of the same by the Commission, and requests that the Commission enter summary judgment in favor of the PWSA and against the Complainant in these consolidated actions:

1. On or about June 17, 2022, Office Partners filed two identical formal Complaints with the Commission docketed and consolidated at the above-captioned numbers (collectively, the Complaints docketed at the above-captioned numbers are referred to as the "Complaints") (the "Action").

2. At all relevant times hereto, Office Partners was developing commercial property known as the FNB Financial Center. *See* Complaints, ¶ 3.

3. Office Partners' FNB Financial Center project had a total project budget of approximately $240,000,000.00, and a specific tap-in budget consistent with the fees ultimately charged by the PWSA. *See* Complaints, ¶ 3; Kaplan Deposition, attached hereto as Exhibit B, 68:16-69:4.

PWSA
Exhibit
F
5/22/2024 py

4. Office Partners' construction of the FNB Financial Center requires PWSA approval of an application for the connection to a PWSA sewer main. *See* Complaints, ¶ 5.

5. Per the PWSA's Developer's Manual in effect at all relevant times: "All fees are established in the PWSA Water and Wastewater Tariffs and approved by the [Commission]," and the Developer's Manual further provides that the "PWSA will calculate the appropriate fees based upon the related project information submitted by the applicant." *See* Complaints, Exhibit A thereto, p. 35.

6. The PWSA Developer's Manual also states, at all relevant times, that "[a]fter the final review, PWSA will supply the applicant with a permit fee invoice." *See* Complaints, Exhibit A thereto, p. 20.

7. The PUC Tariff that forms the basis of this matter was effective March 1, 2019, and is set forth at PUC Docket No. R-2018-3002647 (the "Governing PUC Tariff"), providing the following Tapping Fee:

Collection Fee	$1,701 Per EDU*
Capacity Fee	$1,277 Per EDU*
Total Tapping Fee	$2,978 Per EDU*

* 300 gpd/EDU.

8. 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.[1]

9. A new Tariff went into effect on January 13, 2022 (the "2022 PUC Tariff"), which had the effect of eliminating the tap-in fees and changing the PWSA's overall rate structure.[2]

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[1] A copy of the Tariff is publicly available at: https://www.puc.pa.gov/pcdocs/1687421.pdf.

[2] A copy of the Tariff is publicly available at: https://www.puc.pa.gov/pcdocs/1729291.pdf.

10. The docket for the Commission's consideration and approval of the 2022 PUC Tariff (the "Rate Case") is R-2021-3024779.

11. Office Partners did not make any submissions to the PUC in connection with the Rate Case. *See* Kaplan Dep. 24:10-13, 54:24-55:19.

12. Office Partners submitted an application to tap in to the PWSA's infrastructure in 2021 (the "Application"). *See* Complaints, ¶ 6; *See* Asciolla Dep. at 17:4-18:2. A true and correct copy of the pertinent portions of the deposition transcript of Ms. Asciolla ("Asciolla Dep.") is attached hereto as Exhibit A.

13. Throughout the application process, Office Partners sought to expedite the PWSA's consideration and approval of the Application, and the PWSA took steps to expedite the consideration of the Application. *See* Asciolla Dep. at 63:8-64:3; Kaplan Dep. 35:21-36:21, 38:6-38:25, 42:7-43:18, 59:1-11 and Exhibit 5 to Kaplan Dep.

14. The Application, the PWSA's consideration of the Application, and the PWSA's ultimate approval of the Application all occurred in 2021, during the effective period of the 2021 PUC Tariff, and, thus, the Governing PUC Tariff.

15. Specifically, the PWSA approved the Application on December 23, 2021, identifying the fees due and owing as $508,314.79.[3] *See* Complaints, ¶ 8, Exhibit C thereto; *see also* Asciolla Dep. at pp. 51:5-23, 64:4-8 and Exhibit J to Asciolla Dep.; *see also* Kaplan Dep. at 25:8-28:10 and Exhibit 4 to Kaplan Dep.

[3] This amount was revised to $506,647.18 (the "Escrow Amount"), on the basis of a recalculation of the amount of flow implicated by the Application. *See* Asciolla Dep. 56:16-57:1.

16. Boris Kaplan, Senior Vice President with Buccini Pollin, the developer and owner of Office Partners, confirmed the timing of the approval of the Application. *See* Kaplan Dep. at 8:2-9, 22:4-22.

17. Julie Asciolla, Industry Relations Manager for the PWSA, testified that she had experience not only with consideration of the Application, but also with all other tap-in permit applications during the relevant time period. *See* Asciolla Dep. at 7:12-17, 10:15-25, 14:9-15:20.

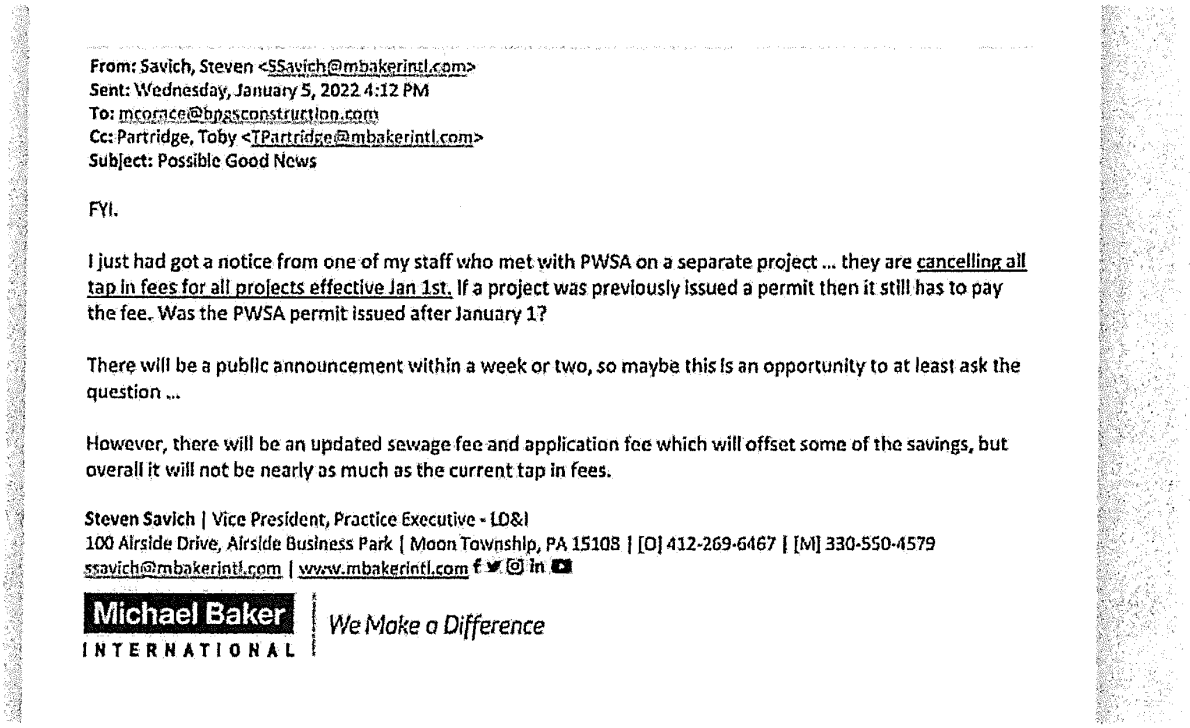
18. Because different applicants submitted initial materials to the PWSA in different ways, the PWSA did not have a strict "application date" for a tap-in permit. The PWSA's consistent policy during the relevant time period was to issue a tap-in permit upon payment of the applicable fees, and to determine such fees by the rate schedule in effect on the date when a tap-in permit is approved. Accordingly, because different applicants submitted initial materials to the PWSA in different ways, the PWSA could not have a strict "application date" for a tap-in permit *See* Asciolla Dep. at 14:16-15:23, 17:16-18:3.

19. 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* Asciolla Dep. at 18:5-12.

20. Following the PWSA's approval on December 23, 2021, Office Partners attempted to "withdraw" the 2021 permit application. *See* Complaints, ¶ 11, Exhibit D thereto.

21. The PWSA has no experience with an attempted withdrawal of a tap-in application because there was no reason for a tap-in application to be withdrawn before the rate structure changed in 2022, and no previous applicants had attempted to do so. Therefore, there was no process in place for such purported withdrawal because unperfected applications can remain open in the PWSA system indefinitely. *See* Asciolla Dep. 20:12-14, 48:5-49:21.

22. Office Partners learned of the 2022 PUC Tariff, and its effect on tap-in fees, in January 2022—after the Application was approved:



From: Savich, Steven <SSavich@mbakerintl.com>
Sent: Wednesday, January 5, 2022 4:12 PM
To: mcorace@bpgsconstruction.com
Cc: Partridge, Toby <TPartridge@mbakerintl.com>
Subject: Possible Good News

FYI.

I just had got a notice from one of my staff who met with PWSA on a separate project ... they are cancelling all tap in fees for all projects effective Jan 1st. If a project was previously issued a permit then it still has to pay the fee. Was the PWSA permit issued after January 1?

There will be a public announcement within a week or two, so maybe this is an opportunity to at least ask the question ...

However, there will be an updated sewage fee and application fee which will offset some of the savings, but overall it will not be nearly as much as the current tap in fees.

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See communications produced by Office Partners through discovery and bates labeled at OfficePartners_0000888, attached in full hereto as Exhibit C.[4]

23. When Office Partners learned that the PWSA's tariff rates were changing in January 2022 to a structure that eliminated tap-in fees, Office Partners sought to withdraw its already-approved Application and resubmit it at a time when the fees were more favorable to Office Partners.

[4] At the relevant times hereto, Steven Savich was a senior engineer at Michael Baker International, an engineering firm working with Office Partners in support of the Application. *See* Kaplan Dep. 16:3-17:1. Matt Corace worked at Buccini Pollin in the technical services group. Kaplan Dep. 17:22-18:12. Toby Partridge also worked at Michael Baker International. Kaplan Dep. 17:2-6.

24. Office Partners' attempted withdrawal and resubmission of the Application was described by Office Partners as a "Hail Mary," to avoid approximately $500,000.00 in applicable fees. *See* Kaplan Dep. 63:20-65:25,73:7-10 and Exhibit 7 to Kaplan Dep.:

> 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.

See Exhibit 7 to Kaplan Dep., communication from Mr. Kaplan to another stakeholder in Office Partners, attached hereto as part of Exhibit B.

25. Office Partners attempted to assert reasons for a "new" application:

> Need a high level summary that explains why this is important: "I'm reaching out to see if you might be able to lead me in the right direction regarding PWSA's new tap-in fees. I believe the issue can be resolved if we're able to get a meeting with the Dir. Will Pickering." It's 2-3 sentences pulled from what you sent Kevin and underscores that we're not seeking any favorable treatment of consideration – just for the permit date (yet to be determined) to trigger the fee structure that went into effect 1/12/22.
>
> Kevin said that he will reach out Director Pickering before the larger call given his relationship.
>
> We should get feedback from Steve on any reasonable/plan modifications that can also help supersede the correspondence from late December.

See communication from Mr. Kaplan to Mr. Corace, included among documents produced through discovery by Office Partners and bates labeled as OfficePartners_0000563, attached hereto as Exhibit D.

26. Office Partners contends that the purportedly withdrawn application was a "new" application because it was amended to clarify or modify the ownership status of the subject parcel, to effect other "structural considerations," or to make changes necessary to secure regulatory approval. Kaplan Dep. 43:19-44:45:3, 47:1-4; 48:24-49:13, 50:4-51:10.

27. Changes or differences in ownership would not require a new application (Asciolla Dep. at 19:8-23), and the subject regulator (the Pennsylvania Department of Environmental Protection) not only approved of the Application, but was actually willing to assist in expediting

the Application as it was submitted in 2021. Kaplan Dep. 34:9-35-20, 41:18-42:5 and Exhibit 5 to Kaplan Dep.

28. Office Partners is unable to identify a single "structural consideration" requiring a new application. Kaplan Dep. 43:23-45:7 and Exhibit 3 to Kaplan Dep., Paragraph 10 of the Complaints.

29. Office Partners' undisputed objective was simply securing a more favorable fee. *See* Kaplan Dep. 45:17-46:8, 47:1-13, 50:4-51:10; 57:10-13, 64:24-65:25 and Exhibit 7 to Kaplan Dep.

30. Office Partners admits that a "major reason" and a "central component" for the attempted re-submission of a tap-in application was the realization of cost savings; that the decision to attempt the withdrawal of the Application rested with Office Partners alone; and was not based upon any requirement or statement from the PWSA or any government entity. *See* Kaplan Dep. 47:1-13, 57:10-13, 64:24-65:25 and Exhibit 7 to Kaplan Dep.

31. Mr. Kaplan stated that, as project manager, "it's my duty to keep identifying reasonable savings that could be realized in a way that offsets potential increases that occur across the rest of the budget." *See* Kaplan Dep. 72:21-73:10.

32. This admission is consistent with Office Partners' objective, since first discovering the change in the tariff fee structure, to obtain a favorable rate for the Application and subsequent permit:

Please see correspondence below from Steve. Not super optimistic but there is a glimmer we may be able to save a chunk. Regardless we will not be cutting any checks to PWSA until we make a hard push. Wrapping up with Carolyn will call you in a bit.

Matthew Corace

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From: Savich, Steven <SSavich@mbakerintl.com>
Sent: Wednesday, January 5, 2022 4:41 PM
To: Matt Corace <mcorace@bpgsconstruction.com>; Partridge, Toby <TPartridge@mbakerintl.com>
Subject: RE: EXTERNAL: RE: [EXT] RE: Possible Good News

I take this to mean that the EDU based fee for sewer will remain and possibly increase some. The fees for taps (by size) of waterlines and the EDU based water fees will go away. I expect the meter costs to remain as well. I have only gotten some partial information on this but will look to confirm with Julie at PWSA tomorrow ...

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See document produced by Office Partners through discovery and Bates labeled at OfficePartners_000091, attached hereto as Exhibit 5.

33. 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. *See* Asciolla Dep. at pp. 39:5-41:19 and Exhibit E to Asciolla Dep.

34. In evaluating and denying Office Partners' requests to benefit from the lower 2022 PUC Tariff Rate, the PWSA was entirely consistent in its imperative to apply its policy uniformly to all similarly-situated applications, which was addressed and approved at both the approval level with Ms. Asciolla, and at the executive level of the PWSA. The PWSAfe did not manipulate the

fee structure for individual commercial applicants. *See* Asciolla Dep. at pp. 40:13-41:19, 46:11-47:3 and Exhibit G to Asciolla Dep.

35. The PWSA's treatment of the Application was consistent in all respects with its treatment of similarly-situated applicants. *See* Asciolla Dep. 64:9-22, 66:16-67:12.[5]

36. The PWSA policy was to allow for late, post-expiration payments to perfect a permit application, as long as the system had sufficient flow capacity in its system at the time in which the post-expiration payment was made. *See* Asciolla Dep. at 20:12-22:10, 61:4-62:16.

37. The only effort Office Partners took to stall progress on the Application was the post-approval attempt to withdrawal of the Application. This attempt was to be followed by a request for expedited treatment of the "new" application—all while relying on the PWSA's prior approval as a basis to keep work on its project proceeding apace during the withdrawal process. *See* Kaplan Dep. 60:4-62:3, 71:1-24 and Exhibit 6 to Kaplan Dep.:

> Good morning. After the OAC yesterday, we discussed our path forward with PWSA. We said that we would notify PWSA staff and Director Pickering of our intent to:
>
> 1) Withdraw the current tap-in fee application
> 2) Submit revised applications and tap plans that separate parcels G1 and G4
> 3) Request that both applications receive the 15-day expedited review and pay the $1300 fee per application for expedited review
>
> Before we send a follow up communication to PWSA, can we quickly confirm that
>
> 1) splitting the application into G1 and G4 components won't have an unintended ripple impact on completed PWSA agreements, bonds, etc? If those supporting documents have to change as well, we'd likely be facing a more protracted delay than the 15 days review process.
> 2) Is there a different plan update that we should consider instead of splitting apart the G1 and G4 parcels?
> 3) Can we use the PWSA notice from December and other approvals to keep advancing the work in the field for another couple of weeks?

See Exhibit 6 to Kaplan Dep., attached hereto as part of Exhibit B.

[5] 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 that the PWSA 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.

38. On March 15, 2022, as part of a consent process that resulted in the stay of an action initiated by Office Partners before the Allegheny County Court of Common Pleas and the initiation of this Action, Office Partners paid the Escrow Amount into the Allegheny County Court of Common Pleas and the PWSA issued the subject permit on the same date.

39. To prevent any delay in the development of the FNB Financial Center on the basis of this dispute, the PWSA issued the subject permit on the same date as Office Partners' payment into escrow.

40. In all matter relevant to these consolidated actions, the PWSA acted consistently with its treatment and consideration of all similar applications, and the PWSA acted consistently with all governing laws, tariffs, rules and regulations.

WHEREFORE, the PWSA respectfully requests that the Commission adopt this Stipulation of Facts and grant the PWSA's Motion for Summary Judgment.

Dated: May 3, 2024

/s/ Ashley L. Buck, Esq.

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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 3rd day of May, 2023, upon the following:

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Attorneys for Complainant,
Office Partners XXIII Block G1, LLC

/s/ Ashley L. Buck
Ashley L. Buck

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