

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Office Partners XXIII Block G1, LLC	:	
	:	
v.	:	C-2022-3033251 (water)
	:	C-2022-3033266 (wastewater)
Pittsburgh Water and Sewer Authority	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This decision grants the Motion for Summary Judgment filed by Complainant, denies the Motion for Summary Judgment filed by Pittsburgh Water and Sewer Authority, and dismisses as moot the Motion for Directed Verdict filed by Office Partners. This decision directs that Pittsburgh Water and Serwer Authority shall calculate tap-in-fees due from Complainant using the fee schedule in effect at the time of payment, which in this case, is March 15, 2022.

HISTORY OF THE PROCEEDINGS

On June 17, 2022, Office Partners XIII Block G1, LLC (Complainant or Office Partners) filed two Formal Complaints (Complaints) against Pittsburgh Water and Sewer Authority (Respondent, Company, or PWSA), alleging PWSA was charging incorrect permit fees for Complainant’s new commercial property development. The

Complaints are identical and were assigned two different docket numbers pursuant to “utility type” – water (municipal) and wastewater.

Office Partners avers it submitted an application to tap into PWSA infrastructure on May 11, 2021. Office Partners avers it communicated with PWSA regarding the plan submission between August 2021 and December 21, 2021. On December 23, 2021, PWSA, by letter accepted the tap-in plans but informed Complainant the permit would not be considered approved until the permit fees were paid. The fees were \$508,314.79. On January 31, 2022, Office Partners alleges it withdrew the 2021 Permit Application and made no payment toward the permit fees.

Office Partners alleges it submitted new tap-in plans to PWSA on February 4, 2022, and maintains these plans were part of an application separate and distinct from that submitted in 2021. Office Partners argues it submitted revised tap-in plans on February 22, 2022, to address verbal comments made by PWSA. Complainant avers PWSA approved the revised plans on February 22, 2022. Office Partners maintains it again submitted revised plans to address final comments made by PWSA on February 23, 2022. Office Partners avers PWSA approved these plans but verbally advised the permit would not be issued until Office Partners made payment for the permit. Complainant argues PWSA, although approving its new application in 2022, is still demanding fees calculated using the fee schedule in effect at the time of its original application in 2021. Office Partners maintains the fees should be calculated using the fee schedule in effect at the time PWSA approved its 2022 plans, which total \$2,590.

PWSA filed an Answer, New Matter, and Preliminary Objections on July 14, 2022. In its Answer, PWSA agrees Office Partners filed an application on May 11, 2021, and avers that PWSA approved that application on December 23, 2021, identifying the fees owed as \$508,314.79. PWSA expressly denies it told Complainant that its application would not be considered “approved” until the fees were paid. PWSA avers it

stated: “The fees have been calculated and are attached for your reference. Permits are not considered *issued* until permits fees are paid.”¹

PWSA alleges once Complainant learned 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 at a time when the fees were supposedly more favorable to it. PWSA denies it permitted Office Partners to withdraw its “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 actually presented, considered, and approved. PWSA maintains it approved Complainant’s application on December 21, 2021, and identified the fees owing as \$508,314.79. PWSA argues Office Partners is not permitted to withdraw an already-approved application, and any purported revisions were to the already-approved 2021 tap-in plans.

In its New Matter and Preliminary Objection, PWSA argues Office Partners is not entitled to any relief as a matter of law. PWSA argues, and Office Partners agrees, the controlling statute is 53 Pa.C.S. § 5607(d)(24), which reads, 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.” The parties advance different interpretations of this statute in their filings.

On July 14, 2022, PWSA filed a Motion to consolidate the above-captioned Complaints.

¹ See PWSA Answer filed July 14, 2022 at 3 (emphasis in original).

On July 22, 2022, Office Partners filed an answer to the Preliminary Objection, essentially restating the arguments in its Complaint.

On August 1, 2022, Office Partners filed a reply to PWSA's New Matter.

On August 9, 2022, the Commission issued a Hearing Notice, scheduling an evidentiary hearing for September 22, 2022. On September 11, 2022, I issued a Prehearing Order.

On August 23, 2022, I issued an Interim Order consolidating the Complaints, denying PWSA's Preliminary Objection, and converting the September 11, 2022, hearing to a prehearing conference.

The prehearing conference convened as scheduled on September 11, 2022. David Nernberg, Esq., appeared on behalf of Office Partners, and Samuel Hornak, Esq., appeared on behalf of PWSA. Counsel agreed to provide a proposed litigation schedule to me by September 23, 2022. Counsel did so, and, on September 27, 2022, I issued an Interim Order adopting their proposal, and setting a deadline for a status report.

Upon agreement of the parties, the litigation schedule was twice amended by Interim Orders issued on January 9, 2023, and March 20, 2023.

The March 20, 2023, Interim Order called for dispositive motions to be filed by May 26, 2023, responses to dispositive motions be filed by June 23, 2023, and a status report to be filed by June 30, 2023.

On May 26, 2023, each party filed a Motion for Summary Judgment, as well as a brief in support.

On June 20, 2023, I issued an Interim Order holding both Motions in abeyance pending the filing of the status reports on June 30, 2023.

The parties subsequently contacted me by email requesting clarification of my June 20, 2023, Interim Order. After a brief email exchange, the parties agreed to file responses to the Motions by June 30, 2023.

On June 22, 2023, I Issued an Interim Order directing the parties to file responses to the Motions by June 30, 2023, and status reports, either separately or jointly by June 30, 2023.

On June 30, 2023, PWSA and Office Partners filed a joint status report, advising they believed that there was potential for a joint stipulation of a substantial body of facts, which would limit or eliminate the need for an evidentiary hearing in this matter. The parties agreed to submit a joint stipulation of fact and contested stipulations of fact by August 14, 2023.

On June 30, 2023, both PWSA and Office Partners filed responses to the other party's Motion for Summary Judgment.

On July 12, 2023, I Issued an Interim Order directing the parties to file their stipulation of fact by August 14, 2023.

On July 26, 2023, Office Partners filed a Motion for Directed Verdict or Alternatively a Motion to Supplement its Motion for Summary Judgment and Response to PWSA's Motion for Summary Judgment and to Extend Time for Stipulations and Status Report (Motion for Directed Verdict).

On August 14, 2023, the parties jointly filed a status report, requesting that, in light of the Motion filed on July 26, 2023, the filing of a status report be stayed pending the issuance of a modified case management order, providing new deadlines for any additional submissions, and advising that PWSA intended to file a response to the Motion for Directed Verdict.

On August 15, 2023, PWSA filed an Answer and Brief in response to the Motion for Directed Verdict.

On August 29, 2023, Office Partners filed a brief in response to PWSA's Answer.

On September 14, 2023, the Commission issued a notice, scheduling a status conference for September 26, 2023.

On September 26, 2023, the status conference was held as scheduled. David Nernberg, Esq., appeared on behalf of Office Partners, and Samuel Hornak, Esq. appeared on behalf of PWSA. After discussion, the parties agreed to have these cases transferred to the Mediation Unit of the Office of Administrative Law Judge (OALJ).

On September 26, 2023, I issued an Interim Order, transferring this matter to the Mediation Unit.

On October 19, 2023, the Commission issued a Mediation Notice, scheduling a mediation session for October 31, 2023.

On November 1, 2023, the Commission issued a Further Mediation Notice, scheduling a mediation session for December 7, 2023.

On December 8, 2023, the Commission issued a Further Mediation Notice, scheduling a mediation session for January 17, 2024.

On January 25, 2024, the Commission issued a Further Mediation Notice, scheduling a mediation session for February 15, 2024.

On February 8, 2024, the Commission issued a Mediation Session Cancellation Notice, cancelling the session for February 15, 2024.

On February 8, 2024, the Mediation Unit advised me that these cases would be transferred back to me to proceed with litigation. I consulted with the parties by email and scheduled a status conference for March 6, 2024.

On February 9, 2024, the Commission issued a Notice, scheduling a status conference for March 6, 2024.

On February 14, 2024, I issued an Interim Order memorializing my email correspondence and scheduling the status conference for March 6, 2024.

The status conference convened as scheduled on March 6, 2024. Both parties were present and represented by counsel. After discussion, the parties agreed to submit a joint stipulation of facts by May 3, 2024. The parties also agreed to submit a list of issues in dispute. The parties also agreed to present oral arguments on the outstanding Motions on May 22, 2024.

On March 12, 2024, the Commission issued a Notice, scheduling oral arguments on the outstanding Motions for May 22, 2024.

On April 3, 2024, the Commission issued a Notice, rescheduling the time of the oral argument on May 22, 2024, from 10:00 a.m. to 2:00 p.m.

On May 3, 2024, the parties filed a Joint Stipulation of Facts, PWSA filed a proposed Findings of Fact, and Office Partners filed Disputed Issues of Fact.

A transcript of the May 22, 2024, oral argument was filed May 31, 2024. PWSA's Exhibits A-F were admitted and I took judicial notice of the following filings made by Office Partners in this matter: (1) its May 26, 2023, Motion for Summary Judgment, as well as a brief in support; (2) its June 30, 2023, response to PWSA's Motion for Summary Judgment; and (3) its July 26, 2023, Motion for Directed Verdict or Alternatively a Motion to Supplement its Motion for Summary Judgment and Response to PWSA's Motion for Summary Judgment and to Extend Time for Stipulations and Status Report; and (4) its August 29, 2023, brief.

On March 5, 2025, I issued an Interim Order closing the record in this matter. This matter is now ripe for adjudication.

STIPULATION OF FACTS²

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.

² The Joint Stipulation of Facts is reproduced here verbatim and are hereby adopted.

3. Office Partners began the application process (which included design and construction plans) to tap into the PWSA’s infrastructure in May of 2021, for two parcels known as G1 and G4 (the “2021 Application”).

4. The PUC Tariff (“2021 Tariff”) that was in effect from March 1, 2019, until January 12, 2022, and is set forth at PUC Docket No. R-2018-3002647 and PUC Docket No. R-2020-3017970- was:

Collection Fee	\$1,701 Per EDU*
Capacity Fee	\$1,277 Per EDU*
Total Tapping Fee	\$2,978 Per EDU*
	* 300 gpd/EDU

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

A Main Extension Applicant shall pay enumerated fees to the Authority. Fees shall be based upon the duly adopted fee schedule which is in effect at the time of payment and shall be payable at the time of application for connection or at a time to which the property owner and Authority agree. 53 Pa.C.S. 5607(d)(24).

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

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

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

****PLEASE NOTE****

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

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

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

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

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

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

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

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

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

Good Afternoon,

I wanted to pass along this email I received from the FNB Tower. I assume this is their way to skirt the fees. I am going to advise them that they wouldn't withdraw the application as that is not necessary. They would just submit a revised planning module under the previous application and pay the expedited revised permit review fee. They likely will not like that answer so I wanted to run it by you 3 before responding.

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

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

Hi Steve,

We don't have any existing policies to withdraw an application. All permits and projects under review have the option to submit revised applications, planning modules, and tap-in plans without restarting an

application. We wouldn't start a new application in e-Builder or CityGrows. To move forward with your review please resubmit your DEP Planning Module under your previous e-Builder folder. We will review expeditiously.

Please let me know if you have any questions.

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

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

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

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

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

IF PERMITS ARE NOT PAID FOR WITHIN THIS PERIOD, THIS PROJECT AND PLANS WILL BE

**VOIDED AND WILL REQUIRE THIS PROJECT
TO START FROM THE BEGINNING.**

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

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

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

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

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

Joint Stipulation of Facts (filed May 3, 2024).

PARTIES' POSITIONS

The parties have each filed a Motion for Summary Judgment, a brief in support of its Motion, and responses to the other party's Motion.

Additionally, Office Partners filed a Motion for Directed Verdict, to which PWSA filed a response and brief, prompting Office Partners to file its own brief in

response. In short, the parties have quite vigorously argued and briefed their respective positions through motions, briefs, and oral argument.

Office Partners' Motion for Summary Judgment

Office Partners' Motion for Summary Judgment

In its Motion for Summary Judgment, Office Partners submits that the dispute involves whether Office Partners is required to pay the 2021 or 2022 tap-in permit fees to tap into PWSA infrastructure as well as the higher rates imposed after the permit tap in fees were reduced. Office Partners contends that the 2022 tap-in rates apply and that payment of the 2021 rates plus the increased sewage fees will constitute a penalty for Office Partners in a windfall for PWSA. Office Partners' Motion for Summary Judgment, at 1.

In its brief in Support of its Motion for Summary Judgment, Office Partners explains that effective January 12, 2022, PWSA and the Commission agreed that PWSA would charge a higher usage rate structure for its customers and reduce its tap-in fee charges to new customers as a result. Office Partners' Brief in Support of Motion for Summary Judgment, at 2.

Office Partners explains that it was in the process of developing the FNB Financial Tower and, in 2021, applied to tap into the PWSA system. On December 23, 2021, PWSA issued a letter and invoice to Office Partners approving the 2021 plans. The invoice was for \$508,324.79.

On January 31, 2022, before the tap-in permit was issued, Office Partners avers it sought to withdraw the application and file a new one. *Id.* Office Partners argues that PWSA did not allow the withdrawal stating that it had “no policy to withdraw

permit.” *Id.* In February 2022, Office Partners submitted new tap-in plans which it argues constituted a brand-new application. *Id.* Office Partners argues PWSA is attempting to treat the new application as a revised application and charge Office Partners the tap-in fee as well as the new usage rates. *Id.* at 1.

Office Partners explains that on February 25, 2022, it filed a mandamus action in the Court of Common Pleas of Allegheny County, at GD-22-2217, seeking judgment that the permit to be issued would be issued at the 2022 rates. PWSA moved for dismissal, contending that the Commission had exclusive jurisdiction over the matter. *Id.* at 3. Office Partners agreed and deposited the amount demanded by PWSA in escrow on March 9, 2022 as a condition of PWSA issuing the permit during the pendency of the litigation. Office Partners explains that the funds were deposited, and the permit was issued on March 15, 2022. *Id.*

In its Brief in Support of Motion for Summary Judgment, Office Partners argues that PWSA’s insistence on charging it tap-in fees under the 2021 rate structure violates the clear language of 53 Pa.C.S. § 5607(d)(24). The language of this statute has remained unchanged throughout the course of these proceedings and reads,

(d) Powers. – Every authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section, including, but without limiting the generality of the foregoing, the following rights and powers:

(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.

53 Pa.C.S. § 5607(d)(24).

Office Partners claims that PWSA acknowledges this statute is controlling. Office Partners' Brief in Support of Motion for Summary Judgment, at 4.

Office Partners notes that the statute states that the fee is that which is “in effect at the time of payment.” *Id.* at 5. Office Partners argues that “payment” is not defined in the statute, and it should take its plain meaning. *Id.* Merriam-Webster's dictionary defines payment as “the act of paying.” Office Partners also submits that the Pennsylvania Supreme Court has held that “payment is defined as the ‘[p]erformance of an obligation, [usually] by the delivery of money.’” *Romaine v. Workers' Comp. Appeal Bd. (Bryn Mawr Chateau Nursing Home)*, 901 A.2d 477 (Pa. 2006), citing Black's Law Dictionary 1150 (7th ed. 1999). Office Partners avers that the date the check is delivered is the date of payment which in this case, is March 15, 2022. *Id.* at 5. Further, Office Partners argues that “payable” (which it posits should be interpreted as “that which may be paid”) and “payment” must take on different meanings in the context of this statute. *Id.* at 5, n.3.

In response to PWSA's arguments, Office Partners avers PWSA is empowered to create its own policies, but only to the extent permitted by statute. *Id.* at 5-6. Office Partners claims that PWSA's policies are reflected in its “Developers Manual,” which states that an “approved permit refers to an application that has met all the requirements as outlined in this manual and has received a final invoice.” *Id.* at 6. Office Partners claims it is undisputed that the final invoice that was issued and paid was dated March 3, 2022. *Id.*

Additionally, Office Partners submits that it is against public policy to allow PWSA's "ad hoc policy" to control the interpretation of 53 Pa.C.S. § 5607(d)(24). Office Partners notes that PWSA has no officially adopted resolution or policy on withdrawal or the timing of the fee calculation and created an arbitrary "policy," violating Office Partners rights. *Id.* Office Partners argues the Commission cannot reward PWSA's attempt to twist the meaning of 53 Pa.C.S. § 5607(d)(24), such that the statute grants authority to only charge the fee in place at the time of payment and no other. *Id.* Office Partners maintains that PWSA has abused its discretion by establishing policy and engaging in practice solely to charge Office Partners an increased fee and the Commission cannot uphold PWSA's scheme where the policy was made up on the spot and there is no official resolution supporting it (and if there was, it would illegally contradict the statute). *Id.* at 8.

Finally, Office Partners argues 53 Pa.C.S. § 5607(d)(24) should not be interpreted to give a windfall to PWSA. Office Partners argues the Pennsylvania Supreme Court held in *Skepton v. Borough of Wilson*, 755 A.2d 1267, (Pa. 2000) (*Skepton*) that:

It is a cardinal rule of statutory construction that if 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. ... [A] taxing statute must be construed most strongly and strictly against the government and if there is a reasonable doubt as to its construction or application to a particular case, the doubt must be resolved in favor of the taxpayer." *Commonwealth v. High Welding Co.*, 428 Pa. 545, 239 A.2d 377, 379 (Pa. 1968) (citations omitted).

Skepton, 755 A.2d at 1270.

Office Partners argues that similar to *Skepton*, with regard to tap-in fees, the statute must be strictly construed in favor of the applicant. Office Partners refers to a fairly recent case involving a tap-in fee dispute where the municipal authority requested the Court to rule that it was immune from suits to collect erroneously charged tap in fees because they constituted consequential damages. *Hidden Creek, L.P. v. Lower Salford Twp. Auth.*, 129 A.3d 602 (Pa. Cmwlth. 2015) (*Hidden Creek*). Office Partners explains that the Court in *Hidden Creek* ruled that the statute permitted the developer to challenge the fees and that to disallow recovery thereof would frustrate the statute’s carefully worded purpose and held that an authority that violates the statutory restrictions cannot be immune from suit. *See Hidden Creek* at 612.

Office Partners submits that 53 Pa.C.S. § 5607(d)(24) must also be strictly construed. Office Partners avers the language is clear and unequivocal, and no amount of wordsmithing or “thin air policy” can alter its meaning; “payment” is “payment.” Office Partners Brief in Support of Motion for Summary Judgment, at 9.

PWSA’s Response to Office Partners’ Motion for Summary Judgment

PWSA responds to Office Partners’ Motion for Summary Judgment by noting that in the 2022 tariff, PWSA and the Commission agreed PWSA would reduce tap-in fees “beginning in 2022 for all customers.” PWSA argues the pertinent analysis essentially ends there, as Office Partners’ application was made and approved in 2021. PWSA Response to Motion for Summary Judgment, at 2. PWSA maintains that its actions at all relevant times have been consistent with the rules and regulations of the Commission and its tariff. *Id.*

PWSA maintains that Office Partners’ argument is due to a misreading of 53 Pa.C.S. § 5607(d)(24). PWSA argues that the statute provides that the fees are payable at the time of application and that those payable fees are based upon the duly

adopted fee schedule which is in effect at the time of payment. *Id.* at 7. PWSA argues that the fees that apply to this dispute are those in effect at the time of Office Partners' application, which is undisputably the rates under the 2021 tariff. *Id.*

Furthermore, PWSA argues that Office Partners' argument is at odds with the facts of the case, since PWSA's 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.

PWSA argues that the Pennsylvania Public Utility Code, Act of July 1, 1988, P.L. 598, No. 116, 66 Pa.C.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 the Commission exclusive jurisdiction to regulate, *inter alia*, public utilities rates. *See* 66 Pa.C.S. § 1301. 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 and orders of the commission.” 66 Pa.C.S. § 1301(a). As a public utility, PWSA must file tariffs with the Commission showing all schedules of rates, regulations, practices, or contracts with the jurisdiction of the Commission. *See* 66 Pa.C.S. §§ 102, 1302. In the instant matter, PWSA maintains that at all relevant times, 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. Cent. Off. 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. Apr. 1, 2002) (citing *H.J., Inc., v. Nw. Bell Tel. Co.*, 954 F.2d 485,488 (8th Cir. 1992)). PWSA explains that the filed rate doctrine thus prevents the questioning or changing of approved rates to prevent rate discrimination among members of the class of ratepayers and to preserve the rule of the regulatory agency as rate setter, *i.e.*, the reasonableness of an agency approved rate is nonjusticiable. *Keough v. Chicago & Nw. Ry. Co.*, 60 U.S. 156 (1922). PWSA maintains that 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 Commission in connection with the Commission's consideration of the subject tariffs. PWSA Response to Motion for Summary Judgment, at 10.

PWSA further notes that “tariffs have the force of law and are binding on both utility and the customer.” *Pa. Elec. Co. v. Pa. Pub. Util. Comm’n*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995). Unless the Commission grants an exception, a public utility cannot charge any rate other than that set forth in the tariff. *See Bell Tel. Co. of Pa. v. Pa. Pub. Util. Comm’n*, 417 A.2d 827, 828-29 (Pa. Cmwlth. 1980); 66 P.S. §§ 1303, 1304.

PWSA submits that it is without dispute that the rates utilized by PWSA are strictly regulated by the Commission pursuant to the settled legal principles underlying the filed rate doctrine. PWSA avers it is further undisputed that the Commission considered and ultimately approved all of the tariffs at issue in this matter. PWSA Response to Motion for Summary Judgment at 11. PWSA maintains that it is fundamental that tariffs have the force of law and are binding on both PWSA and Office Partners; and unless the Commission grants an exception, PWSA cannot charge any other rate than that set forth in the tariff. Furthermore, PWSA asserts: (1) preferences of rates may not be given; (2) the question of the reasonableness of rates and the difference between rates is an administrative question for the Commission; (3) the rate structure is a

matter solely within the ambit of the Commission; and (4) any attempt to vary the terms of the tariff is not effective. *Id.* As a result, PWSA argues that Office Partners cannot collaterally attack the tariffs that have been established and deemed reasonable by the Commission. Moreover, PWSA posits that Office Partners cannot be treated differently than any other consumer served under the tariffs. *Id.*

Further, PWSA argues that to apply Office Partners' interpretation would result in a windfall to Office Partners. The benefit of Office Partners' tap-in fees is passed on to PWSA's ratepayers either to defray rate increases or to pay for expenditures. *Id.* at 11. PWSA argues that because no benefit is being conferred upon PWSA by virtue of collecting the appropriately due tap-in fee from Office Partners, and the benefit is instead conferred on the ratepayers PWSA represents, PWSA cannot be unjustly enriched and, therefore, payment could not result in a windfall. *Id.* PWSA suggests that Office Partners deliberately ignores the harmful results that would result from depriving 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. PWSA maintains it is simply 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 PWSA uniformly has done with other applicants whose application processes are conducted entirely within a single tariff rate/structure. *Id.* at 11-12.

PWSA's Motion for Summary Judgment

PWSA's Motion for Summary Judgment

PWSA also filed a Motion for Summary Judgment and does not materially dispute the facts as alleged by Office Partners. Additionally, it agrees the statute at 53

Pa.C.S. § 5607(d)(24) is controlling. Nevertheless, it takes an alternate view of the interpretation of the applicable statute and the appropriate outcome.

As an initial matter, PWSA argues the Commission has exclusive jurisdiction over the rates charged by utilities within its jurisdiction, including PWSA. *See e.g.*, 66 Pa.C.S. §§ 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), and 1312(c) (imposing conditions on suit); *Byer v. The Peoples Nat. Gas Co.*, 380 A.2d 383, 386 (Pa. Super. 1977) (stating that the Commission has “exclusive jurisdiction over the rates charged by 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 Mun. Auth. v. Pa. Pub. Util. Comm’n*, 185 A.2d 628 (Pa. Super. 1962)).

PWSA agrees Office Partners submitted an application to tap into PWSA’s infrastructure in 2021, and avers it approved the application on December 23, 2021. PWSA’s Motion for Summary Judgment, at 6. PWSA then calculated the fees owing as \$508,314.79.

PWSA explains that because different applicants submitted initial materials to PWSA in different ways, PWSA did not have a strict “application date” for a tap-in permit, and argues its policy was to issue a tap-in permit upon payment of the applicable fees, and to determine such fees due by the rate schedule in effect on the date when a tap-in permit was approved. *Id.*

PWSA notes that a new tariff went into effect on January 13, 2022, which had the effect of eliminating the tap-in fees in changing the PWSA’s overall rate structure. *See* Tariff Water – Pa. P.U.C. No. 1 (Supplement No. 7) at Docket No. R-

2021-3024773; Tariff Wastewater – Pa. P.U.C. No. 1 (Supplement No. 6) at Docket No. R-2021-3024774; Tariff Stormwater – Pa. P.U.C. No. 1 at Docket No. R-2021-3024779.

After the new tariff went into effect in January 2022, PWSA explains that Office Partners attempted to withdrawal its application. PWSA avers it has no experience with an attempted withdrawal of a tap-in application and there is no process in place for such a withdrawal because unperfected applications can remain open in the PWSA system indefinitely. PWSA’s Motion for Summary Judgment, at 7. PWSA argues that Office Partners only attempted to withdraw its application when it learned the rates were becoming more favorable, and in an effort to circumvent PWSA’s policy, and to “shop for a more preferable rate,” Office Partners attempted to assert pretextual reasons for a “new” application. *Id.* When Office Partners attempted its “withdrawal” and reapplication, PWSA advised Office Partners that the fees contained in the 2021 tariff would continue to be applicable to the application. *Id.* PWSA argues that Office Partners’ attempted withdrawal and resubmission of the application was simply a *post facto* effort to save approximately \$500,000 in fees. *Id.* at 12.

Like Office Partners, PWSA argues it is entitled to judgment as a matter of law due to the plain language of 53 Pa.C.S. § 5607(d)(24). PWSA submits that in cases involving the interpretation of the statute, courts are “guided by the provisions of the Statutory Construction Act, 1 Pa.C.S. § 1901 *et seq.*”

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. Generally speaking, the best indication of legislative intent is the plain language of the 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 the 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 Schiepe v. Orlando*, 559 Pa. 112, 739 A.2d 475, 478 (1999).

Sternlicht v. Sternlicht, 876 A.2d 904, 909 (Pa. 2005). PWSA notes that under Section 1921(c) of the Statutory Construction Act, it is only when the words of the statute “are not explicit” that a court may resort to other considerations in order to ascertain legislative intent. PWSA’s Motion for Summary Judgment, at 14.

PWSA argues that per the express language of 53 Pa.C.S. § 5607(d)(24), fees are payable at the time of application, and fees are determined based on the duly adopted fee schedule which is in effect at the time of approval, *i.e.*, the time of application. PWSA argues that Office Partners made its application in 2021, the application was approved in 2021, and therefore, the rates of the tariff in effect in 2021 are controlling. *Id.* at 15.

Office Partners’ Response to PWSA’s Motion for Summary Judgment

Office Partners reiterates its previous arguments, maintaining that the rate statute is clear; and the fee is calculated at the rate in effect on the date of payment of the note. Office Partners submits that PWSA’s position that it can disregard the clear language of the statute and charge a rate not in effect at the time the final invoice was issued or at the time of payment is simply wrong. Office Partners’ Response to PWSA’s Motion for Summary Judgment, at 1.

Further, PWSA contends that applying the 2022 rates to Office Partners would be inequitable. Office Partners responds that this dispute involves a matter of law, *i.e.*, statutory interpretation, but if equity were to apply, the equities would favor Office

Partners. Office Partners argues that the project is subject to the 2022 tap-in rates and subsequent usage rates for its life. These usage rates are significantly higher to cover the expenses previously included in the 2021 tap-in fee rates. *Id.* at 1-2.

Office Partners notes that the parties agree that 53 Pa.C.S. § 5607(d)(24) is controlling. Office Partners submits that there is no ambiguity in this statute. *Id.* at 2. PWSA contends that the term “payable” and “payment” are synonymous and that payable is the same as “due and payable.” Office Partners claims that PWSA argues that when it issues an invoice (“plan approval”), the fee is due and payable at the rate then calculated. However, the statute does not state “due and payable” or “calculated upon plan approval.” It clearly separates payment and payable in two separate events. *Id.* Further, Office Partners submits that PWSA ignores that the invoice was ultimately paid in March 2022 (when the 2022 rates are in effect). *Id.*

Office Partners argues the legislature understands these terms and, in other statutes, clearly recognizes the distinction between payable and due and how they operate when used together. For example, Office Partners points to the Wage Payment and Collection Law, 43 P.S. § 260.3 *et al*, which reads,

(a)... Every employer shall pay all wages, other than fringe benefits and wage supplements, due to his employees on regular paydays designated in advance by the employer... All wages, ..., Earned in any pay. It shall be due and payable within the number of days after the expiration of said pay. As provided in a written contract of employment or, if not so specified, within the standard time-lapse customary in the trade or within 15 days from the end of such pay period.

43 P.S. § 260.3.

Office Partners explains that the second part of the statute allows claims for wages, interest, and penalties, but it states that such claims can only be initiated if funds are “payable” when the claim is made. This statute has been interpreted by its plain meaning; once wages are unpaid beyond the date they are due and payable, a claim for penalties arises. If paid prior to that date, no claim arises. Office Partners explains that “due and payable” is a trigger. Office Partners’ Response to PWSA’s Motion for Summary Judgment, at 4-5.

Another example is a statute that deals with the return of property, interest, and settlement by tax collectors, 72 P.S. § 5860.306. This statute reads, in part,

It shall be the duty of each receiver or collector of any county, city, borough, town, township, school district or institution district taxes to make a return to the Bureau on, or before the last day of April each year, but no earlier than the first day of January of that year. The return shall be typewritten on a form provided by are acceptable to the county and shall include a list of all properties against which taxes are levied, the whole or any part of which were due and payable in the calendar year immediately preceding and which remain unpaid....

72 P.S. § 5860.306(a). Office Partners explains that the legislature requires payment of interest only on those taxes that were both due and payable in the preceding calendar year. If paid before due, no interest would arise. Payable and payment are not interchangeable and are used to denote separate events, in each must be given effect. Office Partners’ Response to PWSA’s Motion for Summary Judgment, at 5.

Office Partners claims that PWSA contends that its “plan approval” and issuance of an invoice make the fee “payable” and that “plan approval” and issuance of the invoice is the time of application under the statute. *Id.* In response, Office Partners argues PWSA has not adopted a policy or regulation stating the foregoing, and if it did, it

could not abrogate statutory law. *Id.* Further, the Developers Manual specifically contemplates application prior to “plan approval.”

Office Partners submits that on the date of payment, PWSA must calculate or recalculate the fee based upon the schedule then in place. Further, pursuant to PWSA’s own argument, the March 3, 2022 invoice should have been calculated at the 2022 rates because it was the final and actual invoice for the issued permit. *Id.*

Office Partners maintains that the only operative date is the date of payment, and had the legislature desired otherwise, it would have been written that the tap-in fee is calculated on the fee in effect on the date of application or approval, which it did not. *Id.*

Office Partners’ Motion for Directed Verdict (or Alternatively to Supplement Motion for Summary Judgment)

Motion for Directed Verdict (or Alternatively to Supplement Motion for Summary Judgment)

In its Motion for Directed Verdict, Office Partners explains that in June 2023, its counsel became aware of a similar case dealing with similar issues of fact and law before of the Commission as a formal complaint at *3213 Penn LLC v. Pittsburgh Water and Sewer Auth.*, Docket No. C-2023-3038775 (*3213 Penn*). Office Partners’ Motion for Directed Verdict, at 1. Office Partners explains the filings in *3213 Penn* were not publicly available and it requested them from PWSA as part of its discovery obligations in the instant matter and from the Commission under the open records laws. *Id.* at 2. Office Partners avers PWSA did not produce the documents, but it was able to obtain them from the Commission. *Id.*

Office Partners avers that in the *3213 Penn* case, PWSA took the position before the Commission that tap-in fees are to be calculated at the time of permit payment, which if applied in the instant matter would require the Commission to find in Office Partners' favor. *Id.*

Office Partners explains that in the *3213 Penn* case, PWSA issued an invoice and plan approval letter to 3213 Penn for \$348,110.03 pursuant to the 2021 tap-in rates, and PWSA approved 3213 Penn's application on or about August 19, 2021, upon receipt of 3213 Penn's full fee payment. *Id.* at 5. Office Partners avers that the City of Pittsburgh Office of Permits, Licenses and Inspections (PLI) required 3213 Penn to obtain an updated approval from PWSA and the permit was not issued upon payment. According to Office Partners, the PLI Order required 3213 Penn to resubmit the tap-in plans on March 11, 2022. *Id.* PWSA approved the resubmitted tap-in plans on April 7, 2022, and issued the tap-in permit. 3213 Penn subsequently filed a formal complaint with the Commission, arguing it should receive a refund and the 2022 tap-in rates should be utilized because no permit was issued until those rates were in effect. *Id.*

In the 3213 Penn formal complaint proceeding, Office Partners alleges that PWSA argued that 53 Pa.C.S. § 5607(d)(24) and PWSA policies provided that fees are to be calculated at the time of permit approval, which is at the time of "payment," and approval of an application occurred "upon receipt of the full fee payment." *Id.*

Office Partners argued that the averments in PWSA's pleadings in *3213 Penn* were all verified by the same individual who verified pleadings in the instant matter and are judicial admissions which should be held against PWSA in the instant matter. *Id.* at 6.

Office Partners argues PWSA is making up *ad hoc* policy to justify its charging of the 2021 fees on a case-by-case basis and it should not be rewarded for such

conduct. Further, given the applicable statute and other facts admitted in this action, the Commission should find in favor of Office Partners on the merits of its action and hold that the 2022 tap in rates apply as both a matter of fact and law.

Statement of fact by one party in pleadings, stipulations, testimony, and the like, made for that party's benefit, are judicial admissions and are binding on the party. *Nasim v. Shamrock Welding Supply Co.*, 563 A2d 1266, 1267 (Pa. Super. 1989). Office Partners argues that PWSA's statements are statements of fact because it claims that it deems approval of the permit application as of the date it is paid. Office Partners claims that PWSA should be judicially estopped from claiming otherwise. *Tops Apparel Mfg. Co. v. Rothman*, 244 A.2d 436 (Pa. 1968).

PWSA's Response to Office Partners' to Motion for Directed Verdict

PWSA responds that Office Partners' Motion is "rife with inaccuracies in misstatements, as well as selective quotations in statements devoid of context." PWSA Response to Motion for Directed Verdict, at 2. PWSA argues that Office Partners seeks to fashion a "judicial admission" by 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. *Id.* PWSA claims 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. *Id.*

Essentially, PWSA argues that its arguments in the *3213 Penn* matter are not judicial admissions and, in any event, are factually distinct from the instant case. Furthermore, PWSA submits that if the Commission were to consider the merits of the Motion for a Directed Verdict, it could potentially violate the substantive rights of PWSA in this matter. *Id.* at 4, fn. 5.

Further, PWSA argues the Motion should be denied based on the fact that the Motion contains a number of incorrect representations and misstatements. *Id.* at 10.

Office Partners' Response to PWSA's Response to Motion for Directed Verdict

Office Partners rebuts PWSA's arguments that its arguments in the 3213 Penn matter should not be considered in the instant matter. Office Partners submits that the instant action and the 3213 Penn matter are similar. Both parties applied for tap-in permits in 2021. Both parties received approval letters for their tap-in plans from PWSA in 2021. Both approval letters required payment for the permit to be issued. Office Partners argues that the only difference is that 3213 Penn paid the invoice when the 2021 rates applied, while Office Partners made payment when the 2022 rates applied. Office Partners' Response to PWSA's Response to Motion for Directed Verdict, at 1. Office Partners claims that these facts are admitted by PWSA. *Id.*

In both actions, PWSA contends that 53 Pa.C.S. § 5607(d)(24) is controlling. Office Partners argues that although the statute says nothing about "approval," PWSA argues in both actions that its policy is to calculate fees at the time of "approval," and it is this policy that should control. *Id.* In the Office Partners action, PWSA takes the position that "approval" is the date it sends a letter and invoice, but in the 3213 Penn case, PWSA argues that "approval" means the date of payment, arguing that the plain meaning of the statute supported its position. *Id.* at 1-2.

Office Partners submits that PWSA is taking contrary positions before the Commission. *Id.* at 2. It argues that in *Ligon v. Middletown Area School Dist.*, 584 A.2d 376, 380 (Pa. Cmwlth. 1990) (*Ligon*), the Court explained, the established rule under the doctrine of judicial estoppel is that a party is precluded from switching positions or "assert certain contrary positions in the same or related proceedings." Moreover,

“[f]ederal courts have long applied this principle of estoppel where litigants ‘play fast and loose’ with the courts by switching legal positions to suit their own ends.” *Id.*

Furthermore, Office Partners argues the Pennsylvania Supreme Court has stated that admissions contained in the pleadings and stipulations are usually regarded as “judicial admissions” and cannot later be contradicted by the party who made them. *Tops Apparel Mfg. Co. v. Rothman*, 244 A.2d 436 (Pa. 1968). Office Partners submits that PWSA be judicially estopped from making contradictory arguments before the Commission.

DISCUSSION

Section 5.102 of the Commission’s regulations provides the Commission’s standard of review for a motion for judgment on the pleadings or a motion for summary judgment:

(1) Standard for grant or denial on all counts. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) Standard for grant or denial in part. The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

52 Pa. Code § 5.102(d)(1)-(2).

Further, the Commission is granted discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993).

The parties have spent considerable time and effort accusing each other of wrongdoing (e.g. whether Office Partners tried “gaming the system” by attempting to withdraw and resubmit its application, whether PWSA failed to adhere to rules of professional conduct, etc.).

As an initial matter, I note there is no genuine issue as to a material fact, as the Joint Stipulation of Facts introduced by the parties was adopted, leaving only the need for the Commission to answer the question of law presented – Should the tap-in fees be calculated using the tariff in effect at the time of Office Partners’ application in 2021 or at the time of payment in 2022?

In my view, this is a simple case, and these extraneous arguments serve merely to distract and obfuscate. Both parties agree that the controlling statute is 53 Pa.C.S. § 5607(d)(24), which appears in the tariff that was in effect at the time of application: “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.” Incredibly, both parties argue the plain language of the statute supports its own interpretation.

The Commission has exclusive jurisdiction over the rates charged by utilities within its jurisdiction, including PWSA. *See e.g.*, 66 Pa.C.S. §§ 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 Nat. Gas Co.*, 380 A.2d 383, 386 (Pa. Super. 1977) (stating that the Commission has “exclusive jurisdiction over the rates charged by 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 Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 185 A.2d 628 (Pa. Super. 1962)).

This case turns on the interpretation of a single sentence. 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). “Generally speaking, the best indication of legislative intent is the plain language of the statute.” *Commonwealth v. Gilmour Mfg. Co.*, 822 A.2d 676, 679 (Pa. 2003). When the words of the 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). It is only when the words of the statute “are not explicit” that a court may resort to other considerations in order to ascertain legislative intent. 1 Pa.C.S. § 1921(c).

“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.” 53 Pa.C.S. § 5607(d)(24). This statute contains two clauses: (a) “fees shall be based upon the duly adopted fee schedule which is in effect at the time of payment;” and (b) “fees shall ... be payable at the time of application for connection or at a time to which the property owner and the authority agree.” *Id.*

The first clause is clear. It relates to *how fees are to be calculated*. Fees shall be based on the fee schedule which is in effect at the time of *payment*. Not, “application,” “not approval of application.” If the legislature meant to have fees due at time of *application*, it certainly would have used the word “application,” as it chose to do in the second clause of the sentence. Payment means “the act of paying” or “the delivery of money.” See *Romaine v. Workers’ Comp. Appeal Bd. (Bryn Mawr Chateau Nursing Home)*, 901 A.2d 477 (Pa. 2006) (citing Black’s Law Dictionary 1150 (7th ed. 1999)).

The second clause is not inconsistent with the plain language of the first. The second clause relates to *when the fees should be paid*, or when the obligation to make the payment arises. It provides that fees are *payable* (i.e. able to be paid) either at the time of application or at another time the utility and applicant agree. PWSA admits its invoices are due to be paid within 6 months. PWSA’s own practice is to make fees *payable* within 6 months of its issuance of an invoice.

PWSA argues that the statute should be interpreted as, “fees shall be determined based on the duly adopted fee schedule which is in effect at the time of “application” or “approval of the application.” While this interpretation may make more sense, this is simply not what the statute says. It is not for me or the Commission to ignore the plain, unambiguous language of the statute.

Finally, I note that the tariff revisions that took effect in January 2022 increased usage rates and eliminated tap-in fees, presumably intended to redistribute or reallocate how costs are borne by PWSA’s customers. It seems patently inequitable that Office Partners should pay the tap-in fees under the 2021 tariff and also the increased usage under the 2022 tariff.

In conclusion, the Motion for Summary Judgment filed by Office Partners is granted and the Motion for Summary Judgment filed by PWSA is denied. PWSA must

calculate its tap-in fees for Office Partners based on the fee schedule in effect on the date of payment, which was March 15, 2022. Both parties agree there were no tap-in fees due under the tariff in effect on that date.

Since I am granting Office Partner's Motion for Summary Judgment, I am dismissing Office Partners' Motion for Directed Verdict as moot.

CONCLUSIONS OF LAW

1. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

2. The Commission is granted discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d).

3. A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993).

4. The Commission has exclusive jurisdiction over the rates charged by utilities within its jurisdiction, including PWSA. 66 Pa.C.S. § 1301.

5. The Commission’s jurisdiction over utility rates exists regardless of whether those rates have been established by deed, contract, ordinance or otherwise. *Blythe Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 185 A.2d 628 (Pa. Super. 1962).

6. The object of all statutory construction is to ascertain and effectuate the General Assembly’s intention. *See* 1 Pa.C.S. § 1921(a).

7. The best indication of legislative intent is the plain language of the statute. *Commonwealth v. Gilmour Mfg. Co.*, 822 A.2d 676, 679 (Pa. 2003).

8. When the words of the 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).

9. It is only when the words of the statute “are not explicit” that a court may resort to other considerations in order to ascertain legislative intent. 1 Pa.C.S. § 1921(c).

10. “Every authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section [relating to the Municipality Authorities Act], including, but without limiting the generality of the following right and powers: . . . To charge enumerated fees to property owners who desire to connect to the authority’s 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.” 53 Pa.C.S. § 5607(d)(24).

11. Summary judgment in favor of Office Partners is appropriate here, as there is no genuine issue as to a material fact and Office Partners is entitled to a judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Stipulation of Facts submitted by Office Partners XXIII Block G1, LLC, and Pittsburgh Water and Sewer Authority on May 3, 2024, is adopted.
2. That the Motion for Summary Judgment filed by Office Partners XXIII Block G1, LLC, at C-2022-3033251 and C-2022-3033266 is granted.
3. That the Motion for Summary Judgment filed by Pittsburgh Water and Sewer Authority at C-2022-3033251 and C-2022-3033266 is denied.
4. That the Motion for Directed Verdict (or Alternatively to Supplement Motion for Summary Judgment) filed by Office Partners XXIII Block G1, LLC, at C-2022-3033251 and C-2022-3033266 is dismissed.
5. That Pittsburgh Water and Sewer Authority shall calculate tap-in fees due from Office Partners XXIII Block G1, LLC, for its FNB Financial Center Project by using the fee schedule in effect on March 15, 2022.

