

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**EXCEPTIONS OF PITTSBURGH WATER AND SEWER AUTHORITY d/b/a  
PITTSBURGH WATER TO THE INITIAL DECISION OF ADMINISTRATIVE LAW  
JUDGE DEVOE**

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Pursuant to 52 Pa. Code § 5.533, Pittsburgh Water and Sewer Authority d/b/a Pittsburgh Water (“Pittsburgh Water”) hereby submits the following Exceptions to the Initial Decision issued in the above-referenced matter on May 2, 2025.

**I. INTRODUCTION**

On February 25, 2022, Office Partners XXIII Block G1 LLC (“Office Partners”) instituted a civil action in the Allegheny County Court of Common Pleas at Docket Number G.D. 22-002217 (the “State Court Action”), seeking to avoid payment of the tap-in permit fee in place when Office Partners submitted its tap-in application to Pittsburgh Water. Pursuant to the Consent Order entered in the State Court Action, Office Partners posted a bond on March 15, 2022, in the amount of \$506,647.18 – the amount due for the tap-in permit fee at the time of Office Partners’ application – with the Allegheny County Department of Court Records on March 15, 2022. Per the Consent Order, the Allegheny County Court of Common Pleas retained jurisdiction over the matter until either: (1) the conclusion of the instant proceedings before the Pennsylvania Public Utility Commission (the “Commission”); or (2) further order of the Allegheny County Court of Common

Pleas. Additionally, the Consent Order required Office Partners to, *inter alia*, initiate an action before the Commission.

On or about June 17, 2022, Office Partners filed two identical formal Complaints (collectively, the “Complaint”) with the Commission at Docket Numbers C-2022-3033251 and C-2022-3033266 (collectively, the “Actions”). The Actions are identical with the exception that they were assigned two different Docket Numbers pursuant to “utility type” – water (municipal) and wastewater. On or about August 23, 2022, the Commission, thus, consolidated the Actions under Docket Number C-2022-3033251.

The Complaint asserts, *inter alia*, that Pittsburgh Water is “require[d]” to “accept payment pursuant to the 2022 fee schedule” in the amount of \$2,590.00, instead of the fees due pursuant to the 2021 fee schedule<sup>1</sup>, notwithstanding that Office Partners applied for its permit with Pittsburgh Water in 2021. While Office Partners argues that it “withdrew” the 2021 application and reapplied in 2022, the ALJ did not address this argument in deciding that the 2022 fees apply. However, in framing the dispute in this matter, the ALJ agrees that Office Partners applied in 2021. *See* Initial Decision pp. 2, 14-15, 32.

Following Preliminary Objections practice, Pittsburgh Water filed an Answer and New Matter to the Complaint. Office Partners filed its Reply to New Matter.

On May 26, 2023, each party filed a Motion for Summary Judgment and supporting documents. On July 26, 2023, Office Partners filed a Motion for Directed Verdict or Alternatively a Motion to Supplement its Motion for Summary Judgment. On May 22, 2024, Administrative

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<sup>1</sup> Because different applicants submitted initial materials to Pittsburgh Water in different ways, Pittsburgh Water did not have a strict “application date” for a tap-in permit. *See* Initial Decision, p. 22. Accordingly, Pittsburgh Water’s consistent and equitable policy was to determine the fees due by the rate schedule in effect on the date when a tap-in permit is *approved*. *Id.* This policy does not bear on the fact that 2021 fees would apply to Office Partners, as Officer Partners’ application and Pittsburgh Water’s approval both occurred in 2021.

Law Judge Emily DeVoe (“ALJ”) heard oral argument on the pending Motions. By Secretarial Letter dated May 2, 2025, the Commission served Pittsburgh Water with the Initial Decision.

While the Initial Decision is comprised of 38 pages, the entirety of the ALJ’s analysis as to the dispositive issue is set forth in the following paragraphs:

This case turns on the interpretation of a single sentence:

“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.

Initial Decision, pp. 33-34.

The Initial Decision is flawed in that it fails to correctly interpret and apply 53 Pa.C.S.A. § 5607(d)(24), particularly in this case where Office Partners applied and Pittsburgh Water approved such application for a tap-in permit in 2021. The ALJ relies on the fact that Office Partners paid for its permit in 2022 (per a Consent Order, as set forth above), but fails to assess the competing provisions of the controlling statutory language (crediting a payment without considering that payable fees means the fees have been calculated) and fails to acknowledge that the reason Office Partners only paid for its permit in 2022 because of a sham withdrawal/reapplication process and a prolonged delay in payment, while admittedly seeking to avail itself of more favorable rates under the 2022 tariff to the detriment of all other Pittsburgh Water ratepayers.

For the reasons that follow, the Commission should grant Pittsburgh Water's Exceptions, reverse the ALJ's Initial Decision, and deny and dismiss the Complaints.

## **II. EXCEPTIONS**

### **1. The ALJ erred in Conclusion of Law Number 11 with respect to the interpretation and application of 53 Pa.C.S.A. § 5607(d)(24)**

The issue presented turns on the interpretation of the language of a statute. The ALJ somewhat accurately characterizes the dispositive question as follows: "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?" Initial Decision, p. 32. However, the ALJ fails to acknowledge that Pittsburgh Water approved Office Partners' application in 2021 and set the required tap-in fee in 2021 – and fails to properly interpret the controlling statute, even though the ALJ agrees that Pittsburgh Water's interpretation of the statute makes "more sense." *Id.*, p. 34.

The ALJ erroneously concludes that the date of payment controls the fee payable to Pittsburgh Water. *Id.*, p. 34. In other words, according to the ALJ, fees are payable, *i.e.*, owed to Pittsburgh Water (or any other utility) when an applicant applies, which is *before fees can even be calculated* because the ALJ holds that fees are then *calculated* in accordance with the fee schedule at the time of *payment* – whenever that may be. *Id.*, pp. 33-34. Thus, according to the ALJ, Office Partners’ payment, consistent with the Consent Order, in 2022 dictates the fees owed to Pittsburgh Water, notwithstanding that the fees were payable to Pittsburgh Water in 2021 when Office Partners submitted its application and Pittsburgh Water approved Office Partners’ application. This conclusion renders the statute, *inter alia*, “absurd, impossible of execution or unreasonable” in derogation of the Statutory Construction Act, 1 Pa.C.S.A. §§ 1501–1991 (“SCA”). Moreover, the Initial Decision undermines the General Assembly’s intent to render the entire statute effective and certain and to favor the public interest as against any private interest. 1 Pa.C.S.A. § 1922(1),(2), and (5). Thus, the Commission should reverse the Initial Decision.

**A. The Statutory Construction Act provides the bounds of the interpretation of 53 Pa.C.S.A. § 5607(d)(24)**

53 Pa.C.S.A. § 5607(d)(24) provides as follows:

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 precepts of the SCA dictate the proper analysis here. Pursuant to the SCA, “the overriding object of all statutory interpretation and construction ‘is to ascertain and effectuate the intention of the General Assembly’ in enacting the statute under review.” *Snyder Bros., Inc. v. Pennsylvania Pub. Util. Comm’n*, 650 Pa. 49, 73, 198 A.3d 1056, 1071 (Pa. 2018) (quoting 1 Pa.C.S.A. § 1921(a)), *order amended on reconsideration*, 651 Pa. 153, 203 A.3d 964 (Pa. 2019). Correspondingly, every statute “shall be construed, if possible, to give effect to all of its

provisions.” 1 Pa.C.S.A. § 1921(a). Only if statutory language is “clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S.A. § 1921(b). “Thus, when the words of a statute have a plain and unambiguous meaning, it is this meaning which is the paramount indicator of legislative intent.” *Snyder Bros.*, 650 Pa. at 73.

However, “in situations where the words of a statute ‘are not explicit,’ the legislature’s intent may be determined by considering any of the factors enumerated in Section 1921(c).” *Id.* at 73-74 (citing *DEP v. Cumberland Coal*, 628 Pa. 17, 102 A.3d 962, 975 (Pa. 2014)). These factors are:

- (1) The occasion and necessity for the statute.
- (2) The circumstances under which it was enacted.
- (3) The mischief to be remedied.
- (4) The object to be attained.
- (5) The former law, if any, including other statutes upon the same or similar subjects.
- (6) The consequences of a particular interpretation.
- (7) The contemporaneous legislative history.
- (8) Legislative and administrative interpretations of such statute.

*Snyder Bros.*, 650 Pa. at 74 (citing 1 Pa.C.S.A. § 1921(c)).

Further, the SCA establishes specific presumptions applicable to the interpretation and construction of all statutes which are aids in determining legislative intent. Three of these presumptions are pertinent to the case at bar: (1) “the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable,” (2) “the General Assembly intends the entire statute to be effective and certain,” and (3) “the General Assembly intends to favor the public interest as against any private interest.” 1 Pa.C.S.A. § 1922(1),(2), and (5).

**B. The ALJ’s statutory construction analysis is insufficient and renders the second part of 53 Pa.C.S.A. § 5607(d)(24) null**

The ALJ’s statutory construction analysis is insufficient to rely only on the plain language of the statute as though an internal conflict does not exist. The ALJ focused exclusively on one part of the statute (“Fees shall be based upon the duly adopted fee schedule which is in effect at the time of payment”) without *any* analysis as to the second part (“[F]ees ... shall be payable *at the time of application for connection* or at a time to which the property owner and the authority agree.”). Initial Decision, p. 33 (emphasis added).

The ALJ’s focus exclusively on the first part of the statute renders the statutory language in conflict because there is simply no way that an amount can be “payable” at the time of *application* (part 2) if the fee amount has not been – and cannot be –determined. Therefore, the statute cannot be read in agreement with a fee amount based upon a fee schedule in effect at time of *payment* (part 1). Yet, this is the result that the ALJ rendered. *Id.*, p. 34. This conclusion does not give effect to all of the statute’s provisions, namely, the second part, which is in derogation of 1 Pa.C.S.A. § 1921(a).

**C. The words of 53 Pa.C.S.A. § 5607(d)(24) are not explicit, yet the ALJ failed to consider any of the factors set out in the SCA when interpreting 53 Pa.C.S.A. § 5607(d)(24)**

The ALJ failed to consider any of the numerous factors set out in 1 Pa.C.S.A. § 1921(c) when interpreting the statute. As an initial matter, the “[o]ccasion and necessity for the statute” show that Pittsburgh Water was granted the power to “exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section [relating to the Municipality Authorities Act].” 53 Pa.C.S.A. § 5607(d)(24). The MAA “provides municipal authorities with significant discretion to impose fees and charges, including tapping fees, for the construction and maintenance

of its facilities.” *J. Buchanan Assocs., LLC v. Univ. Area Joint Auth.*, 231 A.3d 1089, 1104 (Pa. Commw. Ct. 2020).

As to the “circumstances” under which the statute and corresponding tariffs were enacted, “[b]efore a municipal authority can charge a tapping fee, section 5607(d)(24)(ii) of the MAA, 53 Pa.C.S. § 5607(d)(24)(ii), requires it to adopt a resolution at a public meeting and to 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.” *Id.* The purpose of the provision is to make sure the public has a basis upon which to evaluate the accuracy of a municipal authority’s tapping fee. *J. Buchanan Assocs., LLC v. Univ. Area Joint Auth.*, 231 A.3d 1089, 1105 (Pa. Commw. Ct. 2020).

After significant public comment and participation, which Office Partners did not participate in, *the Commission and Pittsburgh Water* agreed to reduce tap-in fees in 2022 to align with a different framework for Pittsburgh Water to collect rates in the next tariff. The new tariff took effect on January 13, 2022, which had the effect of changing tap-in fees and the overall rate structure.<sup>2</sup> Pittsburgh Water acted, at all relevant times, consistent with the Rules and Regulations approved by the Commission. Yet, the ALJ’s interpretation of the statute ratifies Office Partners’ malfeasance through its purported “withdrawal” of an application and/or indefinitely “sitting” on a permit application until such a time when a more favorable tariff would apply to said applicant in order to issue payment.<sup>3</sup> Moreover, the reality of the ALJ’s interpretation of the statute is that

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<sup>2</sup> The docket for the Commission’s consideration and approval of the 2022 tariff (the “Rate Case”) is R-2021-3024779.

<sup>3</sup> The decision also potentially opens the door to similarly situated parties who did not manipulate their applications, as Office Partners did, now relying on this analysis (and result) as a basis to request refunds for payments made in 2022 on the tap-in fees assessed at the 2021 fee schedule. It is unreasonable for statutory construction to allow manipulation of the fee structure approved by the Commission to the detriment of all Pittsburgh Water ratepayers.

Pittsburgh Water could not possibly calculate fees at the time of an application because it cannot know when an applicant would ultimately pay.<sup>4</sup> Such interpretation would not allow either Pittsburgh Water or an applicant to budget the potential tap-in fee. Surely, that absurdity is not what the legislature or the Commission intended.

There is no legislative history or legislative or administrative interpretations of the statute that align with the ALJ's conclusion. To the contrary, the limited case law that exists that applies the subject statute actually supports Pittsburgh Water's interpretation that fees are calculated per the application date, not ultimate payment date. *See, e.g., Lycoming Cnty. Water & Sewer Auth. v. Valley Truck Ventures, LLC*, No. 1525 C.D. 2015, 2016 WL 3541746, at \*5 (Pa. Commw. Ct. June 29, 2016) ("At the time of the application for connection, the Former Owner paid for connection and reserve capacity."). The Commonwealth Court's discussion in *Norristown Mun. Waste Auth. v. 200 E. Airy, LLC*, 2011 WL 10857856 (Pa. Commw. Ct. Nov. 30, 2011) further supports Pittsburgh Water's interpretation:

[T]he Authority did not approach Landowner for payment of the tapping fees until July 22, 2008. Thus, the Authority determined the fees were payable in July 2008. Consequently, we must agree with the trial court that the Authority could not rely upon the December 2008 Resolution to impose a tapping fee upon Landowner's property as it was adopted *after* the Authority sought payment from Landowner.

*Id.* at \*3. Applying the Commonwealth Court's analysis from *Norristown* to the case at bar turns on *when* Pittsburgh Water determined the amount due *and* sought payment from Office Partners. It is undisputed that both of these acts occurred in 2021. Moreover, in contrast to the business in

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<sup>4</sup> Per Pittsburgh Water'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 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.

*Norristown*, Office Partners was advised of the amount due and simply took unilateral action to avoid it. *See id.* at n.8 (“Landowner could not have known what the tapping fees were until the Authority advised Landowner the amount due.”). This highlights the inconsistency in the amount payable at the time of application versus amount due at the time of payment, and demonstrates that the amount when the fees were payable (and not when fees were paid) is a more reasonable interpretation of 53 Pa.C.S.A. § 5607(d)(24). Moreover, and critically, the inconsistency in the statutory language cannot simply be ignored to allow a plain language analysis of the text.

**D. The ALJ’s decision does not take into account SCA’s presumptions, which favor Pittsburgh Water’s interpretation of 53 Pa.C.S.A. § 5607(d)(24)**

The SCA’s presumptions applicable to the interpretation and construction of statutes support Pittsburgh Water’s interpretation of the statute. At the outset, the Initial Decision renders 53 Pa.C.S.A. § 5607(d)(24) “absurd, impossible of execution or unreasonable” for all of the reasons set forth above. *See* 1 Pa.C.S.A. § 1922(1). Further, the statute is neither “effective” nor “certain,” where neither the public nor Pittsburgh Water – nor the Commission – have otherwise been operating pursuant to the ALJ’s interpretation of the same. For example, Pittsburgh Water’s consistent and equitable policy during the relevant time period was to determine tap-in fees by the rate schedule in effect on the date when a tap-in permit is approved. *See* Initial Decision, p. 30. Office Partners was the *only* applicant who attempted to circumvent that policy to shop for a preferable rate.<sup>5</sup> *Id.*, p. 23. Pittsburgh Water has not located any case with the Commission or the Pennsylvania courts which supports that the ALJ’s interpretation of 53 Pa.C.S.A. § 5607(d)(24) has been applied.

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<sup>5</sup> However, as noted in n.3, *supra*, Office Partners is not the only entity that will likely try to now benefit from the interpretation of the ALJ in this matter as similarly situated parties will not want to miss the windfall created by the Initial Decision. Pittsburgh Water will continue to protect the interests of all ratepayers by defending each such action individually on the facts.

Finally, Pittsburgh Water’s interpretation of the statute favors the public interest, whereas the ALJ’s interpretation of the statute favors “private interest,” particularly Office Partners’ interest, in stating that 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.” Initial Decision, p. 34; *see also* 1 Pa.C.S.A. § 1922(5). Pittsburgh Water’s fidelity to the tariffs protects the interests of all ratepayers. The benefit of Office Partners’ tap-in fees is passed on to Pittsburgh Water’s ratepayers either to defray rate increases or to pay for expenditures. The ALJ does not consider the harmful result to the public that would result from depriving Pittsburgh Water 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. Pittsburgh Water 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 Pittsburgh Water uniformly has done with other applicants whose application processes were conducted entirely within a single tariff rate/structure.

As a result, the only proper reading of the statute is 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 application*. Therefore, 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 in 2021.

### **III. CONCLUSION**

Based on the foregoing, the Commission should grant Pittsburgh Water’s Exceptions, reverse the ALJ’s Initial Decision, and deny and dismiss the Complaints.

Dated: May 22, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **EXCEPTIONS OF PITTSBURGH WATER AND SEWER AUTHORITY d/b/a PITTSBURGH WATER TO THE INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE DEVOE** was served electronically via the Commission's electronic filing system, as well as by electronic mail, this 22nd day of May, 2025, upon the following:

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