



**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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**PITTSBURGH WATER AND SEWER AUTHORITY d/b/a PITTSBURGH WATER'S  
REPLY TO OFFICE PARTNERS XXIII BLOCK GI, LLC'S  
EXCEPTIONS TO THE INITIAL DECISION OF THE OFFICE OF  
ADMINISTRATIVE LAW JUDGE ISSUED MAY 2, 2025**

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Pursuant to 52 Pa. Code § 5.535, Pittsburgh Water and Sewer Authority d/b/a Pittsburgh Water (“Pittsburgh Water”) hereby submits the following Reply to the Exceptions of Office Partners XXIII Block GI, LLC (“Office Partners”) to the Initial Decision of the Office of Administrative Law Judge Issued May 2, 2025 (“Office Partners’ Exceptions”).

**I. INTRODUCTION**

On February 25, 2022, Office Partners instituted a civil action sounding in mandamus in the Allegheny County Court of Common Pleas at Docket Number G.D. 22-002217 (the “State Court Action”). Following a conciliation between the parties in the State Court Action, on March 15, 2022, Office Partners voluntarily posted a bond in the amount of \$506,647.18 with the Allegheny County Department of Court Records (“DCR”) pursuant to a Consent Order.<sup>1</sup> Per a

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<sup>1</sup> See March 9, 2022 Consent Order of Court in State Court Action (“By Agreement of the Parties, the PWSA shall issue the permits subject to Office Partners' Complaint within five (5) business days *if* Office Partners obtains a bond immediately payable to the PWSA upon Court Order, *or* deposits the funds into Court, the amount of \$506,647.18.”) (emphasis added).

subsequent Consent Order, the Allegheny County Court of Common Pleas retained jurisdiction over the bond 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.<sup>2</sup> Additionally, the Consent Order provided Office Partners with the option to, *inter alia*, initiate an action before the Commission, which Office Partners did on or about June 17, 2022.

Office Partners filed two identical formal Complaints (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. Following various pleadings, mediation, and dispositive motions practice, by Secretarial Letter dated May 2, 2025, the Commission served the parties with the Initial Decision.

On May 16, 2025, Office Partners filed its Exceptions to the Initial Decision. Office Partners’ Exceptions request that: (i) the Initial Decision require the bond to be released to Office Partners;<sup>3</sup> and (ii) the Initial Decision be “modified” to require Pittsburgh Water “to pay as damages the difference between the rate of interest paid by the Allegheny County Court of Common Pleas ... and the legal interest rate[.]” *See* Office Partners’ Exceptions, ¶¶ 4-5. Office Partners’ Exceptions must be denied because: (i) the Commission has no jurisdiction to award “damages” and Office Partners has not, to date, paid any fee to Pittsburgh Water in connection

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<sup>2</sup> *See* May 6, 2022 Consent Order of Court in State Court Action.

<sup>3</sup> On May 22, 2025, Pittsburgh Water filed its own Exceptions to the Initial Decision, and submits that the bond should not be released to Office Partners for the reasons set forth in Pittsburgh Water’s Exceptions. Further, Pittsburgh Water respectfully requests that the Commission dismiss the Complaints.

with the tap-in permit; (ii) none of the three scenarios in 66 Pa.C.S.A. § 1312(a) are applicable to this case, nor is an award of discretionary interest appropriate; and (iii) Office Partners voluntarily paid the bond to the DCR pursuant to the Consent Order, thereby consenting to the DCR's interest rate and waiving any argument for additional interest. For these reasons, the Commission should deny Office Partners' Exceptions.

## II. REPLY

1. The Commission does not have jurisdiction to award "damages," Office Partners has not paid Pittsburgh Water any fee to date in connection with the tap-in permit, and Pittsburgh Water, thus, did not "receive" any fee from Office Partners

Pennsylvania courts have long held that the powers of the Commission do not include the ability to award "damages." See *Elkin v. Bell Tel. Co. of Pennsylvania*, 491 Pa. 123, 420 A.2d 371, 375 (Pa. 1980). Yet, Office Partners asks that the Initial Decision be "modified" to require Pittsburgh Water "to pay as *damages* the difference between the rate of interest paid by the Allegheny County Court of Common Pleas ... and the legal interest rate[.]" See Office Partners' Exceptions, ¶ 5 (emphasis added). To the extent that Office Partners seeks an award of damages against Pittsburgh Water, which is expressly requested in Office Partners' Exceptions, the Commission does not have jurisdiction to award such damages, and Office Partners' Exceptions should be denied.

Further, it is undisputed that Office Partners has never paid *any* fee to Pittsburgh Water in connection with the tap-in permit, and Pittsburgh Water, therefore, has not received any fee from Office Partners. In making a claim for interest at the legal rate of six percent, Office Partners relies on 66 Pa.C.S.A. § 1312, which states, in pertinent part, as follows:

**(a) General rule.--**If, in any proceeding involving rates, the commission shall determine that any rate *received by a public utility* was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the

commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, *in consequence of such unlawful collection*, within four years prior to the date of the filing of the complaint, *together with interest at the legal rate from the date of each such excessive payment*.

*Id.* § 1312(a) (emphasis added).

As the ALJ duly observed, Office Partners voluntarily paid the 2021 tap-in fee in dispute to the DCR on March 15, 2022, pursuant to the Consent Order. *See* Initial Decision, p. 13. This was a direct result of Office Partners initiating an action with the Court of Common Pleas instead of paying any fee to Pittsburgh Water for the tap-in permit. *See id.*, p. 12. Pittsburgh Water has not received any fee whatsoever from Office Partners for the tap-in permit, yet Pittsburgh Water nevertheless issued Office Partners its permit on March 15, 2022, so as to prevent any delay in Office Partners' development of its project. *See id.*, p. 15. Therefore, Office Partners is not entitled to interest pursuant to Section 1312(a) because Pittsburgh Water has not received any fee from Office Partners in connection with the tap-in permit. Any award of interest on the bond Office Partners deposited with the DCR is necessarily an improper award of damages beyond the authority of the Commission. Office Partners' Exceptions should, thus, be denied.

2. An award of interest pursuant to 66 Pa.C.S.A. § 1312 is discretionary and should not be applied where, as here, a utility acts with the utmost good faith at all relevant times to comply with applicable laws, and the fees Pittsburgh Water sought to recover were not "unjust or unreasonable," "in violation of any regulation or order of the commission," or "in excess of the applicable rate contained in an existing and effective tariff"

It would be unjust to award additional interest to Office Partners in this matter. "Section 1312 of the Code[] does not contain a mandate to award interest. Consequently, the interest on the refund can be ordered paid based on the exercise of our discretion." *Sanderman*, 87 Pa. P.U.C. 734 (Oct. 28, 1997) (citing 66 Pa.C.S.A. § 1312). The primary purpose of interest is to compensate a ratepayer "for the *Company's* use of the *ratepayer's* money." *Id.* (emphasis in original); *accord*

*Gurenlian v. Gurenlian*, 595 A.2d 145, 148 (Pa. Super. Ct. 1991) (“The fairest way for a court is to decide questions pertaining to interest according to a plain and simple consideration of justice and fair dealing.”) (quoting *Murray Hill Estates, Inc. v. Bastin*, 442 Pa. 405, 411, 276 A.2d 542, 545 (Pa. 1971)).

Here, Office Partners did not pay the 2021 tap-in fees to Pittsburgh Water. Thus, Pittsburgh Water has never used – or even exercised control over – Office Partners’ money. To the contrary, it is Office Partners who has used Pittsburgh Water’s infrastructure for years without having yet paid *any fee for its tap-in permit to Pittsburgh Water* for the same. Surely, it is not in the public interest to order Pittsburgh Water to pay interest on any refund that may be due to Office Partners pursuant to the facts at hand involving a good faith dispute as to application of the tariffs, as the public ultimately pays that price, be it through the reallocation of Pittsburgh Water’s monies to be used for operation and maintenance of its systems or otherwise. *See Sanderman, supra* (“Based on our review of the record as developed in this proceeding, we find that it is not in the public interest to order LP to make an award for the payment of interest on the refund.”).

Moreover, in order to properly award a party interest pursuant to 66 Pa.C.S.A. § 1312(a), the Commission must determine that a rate was “unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility[.]” *Id.* Thus, Section 1312(a) interest is imposed only where the Commission “has ordered a refund based upon its finding that one of the three conditions exists for the entry of a refund order.” *See Duquesne Light Co. v. Pennsylvania Pub. Util. Comm'n*, 543 A.2d 196, 200 (Pa. Commw. Ct. 1988).

The ALJ did not find that any of these three conditions existed. *See generally* Initial Decision. That is because they do not. To the contrary, the record reflects that Pittsburgh Water

acted with the utmost good faith, at all times hereto, in interpreting and applying the applicable tariff(s) to determine the tap-in fees due from Office Partners. *See* Initial Decision, pp. 18-20 (summarizing the arguments made by Pittsburgh Water). Pittsburgh Water acted with fidelity to the applicable tariff, rules and regulations of the Commission by requesting that Office Partners pay the fees in effect upon the application’s approval (in 2021), as Pittsburgh Water has uniformly done with other applicants whose application processes were conducted entirely within a single tariff rate/structure, thereby protecting the interests of all ratepayers.

There are various Pennsylvania statutory provisions which bear on this issue. 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 id.*, § 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.” *Id.*, § 1301. As a public utility, Pittsburgh Water must file tariffs with the Commission showing all schedules of rates, regulations, practices, or contracts with the jurisdiction of the Commission. *See id.*, §§ 102, 1302.

At all relevant times, Pittsburgh Water charged fees to Office Partners under the terms of the tariff *as approved by the Commission*. 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.”); *Id.*, § 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.”). 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.

As Office Partners and the ALJ concede, this matter is rooted in statutory interpretation whereby the parties have rendered competing interpretations of the controlling statute. *See Initial Decision*, p. 32. The ALJ even agrees that Pittsburgh Water’s interpretation of the statute makes more sense. *Id.*, p. 34. This matter is vastly distinguishable from a typical refund case which arises under Section 1312(a).<sup>4</sup> Because the 2021 fees under which Pittsburgh Water sought to recover are not unjust or unreasonable, in violation of any regulation or order of the commission, or in excess of the applicable rate contained in an existing and effective tariff, Office Partners is not entitled to discretionary interest pursuant to Section 1312(a). Consequently, Office Partners’ Exceptions should be denied.

3. Office Partners voluntarily paid the bond to the DCR, thereby consenting to the DCR’s interest rate and waiving any argument for additional interest

Office Partners’ Exceptions are at odds with the fact that Office Partners acted voluntarily and knowingly pursuant to a Consent Order. On March 15, 2022, as part of a consent process that resulted in, *inter alia*, the stay of the State Court Action and the initiation of this action, Office Partners paid to the DCR *the full amount* invoiced by Pittsburgh Water upon approval of Office

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<sup>4</sup> The equities bolster this conclusion, as Office Partners’ malfeasance through its purported “withdrawal” of its application in an attempt to secure a purportedly more favorable rate should not be condoned.

Partners' 2021 application. The Local Rules of the Allegheny County Court of Common Pleas are clear:

(2) Except as hereinafter provided, all money deposited with the Department of Court Records shall be deposited by the Department of Court Records in an institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. All deposits with the Department of Court Records in excess of Five Thousand Dollars shall be deposited by the Department of Court Records in interest-bearing accounts, or may be invested in United States Government obligations or United States Government guaranteed obligations.

(3) All interest accrued on deposits, other than deposits of costs, made for a period of three (3) months or more in excess of Five Thousand Dollars (\$5,000.00) shall be paid to the party or parties ultimately determined to be entitled to the fund.

Allegh. L. R. No. 3.

Because Office Partners agreed to the Consent Order and deposited the bond into the DCR, Office Partners is not entitled to additional statutory interest. *See Philadelphia Hous. Auth. v. CedarCrestone, Inc.*, 562 F. Supp. 2d 653, 659-660 (E.D. Pa. 2008) (applying Pennsylvania law in recognizing that parties can agree to vary statutory interest rates, stating: "It follows from the logic of the Pennsylvania decisions that if a party can freely agree to vary the statutory interest rate, it can also agree to forego the statutory right to interest completely."). Here, the parties voluntarily and knowingly negotiated a Consent Order which gave Office Partners the option to deposit the 2021 tap-in fee to the DCR. In doing so, Office Partners agreed to a lower statutory interest rate, thereby waiving any additional interest Office Partners now claims a right to collect pursuant to 66 Pa.C.S.A. § 1312 or otherwise. The Consent Order reflects the clear intent of the parties to award interest on the funds held pursuant to Allegh. L. R. No. 3.

In *Shellhamer v. Grey*, 519 A.2d 462, 468 (Pa. Super. Ct. 1986), "both litigants [were] preoccupied with the accumulation of interest on the money tendered (\$25,000.00—plaintiff wants

it to accrue; the defendant wants it to cease).” To resolve the dispute, the Superior Court cited to 42 Pa. C.S.A. § 3561, which states:

*All money paid into court shall be held in the custody of such officer, shall be invested in such manner, and shall be withdrawn from deposit, as shall be prescribed by general rules. Any such investment, except as otherwise prescribed by or pursuant to general rules, shall be restricted to obligations of the United States or the United States Treasury, or of the Commonwealth.*

*Id.* (emphasis added). The *Shellhamer* Court concluded that the “general rules” addressed therein regarding the manner of investment of monies paid into court were the Local Rules of the Court of Common Pleas of Allegheny County. *Id.* at 512. The Court, thus, held that “the plaintiff’s preoccupation with the potential loss of interest with the deposit of money into court is obviated by the provisions of Section 3561 and Allegheny County Local Rule of Court 255.” *Id.*<sup>5</sup> Relatedly, in *Appeal of Cnty. Treasurer*, 9 Pa. D. & C. 324 (Com. Pl. 1926), the parties agreed to deposit monies into court. One party contended that the other should be charged with 6% interest on the sum during the period that the funds were in the prothonotary’s hands. *Id.* The Court disagreed and instead noted that it is “of the opinion that the case is ruled by the principle that *a fund paid into court does not bear interest* ... and the rule is the same whether or not the money is paid into court as a tender or to abide the result of the litigation.” *Id.* (emphasis added). *Accord Oliphant v. Frost*, 9 Pa. 308, 308 (Pa. 1848) (when contemplating bond of a purchaser at sheriff’s sale that was deposited into court, the Court stated that “a fund in court does not bear interest.”).

The case relied upon in Office Partners’ Exceptions is inapposite and factually distinct. In *Christo v. Tuscany, Inc.*, 533 A.2d 461 (Pa. Super. Ct. 1987), the damages at issue were lost profits, in the form of interest income, on money improperly escrowed after an improvidently granted

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<sup>5</sup> Note that Allegh. L. R. No. 255 cited in *Shellhamer* is substantially similar to Allegh. L. R. No. 3, *supra*.

preliminary injunction. The Court simply concluded that the damages in that case were not limited to the amount of the bond (which was only \$1) because Pa.R.C.P. 1531(b)(1) allowed for the recovery of “all damages” sustained by granting the injunction. *Id.* at 464. However, the Court further noted that the appellants, “on remand, ... must establish by a preponderance the fact of proximate causation, *i.e.*, that but for the injunction, the escrowed funds would have been invested at the rates available.” *Id.* at 471. Thus, the Court determined only that the appellants in that matter were not “limited in their recovery to the amount of the bond” and should “have the opportunity to meet their burden of proof on the damages issue” permitted by the Rules applicable to that matter. *See id.*

Office Partners acted voluntarily and knowingly in negotiating a Consent Order which gave Office Partners the option to deposit the 2021 tap-in fee to the DCR, thereby agreeing to the interest rate with the DCR. Pittsburgh Water should not be penalized for a choice Office Partners knowingly made. Office Partners’ Exceptions should, thus, be denied.

### **III. CONCLUSION**

Based on the foregoing, the Commission should deny Office Partner’s Exceptions.

Dated: June 2, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the accompanying **Pittsburgh Water and Sewer Authority d/b/a Pittsburgh Water’s Reply to Office Partners XXIII Block G1, LLC’s Exceptions to the Initial Decision of Administrative Law Judge Issued May 2, 2025**, which has been electronically filed with the Commission’s electronic filing system, and was served upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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Dated this 2nd day of June, 2025.

*/s/ Ashley L. Buck*  
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