

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held September 11, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

Office Partners XXIII Block G1, LLC

C-2022-3033251

C-2022-3033266

v.

Pittsburgh Water and Sewer Authority

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Office Partners XXIII Block G1, LLC (Complainant, Office Partners, or OP), filed on May 16, 2025, and the Exceptions of the Pittsburgh Water and Sewer Authority (Company, Respondent, or PWSA), filed on May 22, 2025, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Emily I. DeVoe, issued on May 2, 2025. Office Partners filed Reply Exceptions on May 30, 2025, and PWSA filed Reply Exceptions on June 2, 2025. For the reasons stated, *infra*, we shall: (1) deny the Exceptions of PWSA; (2) deny the Exceptions of Office Partners; and (3) adopt the Initial Decision of the ALJ, as modified, consistent with this Opinion and Order.

First, we will deny PWSA's Exceptions because we agree with the ALJ's determination that Office Partners is entitled to Summary Judgment based upon the plain language of the pertinent section of the Municipalities Authorities Act, 53 Pa.C.S. § 5607(d)(24), which was incorporated into PWSA's Tariffs for periods relevant to the Complaint. Notwithstanding our concurrence with the ALJ, we will modify the Initial Decision because we find that the record in this case also establishes that Office Partners is also entitled to Summary Judgment on an additional ground.

Specifically, we agree with the ALJ's characterization of the central question presented in this matter as: "[s]hould the tap-in fees [owed by Office Partners] be calculated using the [PWSA] tariff in effect at the time of Office Partners' application in 2021 or at the time of payment in 2022?" *See* I.D. at 32. We conclude that Office Partners' 2022 Application was the operative application for determining the effective tariff rates in this case, resulting in the application of PWSA's Tariff rates, that became effective January 13, 2022, in this matter regardless of whether Office Partners or PWSA's statutory interpretation arguments prevailed. We also find that PWSA violated

Section 1502 of the Pennsylvania Public Utility Code (Code), *Discrimination in service*, by: (1) unreasonably developing an ad hoc policy against application withdrawal; and (2) failing to apply its existing written invoice policy, which voided projects within six months if permit payment was not rendered, in order to ensure that Office Partners would be subject to paying tap-in fees¹. See 66 Pa.C.S. § 1502 (Pertaining to Discrimination in Service). Regardless of our findings, we will not impose a civil penalty upon PWSA in this matter, for reasons explained below.

Finally, we will deny Office Partners' Exceptions because: (1) the Commission is without jurisdiction to compel the Allegheny County Court's release of escrowed funds; and, (2) there is no viable basis to compel PWSA to pay the legal rate of interest on funds it did not receive.

I. History of the Proceeding

A. Procedural History

On June 17, 2022, Office Partners filed a Formal Complaint² (Complaint) against PWSA alleging that PWSA was assessing incorrect fees for its pending application to tap into the PWSA infrastructure. Complaint at 1-10. As relief, Office Partners requested that the Commission "declare that the applicable fees are the 2022 fees

¹ We note that the Parties have used the phrases "tap-in fee" and "tapping fee" interchangeably throughout this case.

² Office Partners' Complaint indicated that it was in reference to both water and wastewater service provided by PWSA. Complaint at 2. Consequently, two identical versions of the Complaint were docketed: one for water service, C-2022-3033251, and one for wastewater service, C-2022-3033266. PWSA subsequently filed a Motion to consolidate both dockets, and by an *Interim Order* issued on August 23, 2022 (*August 2022 Interim Order*), ALJ DeVoe consolidated the dockets. *August 2022 Interim Order* at 5. Accordingly, this Opinion and Order will refer to both docketed consolidated complaints singularly as "the Complaint."

pled in this complaint, order issuance of the permit based upon the 2022 rate schedule[,]
and order the return [of] all funds held in Court in excess of the amount due under the
rate schedule.” Complaint at 11.

In response to Office Partners’ Complaint filed on June 17, 2022, PWSA
filed an Answer and New Matter to the Complaint (Answer and New Matter) on
July 14, 2022. In its Answer and New Matter, PWSA, *inter alia*, alleged that
Office Partners owes PWSA fees of \$508,314.79 because: (1) Office Partners was not
permitted to withdraw its application approved³ on December 23, 2021; (2) PWSA’s
2022 rate schedule did not apply to Office Partners’ application; (3) pursuant to the plain
language of the applicable provision of the Municipalities Authorities Act, 53 Pa.C.S.

³ Throughout the Parties’ pleadings, they use the phrases “approved
application” and “approved tap-in plans” interchangeably. However, when PWSA
contacted Office Partners by letter on December 23, 2021, which PWSA alleges to be the
time of application approval, it wrote that “PWSA has *approved the tap-in plans* for the
above-referenced project.” *See* PWSA Motion for Summary Judgment, Exh. C at 1
(emphasis added). Additionally, PWSA’s development permit process outlined in its
Developer’s Manual, which was in place for the time periods relevant to the Complaint,
provides for PWSA’s review of applications, and the approval of tap-in plans and
permits, but it does not appear to provide for PWSA’s approval of applications.
See Complaint, Exh. A at 1-4.

§ 5607(d)(24),^{4,5} Office Partners’ fees of \$508,314.79 were due *at the time of application*; and (4) that Office Partners’ purported basis for withdrawing its 2021 Application was a pretext, as Office Partners intended to use the withdrawal to facilitate more favorable fees in 2022 when PWSA’s tap-in fees would be eliminated. Answer and New Matter at 4-12. As relief, PWSA requested that Office Partners be required to pay PWSA the amount of \$508,314.79, and that the Complaint be dismissed, with prejudice. *Id.* at 12.

Also on July 14, 2022, PWSA filed Preliminary Objections (POs) to the Complaint. In its POs, PWSA argued that Office Partners was not entitled to relief as a matter of law and that its Complaint should be dismissed. PWSA’s argument was predicated, *inter alia*, upon the provision of the Statutory Construction Act, 1 Pa.C.S. § 1901 *et seq.*, that “[w]here the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words.” POs at 5-6 (citing *Sternlicht v. Sternlicht*, 876 A.2d 904, 909 (Pa. 2005)). PWSA averred that according to the express language of 53 Pa.C.S. § 5607(d)(24), Office Partners’ permit fees were payable *at the time of application*. POs at 6.

⁴ 53 Pa.C.S. § 5607(d)(24) provides, in pertinent part, that “[f]ees 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).

⁵ Office Partners and PWSA stipulated that both PWSA’s 2021 and 2022 Tariffs incorporated 53 Pa.C.S. § 5607(d)(24), as follows:

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

I.D. at 9 (citing SF No. 5).

On July 22, 2022, Office Partners filed an Answer to the POs. On August 1, 2022, Office Partners filed a reply to PWSA's Answer and New Matter (Reply to Answer and New Matter). In both pleadings, Office Partners claimed that the plain language of 53 Pa.C.S. § 5607(d)(24) supported the Complainant's position that its permit fees were to be determined upon the fee schedule *in effect at the time of payment*. Answer to POs at 7; Reply to Answer and New Matter at 3.

On August 9, 2022, an Initial Call-In Telephone Hearing Notice was issued in this case, *inter alia*, setting the date and time for the telephonic hearing as September 22, 2022 at 10 a.m. On August 11, 2022, ALJ DeVoe issued a *Prehearing Order for Telephone Hearing (Prehearing Order)*. ALJ DeVoe's *Prehearing Order* established the process and procedures for the telephonic hearing. *Prehearing Order* at 1-6.

By the *August 2022 Interim Order*, the ALJ consolidated Office Partners' Complaints, denied PWSA's Preliminary Objection, and converted the September 22, 2022 hearing to a Prehearing Conference. I.D. at 4. On September 27, 2022, the ALJ issued a *Prehearing Conference Order* which, *inter alia*, adopted the Parties' proposed litigation schedule. *Prehearing Conference Order* at 4. At the request of the Parties, the adopted litigation schedule was later modified twice by Interim Orders issued by the ALJ, on January 9, 2023 (*January 2023 Interim Order*) and March 20 2023 (*March 2023 Interim Order*), respectively. I.D. at 4.

By the *March 2023 Interim Order*, the ALJ directed the Parties to, *inter alia*, file dispositive motions by May 26, 2023, responses to the dispositive motions by June 23, 2023, and a status report by June 30, 2023. *March 2023 Interim Order* at 2; I.D. at 4.

On May 26, 2023, the Parties each filed a Motion for Summary Judgment with a supporting brief (OP Motion for Summary Judgment; PWSA Motion for Summary Judgment). I.D. at 4. On June 22, 2023, ALJ DeVoe issued an Interim Order (*June 2023 Interim Order*) holding both Motions for Summary Judgment in abeyance pending submission of the ordered June 30, 2023 status report. *June 2023 Interim Order* at 2.

On June 30, 2023, the Parties filed a joint status report and filed responses to each other's Motion for Summary Judgment. On July 12, 2023, the ALJ issued an Interim Order (*July 2023 Interim Order*) that directed the Parties to file a joint stipulation of facts by August 14, 2023. *July 2023 Interim Order* at 1.

On July 26, 2023, Office Partners filed a pleading titled as a Motion for Directed Verdict or Alternatively to Supplement Motion for Summary Judgment and Response to PWSA's 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 request that the deadline for filing a status report be stayed, pending, *inter alia*, a modified case management order.

On August 15, 2023, PWSA filed an Answer and Brief in response to the Motion for Directed Verdict (Answer to Motion for Directed Verdict). On August 29, 2023, Office Partners filed a Brief in response to PWSA's Answer to Motion for Directed Verdict.

On September 26, 2023, the ALJ held a status conference as scheduled, at which the Parties agreed to have the case transferred to the Office of Administrative Law Judge's (OALJ) Mediation Unit. The ALJ issued an Interim Order transferring this matter to the OALJ's Mediation Unit.

After several earlier status conferences, at the status conference held on March 6, 2024, it was established that the Parties would, *inter alia*, submit a joint stipulation of facts by May 3, 2024, and present oral arguments on the outstanding motions on May 22, 2024. Tr. at 60. On April 3, 2024, the Commission issued a Notice scheduling a telephonic oral argument for the Parties on May 22, 2024 at 2:00 p.m.

On May 3, 2024, the Parties filed a Joint Stipulation of Facts (Joint Stipulation or Stipulated Facts), PWSA filed proposed Findings of Fact (PWSA Proposed FOF) and Office Partners filed Disputed Issues of Fact (OP Disputed IOF).

On May 22, 2024, counsel for PWSA and Office Partners participated in a telephonic oral argument on the outstanding motions as scheduled, and ALJ DeVoe presided. During the oral argument, ALJ DeVoe admitted PWSA's Exhibits A-F, as follows: Exhibit A: PWSA Answer and New Matter; Exhibit B: PWSA Motion for Summary Judgment; Exhibit C: PWSA Answer to Motion for Summary Judgment and Brief; Exhibit D: PWSA Answer to Motion for Directed Verdict and Brief; Exhibit E: Joint Stipulation; and Exhibit F: PWSA Proposed FOFs. Tr. at 113-14; I.D. at 8. Additionally, ALJ DeVoe took judicial notice of the following filings made by Office Partners: (1) its Motion for Summary Judgment, as well as a brief in support; (2) its Answer to PWSA's Motion for Summary Judgment; (3) its Motion for Directed Verdict; and (4) its August 29, 2023 Brief. Tr. at 115-16; I.D. at 8.

On March 5, 2025, the ALJ issued an order closing the record in this case.

On May 2, 2025, the Commission issued ALJ DeVoe's Initial Decision, wherein she, *inter alia*: (1) adopted the Stipulated Facts; (2) granted Office Partners' Motion for Summary Judgment; (3) denied PWSA's Motion for Summary Judgment; and

(4) determined that PWSA should calculate the tap-in fees due from Office Partners by using the fee schedule in effect on March 15, 2022.⁶ I.D. at 35, 37.

As previously noted, Office Partners and PWSA each filed Exceptions to the Initial Decision; Office Partners on May 16, 2025 and PWSA on May 22, 2025. In response, Office Partners and PWSA each filed Replies to Exceptions on May 30, 2025 and June 2, 2025, respectively.

B. Office Partners' Complaint

The crux of Office Partners' Complaint against PWSA is an allegation that PWSA improperly seeks to charge Office Partners tap-in fees pursuant to PWSA's 2021 Tariff rates,⁷ while Office Partners argued that PWSA's 2022 tariff rates,⁸ which eliminated tap-in fees, are applicable. By way of further context, prior to filing its

⁶ Although Office Partners deposited funds in escrow on March 9, 2022 as a condition of PWSA issuing the permit during the pendency of litigation, March 15, 2022 is the date that PWSA issued the permit to Office Partners. *See* I.D. at 15 (citing OP Brief in Support of Motion for Summary Judgment at 1).

⁷ Office Partners and PWSA stipulated that PWSA's "2021 Tariff" was in effect from March 1, 2019 until January 12, 2022, as set forth in Docket Nos. R-2018-3002647 and R-2020-3017970. The 2021 Tariff included the following tapping fees:

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

I.D. at 9 (citing SF No. 4).

⁸ Office Partners and PWSA stipulated that PWSA's "2022 Tariff" went into effect on January 13, 2022, as set forth in Docket No. R-2021-3024779. They also stipulated that PWSA's 2022 Tariff had the effect of eliminating tap-in fees and changing the Company's overall rate structure by, *inter alia*, increasing usage rates. I.D. at 9 (citing SF No. 9).

Complaint against PWSA on June 17, 2022, Office Partners submitted an application to PWSA on May 11, 2021 seeking to tap into PWSA’s infrastructure to facilitate the development of commercial property located in the City of Pittsburgh, FNB Financial Center (*2021 Application*).⁹ According to Office Partners, PWSA’s policy required an application for the connection, and once the application was approved, PWSA would then issue a permit only if Office Partners paid the existing prevailing rate. Complaint at 1 (citing Exh. A; Exh. B).¹⁰

In its Complaint, Office Partners further alleged that, by letter on December 23, 2021, PWSA accepted its tap-in plans,¹¹ but informed Office Partners that the permit it sought would not be considered approved until the permit fees were paid. Complaint at 7-8. Office Partners claimed that on January 31, 2022, it contacted PWSA to withdraw the *2021 Application* before making any payment because, *inter alia*, it had identified a need to separate two parcels of the property, specifically, G1 and G4 blocks, which had initially been combined in the *2021 Application* from that application. Complaint at 1-2.

⁹ In the *2021 Application*, Office Partners did not separate parcels G1 and G4. However, the parcels were separated in the *2022 Application*.

¹⁰ Office Partners attached Exhibits A-I to its Complaint, as follows: Exh. A-PWSA’s Developer’s Manual (Revised April 23, 2021); Exh. B-PWSA Press Releases; Exh. C-Letter from PWSA to Office Partners dated December 23, 2021 and attached invoice; Exh. D-Email from Steven Savich to Julie Ascioffa of PWSA dated January 31, 2022; Exh. E-Email from Toby Partridge to Robert Herring and Shannon Connell of PWSA dated February 4, 2022; Exh. F-Email from Toby Partridge to Robert Herring and Shannon Connell of PWSA on February 15, 2022; Exh. G-Tap Allocation Authorization Letter from Shannon Connell of PWSA to Thomas Flanagan of the PA Department of Environmental Protection on February 22, 2022; Exh. H-Emails between Toby Partridge and Robert Herring and Shannon Connell of PWSA on February 22-23, 2022; Exh. I-PWSA 2022 Fee Schedule.

¹¹ As referenced, *supra*, the Parties sometimes referred to the accepted tap-in plans as an “approved application.”

According to Office Partners, it submitted a new and separate application to PWSA for the G1 and G4 blocks on February 4, 2022 (*2022 Application*)¹² and PWSA approved the plans underlying the *2022 Application* on February 22, 2022, subject to an additional revision that was approved by PWSA on February 23, 2022. Complaint at 8-9 (citing Exhs. D, E, G, and H). In its Complaint, Office Partners alleged that PWSA seeks to improperly charge Office Partners a total of \$508,314.79 based on tap-in fees that were part of PWSA's tariffed rates in effect at the time that the *2021 Application* was approved. Office Partners averred that it withdrew the *2021 Application* before payment was made; therefore, it took the position that its *2022 Application* is operative and that PWSA's 2022 rate schedule, which eliminated tap-in fees, is applicable at the time of payment. Office Partners argued that PWSA wrongly refused to recognize that the *2021 Application* was withdrawn, although PWSA has no written policy prohibiting application withdrawal in the applicable standards contained in the PWSA Developer's Manual.¹³ Complaint at 8-9, Exh. A.

Office Partners also alleged that under the applicable 2022 rate schedule, the tap and meter fees are \$2,590, and that it offered to pay such fees to PWSA and remains ready and willing to remit payment.¹⁴ Complaint at 8-9.

¹² PWSA maintains that the *2022 Application* is not separate from the *2021 Application*. See I.D. at 12 (citing SF No. 15).

¹³ The Developer's Manual PWSA maintained for the period relevant to the Complaint is attached to the Complaint as Exhibit A, as well as to exhibits to pleadings later submitted by both Parties in the context of Summary Judgment. The PWSA Developer's Manual "outlines the regulations and procedures for developments connecting to public sewer or water facilities and constructing new facilities to be dedicated to PWSA. The purpose of this [the] manual is to describe the permit application process, the requirements of the application materials, and the developer's responsibilities." Complaint, Exhibit A at 1, Section 1: Process Overview.

¹⁴ Office Partners indicated that it was advised that a \$250 application fee is also due to PWSA. Complaint at 3.

Office Partners also indicated in its Complaint that on February 25, 2022, it initiated a Mandamus Action before the Common Pleas Court of Allegheny County (Allegheny County Court) demanding that PWSA issue the permit in accordance with the 2022 fee schedule payment. On March 9, 2022, Office Partners and PWSA entered into a consent order, whereby they agreed to have their dispute heard by the Commission while the Allegheny County Court held Office Partners' escrow payment of \$506,647.18¹⁵ until a final determination was made as to the fee being due. The escrowed funds are being held by the Allegheny County Court until a final, non-appealable order is entered in this matter. Complaint at 9-10.

II. Discussion

A. Legal Standards

1. General Burden of Proof for Complaint Proceeding

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be made by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Respondent.

¹⁵ The invoice PWSA charged Office Partners for the *2022 Application* (\$506,647.18) was slightly less than the *2021 Application* (\$508,314.79). According to Office Partners, the reduced amount resulted from the removal of a parcel not owned by Office Partners. Office Partners' Motion for Summary Judgment, Brief at 2.

Se-Ling Hosiery, Inc. v. Margulies, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence (burden of persuasion) to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

2. Commission-Approved Tariffs

It is well accepted that a tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. *PPL Electric Utilities Corporation v. Pa. PUC*, 912 A.2d 386 (Pa. Cmwlth. 2006). Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations, and practices so that the public may inspect its contents. 66 Pa.C.S. § 1302; 52 Pa. Code § 53.25; *Philadelphia Suburban Water Company v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. 2002) (*Phila. Suburban Water*). Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the

public utility and its customers. *Pennsylvania Electric Company v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995) (*Pennsylvania Electric Company*). The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. *Phila. Suburban Water*.

3. Statutory Construction

When interpreting a Pennsylvania statute, “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.” 1 Pa.C.S. § 1921(a). The clearest indication of legislative intent is the plain language of a statute. See *Couloumbis v. Senate of Pennsylvania*, 334 A.3d 48, 53 (Pa. Cmwlth. 2025) (*Couloumbis v. Senate*) (citing *Off. of Governor v. Donahue*, 98 A.3d 1223, 1237-38 (Pa. 2014)). Precedent also establishes that “when the language of a statute is clear and unambiguous, it must be given effect in accordance with its plain and obvious meaning.” *Commonwealth v. Ahlborn*, 699 A.2d 718, 720 (Pa. 1997) (*Commonwealth v. Ahlborn*). Furthermore, when interpreting a statute, we are “admonished to listen attentively to what a statute says. . . [we] must also listen attentively to what it does not say.” *Kmonk-Sullivan v. State Farm Mut. Auto. Ins. Co.*, 788 A.2d 955, 962 (Pa. 2001) (*Kmonk-Sullivan v. State Farm*).

Moreover, “it is not the court's [Commission's] role ... to engage in judicial legislation and to rewrite a statute in order to supply terms which are not present therein.” *Couloumbis v. Senate* at 54 (citing *Steets v. Celebration Fireworks, Inc. (Workers' Comp. Appeal Bd.)*, 295 A.3d 312, 323 (Pa. Cmwlth. 2023)). It is only when the words of the statute are not explicit that the intention of the legislature may be ascertained by considering other means of statutory interpretation or construction. *Barasch v. Pa. PUC*, 532 A.2d 325, 332 (Pa. 1987); *Davis v. Sulcove*, 205 A.2d 89 (Pa. 1964); *Commonwealth v. Chester County Light and Power Co.*, 14 A.2d 314 (Pa. 1940).

4. Summary Judgment

A motion for summary judgment must be based on the pleadings and depositions, answers to interrogatories, admissions, and supporting affidavits. Documents not already filed with the Commission shall be filed with the motion. 52 Pa. Code § 5.102(c). The Commission's Regulations at 52 Pa. Code § 5.102(d) identify the applicable standard of review for summary judgment motions:

(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, answer 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).

When evaluating a motion for summary judgment, all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thompson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979). However, once a motion for summary judgment is properly made and supported, it is generally accepted that the nonmoving party may not simply rest upon the mere allegations or denials of its pleading but must set forth facts showing that there is a genuine issue for trial. *Fiffick v. GAF Corporation*, 603 A.2d 208 (Pa. Super. 1991) (Discussing the Pennsylvania Rules

of Civil Procedure); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) (Discussing the Federal Rules of Civil Procedure). 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. PUC*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993).

B. The ALJ's Initial Decision

In this proceeding, the ALJ adopted twenty-three (23) Stipulated Facts (SF) and reached eleven (11) Conclusions of Law (COL). I.D. at 8-13, 35-37. The Stipulated Facts and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In the Initial Decision, the ALJ granted Office Partners' Motion for Summary Judgment. By way of additional context, upon concluding that no genuine issues of material fact remained after her adoption of the Stipulated Facts, the ALJ determined that the sole question of law presented to the Commission is whether the Complainant's tap-in fees should be calculated based upon PWSA's tariff in effect "[a]t the time of Office Partners' Application in 2021 or at the time of [Office Partners'] payment in 2022." I.D. at 32. After reviewing applicable authority, including, *inter alia*, the Statutory Construction Act, the ALJ determined that 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. I.D. at 32-35. In reaching her determination, the ALJ considered the Parties' pleadings and responses thereto, as summarized below.

1. Office Partners' Motion for Summary Judgment

The ALJ provided a summary of the background information that Office Partners provided in its Motion. At the outset, the ALJ noted Office Partners' assertion that effective January 12, 2022, PWSA and the Commission agreed that PWSA would charge a higher usage rate structure for its customers but would also simultaneously reduce the tap-in fee charged to new customers. The ALJ also acknowledged that on January 31, 2022, before a permit was issued for its *2021 Application*, Office Partners sought to withdraw the *2021 Application*; however, PWSA did not permit the withdrawal. Nevertheless, as the ALJ noted, in February 2022, Office Partners submitted new tap-in plans which, it alleged, constituted a new application. The ALJ also recognized Office Partners' claim that it paid PWSA permit fees on March 9, 2022, as part of a mandamus action it initiated in Allegheny County Court, whereby it 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. I.D. at 14-15 (citing Office Partners' Motion for Summary Judgment at 1).

The ALJ pointed to Office Partners' argument 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), which has remained unchanged throughout the course of these proceedings and is controlling, and reads as follows:

(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.

I.D. at 16 (citing OP Brief in Support of Motion for Summary Judgment at 4; 53 Pa.C.S. § 5607(d)(24)) (emphasis added).

The ALJ acknowledged the position of Office Partners that the payment for the fees in question occurred during the period in which the 2022 Tariff rate structure was in effect. The ALJ further acknowledged Office Partners' argument that as 'payment' is not defined in 53 Pa.C.S. § 5607(d)(24), it should take its plain meaning. I.D. at 16 (citing OP Brief in Support of Motion for Summary Judgment at 5). The ALJ noted that in support of its position, Office Partners averred that Merriam-Webster's dictionary defines payment as "the act of paying" and that the Pennsylvania Supreme Court has held that "payment is defined as the '[p]erformance of an obligation, [usually] by the delivery of money.'" I.D. at 16 (citing OP Brief in Support of Motion for Summary Judgment at 5 (citing *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 ALJ also noted Office Partners' claim 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 53 Pa.C.S. § 5607(d)(24)). I.D. at 16 (citing OP Brief in Support of Motion for Summary Judgment at 5, n.3).

The ALJ also considered Office Partners' argument that while PWSA is empowered to create its own policies, it must do so by statute. In that vein, Office Partners claimed that PWSA's operative policies are reflected in its Developers Manual, which indicates that "approved permit refers to an application that has met all the requirements as outlined in this manual and has received a final invoice." I.D. at 16 (citing OP Brief in Support of Motion for Summary Judgment at 6). The ALJ next

acknowledged Office Partners' claim that the final invoice that was issued and paid was dated March 3, 2022. *Id.*

Additionally, the ALJ summarized, Office Partners submitted that it is contrary to public policy to permit PWSA's "ad hoc policy" to control the interpretation of 53 Pa.C.S. § 5607(d)(24), by precluding Office Partners' withdrawal of the *2021 Application*, noting that PWSA does not have an officially adopted resolution or policy on application withdrawal of the timing of the fee calculation. Along those same lines, the ALJ acknowledged Office Partners' argument that PWSA abused its discretion by establishing policy and engaging in practice solely to charge Office Partners a higher fee, and that the Commission cannot uphold PWSA's scheme. I.D. at 16-17 (citing OP Brief in Support of Motion for Summary Judgment at 8).

Furthermore, the ALJ noted Office Partners' argument that 53 Pa.C.S. § 5607(d)(24) should not be interpreted to give a windfall to PWSA. In support of its claim, Office Partners argued that 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).

I.D. at 17 (citing *Skepton*, 755 A.2d at 1270).

Relying upon *Skepton*, Office Partners argued that 53 Pa.C.S. § 5607(d)(24) must be strictly construed in favor of the applicant. Moreover, the ALJ acknowledged, Office Partners referred to a recent case involving a tap-in fee dispute, whereby the municipal authority sought a ruling that it was immune from suits to collect erroneously collected tap-in fees because they constituted consequential damages. I.D. at 17 (citing OP Brief in Support of Motion for Summary Judgment at 8; *Hidden Creek, L.P. v. Lower Salford Twp. Auth.*, 129 A.3d 602 (Pa. Cmwlth. 2015) (*Hidden Creek*)). Office Partners averred that in *Hidden Creek*, the Court ruled that the statute, *inter alia*, permitted the developer to challenge the tap-in fees and that disallowing recovery of those fees would frustrate the statute’s purpose. I.D. (citing *Hidden Creek* at 612). In summary, the ALJ noted, Office Partners submitted that 53 Pa.C.S. § 5607(d)(24) must be strictly construed, as its language is clear and unequivocal, and the meaning of “payment” is “payment.” I.D. at 17 (citing OP Brief in Support of Motion for Summary Judgment at 9).

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

The ALJ turned next to PWSA’s Answer to Office Partners’ Motion for Summary Judgment, noting that PWSA argued that the pertinent analysis in this case begins and ends with the facts that PWSA’s tap-in fees would be reduced “beginning in 2022 for all customers,” while Office Partners’ application was made and approved in 2021. I.D. at 17 (citing PWSA Answer to OP Motion for Summary Judgment at 2). PWSA also claimed that its actions were consistent with the rules and regulations of the Commission and its tariff, and that Office Partners misread 53 Pa.C.S. § 5607(d)(24), which provides that fees are payable at the time of application and based upon the adopted fee schedule then in effect (*i.e.* the 2021 rates). I.D. at 17 (citing PWSA Answer to OP Motion for Summary Judgment at 2, 7). The ALJ cited PWSA’s claim that Office Partners’ argument is at odds with the facts of this case since PWSA’s policies were: (1) to issue a tap-in permit upon payment of the applicable fees determined by the rate

schedule in effect on the date of approval; and (2) to permit 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. I.D. at 17 (citing PWSA Answer to OP Motion for Summary Judgment at 7-8).

Additionally, the ALJ acknowledged PWSA's arguments regarding its adherence to its Commission-approved tariffs as a basis to establish that its approved rates cannot be collaterally attacked, also referred to as "the filed rate doctrine." See I.D. at 19-20 (citing *Am. Tel. & Tel. Co. v. Cent. Off. Tel., Inc.*, 524 U.S. 214 (1998)). PWSA also argued that the filed rate doctrine 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. I.D. at 20 (citing PWSA Answer to Office Partners' Motion for Summary Judgment at 9; *Keough v. Chicago & Nw. Ry. Co.*, 60 U.S. 156 (1922)). PWSA also argued that 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, and that tariffs have the force of law and are binding on both the customers and the utility. Further, the ALJ summarized PWSA's arguments regarding the force and effect of its Commission-approved tariffs as barring Office Partners from collaterally attacking the established tariffs and from being treated differently than any other consumer served under the tariff. I.D. at 20-21 (citing PWSA Answer to OP Motion for Summary Judgment at 10-11).

The ALJ also noted PWSA's dispute of Office Partners' claim that application of the 2021 tariff rates would result in a windfall to PWSA. Instead, PWSA asserted that the benefit of tap-in fees is conferred on the ratepayers that PWSA represents, and as PWSA cannot be unjustly enriched, payment would not result in a windfall. On the contrary, PWSA argued that Office Partners ignored the harmful results that would result in depriving PWSA and its ratepayers of the amounts that are due under

the fee structure in place when Office Partners applied for and was approved for its permit. The ALJ also acknowledged PWSA's argument that it is exercising its obligation to ratepayers and its fidelity to its tariff rules and regulations by requiring Office Partners to pay the fees in effect when its application was approved, as would be done with any other applicant. I.D. at 21 (citing PWSA Answer to OP Motion for Summary Judgment at 11-12).

3. PWSA's Motion for Summary Judgment

Next, the ALJ summarized PWSA's Motion for Summary Judgment. At the outset, the ALJ noted that PWSA does not materially dispute the facts alleged by Office Partners, and it agrees with Office Partners that 53 Pa.C.S. § 5607(d)(24) is controlling. Nevertheless, PWSA took an alternative view of the interpretation of 53 Pa.C.S. § 5607(d)(24). I.D. at 21. The ALJ also noted the background information provided by PWSA, including that when it approved Office Partners' application on December 23, 2021, it calculated the fees owing as \$508,314.79. PWSA also explained that because applicants may submit initial materials to PWSA in different ways, it did not have a strict "application date" for a tap-in permit. PWSA further explained that 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. I.D. at 21 (citing PWSA Motion for Summary Judgment at 6).

As the ALJ acknowledged, PWSA also indicated that after its new tariff went into effect in January 2022, Office Partners attempted to withdraw its application, but that PWSA had no experience with an attempted withdrawal of a tap-in application. PWSA asserted that it had no process in place for such a withdrawal since an unperfected application can remain open in the PWSA system indefinitely. PWSA also averred that Office Partners' purported basis for withdrawing its application was pretextual, as the

true reason was that Office Partners was seeking more favorable rate treatment under the 2022 tariff. I.D. at 21 (citing PWSA Motion for Summary Judgment at 7).

PWSA also asserted the Statutory Construction Act's provision that only "[w]here the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words." I.D. at 23-24 (citing PWSA Motion for Summary Judgment at 14; *Sternlicht v. Sternlicht*, 876 A.2d 904, 909 (Pa. 2005)). PWSA averred that according to the express language of 53 Pa.C.S. § 5607(d)(24), Office Partners' permit fees were payable at the time the application was approved in 2021, making the rates in PWSA's 2021 tariff, that were then in effect, applicable. I.D. at 24 (citing PWSA Motion for Summary Judgment at 15).

4. Office Partners' Response to PWSA's Motion for Summary Judgment

Turning next to Office Partners' response to PWSA's Motion for Summary Judgment, the ALJ noted that Office Partners reiterated many of its previous arguments, wherein it maintained that the plain language of 53 Pa.C.S. § 5607(d)(24) is clear and that such language triggers a determination that the date that Office Partners paid the tap-in fees controlled, making PWSA's 2022 tariff rates effective. The ALJ also noted that Office Partners' argument that aside from statutory construction, the equities would also favor Office Partners, as the higher usage rates in effect for 2022 were designed to be significantly higher to cover the expenses that were previously included in the 2021 tap-in fee rates. I.D. at 24-25 (citing OP Answer to PWSA's Motion for Summary Judgment at 1-2).

Additionally, Office Partners disputed PWSA's argument that the term "payable" and "payment" are synonymous and that payable is the same as "due and payable." According to Office Partners, 53 Pa.C.S. § 5607(d)(24) does not state "due and payable" or "calculated upon plan approval" but it instead clearly separates payment and

payable in two separate events. Office Partners also contended that PWSA ignored that Office Partners' invoice was paid in March of 2022, when PWSA's 2022 rates were in effect. As part of its argument, the ALJ noted, Office Partners pointed to other statutes in which it claimed that the legislature recognized the distinction between payable and due and how they operate when used together, including the Wage Payment and Collection Law, 43 P.S. § 260.3 *et al.*, and a statute related to the return of property, interest, and settlement by tax collectors, 72 P.S. § 5860.306. I.D. at 25-26 (citing OP Answer to PWSA's Motion for Summary Judgment at 4-5; 43 P.S. § 260.3; 72 P.S. § 5860.306(a)).

In conclusion, the ALJ cited to Office Partners' argument that if that were true, as PWSA contends, that "plan approval" and issuance of the invoice is at the time of the filing of the application under the statute, then Office Partners March 3, 2022 invoice should have been calculated at the 2022 rates because it was the final and actual invoice for the issued permit. Office Partners also averred that if the legislature had intended for the tap-in fee to be calculated at the fee in effect on the date of application or approval, then it would have written 53 Pa.C.S. § 5607(d)(24) to reflect that intention. I.D. at 26-27 (citing OP Answer to PWSA's Motion for Summary Judgment at 5).

5. Office Partners' Motion for Directed Verdict

In summarizing Office Partners' Motion for Directed Verdict, the ALJ indicated that many arguments were predicated upon PWSA's position in another case pending before the Commission, *3213 Penn LLC v. Pittsburgh Water and*

Sewer Authority, Docket No. C-2023-3038775 (*3213 Penn*).¹⁶ The ALJ noted Office Partners’ argument that in *3213 Penn*, PWSA took a contradictory position before the Commission by arguing that 3213 Penn LLC’s tap-in fees are to be calculated at the time of the permit payment. Therefore, Office Partners argued that if PWSA’s position in *3213 Penn* were applied in this case, it would require the Commission to find in Office Partners’ favor. Office Partners argued, *inter alia*, that PWSA’s contradictory position in *3213 Penn* demonstrated that PWSA is formulating an ad hoc policy to justify its charging of the 2021 fees on a case-by-case basis, and that it should not be rewarded for its conduct. I.D. at 28-29 (citing Motion for Direct Verdict at 1-7).

6. PWSA’s Response to Office Partners’ to Motion for Directed Verdict

The ALJ acknowledged that PWSA contested Office Partners’ Motion for Directed Verdict as being “rife with inaccuracies in misstatements, as well as selective quotations in statements devoid of context.” I.D. at 29 (citing Answer to Motion for Directed Verdict at 2). PWSA claimed, *inter alia*, that Office Partners sought to fashion a “judicial admission” by PWSA without providing the Commission with context and while ignoring the verified pleadings and uncontroverted evidence in this case. PWSA also averred that differences exist between the procedural posture and operative

¹⁶ As noted in the Initial Decision, several of the filings made in *3213 Penn*, including the Amended Complaint and PWSA’s Answer and New Matter to the Amended Complaint, have not been made publicly available. I.D. at 27. During the Parties’ oral argument, PWSA’s counsel indicated that he was also counsel to PWSA in the *3213 Penn* case, and that while PWSA considered the *3213 Penn* filings to be “publicly filed,” PWSA nevertheless objected to the relevancy of the *3213 Penn* filings. The ALJ acknowledged PWSA’s objection and indicated that pending further review of the *3213 Penn* filings, she would take judicial notice of the Amended Complaint and PWSA’s Answer and New Matter to the Amended Complaint and consider them to the extent that they were relevant for purposes of adjudicating this case. Tr. at 79-83. We further reinforce that the matter in *3213 Penn* is still pending before the Commission.

facts in *3213 Penn*, rendering Office Partners' claims meritless. I.D. at 29 (citing Answer to Motion for Directed Verdict at 2, 4).

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

Next, the ALJ summarized Office Partners' Reply to PWSA's Answer to Motion for Directed Verdict as opposing PWSA's position that *3213 Penn* should not be considered in this case. On the contrary, Office Partners argued the facts of this case and *3213 Penn* are similar in that both cases involve parties who applied for tap-in permits in 2021 and received PWSA's approval letter for their tap-in plan permits in 2021. Additionally, Office Partners highlighted that both Parties' approval letters required payments to PWSA prior to permit issuance. Office Partners contended that the only difference is that *3213 Penn* paid the invoice when the 2021 rates applied, and Office Partners paid the invoice when the 2022 rates applied. Accordingly, Office Partners averred, in this case, PWSA takes the position that "approval" is the date it sends a letter and invoice, but in *3213 Penn*, PWSA argues that "approval" means the date of payment. Office Partners argued that PWSA should be judicially estopped from making contradictory arguments before the Commission. I.D. at 30 (citing OP Response to PWSA's Answer to Motion for Directed Verdict at 1-2).

8. The ALJ's Grant of Office Partners' Motion for Summary Judgment

After evaluating the Parties' pleadings, the ALJ granted Office Partners' Motion for Summary Judgment based upon a plain language analysis of 53 Pa.C.S. § 5607(d)(24). The ALJ opined that despite the Parties' extraneous arguments which served to distract and obfuscate, this was a simple case that turned on a single sentence: "[f]ees 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.” I.D. at 32 (citing 53 Pa.C.S. § 5607(d)(24)).

The ALJ explained that the first clause of the statute, “fees shall be based upon the duly adopted fee schedule which is in effect at the time of payment” (the first clause) explains how fees are to be calculated, and that this clause supported Office Partners’ position. The ALJ found that [p]ayment means “the act of paying” or “the delivery of money.” I.D. at 34 (citing *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))). According to the ALJ’s plain language analysis, the first clause indicates that the fees shall be based on the fee schedule which is in effect at the time of *payment*, not at the time of “application” or “approval of the application.” I.D. at 33-34. The ALJ deduced that if the legislature had intended for fees to be due at the time of *application*, it would have used the word “application.” I.D. at 33.

Additionally, the ALJ determined that the plain language of the second clause of the statute was consistent with Office Partners’ position. The ALJ opined that the second clause, “fees shall ... be payable at the time of application for connection or at a time to which the property owner and the authority agree” (the second clause) is not inconsistent with the first clause, and that it relates to when the fees should be paid. The ALJ concluded that the second clause 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. Next, the ALJ acknowledged that PWSA’s admitted practice is to make fees *payable* within six (6) months of its issuance of an invoice.

The ALJ recognized PWSA’s interpretation that fees should be determined based upon the fee schedule in effect at the time of “application” or “approval of application” and opined that while PWSA’s interpretation “may make more sense, this is simply not what the statute says.” I.D. at 34. In conclusion, the ALJ commented that it is

neither for her nor the Commission to ignore the plain, unambiguous language of the statute, and that it seemed “patently inequitable” that Office Partners should pay the tap-in fees under the 2021 tariff and also the increased usage under the 2022 tariff. I.D. at 34.

In summary, the ALJ granted Office Partners’ Motion for Summary Judgment and denied PWSA’s Motion for Summary Judgment. The ALJ determined that PWSA must calculate its tap-in fees for Office Partners based on the fee schedule in effect on March 15, 2022, which the Parties agreed did not provide for tap-in fees. Finally, the ALJ dismissed Office Partners’ Motion for Directed Verdict as moot. I.D. at 34-35.

C. PWSA’s Exceptions

In its Exceptions, PWSA contends that the ALJ erred in concluding that Office Partners is entitled to summary judgment as a matter of law, arguing that the conclusion was based on an erroneous interpretation and application of 53 Pa.C.S. § 5607(d)(24). PWSA Exc. at 4 (citing I.D. at 37, COL No. 11). While PWSA explains that it agrees that the ALJ “somewhat accurately” characterizes the dispositive question as: “[s]hould 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?” PWSA avers that the ALJ’s statutory interpretation was flawed in several respects. PWSA Exc. at 4 (citing I.D. at 32). As a result, PWSA argues, the ALJ incorrectly concluded that the date of Office Partners’ payment controlled the fee payable to PWSA, despite the fact that such an interpretation would render the statute “absurd, impossible of execution or unreasonable” in contravention to the Statutory Construction Act. PWSA Exc. at 4 (citing 1 Pa.C.S. §§ 1501–1991).

PWSA also alleges that the ALJ's erroneous statutory interpretation would undermine the General Assembly's intent to render the entirety of 53 Pa.C.S. § 5607(d)(24) to be effective, certain, and to favor the public interest as against any private interests. PWSA Exc. at 4 (citing 1 Pa.C.S. § 1922(1),(2), and (5)). Accordingly, PWSA asserts that the Commission should reverse the Initial Decision based on its arguments set forth more fully below.

1. Statutory Construction Act^{17,18}

PWSA argues that the ALJ's statutory construction analysis, which relies upon the plain language of 53 Pa.C.S. § 5607(d)(24), is insufficient because it relies exclusively on one part of the statute as though an internal conflict does not exist. According to PWSA, the ALJ focused exclusively on the first clause of the statute

¹⁷ PWSA, in its Exceptions, references 1 Pa.C.S. 1921(c), which provides that when the words of a statute are not explicit, the General Assembly's intention may be ascertained by considering factors that include the following, among other matters: (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; and (8) Legislative and administrative interpretations of such statute. 1 Pa.C.S. § 1921(c); PWSA Exc. at 6.

¹⁸ In its Exceptions, PWSA also references portions of 1 Pa.C.S. § 1922, *Presumptions in ascertaining legislative intent*, which provides that when ascertaining the General Assembly's intention in enacting a statute, the following presumptions may be used: (1) That the General Assembly does not intend a result that is absurd, impossible of execution, or unreasonable; (2) That the General Assembly intends the entire statute to be effective and certain; (3) That the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth; (4) That when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language; (5) That the General Assembly intends to favor the public interest as against any private interest. PWSA references only the following provisions: 1 Pa.C.S. § 1922(1),(2), and (5). PWSA Exc. at 6.

("[f]ees 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 clause ("[fees]...shall be payable at *the time of application for connection* or at a time to which the property owner and the authority agree."). PWSA Exc. at 7 (citing I.D. at 33) (emphasis added).

PWSA further alleges that the ALJ's focus on the first part of the statute renders the statutory language in conflict because there is no way that an amount can be "payable" at the time of application if the fee had not been, and cannot be, determined until the applicant makes payment. PWSA Exc. at 5, 7. According to PWSA, the impossibility of PWSA determining the amount of fees payable before the fees can even be calculated renders the statute "absurd, impossible of execution or unreasonable." PWSA alleges that the impossibility of determining fees is contrary to the General Assembly's intent to render the entire statute effective and certain because it renders the second part null. PWSA Exc. at 5-7 (citing 1 Pa.C.S. § 1922(1)-(2)).

2. The ALJ's Statutory Interpretation

PWSA also argues that as the words of 53 Pa.C.S. § 5607(d)(24) are not explicit, the ALJ should have, but failed to, consider the factors identified in the Statutory Construction Act when interpreting the statute. PWSA argues that "the [o]ccasion and necessity for the statute" show that PWSA was empowered 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]." PWSA Exc. at 7 (citing 53 Pa.C.S. § 5607(d)(24)). PWSA asserts that the Municipalities Authorities Act (MAA) "provides municipal authorities with significant discretion to impose fees and charges, including tapping fees, for the construction and maintenance of its facilities." PWSA Exc. at 7-8 (citing *J. Buchanan Assocs., LLC v. Univ. Area Joint Auth.*, 231 A.3d 1089, 1104 (Pa. Cmwlth. 2020) (*J. Buchanan Assoc, LLC*)).

Additionally, with respect to the “circumstances” under which the statute and corresponding tariffs were enacted, PWSA points to the public processes it was required to undertake related to the adoption of, and eventual reduction of tap-in fees. Specifically, PWSA avers that prior to charging a tapping fee, Section 5607(d)(24)(ii) of the MAA requires a municipal authority to adopt a resolution at a public meeting and to make the maximum fees and the underlying fee determinations available for public inspection. PWSA Exc. at 8 (citing 53 Pa.C.S. § 5607(d)(24)(ii)). PWSA asserts that the public disclosures required under Section 5607(d)(24)(ii) of the MAA are intended to ensure that the public has a basis upon which to evaluate the accuracy of the municipal authority’s tapping fee. *Id.* (citing *J. Buchanan Assocs., LLC* at 1105).

Next, PWSA claims that although Office Partners did not participate in the significant public comment and participation opportunities available in 2022, the Commission and PWSA agreed to reduce tap-in fees to align with a different framework for rate collection in PWSA’s next tariff. PWSA contends that as the new tariff took effect on January 13, 2022, resulting in changing tap-in fees and PWSA’s overall rate structure, PWSA has at all times acted consistent with the Rules and Regulations approved by the Commission. Nevertheless, PWSA claims that the ALJ’s interpretation of the statute ratifies Office Partners’ malfeasance through its “purported withdrawal” of an application and/or “sitting” on a permit application until a time when more favorable rates would apply. PWSA Exc. at 8.

Furthermore, PWSA claims that the ALJ’s conclusion fails to align with the legislative history or legislative or administrative interpretations of 53 Pa.C.S. § 5607(d)(24). In support of its claim, PWSA argues that the limited applicable case law supports PWSA’s interpretation that fees are calculated according to the application date, and not the payment date. PWSA Exc. at 9 (citing *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); *Norristown Mun. Waste Auth. v. 200 E. Airy, LLC*,

2011 WL 10857856 (Pa. Commw. Ct. November 30, 2011)(*Norristown*). PWSA also asserts that applying the Commonwealth Court’s analysis in *Norristown* here demonstrates that this case turns on *when* PWSA determined the amount due *and* sought payment from Office Partners, which was undisputably in 2021. PWSA Exc. at 9 (citing *Norristown*). PWSA also argues that while Office Partners was advised of the amount due and it took action to avoid paying that amount, *Norristown* is distinguishable in that the Landowner could not have known the tap-in fees until it was advised, demonstrating that the amount when the fees were payable (and not paid) is a more reasonable interpretation of 53 Pa.C.S. § 5607(d)(24). *Id.* at 9-10.

3. Statutory Construction Act Presumptions

PWSA alleges that the Statutory Construction Act’s presumptions applicable to the interpretation and construction of statutes supports its interpretation of 53 Pa.C.S. § 5607(d)(24), while the ALJ’s interpretation would render the statute “absurd, impossible of execution or unreasonable.” PWSA Exc. at 10 (citing Pa.C.S. § 1922(1)). PWSA also argues that the ALJ’s interpretation would neither render the statute “effective” nor “certain” and it avers that its “consistent and equitable” policy during the relevant time period was to calculate the tap-in fees based upon the rate schedule in effect on the date that the tap-in permit was approved. PWSA Exc. at 10. According to PWSA, Office Partners was the only applicant who attempted to circumvent its policy in order to shop for a preferable rate. Moreover, PWSA asserts that it has not located any case with the Commission, nor with the Pennsylvania courts which support the ALJ’s interpretation of 53 Pa.C.S. § 5607(d)(24), although it alleges that other entities would likely try to do so in attempt to benefit from the windfall created by the Initial Decision. *Id.*

Finally, PWSA contends that its interpretation of 53 Pa.C.S. § 5607(d)(24) is consistent with the statutory presumption that the General Assembly’s intention is to favor the public interest as against any private interest, while the opposite is true of the

ALJ's interpretation. PWSA Exc. at 11 (citing 1 Pa.C.S. § 1922(5)). PWSA avers that its fidelity to its tariffs protects the interest of all ratepayers, and that the benefit of Office Partners' tap-in fee is passed on to PWSA's ratepayers either to defray rate increases or to pay for expenses. In this vein, PWSA argues that the ALJ has failed to consider the harmful result to the public that would result from depriving PWSA and its ratepayers of fees due when Office Partners applied for the subject permit. PWSA asserts that it has consistently upheld its obligations and exercised fidelity to its applicable tariffs and the rules and regulations of the Commission, including by requiring Office Partners to pay the fees in effect upon the application's approval, as PWSA has uniformly done with other applicants. PWSA Exc. at 11.

In conclusion, PWSA maintains that the only proper reading of 53 Pa.C.S. § 5607(d)(24) 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.*" On this basis, PWSA avers that its 2021 tariff fees applied to Office Partners' application, and that the Commission should grant its Exceptions, reverse the Initial Decision, and deny and dismiss Office Partners' Complaint. PWSA Exc. at 11-12.

D. Office Partners' Exceptions

At the outset, Office Partners explains that it does not except to the ALJ's Findings of Fact, Conclusions of Law, or Order,¹⁹ *i.e.* the Initial Decision. Rather, Office Partners seeks modification of the ALJ's Initial Decision to facilitate its intended result with respect to funds held in escrow in Allegheny County Court. Specifically, Office Partners requests that the ALJ's Initial Decision be modified to: (1) require the

¹⁹ Office Partners referred to the ALJ's decision as an Order rather than an Initial Decision. We shall refer to the decision as an Initial Decision.

\$506,647.18 held in escrow in Allegheny County Court to be released to Office Partners; and (2) require PWSA to pay, as damages, the difference between the lower rate of interest applicable in the Allegheny County Court on the escrowed funds, and the higher legal interest rate, which could be due pursuant to 66 Pa.C.S. § 1312. OP Exc. at 1-2.

In support of its requests, Office Partners provides information about how Allegheny County Court calculates interest, and how that calculation differs from the applicable interest rate that is set forth in 66 Pa.C.S. § 1312 and available through the Commission. According to Office Partners, pursuant to Allegheny County Civil and Family Local Court Rule 3, the Department of Court Records pays interest on a fluctuating rate which it calculates to be \$20,344.81 as of May 7, 2025. Office Partners argues that the interest available in Allegheny County Court is significantly lower than the 6% legal interest rate pursuant to “rule 1312 [66 Pa.C.S. § 1312],” and it calculates the difference to be \$95,145.46.²⁰ Office Partners argues that awarding a higher rate of interest is consistent with the law, as damages due on bonds required to be paid for injunctive relief are not limited to the bonds, “but also consist of interest rates that could have been earned on the funds had they been paid over.” Office Partners’ Exc. at 2 (citing *Christo v. Tuscan, Inc.*, 533 A.2d 461 (Pa. Super, 1987) (*Christo v. Tuscan*)).

In conclusion, Office Partners requests that the Commission modify ALJ DeVoe’s Initial Decision to order that the \$506,647.18 in escrow in Allegheny County Court be released to Office Partners along with an additional amount of \$95,145.46. OP Exc. at 1-3.

²⁰ Office Partners alleges that its calculation of \$95,145.46 was based upon application of 6% interest calculated from the date of deposit determined by ALJ DeVoe, March 15, 2022, until Office Partners is paid. Office Partners indicates that the \$95,145.46 was determined by applying 6% interest for 3 years, 1 month and 17 days, plus \$83.28 per day from May 2, 2025. Office Partners’ Exc. at 2.

E. PWSA's Reply Exceptions

In its Reply Exceptions, PWSA contests Office Partners' requests for the Commission to: (1) require the release of the \$506,647.18 to Office Partners; and (2) modify the Initial Decision to require PWSA to pay, in the form of damages, the difference between the rate of interest paid by the Allegheny County Court of Common Pleas and the legal interest rate. PWSA argues that Office Partners' Exceptions must be denied for three reasons: (1) the Commission has no jurisdiction to award damages, and Office Partners has not yet paid any tap-in fee to PWSA; (2) an award of discretionary interest pursuant to 66 Pa.C.S. § 1312(a) is not appropriate; and (3) by voluntarily paying the bond to Allegheny County's Department of Court Records, Office Partners consented to the Department of Court Records' interest rate and waived any argument for additional interest. PWSA R. Exc. at 2-4.

1. Damages in the Form of Interest

PWSA asserts that Office Partners' request for damages in the form of interest calculated at the legal rate of interest instead of the lower rate applicable in Allegheny County Court must be rejected because the Commission does not have the authority to award damages. PWSA R. Exc. at 4 (citing *Elkin v. Bell Tel. Co. of Pennsylvania*, 420 A.2d 371, 375 (Pa. 1980)). Moreover, noting that Office Partners invoked 66 Pa.C.S. § 1312 as the authority for the Commission to assess the legal rate of interest as damages, PWSA asserts that Section 1312(a) of the Code, 66 Pa.C.S. § 1312(a), is inapplicable because PWSA has not received tap-in fees. In support of its position, PWSA references a portion of Section 1312(a), as replicated below:

(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.

PWSA R. Exc. at 4-5 (citing 66 Pa.C.S. § 1312(a) (emphasis added)).

Relying upon the emphasized language above, PWSA argues that Section 1312(a) is inapplicable because PWSA never received Office Partners' payment for tap-in fees. While PWSA explains that it issued Office Partners a permit on March 15, 2022 to prevent a delay in project development, it asserts that it has not received any payment from Office Partners in connection with the tap-in permit. On these facts, PWSA alleges that any award the Commission would issue in the form of an interest award would be improper and would exceed the Commission's authority.

PWSA R. Exc. at 5.

2. Application of 66 Pa.C.S. § 1312(a)

PWSA additionally disputes Office Partners' claims that it should be entitled to interest at the legal rate, as set forth in Section 1312(a) of the Code, 66 Pa.C.S. § 1312(a), arguing that Section 1312(a) does not contain a mandate to award interest, and the award would be unjust. According to PWSA, while the Commission has the discretion to award interest on a refund, the primary purpose of an interest award is to compensate a ratepayer "for the Company's use of the ratepayer's money." PWSA R. Exc. at 5 (citing *Sanderman [v. LP Water and Sewer Company]* 87 Pa. P.U.C. 734 (October 28, 1997) (*Sanderman*)). PWSA argues that because PWSA has never received control over, nor received, tap-in fees from Office Partners, an interest award is not

appropriate. Moreover, PWSA asserts that it is not in the public interest to require PWSA to pay interest on any refund that may be due to Office Partners where this matter involves a good faith dispute as to tariff application, and while the public [PWSA's ratepayers] must ultimately pay the price. PWSA R. Exc. at 5.

Additionally, PWSA argues that in order for an award of interest under Section 1312(a) of the Code to apply, 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[.]” PWSA R. Exc. at 6 (citing 66 Pa.C.S. § 1312(a)). According to PWSA, the ALJ did not find that any of the three conditions existed in this case, and the record reflects that PWSA acted with good faith in interpreting and applying the applicable tariff to determine Office Partners' tap-in fees. Further, PWSA argues that it has acted consistently with its applicable tariffs and with applicable rules and regulations at all times relevant to this matter. Accordingly, PWSA insists that Office Partners' request for an interest award must fail because it is not warranted under the facts of this case. PWSA R. Exc. at 6-7.

3. Interest Rate

Finally, PWSA contends that Office Partners voluntarily consented to the Department of Court Records' interest rate when it paid the bond. According to PWSA, by paying the bond to the Department of Court Records, Office Partners waived any argument for additional interest and, therefore, it cannot now properly seek a higher rate of interest from the Commission. PWSA R. Exc. at 8. In support of its position, PWSA included a Local Rule of the Allegheny County Court, which is replicated below:

(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.

PWSA R. Exc. at 9 (citing Allegh. L. R. No. 3).

Citing to the above Local Rule of the Allegheny County Court, PWSA avers that Office Partners deposited the bond into the Department of Court Records, agreed to the Consent Order, and is therefore not entitled to statutory interest. Instead, PWSA contends, Office Partners agreed to a lower statutory interest rate than that available in 66 Pa.C.S. § 1312. PWSA also cites to the case of *Shellhamer v. Grey*, whereby the Pennsylvania Superior Court, in the context of resolving a dispute related to accumulation of interest on money, concluded that an Allegheny County Local Rule of Court was the applicable rule for investing money paid into the county court.

PWSA R. Exc. at 10 (citing *Shellhamer v. Grey*, 519 A.2d 462, 468 (Pa. Super. 1986)). PWSA further cites to additional cases in support of its position that under the circumstances of this case, awarding Office Partners interest at the legal rate would be contrary to Pennsylvania precedent. *Id.* (citing *Appeal of Cnty. Treasurer*, 9 Pa. D. & C. 324 (Com. Pl. 1926); *Accord Oliphant v. Frost*, 9 Pa. 308, 308 (Pa. 1848)).

Finally, PWSA contends that Office Partners improperly relied upon *Christo v. Tuscany* because that case is inapposite and factually distinct. According to PWSA, the damages at issue in *Christo v. Tuscany* were lost profits, in the form of

interest income, on money that was improperly escrowed after an improvidently granted preliminary injunction. Thus, PWSA argues, in *Christo v. Tuscaney*, the Court applied Pennsylvania Rule of Civil Procedure 1531(b)(1), which allowed for recovery of all damages, which in that case were not limited to the amount of the bond.

PWSA R. Exc. at 10-11 (citing *Christo v. Tuscaney* at 464, 471). Here, PWSA asserts that Office Partners' circumstances differ from those in *Christo v. Tuscaney*, as Office Partners acted voluntarily and knowingly in depositing the 2021 tap-in fee to the Department of Court Records, thereby consenting to the applicable interest rate. PWSA maintains that it should not be penalized for Office Partners' decision, and it asks the Commission to deny Office Partners' Exceptions. PWSA R. Exc. at 11.

F. Office Partners' Reply Exceptions

In its Reply Exceptions, Office Partners directly contests PWSA's arguments alleging that the ALJ erred in interpreting 53 Pa.C.S. § 5607(d)(24). At the outset, Office Partners stresses its position that because there is no ambiguity in the provisions of 53 Pa.C.S. § 5607(d)(24), there is nothing to interpret. Instead, Office Partners contends that PWSA is asking the Commission to ignore the plain meaning of the statute and to rewrite it to adopt PWSA's interpretation. Additionally, Office Partners claims that PWSA has argued inconsistent positions in this case, and that it should be judicially estopped from arguing its inconsistent position. OP R. Exc. at 1.

1. Application of 53 Pa. C.S.A. § 5607(d)(24)

According to Office Partners, 53 Pa.C.S. § 5607(d)(24) is clear and the ALJ correctly applied it in the Initial Decision. Office Partners argues that the following passage of the Initial Decision accurately explained the law of statutory interpretation:

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).

OP R. Exc. at 2 (citing I.D. at 33). Office Partners avers that because 53 Pa.C.S. § 5607(d)(24) is clear, changing under the guise of interpretation is impermissible.

OP R. Exc. at 2.

2. The Doctrine of Judicial Estoppel

Office Partners alleges that PWSA should be judicially estopped from taking contradictory positions regarding the applicable rate in this case. First, Office Partners contends that although the statute does not mention “approval,” PWSA initially argued that Office Partners’ application approval date should control as to the applicable rate. According to Office Partners, PWSA also argued that the date of its final invoice is the date of approval, while the final invoice in this case was issued on March 3, 2023.

OP R. Exc. at 2.

Office Partners contends that beyond PWSA's contradictory positions within this case, PWSA took a completely opposite position regarding the applicable rate in another matter pending before the Commission, *3213 Penn.* Office Partners claims that in *3213 Penn.*, while the complainant, *3213 Penn.*, contended that the new lower tariff rates should be applied because a permit was not approved or issued until after the lower tariff rate took effect, PWSA took the position that the approval date is the date of payment. Office Partners further avers that in *3213 Penn.*, PWSA invoked 53 Pa.C.S. § 5607(d)(24) in arguing that fees are calculated on the date of payment. OP R. Exc. at 2-3 (citing Motion for Directed Verdict at ¶ 14; Exh. F). Office Partners also cites to several cases within varying contexts to support its position that the doctrine of judicial admissions and estoppel should be applied to this matter to preclude PWSA from asserting contrary positions. OP R. Exc. at 3-4 (citing *Avondale Cut Rate, Inc. v. Associated Excess Underwriters, Inc.*, 178 A.2d 758, 760-61 (Pa. 1962); *Tops Apparel Mfg. Co. v. Rothman*, 244 A.2d 436, 438 (Pa. 1968); *Gross v. City of Pittsburgh*, 686 A.2d 864 (Pa. Cmwlth. 1996); *Ligon v. Middletown Area School Dist.*, 584 A.2d 376 (Pa. Cmwlth. 1990); *Yudacufski v. Commonwealth*, 454 A.2d 923, 926 (Pa. 1982)). Office Partners relies upon its cited authorities to contend that PWSA's lack of consistency in arguments and policies leaves the public without clear guidance and contradicts the clear statutory language in 53 Pa.C.S. § 5607(d)(24). OP R. Exc. at 4.

3. Statutory Interpretation

Office Partners also argues that PWSA's reliance upon statutory interpretation is misplaced, and that the arguments PWSA makes are without merit. Specifically, Office Partners disputes PWSA's claim that reading 53 Pa.C.S. § 5607(d)(24) as requiring fees to be established as of the date of payment renders calculation of the payment impossible. On the contrary, Office Partners argues that PWSA is already permitting applicants to pay at any time after applying and being issued an invoice, as its existing practice is not to calculate any fees until it is ready to issue a

permit. OP R. Exc. at 5 (citing OP Motion for Summary Judgment at Appd'x S; OP Brief in Opposition to PWSA's Motion for Summary Judgment at 5). Office Partners also claims that PWSA's argument alleging impossibility is dispelled by the fact that in this case, PWSA recalculated Office Partners' fees pursuant to the escrow agreement between PWSA and Office Partners. OP R. Exc. at 5 (citing Stipulated Facts at 7, 18).

Additionally, Office Partners disputes PWSA's reliance upon *Norristown* to support the claim that an applicant's application date is the date of calculation of the fee. In support of the dispute, Office Partners asserts that there are distinguishable facts between *Norristown* and this instant case. More specifically, Office Partners alleges that in *Norristown*, the Landowner purchased a property in 2002, and while the Borough of Norristown (Borough) issued an occupancy permit in 2005, it waited until three years later, in 2008, to ask the Landowner to pay a tapping fee for the 2005 connection. Office Partners continues that the Borough had not asked the Landowner to pay a tapping fee for the 2005 connection prior to 2008. In 2008, after contacting the Landowner to request a tapping fee, the Norristown Municipal Waste Authority (Authority) passed a Resolution establishing that the fees would apply to the Landowner's property. The Landowner disputed the fees, and after the Authority filed a municipal lien against the Landowner to collect fees, the Landowner filed an affidavit of defense alleging that the 2008 Resolution did not apply to his property because the Resolution specifically stated that tapping fees applied only to connections after the resolution's effective date. OP R. Exc. at 5 (citing *Norristown*).

Office Partners explains that in *Norristown*, the Court struck the lien against the Landowner for two reasons. First, Office Partners asserts, the Court determined that the Authority's Resolution applied only to connections after the effective date and were, therefore, inapplicable to the Landowner. Additionally, the Court held that the Resolution did not comply with 53 Pa.C.S. § 5607(d)(24)(i)(C) because while the Resolution revealed that the Authority lowered the water volume used to determine the

tapping fees, it failed to separately set forth the tapping fees and to explain the various components of a tapping fee or how it was calculated. OP R. Exc. at 5-6 (citing *Norristown*). Pointing to the issues addressed in *Norristown*, Office Partners alleges that PWSA's reliance upon that case is faulty in that there is no commonality, and that Office Partners is not challenging the rate in effect at the time of payment. OP R. Exc. at 6.

Finally, Office Partners avers that the Commission should reject PWSA's attempt to rewrite the statute and adopt the plain meaning of the word "payment" in 53 Pa.C.S. § 5607(d)(24). Office Partners argues that PWSA's position is without merit, and it claims that PWSA can, and already does, calculate tap-in fees at the time of payment, rendering PWSA's allegations of absurdity and impossibility meritless. OP R. Exc. at 7.

G. Disposition

At the outset, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

On review of the record in this proceeding, we will: (1) deny PWSA's Exceptions; (2) deny Office Partners' Exceptions; and (3) adopt the ALJ's Initial Decision with a modification to recognize additional grounds that entitle Office Partners to Summary Judgment.

1. PWSA's Exceptions

We will deny PWSA's Exceptions because we conclude that the ALJ correctly granted Office Partners' Motion for Summary Judgment. Specifically, we find that the ALJ properly interpreted and applied 53 Pa.C.S. § 5607(d)(24) according to its plain language. Additionally, we find PWSA's claims regarding the Statutory Construction Act to be both contradictory with its positions in this case and with its existing practices. Our review of the record also concludes with the determination that Office Partners is also entitled to Summary Judgment on the basis that its 2022 Application was operative for determining the effective tariff rates in this case, and that PWSA violated Section 1502 of the Code, 66 Pa.C.S. § 1502, by: (1) arbitrarily and unreasonably refusing to permit Office Partners to withdraw its 2021 Application; and (2) failing to follow its written invoice policy, which voided projects within six months if permit payment was not rendered, in order to ensure that Office Partners would be subject to paying tap-in fees. While we have determined not to impose a civil penalty upon PWSA in this matter, we find that its conduct unreasonably prejudiced Office Partners, and that proper application of PWSA's written invoice policy rendered Office Partners' 2022 Application operative. As the 2022 Application was approved on February 22, 2022, and Office Partners paid via funds deposited in escrow on March 9, 2022, both the date of approval and the date of payment establish that PWSA's tariff rates approved on January 12, 2022 are applicable.

a. The ALJ Correctly Interpreted and Applied 53 Pa.C.S. § 5607(d)(24)

In granting Office Partners' Motion for Summary Judgment, the ALJ correctly applied a plain language analysis to 53 Pa.C.S. § 5607(d)(24). At the outset, before the ALJ applied a plain language analysis that supported Office Partners' position, both PWSA and Office Partners agreed that 53 Pa.C.S. § 5607(d)(24) is the controlling

statute in this case, and that a plain language analysis of the statute should be applied. *See* I.D. at 32; (POs at ¶¶26-28); PWSA Answer and New Matter at 9; PWSA Motion for Summary Judgment at ¶¶50-52).

After noting the Parties' agreement on the controlling statute and appropriate analysis, the ALJ addressed the Statutory Construction Act, which establishes 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." I.D. at 33 (citing 1 Pa.C.S. § 1921(b)). ALJ DeVoe also correctly recognized that a court may resort to other considerations in order to ascertain legislative intent only when the words of the statute are not explicit. I.D. at 33 (citing 1 Pa.C.S. § 1921(b)). Importantly, the ALJ's references to the Statutory Construction Act and her resulting conclusion that a plain language interpretation of 53 Pa.C.S. § 5607(d)(24) should be applied aligned with PWSA's position until the Exceptions phase of this case. *See* PWSA Motion for Summary Judgment at 14-15.

Our review of the applicable standards regarding statutory construction supports the ALJ's plain language analysis of 53 Pa.C.S. § 5607(d)(24), and the conclusion that Office Partners' permit fees should be calculated on the fee schedule which is in effect at the time of payment. In this case, the ALJ's plain language analysis comports with applicable precedent. While PWSA averred that the express language of the statute required a determination that Office Partners' fees were *payable at the time of application based on the fee schedule in effect at the time of approval*, the ALJ concluded that the express language required a determination that *fees should be based on the schedule in effect at the time of payment*. *See* PWSA Motion for Summary Judgment at ¶ 52; I.D. at 34 (emphasis added). The ALJ arrived at her conclusion by, *inter alia*, considering the plain meaning of the word "payment," meaning "the act of paying" or "the delivery of money." I.D. at 34 (citing *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))).

Moreover, the ALJ’s analysis was limited to consideration of only the plain meaning of the words extant in 53 Pa.C.S. § 5607(d)(24). In confining her analysis to only the words of 53 Pa.C.S. § 5607(d)(24), the ALJ determined that, in the first clause relating to how fees are to be calculated, the statute provided that fees “shall be based on the fee schedule which is in effect at the time of *payment*” and not “at the time of application” nor at the time of “approval of application.” I.D. at 34. The ALJ concluded that if the legislature had intended for fees to be due at the time of “application,” then it would have used the word “application.” *Id.*

As demonstrated above, the ALJ relied on the common and approved usage of the word “payment” as “the act of paying” or the “delivery of money.” I.D. at 34 (citing e.g., Black’s Law Dictionary 1150 (7th ed. 1999)). By confining her analysis to the plain and obvious meaning of the words of the statute, the ALJ adhered to the legal standards articulated, *supra*, in *Couloumbis v. Senate* and *Commonwealth v. Ahlborn*. *See Couloumbis v. Senate* at 53; *Commonwealth v. Ahlborn* at 720. Additionally, the ALJ properly rejected PWSA’s analysis because, *inter alia*, it would have improperly required the insertion of the word “application” or the words “approval of application.” I.D. at 34. We agree with the ALJ that inserting words into 53 Pa.C.S. § 5607(d)(24) as necessary to support PWSA’s argument, would be contrary to what the statute says. *See Id*; *see also Couloumbis v. Senate* at 54; *Kmonk-Sullivan v. State Farm* at 962.

While PWSA correctly indicates that the ALJ characterized PWSA’s interpretation of 53 Pa.C.S. § 5607(d)(24) as making “more sense,” we do not find the ALJ’s comment to undermine the integrity of the plain language analysis contained in the Initial Decision. *See* PWSA Exc. at 4 (citing I.D. at 34). As precedent establishes that the Commission may not rewrite a statute in order to supply terms which are not present,

we will decline to do so here, irrespective of any opinion that doing so would make sense. *See Couloumbis v. Senate* at 54.

Likewise, we are not persuaded by PWSA’s assertion, raised in the Exceptions phase, that ascertaining the legislative intent of 53 Pa.C.S. § 5607(d)(24) is necessary to resolve ambiguity. *See* PWSA Exc. at 7-11. PWSA’s argument appears to be intertwined with its claim that the ALJ’s statutory construction analysis created an internal conflict that renders the second clause of 53 Pa.C.S. § 5607(d)(24) null. *See* PWSA Exc. at 7. Specifically, PWSA claims that while the ALJ determined that fees should be based upon the fee schedule effective at the time of payment, the ALJ did not perform any analysis of the second clause (“[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.”). *See* PWSA Exc. at 7 (citing I.D. at 33)(emphasis added). PWSA alleges that a conflict exists 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).

PWSA Exc. at 7. We are not persuaded by PWSA’s arguments, because we find that no conflict exists.²¹

²¹ As an important caveat, we make no determination regarding the alleged conflict between PWSA’s position in this case and its position in *3213 Penn*. While we acknowledge Office Partners’ arguments that, in *3213 Penn*, PWSA took a contradictory position before the Commission by arguing that 3213 Penn LLC’s tap-in fees are to be calculated at the time of permit payment, we will decline to address that argument here. *See 3213 Penn LLC v. PWSA*, Docket No. C-2023-3038775; Office Partners’ R. Exc. at 2-6; Motion for Directed at 1-7; Tr. at 79-83. First, we need not do so in this instant proceeding because we conclude that the plain language of 53 Pa.C.S. § 5607(d)(24) supports the ALJ’s determination that Office Partners’ permit fees shall be based on the fee schedule which is in effect at the time of payment. *See* I.D. at 33-34. Additionally,

Our review of the Initial Decision indicates that the ALJ correctly determined that the plain language of the first clause of 53 Pa.C.S. § 5607(d)(24), relating to how fees are to be calculated (at the schedule in effect at the time of payment) is not inconsistent with the plain language of the second clause, relating to when fees should be paid. *See* I.D. at 34. Indeed, the ALJ’s analysis gives effect to the full text of 53 Pa.C.S. § 5607(d)(24), as she correctly indicated that the statute 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*. *Id.* (emphasis added). The ALJ further noted PWSA’s admission that its invoices are due to be paid within 6 months [of application approval]; therefore, PWSA’s policy is to make fees payable within 6 months of its issuance of the invoice. *Id.*

We agree with the ALJ. We find that by developing a policy to make payments due within 6 months of the date of application approval, PWSA and the applicant (upon payment) have agreed that fees are payable after the application’s approval. *See* I.D. at 10, SF No. 7; I.D. at 34. Moreover, as Office Partners explained, the record in this matter indicates that PWSA allows applicants to pay at *any* time after they apply and PWSA issues an invoice. OP R. Exc. at 5 (citing OP Motion for Summary Judgment, Appendix S). Accordingly, the conflict that PWSA alleges ignores the plain language of 53 Pa.C.S. § 5607(d)(24), as well as the reality of its existing practices of permitting payments to be made at least six (6) months after the application has been made, and often times far beyond that time period, at PWSA’s discretion, and as

as the record in *3213 Penn* remains open, it is not properly before the Commission for consideration at this time. While we take no position on *3213 Penn* at this present time, we do so without waiving the Commission’s rights to address any and all issues existing in that case when the record is ripe for resolution.

ratified by the Applicant's payment.²² See PWSA Motion for Summary Judgment, Exh. A at 20-22.

We also disagree with PWSA's reliance upon *Norristown* and its corresponding argument that this case turns on *when* PWSA determined the amount due *and* sought payment from Office Partners, which it claims was undisputably in 2021. See *PWSA Exc.* at 9-10 (citing *Norristown*). Notwithstanding our disagreement with PWSA's statutory interpretation of 53 Pa.C.S. § 5607(d)(24), we find PWSA's reliance to be misplaced because *Norristown* is factually distinguishable in ways that render it inapplicable here. See *OP R. Exc.* at 5-6. Specifically, we agree with Office Partners that *Norristown* is inapplicable because Office Partners is not challenging a retroactively-applied municipal resolution, nor is it challenging PWSA's rate in effect at the time of payment. See *Id.* Thus, we do not find *Norristown* to be determinative or persuasive in the context of this case.

Furthermore, we reject PWSA's arguments that the ALJ's interpretation is at odds with the Statutory Construction Act's presumptions that: (1) the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable; and (2) the General Assembly intends the entire statute to be effective and certain. See *PWSA Exc.* at 6-10; 1 Pa.C.S. § 1922(1)-(2). As we find that no conflict exists and that PWSA is already availing itself of the option to make fees payable at a time when it and the applicant agree, we find no merit to PWSA's claims.

Finally, we disagree with PWSA's argument that its statutory interpretation favors the Statutory Construction Act's presumption that the General Assembly intends to favor the public interest as against any private interest. See *PWSA Exc.* at 11 (citing

²² Further explanation of PWSA's written policy and practices regarding the timing of payment and the effect of non-payment within six (6) months is provided, *infra*.

1 Pa.C.S. § 1922(5)). While PWSA’s claim is largely predicated upon its argument that the ALJ failed to consider the harmful results to the public if PWSA and its ratepayers are deprived of the amounts due under the [2021] fee structure, we find that PWSA’s argument is misplaced. *See Id.* Notwithstanding our decision that determining legislative intent is not necessary or appropriate in this matter, we also find that the public interest in this case is best served by interpreting the statute in a manner that does not elevate collection of higher fees above application of the clear, unambiguous language of 53 Pa.C.S. § 5607(d)(24).

For these reasons, we will deny PWSA’s Exceptions, and adopt the portion of the ALJ’s Initial Decision that grants Office Partners’ Motion for Summary Judgment.

b. Office Partners is Entitled to Summary Judgment Because the 2022 Application is Operative for Purposes of Determining the Effective Rates

While we agree with the ALJ, we will also modify the Initial Decision to include a determination that Office Partners is further entitled to Summary Judgment because PWSA: (1) unreasonably developed a policy against application withdrawal; and (2) failed to apply its existing written invoice policy, which voided projects within six months if permit payment was not rendered, which unreasonably prejudiced Office Partners in violation of the Code’s prohibition against such prejudice. *See* 66 Pa.C.S. § 1502. Specifically, Section 1502 of the Code prohibits discrimination in service and provides, in pertinent part, that “[n]o public utility shall, as to service, 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.” 66 Pa.C.S. § 1502. In this case, we conclude that Office Partners was unreasonably prejudiced by PWSA’s inconsistent and prejudicial application of its policies. In our view, if PWSA had consistently and reasonably applied

its policies in this case, Office Partners' 2021 Application would have been voided and its 2022 Application would have been operative for purposes of determining the appropriate rate treatment.

Accordingly, we will treat Office Partners' 2022 Application as operative for purposes of determining the effective tariff rates in this matter. As Office Partners' *2022 Application* was approved on February 22, 2022, and Office Partners paid via funds deposited in escrow on March 9, 2022, both the date of approval²³ and the date of payment establish that PWSA's tariff rates approved on January 12, 2022 are applicable. Thus, as there is no genuine issue as to the applicability of PWSA's effective rate, Office Partners is entitled to a judgment as a matter of law on this basis as well.

Our conclusion is based upon a determination that PWSA arbitrarily and unreasonably refused to permit Office Partners to withdraw its *2021 Application*, and that it failed to follow its written invoice policy that voided projects within six months if permit payment was not rendered. We are unpersuaded by PWSA's arguments that it had no experience with an attempted withdrawal of a tap-in application and that it had no process in place for such a withdrawal since an unperfected application can remain open in the PWSA system indefinitely, at PWSA's discretion. *See* PWSA Motion for Summary Judgment at 7. Additionally, the record does not support the determination that PWSA's treatment of the *2021 Application* was based on a neutral application of policies or even based upon PWSA's adherence to its written invoice policy. On the contrary, PWSA's actions were undertaken in accordance with its conclusion that Office Partners

²³ Although we have established that the date of an applicant's payment, and not the date of application approval, is decisive for purposes of determining the effective fee schedule, we provide this analysis for purposes of completeness and to demonstrate that assuming, *arguendo*, that the application approval date was determinative, PWSA's 2022 Tariff rates would still be effective.

was seeking more favorable rate treatment under the 2022 tariff and in a manner that contradicted the written policy included on the invoice it sent to Office Partners.

Throughout this proceeding, PWSA maintained a significant focus on challenging Office Partners' motive in attempting to withdraw the *2021 Application*. PWSA alleged, *inter alia*, that Office Partners' rationale for the need to separate Parcels G1 and G4 based on separate ownership of those parcels was pretextual and that the withdrawal attempt was truly predicated on Office Partners' wish to avail itself of lower rates available in 2022. PWSA Answer and New Matter at 6; PWSA Motion for Summary Judgment at 11, 15. PWSA devoted significant resources to establishing Office Partners' true motive for withdrawing the *2021 Application*, including undertaking a deposition of Boris Kaplan, a Senior Vice President of Buccini Pollin, the developer and owner of Office Partners. PWSA Motion for Summary Judgment at ¶21; Exh. B. Mr. Kaplan admitted that Office Partners' desire to avail itself of the new rate structure was at least part of the reason for the withdrawal, but he also maintained that the separate ownership of parcels G1 and G4 necessitated the need to bifurcate the application into two ownerships. PWSA Motion for Summary Judgment, Exh. B at 47-49.

Through its Motion for Summary Judgment, PWSA asked the Commission to find, "as a matter of law, that Office Partners is not permitted to withdraw an approved application for the purpose of securing a more favorable rate. . . ." PWSA Motion for Summary Judgment at 17. We will decline to do so because Office Partners' motive²⁴ for withdrawing the *2021 Application* is not determinative in this case.

²⁴ The Commission will not, and need not, make a finding of Office Partners' "true motive" for attempting to withdraw the *2021 Application*. Even assuming, *arguendo*, that PWSA has proven that Office Partners sought to withdraw the *2021 Application* solely in pursuit of more favorable rates, Office Partners' motive does not relieve PWSA of its obligations as a jurisdictional utility.

Instead, what is at issue is whether PWSA acted in accordance with its tariff, the Code, Commission Regulations, Commission Orders, and policies. We find that PWSA did not do so when it: (1) developed and enforced an ad hoc policy refusing to permit Office Partners to withdraw the *2021 Application*, and (2) when it deviated from its written policy and its written communication with Office Partners indicating that projects and plans will be voided if permits are not paid within 6 months of approval.

(1) PWSA’s Refusal to Permit Office Partners to Withdraw the *2021 Application*

First, the facts underlying PWSA’s refusal to permit Office Partners to withdraw the *2021 Application* demonstrate that PWSA developed and enforced a policy prohibiting application withdrawal directly in response to Office Partners’ request. As part of this case, PWSA Industry Relations Manager, Julie Ascioffa, was deposed about matters that included PWSA’s policy for processing permit applications. PWSA Motion for Summary Judgment, Exh A. Ms. Ascioffa testified that in 2021-2022, all of PWSA’s written policies regarding the application process were contained within PWSA’s Developer’s Manual. *Id.* at 61, 65. The Developer’s Manual had no written policies related to the withdrawal of a permit, and PWSA had no explicit policy prohibiting the withdrawal of an application. *Id.* at 48, 65. Instead, Ms. Ascioffa simply indicated that she was unaware of any other builders or developers who attempted to withdraw their permits in the past. *Id.* at 66.

Despite not having any policies that would prohibit an applicant from withdrawing an application, and without having evaluated a prior withdrawal request, PWSA developed and enforced a novel withdrawal prohibition policy directly in response to Office Partners’ request to withdraw its *2021 Application*. On January 31, 2022, when Office Partners first indicated that it sought to withdraw the *2021 Application*, PWSA’s determination to deny the withdrawal was unreasonable and

arbitrary. Upon receipt of Office Partners' request to withdraw the *2021 Application*, Ms. Ascioffa, wrote to PWSA CEO William Pickering that she "assume[d] that this is their [Office Partners'] way to skirt the fees" and that she was going to "advise them [Office Partners] that they wouldn't withdraw the application as that is not necessary." Office Partners' Motion for Summary Judgment, Exh. J at 1-2; I.D. at 11, SF No. 11-12. Ms. Ascioffa also indicated that instead of withdrawing the *2021 Application*, Office Partners "would just submit a revised planning module under their previous application. . . ." and she sought permission from Mr. Pickering to inform Office Partners of her determination. *Id.*

On January 31, 2022, Mr. Pickering deferred to Ms. Ascioffa's position that the *2021 Application* would not be withdrawn, with one caveat: "[a]s long as this approach is consistent with how we [PWSA] would treat similar applications. . . ." *Id.* at 1; I.D. at 11, SF No. 12. Mr. Pickering's caveat underscores a key issue in this case, which is that PWSA had no policy nor any approach for handling withdraw requests, as there is no evidence that it previously considered a withdraw request. PWSA had no "similar" applications to use as a metric, and it developed its ad hoc policy to prohibit the withdrawal in the course of assuming that Office Partners was attempting to "skirt fees." While we acknowledge PWSA's argument that it has a duty to ensure that its ratepayers are not deprived of the amounts due under the fee structure that was in place when Office Partners applied for the subject permit, such a duty does not extend to developing and enforcing an ad hoc policy designed, at least in part, to ensure that Office Partners does not "skirt" higher fees. *See* PWSA Exc. at 11. Instead, as a jurisdictional utility, PWSA has a statutory duty to serve all customers without unreasonably

prejudicing or disadvantaging them in the course of providing service.²⁵ 66 Pa.C.S. § 1502.

After considering the record, we find that PWSA arbitrarily and unreasonably denied Office Partners' request to withdraw the *2021 Application*. Accordingly, we will treat Office Partners' *2021 Application* as properly withdrawn for purposes of this case, and we will consider Office Partners' *2022 Application* effective for the purpose of determining PWSA's effective rates. As indicated above, both the date of approval for Office Partners' *2022 Application* and the date of payment establish that PWSA's tariff rates approved on January 12, 2022 would be applicable. Therefore, as no issue of material fact exists, Office Partners is entitled to judgment as a matter of law.

(2) PWSA's Inconsistent Policy of Voiding Projects and Plans After 6 Months of Non-Payment

Next, the facts also demonstrate that PWSA violated its own written policy in order to render the *2021 Application* effective for determining Office Partners' effective rates. Specifically, the PWSA Developer's Manual in place when Office Partners' *2021 Application* was approved included the following written policy, in pertinent part:

Approved permit refers to an application that has met all the requirements as outlined in this manual and has received a final invoice. Approved permits are valid for six (6) months from date of approval. *If the final invoice is not paid within six (6) months, the permit becomes invalid, and the*

²⁵ The term "service" is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. See 66 Pa.C.S. § 102. The statutory definition of "service" is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

application may be required to restart the application process.

OP Motion for Summary Judgment, Exh. S at 4 (emphasis added).

While the above-cited portion of PWSA’s Developer’s Manual indicates that PWSA *may* require an applicant to restart the application process if the applicant’s final invoice is not paid within six months of receiving a final invoice, PWSA’s written communication with Office Partners went further. Specifically, in a letter dated December 23, 2021, PWSA informed Office Partners, *inter alia*, that: (1) the *2021 Application* plans were approved; (2) fees of \$508,314.79 were due; and (3) “[p]ayment for permits must be received within 6 months from 12/23/2021.²⁶ 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.” Office Partners’ Motion for Summary Judgment, Exh. M at 1-2. Although Ms. Ascioffa testified that PWSA enforced its expiration policies on a case-by-case basis, PWSA admits that it advised Office Partners, in writing, that its project and plans would be voided if payment was not received within six months. PWSA Motion for Summary Judgment, Exh. A at 21-22; I.D. at 10, SF No. 7. Office Partners did not pay PWSA the \$508,314.79 fees by June 23, 2022 (or at all); consequently, application of the payment policy that PWSA imposed upon Office Partners’ 2021 Application would have rendered the *2021 Application* “voided.”

On the other hand, the facts and timeline underlying Office Partners’ *2022 Application* support our determination that it should be operative for determining the effective rates. We note that on February 4, 2022, Office Partners submitted its *2022 Application* to PWSA, which, *inter alia*, excised the G4 Parcel water and sanitary taps. I.D. at 12; SF No. 14. In response, on March 3, 2022, PWSA sent Office Partners an invoice for the tap-in authorization for the *2022 Application* for \$506,647.18.

²⁶ The six-month period concluded on June 23, 2022.

I.D. at 12, SF No. 17; Office Partners’ Motion for Summary Judgment at 2; Exh. O at 1. The new invoice contained the following statement: “[p]ayment for permits must be received within 6 months from 3/3/2021[sic].²⁷ If permits are not paid for within this period,²⁸ this project and plans will be voided and will require this project to start from the beginning.” Office Partners’ Motion for Summary Judgment, Exh. O at 1. Both Office Partners and PWSA agree that on March 15, 2022, Office Partners made an “escrow deposit for the March 3, 2022, invoice amount [of \$506,647.18]” with the Allegheny County Court and that PWSA thereafter issued the permit to Office Partners. I.D. at 13, SF No. 19.

While we recognize that PWSA has not yet received the funds from escrow and that Office Partners disputes the amount owed, we conclude that by paying the March 3, 2022 invoice in escrow, Office Partners made payment for its *2022 Application*. Accordingly, Office Partners’ *2022 Application* should be used to determine the applicable fee schedule, resulting in application of PWSA’s 2022 tariff rates, which eliminated tap-in fees. *See* I.D. at 10, SF No. 9. Thus, Office Partners is also entitled to Summary Judgment because consistent, reasonable, and non-prejudicial application of PWSA’s policy would have rendered PWSA’s 2022 tariff rates effective.

(3) Civil Penalty

Finally, although we conclude that PWSA violated Section 1502 of the Code, 66 Pa.C.S. § 1502, by unreasonably developing a policy against application withdrawal and by failing to apply its existing written invoice policy, which unreasonably

²⁷ It is assumed that the reference to 3/3/2021 was intended to be 3/3/2022, because, *inter alia*, Office Partners did not begin its initial application process with PWSA until May of 2021. *See* I.D. at 9, SF No. 3.

²⁸ The six-month period concluded on September 3, 2022.

prejudiced Office Partners, we will not exercise our discretion to assess a civil penalty in this matter. For context, we note that when appropriate due to violation of the Commission's statutes or regulations, Sections 3301(a) and (b) of the Code authorize the Commission to impose a maximum civil penalty of \$1,000 per day for violations of its statutes, regulations, and orders. *See* 66 Pa.C.S. § 3301(a)-(b). Through promulgation of a Policy Statement, the Commission has adopted ten (10) factors that it may consider in evaluating whether, and to what extent, a civil penalty for violating a Commission Order, Regulation or Statute is appropriate. *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* (Policy Statement), 52 Pa. Code § 69.1201; *see also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000) (*Rosi*). The ten factors are termed the *Rosi* factors.

The following ten (10) *Rosi* factors are the standards to be evaluated:

(1) Whether the conduct at issue is of a serious nature, such as willful fraud or misrepresentation, which may warrant a higher penalty; (2) Whether the resulting consequences of the conduct at issue are of a serious nature, such as personal injury or property damage; (3) Whether the conduct at issue is deemed intentional or negligent⁹; (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future; (5) The number of customers affected and the duration of the violation; (6) The compliance history of the regulated entity which committed the violation; (7) Whether the regulated entity cooperated with the Commission's investigation. (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount; (9) Past Commission decisions in similar situations; and (10) Other relevant factors.

52 Pa. Code § 69.1201(c)(1)-(c)(10).

We will decline to assess a civil penalty in this case for several reasons. First, notwithstanding our acknowledgment that PWSA's conduct prejudiced Office Partners, PWSA's conduct did not cause personal injury or property damage to Office Partners. On this point, we note that while PWSA has not received fees from Office Partners while payment remains in escrow in Allegheny County, PWSA has nevertheless issued a permit to Office Partners to facilitate development of the FNB Financial Center Project. *See* I.D. at 13, SF No. 19; PWSA R. Exc. at 5. Accordingly, we conclude that PWSA's willingness to issue Office Partners a permit without receiving any fee significantly weighs in PWSA's favor. Additionally, at this time, Office Partners appears to be the only PWSA applicant who has been denied the ability to withdraw a tap-in permit application, and the only PWSA applicant who has sought to establish that its application is void for non-payment; accordingly, the number of customers affected is another mitigating factor for PWSA.

Finally, as PWSA has argued, PWSA's ratepayers will be subject to the financial consequences of this proceeding. *See* PWSA Exc. at 11. As part of our consideration, we must acknowledge that there are no shareholder funds available to absorb the cost of any civil penalty imposed in this case.²⁹ Accordingly, our evaluation is also informed by the knowledge that ratepayers would ultimately bear the cost of any penalty we impose. Assessing a civil penalty in this matter will have a detrimental impact upon ratepayers, and this factor too weighs against assessing a civil penalty in this matter.

²⁹ PWSA is not an investor-owned utility and its rates are currently determined using a cash flow ratemaking method instead of the method that provides for a fair rate of return on a used and useful rate base. As a result, PWSA is dependent on revenues received from its ratepayers to fund its operations, and there are no shareholder funds available for payment of a civil penalty. *See Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority, Final Implementation Order*, Docket Nos. M-2018-2640802 and M-2018-2640803 at 27-28 (Order entered March 15, 2018).

While we will not assess a civil penalty in this case for the foregoing reasons, we caution PWSA that further violations of its tariff, the Code, and the Commission's Regulations or Orders may result in the Commission pursuing all available remedies. *See Pa. PUC, Bureau of Investigation and Enforcement v. Philadelphia Gas Works*, Docket No. C-2011-2278312 (Opinion and Order issued July 26, 2013) (*PGW*).³⁰ As such, we urge PWSA to take steps to ensure that it is equitably and consistently applying policies³¹ that comply with PWSA's obligations as a jurisdictional utility.

2. Office Partners' Exceptions

We will also deny Office Partners' Exceptions. First, the Commission is without jurisdiction to require Allegheny Court to release funds held in escrow, as Office Partners requests. Additionally, Office Partners' request for the Commission to order PWSA to pay interest at the legal rate is also denied, as Office Partners is not entitled to such relief under the plain language of Section 1312(a). 66 Pa.C.S. § 1312(a).

³⁰ In *PGW*, the Commission approved a Settlement between the Commission's Bureau of Investigation and Enforcement and Philadelphia Gas Works (*PGW*), which included an agreed upon civil penalty. In doing so, the Commission deviated from its previous policy of not imposing a civil penalty upon PGW, based upon the facts in that proceeding. PGW, like PWSA, is not an investor-owned utility and is dependent on revenues from its ratepayers to fund its operations. *See PGW* at 25-29.

³¹ Policies included in PWSA's Developer's Manual underscored several of the claims and defenses raised by Office Partners and PWSA in this case. As Office Partners correctly indicated, the Developer's Manual was neither included in PWSA's tariffs nor approved by the Commission for any of the periods relevant to Office Partners' Complaint. Tr. at 117. Accordingly, the Commission's determination in this case should not be construed to operate as an approval or adoption of the Developer's Manual, as the Commission's references to it were limited to the purpose of evaluating PWSA's written policies as they related to matters raised in Office Partners' Complaint and in the record of this case.

a. The Commission Has No Jurisdiction to Require the Release of Funds Held in Escrow in Allegheny County Court

At the outset, we note that as part of its Motion for Summary Judgment, Office Partners provided a copy of the Consent Order of Court entered in Allegheny County Court on May 6, 2022. OP Motion for Summary Judgment, Exh. T. The Consent Order, signed by Judge John T. McVay, Jr., indicates that the Court (and not the Commission) will retain jurisdiction over the matter relating to the bond, which will remain deposited with the Court until either: (1) “conclusion of the Pennsylvania Public Utility Commission proceedings, including the exhaustion of both parties’ state court appellate rights, without waiving either party’s appellate rights to the Supreme Court of the United States; or (2) further order of this [Allegheny County] Court.”

Our review of the Consent Order need not be a searching one, as the Allegheny County Court expressly retained jurisdiction over the escrowed funds, and the Commission is not empowered to compel the release of those funds. Additionally, the language of the Consent Order expressly permits parties to pursue appellate opportunities that may extend beyond this case and beyond the Commission’s jurisdiction. The Commission will not impede parties’ opportunities to pursue such appeals should they determine such action is warranted. As the Allegheny County Court retains jurisdiction over the escrowed funds, the Commission must deny Office Partners’ Exception.

b. The Commission Will Not Exercise its Discretion to Issue Damage-Based Interest

We will also deny Office Partners’ Exception averring that PWSA should be required to pay, as damages, the difference between the lower rate of interest

applicable in the Allegheny County Court on the escrowed funds, and the higher legal interest rate which would be due pursuant to 66 Pa.C.S. § 1312.³² OP Exc. at 1-2.

First, as Office Partners, in its Exceptions, requests an interest award in the context of damages, we must acknowledge that the Commission is not authorized to award monetary damages. *See* OP Exc. at 1-2; *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977). Outside the context of damages, the Commission has clear authority and discretion to order refunds, together with interest at the legal rate, where the Commission determines that a rate was unlawfully collected. 66 Pa.C.S. § 1312(a) (Section 1312(a); *Emporium Water Co. v. Pa. PUC*, 859 A.2d 20, 24 (Pa. Cmwlth. 2004); *National Fuel Gas Distribution Corporation v. Pa. PUC*, 76 Pa. Cmwlth. 102, 464 A.2d 546 (1983). As previously noted, Section 1312(a) of the Code, relating to refunds, reads in pertinent part as follows:

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.

66 Pa.C.S. § 1312(a).

In this case, the plain language of Section 1312(a) of the Code, 66 Pa.C.S. § 1312(a), supports our determination that Office Partners is not entitled to an award of

³² The current legal rate of interest is 6% per annum. *See* 41 Pa. Stat. Ann. § 202.

interest at the legal rate. We agree with PWSA that while the plain language of Section 1312 permits the Commission to award interest only on improperly *collected rates*, PWSA has not received any fees from Office Partners in connection with the tap-in permit. *See* PWSA R. Exc. at 4-5. As PWSA explained, the escrowed funds that PWSA deposited with the Allegheny County Court have remained in escrow; therefore, PWSA never had control of such funds. *Id.* We also agree with PWSA that an overarching policy of awarding interest on refunds authorized under Section 1312 is to recompense the ratepayer for the utility's use of the ratepayer's money. PWSA R. Exc. at 5 (citing *Sanderman [v. LP Water and Sewer Company]*, 87 Pa. P.U.C. 734 (October 28, 1997)). As PWSA never had use or control of Office Partners' escrowed tap-in fees, it derived no benefit from them and there is no supporting basis for recompensing Office Partners through application of the legal rate of interest. Accordingly, we will deny Office Partners' Exception.

III. Conclusion

Based upon our review of the Exceptions, the Reply Exceptions, the Initial Decision, and the record in this proceeding, we shall: (1) deny PWSA's Exceptions; (2) deny Office Partners' Exceptions; and (3) adopt the ALJ's Initial Decision, as modified, consistent with the discussion in this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Pittsburgh Water and Sewer Authority, filed on May 22, 2025, to the Initial Decision of Administrative Law Judge Emily I. DeVoe, issued on May 2, 2025, at Docket Nos. C-2022-3033251 and C-2022-3033266, are denied, consistent with this Opinion and Order.

2. That the Exceptions of Office Partners XXIII Block G1, LLC, filed on May 16, 2025, to the Initial Decision of Administrative Law Judge Emily I. DeVoe, issued on May 2, 2025 at the above Docket Nos., are denied, consistent with this Opinion and Order.

3. That the Initial Decision of Administrative Law Judge Emily I. DeVoe, issued on May 2, 2025, at these dockets, is adopted, as modified, consistent with this Opinion and Order.

4. That the Formal Complaints filed by Office Partners XXIII Block G1, LLC on June 17, 2022, against the Pittsburgh Water and Sewer Authority at Docket Nos. C-2022-3033251 and C-2022-3033266, are sustained, consistent with this Opinion and Order.

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.

6. That Pittsburgh Water and Sewer Authority shall issue an updated invoice to Office Partners XXIII Block G1, LLC, for its FNB Financial Center Project within thirty (30) days of the entry of a Final Order by the Commission in the consolidated matter at C-2022-3033251 and C-2022-3033266, serving a copy upon the Commission's Secretary's Bureau.

7. That upon receipt of the revised invoice, the Secretary's Bureau shall mark the dockets at C-2022-3033251 and C-2022-3033266 as closed.

BY THE COMMISSION,

A handwritten signature in black ink, reading "Matthew L. Homsher". The signature is written in a cursive style with a large, stylized initial "M".

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: September 11, 2025

ORDER ENTERED: September 11, 2025