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October 24, 2025

Via Electronic Filing

Rosemary Chiavetta, Secretary
Secretary's Bureau
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
rchiavetta@pa.gov

Re: *3213 Penn LLC v. The Pittsburgh Water and Sewer Authority*
Docket No. C-2023-3038775

Dear Secretary Chiavetta,

Enclosed for electronic filing in the above-referenced matter, please find Respondent, The Pittsburgh Water and Sewer Authority's Motion to Dismiss for Failure to Prosecute and/or for Sanctions. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

CLARK HILL

Ashley L. Buck
Ashley L. Buck, Esq.

ALB:sm
Enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

3213 PENN, LLC,)	
)	
Complainant,)	
)	
vs.)	Docket No. C-2023-3038775
)	
THE PITTSBURGH WATER AND SEWER)	
AUTHORITY,)	
)	
Respondent.)	

NOTICE TO PLEAD

To: 3213 PENN, LLC

Pursuant to 52 Pa. Code § 5.103(b), you are hereby notified to file a responsive pleading to the enclosed Motion to Dismiss for Failure to Prosecute and/or for Sanctions within twenty (20) days from service hereof.

Pursuant to 52 Pa. Code § 1.4, all documents must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on counsel, and where applicable, the Administrative Law Judge presiding over the issue, or electronically on the Commission's electronic filing system if the document is a qualified document.

Dated: October 24, 2025

/s/ Ashley L. Buck
Ashley L. Buck, Esquire
Pa. I.D. No. 320537
CLARK HILL PLC
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425
(412) 394-2448
*Attorney for Respondent,
The Pittsburgh Water and Sewer Authority*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

3213 PENN, LLC,)	
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Complainant,)	
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vs.)	Docket No. C-2023-3038775
)	
THE PITTSBURGH WATER AND SEWER)	
AUTHORITY,)	
)	
Respondent.)	

**THE PITTSBURGH WATER AND SEWER AUTHORITY’S
MOTION TO DISMISS FOR FAILURE TO PROSECUTE AND/OR FOR SANCTIONS**

To The Honorable Administrative Law Judge Steven K. Haas:

Pursuant to 52 Pa.Code §§5.103, 5.245, 5.371 and 5.372 and 66 Pa.C.S.A. §§332(f) and 703(b), Respondent, The Pittsburgh Water and Sewer Authority (“Pittsburgh Water”), by and through its undersigned counsel, hereby moves to dismiss the Complainant’s Formal Complaint for failure to prosecute as follows:

I. BACKGROUND

A. Procedural Background

1. On or about March 2, 2023, Complainant, 3213 Penn, LLC (“3213 Penn”), filed a Formal Complaint against Pittsburgh Water asserting, *inter alia*, that Pittsburgh Water is “withholding more than \$345,000.00 of 3213 Penn’s money” and generally challenging Pittsburgh Water’s retention of tap-in fees that 3213 Penn paid to Pittsburgh Water prior to revisions to Pittsburgh Water’s tap-in fee schedule as reflected in the 2022 PUC Tariff set forth at PUC Docket No. R-2021-3024779.

2. 3213 Penn seeks a return of the difference between the amount 3213 Penn paid to Pittsburgh Water under the 2021 PUC Tariff set forth at PUC Docket No. R-2020-3017970 and the amount it would have been required to pay under the 2022 PUC Tariff.

3. At the request of Pittsburgh Water and in order to comply with 52 Pa. Code §1.31, 3213 Penn filed an Amended Complaint without substantive changes.

4. On or about April 13, 2023, Pittsburgh Water filed an Answer and New Matter to the Amended Complaint.

5. On July 6, 2023, Pittsburgh Water filed an Amended Answer and New Matter in response to a request from 3213 Penn to attach certain documentation to Pittsburgh Water's Answer and New Matter.

6. Pittsburgh Water denies, and has continually denied, that 3213 Penn is entitled to a refund.

7. 3213 Penn filed a Reply to Pittsburgh Water's Amended Answer and New Matter on July 31, 2023.

8. The pleadings are closed.

9. In or about August 2023, the parties attempted to resolve 3213 Penn's Complaint through the Commission's mediation process, but such mediation was unsuccessful.

B. Factual Background

10. At all relevant times hereto, 3213 Penn was developing residential property in the Strip District of Pittsburgh.

11. In 2021, 3213 Penn submitted an application to tap-in to Pittsburgh Water's infrastructure.

12. On August 2, 2021, Pittsburgh Water approved 3213 Penn's application, identifying the fees due and owing, in accordance with the 2021 PUC Tariff, as \$348,110.03.

13. On or about August 19, 2021, 3213 Penn paid the fees due and owing to Pittsburgh Water in the amount of \$348,110.03.

14. On August 20, 2021, Pittsburgh Water issued the approved tap-in permit to 3213 Penn.

C. Discovery and Prehearing Conferences

15. On January 3, 2025, Pittsburgh Water served its First Set of Interrogatories, Requests for Production of Documents and Requests for Admission (collectively, the "Discovery Requests") upon 3213 Penn.

16. The Discovery Requests contain thirty (30) interrogatories, nine (9) requests for production, and sixteen (16) requests for admission.

17. Per applicable Rules, 3213 Penn's responses to the Discovery Requests were due on or before January 23, 2025. *See* 52 Pa.Code §5.342(d) (answering party shall serve answers within 20 days after service of the interrogatories); 52 Pa.Code §5.349(d) (party upon whom the request [for production] is served shall serve a written response within 20 days after service of the request); and 52 Pa.Code §5.350(c) (matter is admitted unless, within 20 days after service of the request [for admission], the party to whom the request is directed answers or makes an objection to the matter, signed by the party or by his attorney).

18. On January 22, 2025, 3213 Penn requested an extension until February 20, 2025, to respond to the Discovery Requests, which Pittsburgh Water agreed to. A true and correct copy of the email correspondence reflecting this exchange is attached hereto as **Composite Exhibit "A."**

19. On February 20, 2025, 3213 Penn requested an additional extension of two weeks, to which Pittsburgh Water again agreed. *See* Composite Ex. A.

20. As such, 3213 Penn's responses to the Discovery Requests were due on or before March 6, 2025.

21. 3213 Penn did not provide any responses - or request any additional extension of time to respond to the Discovery Requests – on or before the March 6, 2025 deadline.

22. On March 10, 2025, Pittsburgh Water emailed 3213 Penn, seeking a status update on the responses to the Discovery Requests. *See* Composite Ex. A. 3213 Penn did not respond.

23. At the last prehearing conference in this matter, which was held on March 19, 2025, it was specifically discussed that 3213 Penn owed responses to the Discovery Requests and that, pending receipt of those responses, the parties may seek to conduct depositions.

24. On July 24, 2025, Pittsburgh Water contacted 3213 Penn in response to a status update request from the Presiding Officer and Pittsburgh Water advised: “[I]f 3213 Penn intends to proceed with this litigation, Pittsburgh Water requests responses to the outstanding written discovery.” A true and correct copy of the email correspondence (as redacted for relevance) is attached hereto as **Composite Exhibit “B”**.

25. 3213 Penn, again, did not respond.

26. On July 31, 2025, Pittsburgh Water sought an update from 3213 Penn so as to timely provide the Presiding Officer with the requested status update. *See* Composite Ex. B.

27. 3213 Penn, again, did not respond.

28. On August 1, 2025, Pittsburgh Water ultimately provided its own status update to the Presiding Officer, advising, in part: “No activity has occurred since the date of our last status update. While I have twice contacted Complainant in an attempt to obtain a status update as to

this case (on July 24 and 31), I have not received any response. Complainant's responses to Pittsburgh Water's written discovery remain outstanding. Complainant's counsel is copied on this correspondence."

29. 3213 Penn did not respond.

30. The Presiding Officer requested the parties' availability for a prehearing conference in September, which Pittsburgh Water timely provided.

31. 3213 Penn did not respond.

32. In light of 3213 Penn's failure to respond and pursue this action for a substantial period of time, Pittsburgh Water attempted one final outreach to 3213 Penn on August 9, 2025, advising as follows: "Please be advised that if we do not receive Complainant's responses to Pittsburgh Water's outstanding discovery on or before August 25, 2025, we'll be forced to file a Motion to Compel and/or Deem Admitted." *See* Composite Ex. B.

33. 3213 Penn, again, did not respond.

34. To date, 3213 Penn failed to provide any response(s) to the Discovery Requests, to otherwise respond to Pittsburgh Water, or provide the Presiding Officer with requested status updates.

35. In fact, for months, Pittsburgh Water has been the only party attempting to advance the resolution of this matter.

36. As a result of 3213 Penn's non-participation in this matter, on August 28, 2025, Pittsburgh Water filed a Motion to Deem Requests for Admissions Admitted, Compel Responses to Interrogatories and Requests for Production of Documents, and for Sanctions (the "Discovery Motion").

37. 3213 Penn did not respond to or otherwise acknowledge the Discovery Motion.

38. While the Discovery Motion was pending, the Presiding Officer contacted the parties via e-mail on September 19, 2025, requesting that the parties provide availability by September 26, 2025, for another prehearing conference. A true and correct copy of the email correspondence is attached hereto as **Exhibit “C.”**

39. While Pittsburgh Water promptly responded to the Presiding Officer’s request, 3213 Penn, again, did not. *See Ex. C.*

40. The Presiding Officer again contacted the parties on October 9, 2025, advising that he would be issuing on ruling on the Discovery Motion. A true and correct copy of the email correspondence is attached hereto as **Exhibit “D.”**

41. 3213 Penn did not respond to the October 9, 2025 email.

42. On October 9, 2025, the Presiding Officer entered an Order on the Discovery Motion (the “Discovery Motion Order”), granting in part and denying in part the same. A true and correct copy of the Discovery Motion Order is attached hereto as **Exhibit “E.”**

43. Of note, the Presiding Officer ordered 3213 Penn to “serve upon counsel for Pittsburgh Water full and complete responses to all of the Interrogatories and Requests for Production of Documents served on 3213 Penn on January 3, 2025, by no later than 4:00 p.m. on Friday, October 17, 2025.” *See Ex. E, p. 4.*

44. The Discovery Motion Order further states: “...while I could direct that Pittsburgh Water’s requests for admissions have been deemed admitted by 3213 Penn’s failure to respond, I will give the Complainant a *final opportunity*, as directed below, to respond to Pittsburgh Water’s requests for admissions.” *See Ex. E, p. 3 (emphasis added).*

45. Finally, the Discovery Motion Order states: “In the event 3213 Penn does not fully comply with this order and fails to respond to Pittsburgh Water’s requests for admissions,

interrogatories and requests for production of documents as directed above, Pittsburgh Water may make an appropriate motion requesting further relief.” *See* Ex. E, p. 5.

46. 3213 Penn did *not* comply with the October 17, 2025 deadline or otherwise provide *a* response to the Discovery Requests.

47. Pittsburgh Water moves for an Order: (i) dismissing this action, with prejudice, for 3213 Penn’s failure to prosecute; *or* granting discovery sanctions as follows: (a) deeming Pittsburgh Water’s Requests for Admission served upon 3213 Penn admitted for all purposes in this action; (b) barring 3213 Penn from offering any evidence in contradiction of the information sought in Pittsburgh Water’s First Set of Interrogatories and Requests for Production of Documents or otherwise referring to such non-provided documents, information or evidence at any subsequent hearing in this matter; *and* (ii) awarding Pittsburgh Water its reasonable attorney’s fees and costs associated with preparing the instant Motion; and (iii) all other relief deemed equitable and just.

II. ARGUMENT

a. The Complaint Should Be Dismissed Due To 3213 Penn’s Failure To Proceed With Reasonable Promptness And Non-Responsiveness To Date.

48. 66 Pa.C.S.A. §332(f) states: “If the actions of a party or counsel in a proceeding shall be determined by the commission, after due notice and opportunity for hearing, to be obstructive to the orderly conduct of the proceeding and inimical to the public interest, the commission may reject or dismiss any rule or order in any manner proposed by the offending party or counsel[.]”

49. 66 Pa.C.S.A. §703(b) further states that “the Commission may dismiss a complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.”

50. Additionally, judgment of non pros may be entered: (1) where a party to a proceeding shows a want of due diligence in failing to proceed with reasonable promptness; (2)

where there has been no compelling reasons for the delay; and (3) where the delay has caused prejudice to the adverse party.” *Pennsylvania Pub. Util. Comm'n*, 80 Pa. P.U.C. 604 (Nov. 10, 1993) (concluding judgment of non pros is appropriate) (citing *James Brothers Lumber Co. v. Union Banking and Trust Co. of DuBois*, 432 Pa. 129, 132, 247 A.2d 587, 589 (1968)).

51. Prejudice, “for purposes of entering non pros, is not limited to the death or absence of material witnesses, but may also attach where, because of delay, there is loss of documentary evidence or any substantial diminution in a party’s ability to properly present its case.” *Pennsylvania Pub. Util. Comm'n*, 80 Pa. P.U.C. 604 (citing *Carrol v. Kimmel*, 362 Pa. Superior Ct. 432, 524 A. 2d 954 (1987); *American Bank and Trust Co. of Pennsylvania v. Ritter, Todd and Haayen*, 274 Pa. Superior Ct. 285, 418 A.2d 408 (1980)).

52. The Commission is required to provide due process to the parties appearing before them; however, this requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pennsylvania Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Commw. Ct. 1984).

53. It is axiomatic that parties appearing before the Commission must at least make a good faith effort to comply with the Commission’s procedures. *Dushawn King v. Verizon Pennsylvania Inc.*, Docket No. C-20054799 (March 21, 2006).

54. 3213 Penn failed to proceed with reasonable promptness; namely, 3213 Penn is utterly refusing to even **respond** to the Presiding Officer or Pittsburgh Water.

55. 3213 Penn’s refusal to respond demonstrates a flagrant disregard for applicable rules of law, deadlines, and judicial authority.

56. While 3213 Penn has been presented with numerous opportunities to do so, 3213 Penn has yet to provide any reason at all – let alone compelling reason – for the delay in prosecuting this matter.

57. As a result of 3213 Penn’s dilatory conduct, Pittsburgh Water is prejudiced in being unable to obtain discovery to defend itself in this matter.

58. Moreover, Pittsburgh Water continues to incur costs to defend a matter that 3213 Penn – the party with the burden of proof¹ – is not actively prosecuting, as Pittsburgh Water has been forced to respond to numerous outreaches from the Presiding Officer, as well as prepare numerous motions.

59. Simply, the actions of 3213 Penn to date are obstructive to the orderly conduct of this matter and warrant the dismissal of this matter.

b. An Award of Sanctions In The Form Of Dismissal Is Appropriate In Light Of 3213 Penn’s Lack Of Prosecution.

60. Pursuant to 52 Pa.Code §5.371(a)(1) the Presiding Officer may enter an appropriate order if “[a] party fails to appear, answer, file sufficient answers, file objections, make a designation, or otherwise respond to discovery requests.”

61. Any such failure may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order. 52 Pa.Code §5.371(d).

62. Here, as detailed at length above, 3213 Penn failed to answer, respond, or even object to the Discovery Requests.

63. Succinctly stated, 3213 Penn failed to comply with its discovery obligations.

¹ As the party seeking affirmative relief from the Commission, 3213 Penn bears the burden of proof. 66 Pa.C.S.A. §332(a).

64. In light of 3213 Penn's wholesale failure to comply with its discovery obligations, the Presiding Officer has the authority, pursuant to 52 Pa.Code. §5.371(a), to enter an appropriate order sanctioning 3213 Penn. Such an order may:

- a. take as established the matters regarding which the questions were asked, the character or description of the thing or land, the contents of the paper, or other designated fact for the purposes of the action in accordance with the claim of the party obtaining the order;
- b. refuse to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things, or testimony;
- c. strike out pleadings or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient party or individual advising the disobedience; and/or
- d. award other relief deemed equitable and just.

52 Pa.Code §5.372(a) (1-4).

65. The Commission has repeatedly and consistently found that striking complaints for the contemptuous failure to respond to discovery is the appropriate sanction to be imposed. *David Nippes*, Docket No. C-2013-2363324, 2013 WL 4717017, at *3 (Aug. 15, 2013) (citing *Merchant v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00935253 (June 20, 1994); *Application of Tyrone E. Hartley, t/d/b/a T's Automotive Service*, Docket No. A-00112575 (August 6, 1996); *Application of Karen Lee Miller*, Docket No. A-00116067 (March 27, 2000); *Application of Patrick M. Kelsey*, Docket No. A-00116366 (May 18, 2000); *Application of Besteastern Limousine, Inc.*, Docket No. A-00118593 (November 14, 2002); *see also Samick et al. v. Pennsylvania Electric Company*, Docket No. C-20043921 (October 25, 2005).

66. “The reason is that failure to comply with the rules of discovery directly affects the due process rights of the promulgating party, thus preventing orderly and fair litigation.” *David Nippes*, 2013 WL 4717017, at *3.

67. Dismissal of the Complaint is appropriate here, as 3213 Penn's behavior directly prohibits fair and orderly litigation and prevents Pittsburgh Water from receiving the process that is due.

68. Given 3213 Penn's dilatory conduct, the Presiding Officer should follow the Commission's longstanding practice of dismissing the Complaint.

c. Alternatively, Pittsburgh Water's Requests For Admission Must Be Deemed Admitted.

69. Pursuant to 52 Pa.Code §5.321(c), "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition, and location of any books, documents, or other tangible things and the identity, and location of persons having knowledge of a discoverable matter."

70. The Commission has held that "[i]nformation is relevant if it tends to establish a material fact, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact", "[r]elevancy in discovery is broader than the standard used for admission of evidence at a hearing, and "[a]ny doubts regarding relevancy should be resolved in favor of discovery." See *Petition of the Borough of Cornwall for a Declaratory Order that the Provision of Water Service to Isolated Customers Adjoining its Boundaries Does Not Constitute Provision of Public Utility Service Under 66 Pa.C.S. §102*, Docket No. P-2015-2476211 (Sept. 11, 2015) (citing *Smith v. Morrison*, 47 A.3d 131 (Pa. Super. Ct. 2012), *app.*

denied, 57 A.3d 71 (Pa. 2012) and *Com. v. TAP Pharmaceutical Products, Inc.*, 904 A.2d 986 (Pa. Commw. Ct. 2006)).²

71. The Commission or Presiding Officer may impose sanctions for failure to provide discovery responses, or to timely object, against the non-compliant party. *See* 52 Pa.Code §§5.371 and 5.372.

72. On January 3, 2025, Pittsburgh Water served 3213 Penn with Requests for Admission.

73. A “matter is admitted unless, within 20 days after service of the request, the party to whom the request is directed answers or makes an objection to the matter, signed by the party or by his attorney.” 52 Pa. Code §5.350(c).

74. At the absolute latest, 3213 Penn’s response(s) to the Requests for Admission were due on or before March 6, 2025.

75. However, 3213 Penn did not answer, deny, or object – or seek an additional extension to respond - to the Requests for Admission on or before March 6, 2025.

76. Indeed, as of the filing of this Motion, 3213 Penn failed to provide *any* response(s) to the Requests for Admission.

77. As such, as a matter of law, 3213 Penn admitted the Requests for Admission for all purposes in this action.

² 3213 Penn has not lodged any objection(s) to Pittsburgh Water’s Discovery Requests. Further, the burden is on the party objecting to discovery to establish that the information requested is not relevant or discoverable. *See Petition of the Borough of Cornwall for a Declaratory Order that the Provision of Water Service to Isolated Customers Adjoining its Boundaries Does Not Constitute Provision of Public Utility Service Under 66 Pa.C.S. §102*, Dkt. No. P-2015-2476211, (Order Issued Sept. 11, 2015), *citing Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1025 (Pa. Commw. Ct. 2006). Since 3213 Penn failed to timely object, any challenge to relevancy and/or discoverability has been waived.

78. Accordingly, Pittsburgh Water respectfully requests that the Presiding Officer enter an Order deeming the Requests for Admission admitted for all purposes in this action.

d. 3213 Penn Must Be Precluded From Offering Evidence That Contradicts The Information Sought In Pittsburgh Water's First Set Of Interrogatories And Requests For Production Of Documents.

79. On January 3, 2025, Pittsburgh Water served its First Set of Interrogatories and Requests for Production of Documents upon 3213 Penn.

80. The First Set of Interrogatories and Requests for Production of Documents are aimed specifically at enabling Pittsburgh Water to better understand the instant dispute, adequately prepare its defense(s), and formulate its positions.

81. The information sought in the First Set of Interrogatories and Requests for Production of Documents is necessary for Pittsburgh Water to investigate this matter and prepare a defense of the claims in this action.

82. At the absolute latest, 3213 Penn's responses to the First Set of Interrogatories and the Requests for Production of Documents were due on or before March 6, 2025.

83. However, 3213 Penn did not answer or respond – or seek an additional extension to respond - to the First Set of Interrogatories on or before March 6, 2025.

84. Indeed, as of the filing of this Motion, 3213 Penn failed to provide *any* response(s) to Pittsburgh Water's First Set of Interrogatories.³

85. Similarly, 3213 Penn did not answer or respond – or seek an additional extension to respond - to the Requests for Production of Documents on or before March 6, 2025.

³ 3213 Penn did not object to the First Set of Interrogatories within 10 days of service. *See* Pa.Code §5.342 (e).

86. Indeed, as of the filing of this Motion, 3213 Penn failed to provide *any* response(s) to Pittsburgh Water's Requests for Production of Documents.⁴

87. 3213 Penn's failure to timely respond to the First Set of Interrogatories and Requests for Production of Documents has prejudiced Pittsburgh Water.

88. Pursuant to 52 Pa.Code §§5.342, 5.349, 5.371 and 5.372, the Presiding Officer may enter an appropriate order if a party fails to answer or otherwise respond to discovery requests.

89. Accordingly, Pittsburgh Water respectfully requests that the Presiding Officer enter an Order prohibiting 3213 Penn from offering any evidence that contradicts the information sought in Pittsburgh Water's First Set of Interrogatories and Requests for Production of Documents.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, Pittsburgh Water respectfully requests that the Presiding Officer grant this Motion and enter an Order: (i) dismissing this action, with prejudice, for 3213 Penn's failure to prosecute; *or* granting discovery sanctions as follows: (a) deeming Pittsburgh Water's Requests for Admission served upon 3213 Penn admitted for all purposes in this action; (b) barring 3213 Penn from offering any evidence in contradiction of the information sought in Pittsburgh Water's First Set of Interrogatories and Requests for Production of Documents or otherwise referring to such non-provided documents, information or evidence at any subsequent hearing in this matter; *and* (ii) awarding Pittsburgh Water its reasonable attorney's fees and costs associated with preparing the instant Motion; and (iii) all other relief deemed equitable and just.

⁴ 3213 Penn did not object to the Requests for Production of Documents within 10 days of service. *See* Pa.Code §5.349(d) ("If the request is objected to, the objection shall be made in the manner described in §5.342); *See also* Pa.Code §5.342(e) ("The objecting party shall serve objections within 10 days of service...").

Dated: October 24, 2025

Respectfully submitted,

/s/ Ashley L. Buck

Ashley L. Buck, Esquire

Pa. I.D. No. 320537

CLARK HILL PLC

One Oxford Centre

301 Grant Street, 14th Floor

Pittsburgh, PA 15219-1425

(412) 394-2448

Attorneys for Respondent,

The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

3213 PENN, LLC,)	
)	
Complainant,)	
)	
vs.)	Docket No. C-2023-3038775
)	
THE PITTSBURGH WATER AND SEWER)	
AUTHORITY,)	
)	
Respondent.)	

ORDER

AND NOW, to wit, this _____ day of _____, 2025, it is hereby ORDERED, ADJUDGED and DECREED that The Pittsburgh Water and Sewer Authority’s Motion to Dismiss for Failure to Prosecute and/or for Sanctions is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Complainant, 3213 Penn, LLC’s Formal Complaint is hereby dismissed WITH PREJUDICE for failure to prosecute.

DONE AND ORDERED THIS ____ DAY OF _____, 2025.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

3213 PENN, LLC,)	
)	
Complainant,)	
)	
vs.)	Docket No. C-2023-3038775
)	
THE PITTSBURGH WATER AND SEWER)	
AUTHORITY,)	
)	
Respondent.)	

[ALTERNATIVE] ORDER

AND NOW, to wit, this _____ day of _____, 2025, it is hereby ORDERED, ADJUDGED and DECREED that The Pittsburgh Water and Sewer Authority’s Motion to Dismiss for Failure to Prosecute and/or for Sanctions is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that The Pittsburgh Water and Sewer Authority’s First Set of Requests for Admissions attached to its August 28, 2025 Motion to Deem Requests for Admissions Admitted, Compel Responses to Interrogatories and Requests for Production of Documents, and for Sanctions as Exhibit “A” are DEEMED ADMITTED for all purposes in this action.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Complainant, 3213 Penn, LLC, is barred from offering any evidence in contradiction of the information sought in Pittsburgh Water’s First Set of Interrogatories and Requests for Production of Documents and any subsequent hearing in this matter. It is further ORDERED that Complainant, 3213 Penn, LLC, is barred from introducing at any evidentiary proceeding or otherwise referring to such non-provided documents, information or evidence, among such other relief as The Pittsburgh Water and Sewer Authority may request at a later date in advance of any evidentiary proceeding in this matter.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Complainant, 3213 Penn, LLC shall pay to Pittsburgh Water an amount to be determined for reasonable attorney's fees and costs associated with preparing The Pittsburgh Water and Sewer Authority's Motion to Dismiss for Failure to Prosecute and/or for Sanctions.

DONE AND ORDERED THIS ____ DAY OF _____, 2025.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Respondent, The Pittsburgh Water and Sewer Authority's Motion to Dismiss for Failure to Prosecute and/or for Sanctions upon the parties listed below, in accordance with the requirements of §1.54 (relating to service by a party).

VIA E-MAIL ONLY

Stuart C. Gaul, Jr.
Bernstein Burkley, P.C.
601 Grant Street, 9th Floor
Pittsburgh, PA 15219
sgaul@bernsteinlaw.com
Attorneys for Complainant, 3123 Penn, LLC

Hon. Steven K. Haas
Administrative Law Judge
PA Public Utility Commission
400 North Street
Keystone Bldg.
Harrisburg, PA 17120
sthaas@pa.gov

DATED this 22nd day of October 2025.

/s/ Ashley L. Buck
Ashley L. Buck

Composite Exhibit

“A”

From: Buck, Ashley L.
Sent: Monday, March 10, 2025 2:25 PM
To: Stuart C. Gaul, Jr.
Subject: RE: 3213 Penn LLC v. The Pittsburgh Water and Sewer Authority

Hi Stuart,

Can you please provide me with a status update as to the responses?

Thank you,
Ashley

Ashley L. Buck

Attorney-At-Law


Clark Hill

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abuck@clarkhill.com | www.clarkhill.com

From: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Sent: Thursday, February 20, 2025 3:34 PM
To: Buck, Ashley L. <abuck@clarkhill.com>
Subject: Re: 3213 Penn LLC v. The Pittsburgh Water and Sewer Authority

EXTERNAL EMAIL: The sender (sgaul@bernsteinlaw.com) is external to Clark Hill. Exercise caution with links, attachments, or replies if this message is unexpected.

Makes sense. Thanks.

Stuart C. Gaul, Jr., Esq. 

601 Grant Street, 9th Floor | Pittsburgh, PA 15219

sgaul@bernsteinlaw.com | P: 412.456.8139 | F: 412.456.8135

Stuart C. Gaul, Jr., Esq.

BERNSTEIN ■ BURKLEY
ATTORNEYS AT LAW

A Business Approach
to Legal Service™

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From: Buck, Ashley L. <abuck@clarkhill.com>
Sent: Thursday, February 20, 2025 3:18:06 PM
To: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: RE: 3213 Penn LLC v. The Pittsburgh Water and Sewer Authority

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

[EXTERNAL SENDER]
Stu,

Apologies I missed your call. No objection to the additional time assuming that you will not oppose that the deadline for depositions will clearly need to extend past the date of our next status conference.

Ashley L. Buck

Attorney-At-Law

Clark Hill

One Oxford Centre, 301 Grant Street, 14th floor, Pittsburgh, PA 15219
+1 412.394.2448 (office) | +1 724.825.9914 (cell) | +1 412.394.2555 (fax)
abuck@clarkhill.com | www.clarkhill.com

From: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Sent: Thursday, February 20, 2025 1:57 PM
To: Buck, Ashley L. <abuck@clarkhill.com>
Subject: RE: 3213 Penn LLC v. The Pittsburgh Water and Sewer Authority

EXTERNAL EMAIL: The sender (sgaul@bernsteinlaw.com) is external to Clark Hill. Exercise caution with links, attachments, or replies if this message is unexpected.

Ashley,

I hate to do this, but I'd like to request another two weeks. I just left a message on your office phone, but, if you would like to discuss this, please feel free to call me on my cell at 412-370-1515. I'm going to be out of the office for the rest of the afternoon.

Thanks,
Stuart

Stuart C. Gaul, Jr., Esq.

BERNSTEIN ■ BURKLEY
ATTORNEYS AT LAW

*A business approach
to legal service*

601 Grant Street 9th Floor | Pittsburgh, PA 15219
sgaul@bernsteinlaw.com | P: 412.456.8139 | F: 412.456.8135



From: Buck, Ashley L. <abuck@clarkhill.com>
Sent: Wednesday, January 22, 2025 2:31 PM
To: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: RE: 3213 Penn LLC v. The Pittsburgh Water and Sewer Authority

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

[EXTERNAL SENDER]
That's fine, Stuart.

Ashley L. Buck

Attorney-At-Law

Clark Hill

One Oxford Centre, 301 Grant Street, 14th floor, Pittsburgh, PA 15219
+1 412.394.2448 (office) | +1 724.825.9914 (cell) | +1 412.394.2555 (fax)
abuck@clarkhill.com | www.clarkhill.com

From: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Sent: Wednesday, January 22, 2025 12:33 PM
To: Buck, Ashley L. <abuck@clarkhill.com>
Subject: FW: 3213 Penn LLC v. The Pittsburgh Water and Sewer Authority

[External Message]

Ashley,

Would you be willing to give me an extension to February 20 on these? I was going to need an extension in any event, but we just realized that we had miscalendared the deadline.

Thanks,
Stuart

Stuart C. Gaul, Jr., Esq.



*"A business approach
to legal service."*

601 Grant Street 9th Floor | Pittsburgh, PA 15219
sgaul@bernsteinlaw.com | P: 412.456.8139 | F: 412.456.8135



From: May, Linda M. <lmay@clarkhill.com>
Sent: Friday, January 3, 2025 2:16 PM
To: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>

Cc: Buck, Ashley L. <abuck@clarkhill.com>

Subject: 3213 Penn LLC v. The Pittsburgh Water and Sewer Authority

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

[EXTERNAL SENDER]

Re: *3213 Penn LLC v. The Pittsburgh Water and Sewer Authority*
Docket No. C-2023-3038775

Attached please find correspondence, along with Respondent Pittsburgh Water and Sewer Authority's First Set of Interrogatories, Requests for Production of Documents and Requests for Admission Directed to Complainant in the above-referenced matter.

Linda M. May

Legal Administrative Assistant

Clark Hill

One Oxford Centre, 301 Grant Street, 14th floor, Pittsburgh, PA 15219

412.394.2557 (office) | 412.394.2555 (fax)

lmay@clarkhill.com | www.clarkhill.com

**Composite Exhibit
“B”**

From: Buck, Ashley L.
Sent: Tuesday, August 19, 2025 9:23 AM
To: Stuart C. Gaul, Jr.
Subject: RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

Stuart,

Please be advised that if we do not receive Complainant's responses to Pittsburgh Water's outstanding discovery on or before August 25, 2025, we'll be forced to file a Motion to Compel and/or Deem Admitted.

Thank you,
Ashley

Ashley L. Buck

Attorney-At-Law

Clark Hill

One Oxford Centre, 301 Grant Street, 14th floor, Pittsburgh, PA 15219
+1 412.394.2448 (office) | +1 724.825.9914 (cell) | +1 412.394.2555 (fax)
abuck@clarkhill.com | www.clarkhill.com

From: Buck, Ashley L.
Sent: Thursday, July 31, 2025 9:39 AM
To: 'Stuart C. Gaul, Jr.' <sgaul@bernsteinlaw.com>
Subject: RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

Stuart,

Please let me know your response to the below.

Thanks.

Ashley L. Buck

Attorney-At-Law

Clark Hill

One Oxford Centre, 301 Grant Street, 14th floor, Pittsburgh, PA 15219
+1 412.394.2448 (office) | +1 724.825.9914 (cell) | +1 412.394.2555 (fax)
abuck@clarkhill.com | www.clarkhill.com

From: Buck, Ashley L.
Sent: Thursday, July 24, 2025 2:16 PM
To: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

Stuart,

I am circling back on the below, as we owe Judge Haas another status update on August 1st. If 3213 Penn intends to proceed with this litigation, Pittsburgh Water requests responses to the outstanding written discovery in advance of the status update.

I am happy to have a call to discuss this matter as needed.

Ashley

Ashley L. Buck

Attorney-At-Law

Clark Hill

One Oxford Centre, 301 Grant Street, 14th floor, Pittsburgh, PA 15219

+1 412.394.2448 (office) | +1 724.825.9914 (cell) | +1 412.394.2555 (fax)

abuck@clarkhill.com | www.clarkhill.com

Exhibit
“C”

March, Sara

From: Buck, Ashley L.
Sent: Friday, September 19, 2025 2:06 PM
To: Haas, Steve
Cc: Stuart C. Gaul, Jr.
Subject: RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

Judge Haas,

Counsel for Pittsburgh Water is available on the following dates and times:

September 30 – between 1130-2
October 1
October 6
October 8
October 10
October 15
October 16

Please also note Pittsburgh Water's pending Motion to Deem Requests for Admissions Admitted, Compel Responses to Interrogatories and Requests for Production of Documents, and for Sanctions filed and served on August 28, 2025.

Respectfully,
Ashley

Ashley L. Buck

Attorney-At-Law

Clark Hill

One Oxford Centre, 301 Grant Street, 14th floor, Pittsburgh, PA 15219
+1 412.394.2448 (office) | +1 724.825.9914 (cell) | +1 412.394.2555 (fax)
abuck@clarkhill.com | www.clarkhill.com

From: Haas, Steve <sthaas@pa.gov>
Sent: Friday, September 19, 2025 10:16 AM
To: Buck, Ashley L. <abuck@clarkhill.com>
Cc: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

EXTERNAL EMAIL: The sender (sthaas@pa.gov) is external to Clark Hill. Exercise caution with links, attachments, or replies if this message is unexpected.

Good Morning –

I don't believe I received a response from Mr. Gaul re: his availability for a Prehearing Conference.

Accordingly, let's try again to find a mutually-agreeable date for another telephonic conference.

I ask you both to respond by COB next Friday, September 26, 2025, to let me know if you are available on any of the following dates:

September 30
October 1
October 6
October 8
October 10
October 15, and
October 16

We will discuss, among other things, the impact of the Commission's Opinion and Order in *Office Partners XXIII Block G1, LLC v. PWSA* (C-2022-3033251).

Judge Haas

From: Buck, Ashley L. <abuck@clarkhill.com>
Sent: Tuesday, August 12, 2025 10:09 PM
To: Haas, Steve <sthaas@pa.gov>
Cc: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: RE: [External] RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

Judge Haas,

I am available Sept. 15, 17, and 22-25 for a 10 AM call.

Respectfully,

Ashley L. Buck

Attorney-At-Law

Clark Hill

One Oxford Centre, 301 Grant Street, 14th floor, Pittsburgh, PA 15219
+1 412.394.2448 (office) | +1 724.825.9914 (cell) | +1 412.394.2555 (fax)
abuck@clarkhill.com | www.clarkhill.com

From: Haas, Steve <sthaas@pa.gov>
Sent: Tuesday, August 5, 2025 2:12 PM
To: Buck, Ashley L. <abuck@clarkhill.com>
Cc: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: RE: [External] RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

EXTERNAL EMAIL: The sender (sthaas@pa.gov) is external to Clark Hill. Exercise caution with links, attachments, or replies if this message is unexpected.

Good Afternoon Counsel –

I intend to schedule a telephonic prehearing conference on a day during the last two weeks in September at which time we will further discuss the status of this case and establish a formal litigation schedule. To this end, I ask that you both respond this week and let me know which days during the weeks of September 15-19 and September 22-26 you are available for a 10:00 a.m. prehearing conference.

Judged Haas

From: Buck, Ashley L. <abuck@clarkhill.com>
Sent: Friday, August 1, 2025 11:18 AM
To: Haas, Steve <sthaas@pa.gov>
Cc: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: RE: [External] RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

Judge Haas,

I am writing on behalf of Respondent in the above-captioned matter pursuant to your request for another case status update by today. No activity has occurred since the date of our last status update. While I have twice contacted Complainant in an attempt to obtain a status update as to this case (on July 24 and 31), I have not received any response. Complainant's responses to Pittsburgh Water's written discovery remain outstanding. Complainant's counsel is copied on this correspondence.

Thank you,
Ashley

Ashley L. Buck

Attorney-At-Law

Clark Hill

One Oxford Centre, 301 Grant Street, 14th floor, Pittsburgh, PA 15219
+1 412.394.2448 (office) | +1 724.825.9914 (cell) | +1 412.394.2555 (fax)
abuck@clarkhill.com | www.clarkhill.com

From: Haas, Steve <sthaas@pa.gov>
Sent: Wednesday, July 2, 2025 11:58 AM
To: Buck, Ashley L. <abuck@clarkhill.com>; Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: RE: [External] RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

EXTERNAL EMAIL: The sender (sthaas@pa.gov) is external to Clark Hill. Exercise caution with links, attachments, or replies if this message is unexpected.

Please provide to me another case status update by Friday, August 1, 2025.

Thank you.

Judge Haas

From: Buck, Ashley L. <abuck@clarkhill.com>
Sent: Tuesday, July 1, 2025 10:19 AM
To: Haas, Steve <sthaas@pa.gov>; Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: [External] RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

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Judge Haas,

Please allow this email to serve as the parties' joint case status update. The parties are not yet ready for a litigation schedule, as no further discovery has occurred since our last status conference. The parties intend to discuss this matter more broadly within the next week.

Please let me know if there is any additional information we can provide you with in the interim.

Ashley

Ashley L. Buck

Attorney-At-Law

Clark Hill

One Oxford Centre, 301 Grant Street, 14th floor, Pittsburgh, PA 15219
+1 412.394.2448 (office) | +1 724.825.9914 (cell) | +1 412.394.2555 (fax)
abuck@clarkhill.com | www.clarkhill.com

From: Haas, Steve <sthaas@pa.gov>
Sent: Tuesday, June 17, 2025 11:15 AM
To: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>; Buck, Ashley L. <abuck@clarkhill.com>
Subject: RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

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Good Morning –

Prior to scheduling another on the record prehearing conference, I ask the parties to confer and provide to me, via e-mail, a case status update.

Let me know if additional time is needed for discovery, or if the parties are ready to set a litigation schedule.

Thanks.

Judge Haas

From: Haas, Steve
Sent: Wednesday, June 11, 2025 3:37 PM
To: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>; Buck, Ashley L. <abuck@clarkhill.com>
Subject: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

Good Afternoon Mr. Gaul and Ms. Buck –

Something came up with my schedule that necessitates the rescheduling of the prehearing conference scheduled for Monday, June 16th at 10:00 a.m.

Will you please look at your schedules for the week of July 7-11 and let me know if you are available on any of those days. The conference can be scheduled at any time on a suitable day.

Thank you.

Judge Haas

Exhibit
“D”

March, Sara

From: Haas, Steve <sthaas@pa.gov>
Sent: Thursday, October 9, 2025 8:31 AM
To: Buck, Ashley L.
Cc: Stuart C. Gaul, Jr.
Subject: RE: [External] RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

EXTERNAL EMAIL: The sender (sthaas@pa.gov) is external to Clark Hill. Exercise caution with links, attachments, or replies if this message is unexpected.

Good Morning –

I will be issuing a ruling on Pittsburgh Water’s outstanding motions (1) to deem requests for admissions admitted, and (2) to compel responses to discovery requests this week.

I will hold off scheduling another status conference pending resolution of the motions.

Judge Haas

From: Buck, Ashley L. <abuck@clarkhill.com>
Sent: Friday, September 19, 2025 2:06 PM
To: Haas, Steve <sthaas@pa.gov>
Cc: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: [External] RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

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Judge Haas,

Counsel for Pittsburgh Water is available on the following dates and times:

September 30 – between 1130-2
October 1
October 6
October 8
October 10
October 15
October 16

Please also note Pittsburgh Water’s pending Motion to Deem Requests for Admissions Admitted, Compel Responses to Interrogatories and Requests for Production of Documents, and for Sanctions filed and served on August 28, 2025.

Respectfully,
Ashley

Ashley L. Buck

Attorney-At-Law

Clark Hill

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abuck@clarkhill.com | www.clarkhill.com

From: Haas, Steve <sthaas@pa.gov>
Sent: Friday, September 19, 2025 10:16 AM
To: Buck, Ashley L. <abuck@clarkhill.com>
Cc: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

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Good Morning –

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I ask you both to respond by COB next Friday, September 26, 2025, to let me know if you are available on any of the following dates:

September 30
October 1
October 6
October 8
October 10
October 15, and
October 16

We will discuss, among other things, the impact of the Commission's Opinion and Order in *Office Partners XXIII Block G1, LLC v. PWSA (C-2022-3033251)*.

Judge Haas

From: Buck, Ashley L. <abuck@clarkhill.com>
Sent: Tuesday, August 12, 2025 10:09 PM
To: Haas, Steve <sthaas@pa.gov>
Cc: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: RE: [External] RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

Judge Haas,

I am available Sept. 15, 17, and 22-25 for a 10 AM call.

Respectfully,

Ashley L. Buck

Attorney-At-Law

Clark Hill

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abuck@clarkhill.com | www.clarkhill.com

From: Haas, Steve <sthaas@pa.gov>
Sent: Tuesday, August 5, 2025 2:12 PM
To: Buck, Ashley L. <abuck@clarkhill.com>
Cc: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: RE: [External] RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

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Judged Haas

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Sent: Friday, August 1, 2025 11:18 AM
To: Haas, Steve <sthaas@pa.gov>
Cc: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: RE: [External] RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

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Thank you,
Ashley

Ashley L. Buck

Attorney-At-Law

Clark Hill

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abuck@clarkhill.com | www.clarkhill.com

From: Haas, Steve <sthaas@pa.gov>
Sent: Wednesday, July 2, 2025 11:58 AM
To: Buck, Ashley L. <abuck@clarkhill.com>; Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: RE: [External] RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

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Judge Haas

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Sent: Tuesday, July 1, 2025 10:19 AM
To: Haas, Steve <sthaas@pa.gov>; Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>
Subject: [External] RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

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Judge Haas,

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Please let me know if there is any additional information we can provide you with in the interim.

Ashley

Ashley L. Buck

Attorney-At-Law

Clark Hill

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abuck@clarkhill.com | www.clarkhill.com

From: Haas, Steve <sthaas@pa.gov>
Sent: Tuesday, June 17, 2025 11:15 AM

To: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>; Buck, Ashley L. <abuck@clarkhill.com>
Subject: RE: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

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Good Morning –

Prior to scheduling another on the record prehearing conference, I ask the parties to confer and provide to me, via e-mail, a case status update.

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Judge Haas

From: Haas, Steve
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To: Stuart C. Gaul, Jr. <sgaul@bernsteinlaw.com>; Buck, Ashley L. <abuck@clarkhill.com>
Subject: 3213 Penn, LLC v. PWSA (C-2023-3038775) Prehearing Conference

Good Afternoon Mr. Gaul and Ms. Buck –

Something came up with my schedule that necessitates the rescheduling of the prehearing conference scheduled for Monday, June 16th at 10:00 a.m.

Will you please look at your schedules for the week of July 7-11 and let me know if you are available on any of those days. The conference can be scheduled at any time on a suitable day.

Thank you.

Judge Haas

Exhibit
“E”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

3213 Penn, LLC	:	
	:	
v.	:	C-2023-3038775
	:	
Pittsburgh Water and Sewer Authority	:	

**ORDER
GRANTING MOTION OF
PITTSBURGH WATER AND SEWER AUTHORITY
TO COMPEL RESPONSES TO
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Procedural Background

On or about March 24, 2023, the Complainant, 3213 Penn, LLC (3213 Penn), filed an amended complaint against the Pittsburgh Water and Sewer Authority (Pittsburgh Water), challenging Pittsburgh Water’s retention of tap in fees it paid to Pittsburgh Water prior to revisions to Pittsburgh Water’s tap in fee schedule as reflected in a 2022 fee schedule and the utility’s tariff. 3213 Penn is seeking the return of approximately \$345,000.00, which is the approximate difference between the amount 3213 Penn paid under the prior fee schedule and the amount it would have been required to pay under the 2022 fee schedule. In its answer to 3213 Penn’s complaint, Pittsburgh Water denied that 3213 Penn is entitled to a refund.

The parties initially attempted to resolve 3213 Penn’s complaint through the Commission’s mediation process, but that process was unsuccessful. Subsequently, with the agreement of the parties, additional time was allowed prior to the establishment of a formal litigation schedule for discovery and further settlement discussions. Pittsburgh Water served formal discovery requests and requests for admissions on 3213 Penn on January 3, 2025. Several prehearing conferences were held for the purpose of discussing the status of the

proceeding and discovery issues. The last prehearing conference was held on March 19, 2024, during which the parties again agreed to allow additional time for discovery. It was specifically discussed during this conference that 3213 Penn owed to Pittsburgh Water outstanding responses to discovery requests and that, pending receipt of those responses, the parties may seek to conduct depositions. Accordingly, we did not establish a hearing schedule during the March 19th conference.

Counsel to 3213 Penn requested and was granted several extensions of time to submit responses to Pittsburgh Water's discovery requests. The last such request was made by 3213 Penn on February 20, 2025, at which time 3213 Penn was granted by Pittsburgh Water a two-week extension of time, until March 6, 2025, to provide its responses. To date, despite having been given several extensions of time to provide responses, 3213 Penn never objected to or provided responses to any of Pittsburgh Water's discovery requests.

On August 28, 2025, Pittsburgh Water filed a Motion (1) to deem its requests for admissions admitted, (2) to compel responses to its interrogatories and requests for production of documents, and (3) for sanctions. In its Motion, Pittsburgh Water noted that 3213 Penn requested on several occasions additional time to respond to discovery requests, but still failed to ever provide any responses. Pittsburgh Water further noted that its more recent attempts to contact, via e-mail, counsel to 3213 Penn to obtain updates on the status of discovery responses were unsuccessful and that 3213 Penn never responded to those attempted contacts. Motion, pp. 2-4. 3213 Penn did not file a response to Pittsburgh Water's Motion.

Discussion

The Commission's Regulations at 52 Pa.Code § 5.371 address the consequences of a participant's failure to comply with the Commission's discovery regulations. Section 5.371 provides that:

- (a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:

(1) A party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.

Further, 52 Pa.Code § 5.372 provides that the presiding officer may impose appropriate sanctions upon a party found to be found in violation of the obligations set forth in the Commission's Regulations.

As noted, Pittsburgh Water is seeking in its Motion an Order from the Commission that (1) deems its requests for admissions admitted, (2) compels 3213 Penn to provide responses to its outstanding interrogatories and requests for production of documents, and (3) imposes sanctions on 3213 Penn. I will address each of these requests below.

Motion to Deem Requests for Admissions Admitted

The Commission's regulations provide that a party to a proceeding may request of another party that it admit the truth of matters set forth in the requests. 52 Pa. Code §5.350. The regulation further provides, "a matter is admitted unless, within 20 days after service of the request, the party to whom the request is directed answers or makes an objection to the matter, signed by the party or by his attorney." 52 Pa. Code §5.350(c).

Here, the last extension of time given to 3213 Penn by Pittsburgh Water to provide responses had a deadline date of March 6, 2025. As noted, 3213 Penn never responded to Pittsburgh Water's requests for admissions or any other discovery requests promulgated by the utility. Therefore, while I could direct that Pittsburgh Water's requests for admissions have been deemed admitted by 3213 Penn's failure to respond, I will give the Complainant a final opportunity, as directed below, to respond to Pittsburgh Water's requests for admissions.

Motion to Compel Responses to Interrogatories and Document Requests

As noted above, 3213 Penn failed to provide responses to Pittsburgh Water's interrogatories and document requests by the March 6, 2025, extended deadline, or at any time from that deadline to date. In an attempt to give 3213 Penn one final opportunity to respond, I direct that it provide full and complete responses to all of Pittsburgh Water's interrogatories and requests for the production of documents no later than 4:00 p.m. on Friday, October 17, 2025.

Motion for Sanctions

I am not directing that any sanctions, beyond the directions set forth above, be imposed on 3213 Penn at this time. However, if 3213 Penn fails to fully comply with this Order, I will swiftly consider and rule on any other appropriate motions Pittsburgh Water may choose to make seeking the imposition of sanctions, including dismissal of the complaint, or other desired relief.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Compel Responses to Interrogatories and Requests for Production of Documents filed by Pittsburgh Water on August 28, 2025, is granted.
2. That 3213 Penn shall serve upon counsel for Pittsburgh Water full and complete responses to all of the Interrogatories and Requests for Production of Documents served on 3213 Penn on January 3, 2025, by no later than 4:00 p.m. on Friday, October 17, 2025.
3. That the Motion to Deem Requests for Admissions Admitted filed by Pittsburgh Water on August 28, 2025, is denied.

4. In the event 3213 Penn does not fully comply with this order and fails to respond to Pittsburgh Water's requests for admissions, interrogatories and requests for production of documents as directed above, Pittsburgh Water may make an appropriate motion requesting further relief.

Date: October 9, 2025

_____/s/
Steven K. Haas
Administrative Law Judge

**C-2023-3038775 - 3213 PENN LLC v. THE PITTSBURGH WATER AND SEWER
AUTHORITY**

Revised: June 20, 2024

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