

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

3213 Penn, LLC

v.

Pittsburgh Water and Sewer Authority

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C-2023-3038775

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

This decision dismisses, with prejudice, a formal Complaint due to the Complainant's failure to prosecute its Complaint and for its failure to comply with an Order of the Administrative Law Judge (ALJ).

HISTORY OF THE PROCEEDINGS

On March 2, 2023, 3213 Penn, LLC, (Complainant or 3213 Penn) filed a formal Complaint (Complaint) against Pittsburgh Water and Sewer Authority (PWSA) challenging PWSA's retention of approximately \$345,000.00 in tap-in fees paid by the Complainant to PWSA under PWSA's tariff that was in effect in 2021 (2021 Tariff), prior to revisions to PWSA's tariff that became effective in 2022 (2022 Tariff). The Complainant is seeking a return of the difference between the amount it paid pursuant to the 2021 Tariff and the amount it would have been required to pay pursuant to the 2022 Tariff. Complainant subsequently filed an Amended Complaint which made non-substantive changes to its original Complaint.

On April 13, 2023, PWSA filed an Answer and New Matter in response to 3213 Penn's Complaint. On July 6, 2023, PWSA filed an Amended Answer and New Matter, primarily in response to a request from 3213 Penn to attach certain documentation not included with the original Answer and New Matter. 3213 Penn filed an Answer to PWSA's New Matter on July 31, 2023.

In August of 2023, the Parties participated in the Commission's mediation process in an attempt to negotiate a settlement of 3213 Penn's Complaint. This effort was unsuccessful.

On June 20, 2024, the Commission issued a telephonic prehearing conference notice that alerted the Parties a prehearing conference would be held on July 10, 2024, and I was assigned as the presiding officer.

Subsequent to the prehearing conference, I held several informal conferences with the Parties during which the Parties agreed to conduct informal discovery and hold further discussions with the hope of reaching a resolution of the issues in the case. To that end, the Parties and I agreed to postpone establishing a litigation schedule to allow additional time for informal discovery and settlement negotiations, which ultimately were unsuccessful.

On January 3, 2025, PWSA served on 3213 Penn its First Set of Interrogatories, Requests for Documents and Requests for Admissions. On January 22, 2025, the Complainant requested an extension of time until February 20, 2025, to provide its responses to the discovery requests. PSWA agreed to this request. Subsequently, on February 20, 2025, the Complainant requested an additional two weeks to provide its responses, or until March 6, 2025. PSWA again agreed to this request.

Having not received any responses by the new March 6, 2025, deadline, counsel for PWSA sent an e-mail message to counsel for 3213 Penn on March 10, 2025, asking for a status update on the discovery responses. 3213 Penn did not respond to this request.

On March 19, 2025, a telephonic conference was held during which the Parties and I discussed the status of the proceeding and discovery issues. The Parties agreed that 3213 Penn owed and would provide to PWSA its responses to PWSA's discovery requests and that, following the provision of the responses, the Parties may seek to conduct depositions.

From that point forward in the proceeding, as more fully explained below, the Complainant, represented by legal counsel, completely stopped responding to informal requests for updates from both me and PWSA, as well as a formal Order issued by me.

On August 28, 2025, PWSA filed a Motion to Deem Requests for Admissions Admitted, Compel Responses to Interrogatories and Requests for Production of Documents, and for Sanctions (Motion to Compel). In its Motion, PWSA sought an Order: (1) deeming PWSA's Requests for Admissions admitted, (2) compelling responses to its interrogatories and requests for production of documents within five days of the entry date of the Order, and (3) other relief deemed appropriate. 3213 Penn did not file an Answer or otherwise respond to PWSA's Motion to Compel.

On October 9, 2025, I issued an Order on PWSA's Motion to Compel. The Order granted in part and denied in part PWSA's Motion to Compel. I denied PWSA's request that its requests for admissions all be deemed admitted. However, I granted the Motion to the extent it sought an Order directing that answers to its discovery requests be provided. I directed 3213 Penn to provide full and complete responses to all of PWSA's

discovery requests no later than October 17, 2025. The Order further stated that, if 3213 Penn failed to comply with the Order, PWSA may make any appropriate motions seeking further relief. 3213 Penn did not provide any discovery responses by the deadline set forth in the Order, thereby violating the Order.

On October 24, 2025, PWSA filed a Motion to Dismiss for Failure to Prosecute and/or for Sanctions (Motion to Dismiss). In its Motion to Dismiss, PWSA seeks either dismissal of 3213 Penn's Complaint, with prejudice, due to Complainant's failure to prosecute its Complaint or, in the alternative, the imposition of discovery sanctions, including (1) deeming as admitted PWSA's Requests for Admissions, and (2) barring 3213 Penn from offering any evidence contradicting any of the information sought in Respondent's discovery requests. 3213 Penn did not file a response to PWSA's Motion to Dismiss.

As more fully explained below, I will grant PWSA's Motion to Dismiss and dismiss, with prejudice, 3213 Penn's Complaint.

FINDINGS OF FACT

1. The Complainant in this proceeding is 3213 Penn, LLC.
2. The Respondent in this proceeding is the Pittsburgh Water and Sewer Authority.
3. 3213 Penn is a real estate developer which is developing a residential project on Penn Avenue in Pittsburgh, Pennsylvania. Amended Complaint, ¶ 2.

4. As a part of the project, 3213 Penn would need to connect to the water and sewer lines of PWSA. Amended Complaint, ¶ 2.

5. In its Complaint, 3213 Penn is challenging PWSA's retention of approximately \$345,000.00 in tap-in fees paid by the Complainant to PWSA under its tariff that was in effect in 2021, prior to revisions to PWSA's tariff that became effective in 2022. Amended Complaint, ¶¶ 23-29.

6. The Complainant is seeking a return of the difference between the amount it paid pursuant to the 2021 Tariff and the amount it would have been required to pay pursuant to the 2022 Tariff. Amended Complaint, ¶¶23-29.

7. By agreement of the Parties, the scheduling of an evidentiary hearing was postponed giving the Parties time to conduct discovery and to discuss potential settlement terms.

8. On January 3, 2025, PWSA served on 3213 Penn its First Set of Interrogatories, Requests for Documents and Requests for Admissions.

9. On January 22, 2025, 3213 Penn requested an extension of time until February 20, 2025, to provide its responses to the discovery requests. PSWA agreed to this request.

10. On February 20, 2025, 3213 Penn requested an additional two weeks to provide responses, or until March 6, 2025. PSWA agreed to this request.

11. Having not received any responses by the new March 6, 2025 deadline, counsel for PWSA sent an e-mail message to counsel for 3213 Penn on

March 10, 2025, asking for a status update on the discovery responses. 3213 Penn did not respond to this request.

12. On March 19, 2025, I convened a telephonic conference during which the Parties and I discussed the status of the proceeding and discovery issues. The Parties agreed that 3213 Penn owed and would provide to PWSA its responses to PWSA's discovery requests.

13. On August 28, 2025, PWSA filed a Motion to Deem Requests for Admissions Admitted, Compel Responses to Interrogatories and Requests for Production of Documents, and for Sanctions (Motion to Compel).

14. 3213 Penn did not file an answer or otherwise respond to PWSA's Motion to Compel.

15. On October 9, 2025, I issued an Order granting in part and denying in part PWSA's Motion to Compel. I denied PWSA's request that its requests for admissions all be deemed admitted. I granted the Motion to the extent it sought an Order directing that its discovery requests be provided. I directed 3213 Penn to provide full and complete responses to all of PWSA's discovery requests no later than October 17, 2025.

16. 3213 Penn did not provide any discovery responses by the deadline set forth in my Order, thereby constituting a violation of that Order.

17. On October 24, 2025, PWSA filed a Motion to Dismiss for Failure to Prosecute and/or for Sanctions (Motion to Dismiss). In its Motion to Dismiss, PWSA sought either dismissal of 3213 Penn's Complaint, with prejudice, due to Complainant's failure to prosecute its Complaint or, in the alternative, the imposition of discovery sanctions, including (1) deeming as admitted PWSA's Requests for Admissions, and (2)

barring 3213 Penn from offering any evidence contradicting any of the information sought in Respondent's discovery requests.

18. 3213 Penn did not file a response to PWSA's Motion to Dismiss.

DISCUSSION

As noted above, this proceeding was initiated by the filing of a formal Complaint by 3213 Penn against PWSA wherein 3213 Penn sought a refund of money it paid to PWSA to connect a proposed residential development in the city of Pittsburgh to PWSA's system. During the early stages of this proceeding, counsel for the Parties worked cooperatively to allow time for discovery and settlement negotiations. I held several informal, off the record conferences with the Parties to facilitate those efforts. As noted, PWSA voluntarily granted several requests by counsel to 3213 Penn for extensions of time to provide responses to discovery requests.

Following my final informal conference with the Parties on March 19, 2025; however, 3213 Penn inexplicably stopped participating in this proceeding. Complainant did not respond to e-mails from PWSA asking for updates on discovery responses, nor file answers to PWSA's Motion to Compel or its Motion to Dismiss. Finally, Complainant failed to comply with my Order directing it to provide responses to PWSA's discovery requests. 3213 Penn simply disappeared from any further participation in its own complaint proceeding.

The Commission's procedural regulations provide for the imposition of sanctions when a party fails or refuses to answer interrogatories. *See*, 52 Pa. Code §§ 5.371, 5.372. The listed sanctions include the entering of judgment against the disobedient party, and a "catch-all" provision allowing for an order which is just. 52 Pa. Code § 5.372(a)(3), (a)(4). In the instant proceeding, PWSA has moved for dismissal of

the case (Motion to Dismiss) as a sanction for 3213 Penn's failure to cooperate in the discovery process and for its failure to comply with my Order granting PWSA's Motion to Compel. PWSA's Motion to Dismiss will be granted.

Subject to certain limitations, Commission regulations provide for the propounding of written interrogatories to a party regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. 52 Pa. Code §§ 5.321(c), 5.341. Due process requires that parties be permitted to discover the basis for an opposing party's case so that parties can adequately prepare for litigation. *See, e.g., Gaudenzia, Inc. v. Zoning Bd. of Adjustment of City of Phila.*, 287 A.2d 698 (Pa. Cmwlth. 1972).

PWSA availed itself of Commission discovery procedures to obtain information related to 3213 Penn's claims against it, and it filed for sanctions when 3213 Penn failed to respond. Despite my Order directing 3213 Penn to respond by October 17, 2025, 3213 Penn failed to answer any of PWSA's discovery requests. By its refusal to participate in the discovery process, 3213 Penn is thwarting the ability of PWSA to adequately prepare for litigation. Additionally, 3213 Penn disobeyed my Order directing it to provide responses to PWSA's discovery requests. These actions will not be tolerated.

The Commission has, on numerous occasions, dismissed cases for failure to answer interrogatories in accordance with the Commission's regulations and as required by an Order of the presiding Administrative Law Judge. *See, e.g., Dizes v. Verizon Pennsylvania, Inc.*, Docket No. C-2008-2033638 (Final Order entered June 10, 2009); *Kapusnik v. Verizon Pa. Inc.*, Docket No. C-20031224 (Final Order entered Apr. 13, 2004); *Majkowski v. Columbia Gas of Pa., Inc.*, Docket No. F-01087321, (Final Order entered Mar. 28, 2003); *Brown v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-

00957014 (Final Order entered Apr. 23, 1996); *Merchant v. The Bell Telephone Co. of Pa.*, Docket No. C-00935253 (Final Order entered June 20, 1994).

The Commission has further held that an Order of an Administrative Law Judge must be followed and failure to comply with such an Order may serve as a basis for dismissing a proceeding without a hearing. *Application of STH Holdings, LLC*, Docket No. A-2016-2529691 (Final Order entered Aug. 18, 2016); *Treffinger v. PPL Electric Utilities Corp.*, Docket No. C-20027978 (Opinion and Order entered Mar. 3, 2023). The same result is appropriate in this case.

3213 Penn's refusal to answer discovery requests to which it did not object has unfairly prejudiced PWSA's ability to prepare for litigation. Further, 3213 Penn's disregard of an Order of an Administrative Law Judge compelling responses to discovery requests, if permitted to stand, would sanction a disregard of the Commission's litigation process as set forth in its regulations. This will not be permitted.

CONCLUSION

3213 Penn failed to provide responses to unopposed discovery requests. It also disregarded the directives of my Order Granting PWSA's Motion to Compel, dated October 9, 2025. Therefore, PWSA's Motion to Dismiss will be granted and 3213 Penn's formal Complaint will be dismissed, with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. §§ 102, 701, 1101, 1103.

2. Due process requires that parties be permitted to discover the basis for an opposing party's case so that they can adequately prepare for litigation. *See, e.g., Gaudenzia, Inc. v. Zoning Bd. of Adjustment of City of Phila.*, 287 A.2d 698 (Pa. Cmwlth. 1972).

3. The refusal of a party to answer reasonable and relevant discovery questions, as directed in an Administrative Law Judge's Order, is prejudicial to other parties' due process rights and is appropriately sanctioned. *See, e.g., Gaudenzia, Inc. v. Zoning Bd. of Adjustment of City of Phila.*, 287 A.2d 698 (Pa. Cmwlth. 1972); *Dizes v. Verizon Pennsylvania, Inc.*, Docket No. C-2008-2033638 (Final Order entered June 10, 2009).

4. Commission regulations at 52 Pa. Code §§ 5.371 and 5.372 list various sanctions for failure of the parties to respond to discovery, including the entering of judgment against the disobedient party. 52 Pa. Code §§ 5.371, 5.372(a)(3).

5. The Commission may dismiss a proceeding for failure to answer interrogatories in accordance with the Commission's regulations and as required by Order of the presiding Administrative Law Judge. *See, e.g., Dizes v. Verizon Pennsylvania, Inc.*, Docket No. C-2008-2033638 (Final Order entered June 10, 2009); *Kapusnik v. Verizon Pa. Inc.*, Docket No. C-20031224 (Final Order entered Apr. 13, 2004); *Majkowski v. Columbia Gas of Pa., Inc.*, Docket No. F-01087321, (Final Order entered Mar. 28, 2003); *Brown v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00957014 (Final Order entered Apr. 23, 1996); *Merchant v. The Bell Telephone Co. of Pa.*, Docket No. C-00935253 (Final Order entered June 20, 1994).

6. An Order of an Administrative Law Judge must be followed and failure to comply with an Order may serve as a basis for dismissing a proceeding without a hearing. *Application of STH Holdings, LLC*, Docket No. A-2016-2529691 (Final Order

entered Aug. 18, 2016); *Treffinger v. PPL Electric Utilities Corp.*, Docket No. C-20027978 (Opinion and Order entered Mar. 3, 2023).

7. Dismissal of a Complaint is warranted where the Complainant's refusal to answer interrogatories, as directed in an Order compelling a response, has prejudiced the opposing parties' ability to prepare for litigation. *Isenberger v. Schumann*, 34 Pa. D. & C. 2d 315 (C.P. Allegheny 1964), *aff'd*, 203 A.2d 136 (Pa. 1964).

8. Complainant's failure to comply with an Order concerning discovery constitutes grounds for dismissal of the Complaint. *Snyderville Community Development Corp. v. Verizon Pa., Inc.*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss filed by the Pittsburgh Water and Sewer Authority against 3213 Penn, LLC at Docket No. C-2023-3038775 is granted.

2. That the formal Complaint filed by 3213 Penn, LLC against the Pittsburgh Water and Sewer Authority at Docket No. C-2023-3038775 is dismissed, with prejudice, for failure of the Complainant to respond to discovery requests or to comply with an Order of the Administrative Law judge.

3. That the proceeding at Docket No. C-2023-3038775 be marked closed.

Date: May 13, 2026

/s/
Steven K. Haas
Administrative Law Judge