

Scott H. DeBroff, Esq.

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RHOADS & SINON LLP

December 10, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

VIA HAND DELIVERY

Re: SBG Management Services, Inc. v. Philadelphia Gas Works Docket Nos. C-2012-2308454, C-2012-2308462, C-2012-2308465, C-2012-2304183, C-2012-2304215, C-2012-2304324, C-2012-2304167 & C-2012-2304303

Dear Ms. Chiavetta:

Enclosed herewith for filing in the above captioned proceedings, please find the "Amended Complaints on Behalf of SBG Management Services, Inc."

Should you have any questions, please do not hesitate to contact me at (717) 237-6716.

Very truly yours,

RHOADS & SINON LLP

By: 

Scott H. DeBroff, Esq.

Alicia R. Duke, Esq.

Counsel for SBG Management Services, Inc.

Enclosure

cc: Certificate of Service

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**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc./ :
Fairmount Manor Realty Co., L.P. :
v. :
Philadelphia Gas Works :

Docket No. C-2012-2304215

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AMENDED FORMAL COMPLAINT OF SBG MANAGEMENT SERVICES, INC. AGAINST PHILADELPHIA GAS WORKS

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.91, 66 Pa. C.S. § 701 and 52 Pa. Code § 5.22, and by and through its attorneys, Scott H. DeBroff, Esq., and Alicia R. Duke, Esq., of Rhoads & Sinon LLP, SBG Management Services, Inc. (“SBG”) submits this Amended Formal Complaint against Philadelphia Gas Works (“PGW”) as follows:

SBG originally filed a Complaint against PGW on or about May 11, 2012. Since this initial filing, SBG has obtained new counsel. After consultation with Administrative Law Judge Vero and counsel for PGW, SBG was permitted leave to file this Amended Complaint.

In support of its Amended Complaint, Complainant avers as follows:

II. THE PARTIES

1. The initial Complaint listed both SBG Management Services, Inc., and Fairmount Manor Realty Co., L.P. (“Fairmount Manor”) as Complainants. Fairmount Manor is the owner of the apartment complex located at 700 - 08 Marshall Street, Philadelphia, PA, 19123; 711 – 719 N. 7th Street, Philadelphia, PA, 19123; 601 – 643 N. Marshall Street, Philadelphia, PA, 19123; and, 650 Fairmount Ave., Philadelphia, PA, 19123 (the “Complex”). Fairmount Manor,

as owner and landlord, leases the Complex's apartments to residential tenants. SBG acts as an agent for Fairmount Manor and manages the Complex, which is comprised of 110 multi-family, residential rental units. As the agent for Fairmount Manor, SBG is authorized to engage in certain activities and to assume and execute certain responsibilities for and at the Complex, including, but not limited to: 1) serving as the property manager; 2) receiving, reviewing, and paying all bills, charges, and expenses; and 3) managing the operations of and the affairs for the Complex. SBG's responsibilities as an agent for Fairmount Manor include, but are not limited to, receiving and reviewing PGW gas bills and submitting payment on Fairmount Manor's behalf on all accounts where Fairmount Manor and/or SBG is listed as the customer of record or the Complex is ultimately responsible for satisfaction or payment of the debt for such bills and charges. SBG's mailing address is P.O. Box 549, Abington, PA 19001. Please see the attached letter in Exhibit A, which gives Phil Pulley, the Director of Operations for SBG, the authority to commence legal actions against PGW for all accounting and billing disputes.

The Commission has previously allowed standing for a party who is not the named customer of record where evidence can be established that the complainant is an "authorized agent" for the customer(s) of record and therefore has standing in a "representational capacity" to assert the interests of the customers and to participate in a proceeding at the Commission level. When allowing standing in these cases the Commission has noted the judicial trend toward a less strict standard for representational standing, where it determined that a party asserting representational standing should not be denied such status solely because the party itself does not have an interest as a customer, competitor or consumer. Examples of such cases include *PA PUC, Office of Consumer Advocate, and Interstate Marketing, Inc. v. Pennsylvania Gas & Water Company* 1995 Pa. PUC LEXIS 29 (PA PUC 1995) affirmed by *Interstate Gas Mktg. v.*

Pennsylvania PUC, 679 A.2d 1349 (Pa. Commw. Ct. 1996); *Township of Findlay v. Duquesne Light Company and West Penn Power Company* 1996 Pa. PUC LEXIS 177 (PA PUC 1996) and *Pennsylvania Natural Gas Association v. T.W. Phillips Gas & Oil Co.* 1991 Pa. PUC Lexis 1995 (PA PUC 1995). In *Interstate Gas Marketing*, at page 7, the Pennsylvania Commonwealth Court held:

Like the PUC, we [Commonwealth Court] believe that IGM, as agent for its customers, had an interest in PG&W's proposal and, thus, has standing to file its formal complaint with the PUC.... Here, IGM alleges that the proposed ... rate will cause harm to certain PG&W customers represented by IGM. Thus IGM is a 'party' with a direct interest in the case. (See also *Interstate*, at pages 9-10).

In this case, the Commonwealth Ct. is addressing the agent's right to file a formal complaint and appeal.

Lastly, the relationship between SBG as an agent for the principal Fairmount Manor squarely fits into the definition and explanation of a principal, an agent and an agency relationship as set forth in the Restatement of Law, Second, Agency.¹

¹ Restat 2d of Agency, § 1 (1958)
§ 1 Agency; Principal; Agent

- (1) Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.
(2) The one for whom action is to be taken is the principal.
(3) The one who is to act is the agent.

At Comment on Subsection (2): (d) of the Restat 2d of Agency, § 1, the following is stated:

d. "Principal" is a word used to describe a person who has authorized another to act on his account and subject to his control. It includes, therefore, both a person who has directed another to act on his account in business dealings or to represent him in hearings or proceedings, but who has no control or right of control over the other's physical conduct, and also a person who employs another to act in his affairs, having such control or right to control over his conduct that the other is termed a servant, whether or not he renders merely manual service. The word "master" as defined in Section 2 is not used in contrast to the word "principal," but is included within it. Thus, the owner of a business is a principal not only with regard to brokers who, as to their physical acts, are independent of his supervision, but also with regard to salesmen who conduct business transactions under supervision as to such conduct and who therefore come within the definition of servant. Likewise, the owner of a house is the principal as well as the master of the janitors whom he employs and whose jobs are confined to the performance of manual acts on the premises under the owner's supervision. The word "principal," therefore, includes both persons who are masters and persons who are principals but not masters. (Emphasis added).

2. The Respondent is Philadelphia Gas Works, which provides gas service to customers such as Complainant who are located in and around the City of Philadelphia and which is regulated by the Pennsylvania Public Utility Commission with respect to such service.

III. BACKGROUND AND MATTERS COMPLAINED OF

3. SBG started contacting PGW about the accounts associated with the Complex listed above in or about 2004. Since then, SBG contacted and requested on numerous occasions that PGW review the bills associated with the accounts on these properties. On October 3, 2012, and November 16, 2012, SBG sent discovery requests to PGW. In November 2012, SBG has begun to receive some of the information necessary to determine the accuracy of the bills and the amounts still owed on the accounts where SBG and/or Fairmount Manor is the customer of record.

4. Attached in Exhibit B to this Complaint, is a spreadsheet outlining the accounts in question on which SBG has received information as of November 26, 2012. SBG is currently in conversations with counsel for PGW and anticipates receiving more information through discovery on other accounts associated with the Complex in the near future.²

5. Since discovery is ongoing, SBG reserves its right to update the attached Exhibit B with information on further disputed accounts as it receives such information from PGW.

6. The spreadsheet of accounts in Exhibit B has a legend outlining the specific issues for each particular account. The issues with the accounts listed in Exhibit B may include, but are not limited to, those listed below:

² SBG understands that the Commission cannot address its concerns in regard to municipal liens. SBG respectfully requests that the Commission take judicial notice that SBG filed actions in the Court of Common Pleas of Philadelphia County, which are currently pending, against PGW challenging whether said municipal liens were issued in error, as related to the above referenced properties for unpaid gas bills.

A) SBG disputes the accuracy of the amounts PGW claims to be outstanding because they appear to be based on: i) inaccurate actual meter reads; ii) inaccurate estimated meter reads; iii) wrongful and inaccurate transfer of liabilities from one account to another account; iv) failure to accurately and properly credit the accounts for prior payments and to reduce or to eliminate the allegedly incorrect resulting “outstanding” balances; and v) inaccurate and wrongful billing and collection practices, including, but not limited to, sending bills to and trying to collect money from the wrong party;

B) SBG also disputes the calculation and imposition of interest and penalties assessed by PGW on the accounts PGW claimed to be delinquent.

7. PGW failed to mitigate its damages, including, but not limited to, allowing large unpaid gas debts to accrue in lieu of gas termination, or failing to pursue other alternative and available remedies.

8. SBG contends that as a result of these issues and their further development over a substantial period of time, without resolution, the lines between the SBG customer accounts in Elrae Garden have been blurred, as some tenant specific accounts may contain cross-credits or debts that were included in SBG accounts. Without an ability to litigate these issues and require PGW to provide credible, accurate, and reliable information to resolve these issues and to clarify and explain its billing and accounting for these gas charges and payments, PGW may require and ultimately receive payment (whether from a tenant, landlord, or property) for which PGW has no actual legal or financial claim. SBG will never know its actual liability--what its accounts accurately reflect and what it should accurately pay for bills previously paid or for bills owed by unaffiliated or unknown parties. State law and the tariff certainly do not authorize or sanction this untenable result.

9. SBG contends that as a result of these issues and their further development over a substantial period of time, without resolution, the lines between the SBG customer accounts in Fairmont Manor have blended with SBG believing that some tenant specific accounts may contain cross-credits or debts that were included in SBG accounts. Without an ability to mitigate these issues and require PGW to resolve these issues and provide clarity, SBG will never know what its accounts should accurately reflect.

10. If PGW had responded initially to SBG's attempts to gather information about the accounts, these billing disputes could have been resolved in an appropriate, reasonable, and expeditious manner, which may have ultimately resulted in no alleged delinquent accounts or in claims of alleged delinquent accounts with substantially smaller balances.

IV. PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth herein, Complainant SBG Management Services, Inc., respectfully requests that the Pennsylvania Public Utility Commission sustain this Amended Complaint, and:

1. Require PGW to supply all the necessary information in order to determine the accuracy of any and all amounts it claims are owed on the disputed accounts where SBG and/or Fairmount Manor is the customer of record;

2. Require PGW to test the meters on the accounts in question in order to determine that Complainant is being accurately billed;

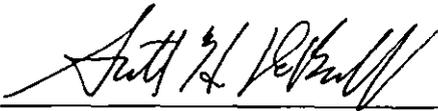
3. Require PGW to correct the accounts listed in this Amended Complaint that are determined to be inaccurate and refund the amount to SBG that is determined to be overpaid; and

4. Grant such other and further relief as the Commission determines to be in the public interest.

[SIGNATURE BLOCK FOLLOWS]

Respectfully submitted,

Dated: December 10, 2012

By: 

SCOTT H. DEBROFF, ESQUIRE

ALICIA R. DUKE, ESQUIRE

RHOADS & SINON LLP

ONE SOUTH MARKET SQUARE

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COUNSEL FOR SBG MANAGEMENT SERVICES, INC.

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EXHIBIT A

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SBG Management Services, Inc.

P.O. Box 549 ❖ Abington PA 19001

☎ Phone 215.938.6665

☎ Fax 215.938.7613

Tuesday, November 27, 2012

Scott DeBroff, Esquire
Rhoads & Sinon, LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146

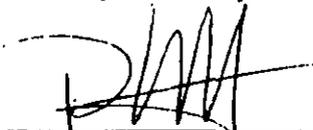
Dear Mr. DeBroff:

This letter is to inform you that each legal entity ("Property Owner") listed below has authorized Philip Pulley, Director of Operations of SBG Management Services, Inc. "SBG Management" to commence legal action against the Philadelphia Gas Works "PGW" for all accounting and billing disputes.

- Admiral Court Realty Co. L.P.
- Colonial Garden Realty Co. L.P.
- Dorsett Court Realty Co. L.P.
- Elrae Garden Realty Co. L.P.
- Fairmount Manor Realty Co. L.P.
- Fern Rock Realty Co. L.P.
- Oak Lane Court Realty Co. L.P.
- Marchwood Realty Co. L.P.
- Marshall Square Realty Co. L.P.
- Simon Garden Realty Co. L.P.

SBG Management has full agent authority under its Exclusive Management Agreement to represent the Property Owner at meetings and legal proceedings against PGW. Furthermore, each property owner designates Phil Pulley as its authorized representative to execute in the name of the Property Owner any and all documents to be executed by Property Owner and to enable SBG Management as agent to carry out its duties outlined in its Exclusive Management Agreement.

SBG Management Services, Inc.
A Pennsylvania Corporation



Philip Pulley, Director of Operations



Equal Housing Opportunity Equal Opportunity Employer

"SBG Management and the owner of the property in question do not discriminate on the basis of handicap status in the admission to, or treatment of employment in its federally assisted programs and activities."

Page 1 of 1

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EXHIBIT B

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SBG Accounting Dispute Legend

Code	Description
A	Excessive Billings- (disputed) examples include duplicate bills and high meter reads
B	Adjustments- reverse adjustments (unfavorable)
C	Transfers
D	Estimated Billings (disputed)
E	Missing payments
F	Late Penalty Charges (disputed)
G	Tenant Charges
H	Canceled Payments
I	Unexplained Transaction
J	Disputed Meter Read

Property	PGW Account #	Billing Period Reviewed ²	Dispute Codes ³	Sum of ESTIMATED DISPUTES ¹
Fairmount Manor Realty CO., L.P.	156030558	1/1/2004 - 10/25/2012	J	854.49
	215659749	1/1/2004 - 10/25/2012	G,J	1,422.48
	333870431	1/1/2004 - 10/25/2012	C,F,J	6,342.72
	355139832	1/1/2004 - 10/25/2012	J	4,894.90
	612167092	1/1/2004 - 10/25/2012	A,D,J	28,602.34
	664719425	1/1/2004 - 10/25/2012	A,E,I,J	70,761.82
	677180766	1/1/2004 - 10/25/2012	J	2,531.68
	736586029	1/1/2004 - 10/25/2012	J	4,811.02
	973122001	1/1/2004 - 10/25/2012	F,J	944.24
	025088422	1/1/2004 - 10/25/2012	E,J	24,940.67
	075710860	1/1/2004 - 10/25/2012	E,J,A	83,418.71
	089533358	1/1/2004 - 10/25/2012	J	43,871.96
		Total		273,397.03

Footnotes:

1. This is a preliminary estimate based on discovery provided by PGW to date. SBG is still waiting for additional discovery from PGW, as a result, the disputed amounts are subject to change.

2. In order to properly reconcile the accounts for forensic accounting purposes, SBG has requested through discovery statements of account from origination to ensure accuracy of the account balances in dispute. These accounting records also support SBG's assertion that PGW has a history of miscalculations and or errors in their accounting statements.

3. Please refer to the SBG Accounting Dispute Legend.

VERIFICATION

I, Philip Pulley, Director of Operations for SBG Management Services, Inc., hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



Philip Pulley
Director of Operations
SBG Management Services, Inc.

DATED: 12-10-12

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**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**SBG MANAGEMENT SERVICES, INC./
MARCHWOOD REALTY**

V.

PHILADELPHIA GAS WORKS

DOCKET NO. C-2012-2308454

**SBG MANAGEMENT SERVICES, INC./
OAK LANE REALTY CO., LP**

V.

PHILADELPHIA GAS WORKS

DOCKET NO. C-2012-2308462

**SBG MANAGEMENT SERVICES, INC./
FERNROCK REALTY**

V.

PHILADELPHIA GAS WORKS

DOCKET NO. C-2012-2308465

**SBG MANAGEMENT SERVICES, INC./
COLONIAL GARDEN REALTY, LP**

V.

PHILADELPHIA GAS WORKS

DOCKET NO. C-2012-2304183

**SBG MANAGEMENT SERVICES, INC./
FAIRMOUNT REALTY**

V.

PHILADELPHIA GAS WORKS

DOCKET NO. C-2012-2304215

**SBG MANAGEMENT SERVICES, INC./
SIMON GARDENS REALTY, LP**

V.

PHILADELPHIA GAS WORKS

DOCKET NO. C-2012-2304324

**SBG MANAGEMENT SERVICES, INC./
ELRAE GARDEN REALTY, LP**

V.

PHILADELPHIA GAS WORKS

DOCKET NO. C-2012-2304167

**SBG MANAGEMENT SERVICES, INC./
MARSHALL SQUARE REALTY, LP**

V.

PHILADELPHIA GAS WORKS

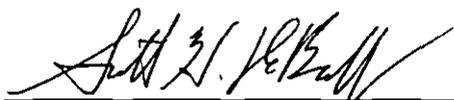
DOCKET NO. C-2012-2304303

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties, listed on the next page, in accordance with the requirements of §1.54 (relating to service by a party).

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Dated: **December 10, 2012**

By: 

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**COUNSEL FOR SBG MANAGEMENT SERVICES,
INC.**

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**Certificate of Service – Docket Nos. C-2012-2308454, C-2012-2308462, C-2012-2308465,
C-2012-2304183, C-2012-2304215, C-2012-2304324, C-2012-2304167 & C-2012-2304303**

<p>MR. PHIL PULLEY MS. FRANCINE THORNTON BOONE, ESQ. MS. KATHY TREADWELL SBG MANAGEMENT SERVICES, INC. P.O. BOX 549 ABINGTON, PA 19001</p>	<p>LAURETO FARINAS, ESQUIRE PHILADELPHIA GAS WORKS 4TH FLOOR 800 W. MONTGOMERY AVENUE PHILADELPHIA, PA 19122</p>
<p>HON. ERANDA VERO ADMINISTRATIVE LAW JUDGE PA PUBLIC UTILITY COMMISSION 801 MARKET STREET PHILADELPHIA, PA 19107</p>	

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