



PHILADELPHIA GAS WORKS

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September 29, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: SBG Management Services, Inc v. PGW, Docket No. C – 2012 – 2304183, C – 2012 – 2304215, C – 2012 – 2304324, C – 2012 – 2304167, C – 2012 – 2304303, C – 2012 – 2308454, C – 2012 – 2308462, C – 2012 – 2308465, and C – 2012 – 2334253

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.371, the Philadelphia Gas Works ("PGW") hereby files its answer to the Complainants' Motion to Dismiss PGW's Objections, Motion for a Determination of Sufficiency of Answer and Motion to Compel Response to Requests to Complainants' Requests for Admissions in the above captioned matters by letter date September 22, 2014.

If additional information is required, please do not hesitate to contact the undersigned. Thank you for your assistance in the matter.

Sincerely,


Danielle Leva

Enclosure

cc: Francine Thornton Boone, Esq. (FedEx and Email)
Donna S. Ross, Esq. (FedEx and Email)
Mr. Philip Pulley (Email)
Ms. Kathy Treadwell (Email)
Administrative Law Judge Eranda Vero (Email)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc. / :
Colonial Garden Realty, LP, :
Complainant :
v. : **Docket No. C – 2012 – 2304183**
: :
Philadelphia Gas Works, :
Respondent :

SBG Management Services, Inc. / :
Fairmount Realty, :
Complainant :
v. : **Docket No. C – 2012 – 2304215**
: :
Philadelphia Gas Works, :
Respondent :

SBG Management Services, Inc. / :
Simon Gardens Realty, LP, :
Complainant :
v. : **Docket No. C – 2012 – 2304324**
: :
Philadelphia Gas Works, :
Respondent :

SBG Management Services, Inc. / :
EIRae Garden Realty, LP, :
Complainant :
v. : **Docket No. C – 2012 – 2304167**
: :
Philadelphia Gas Works, :
Respondent :

SBG Management Services, Inc. / :
Marshall Square Realty, LP, :
Complainant :
v. : **Docket No. C – 2012 – 2304303**
: :
Philadelphia Gas Works, :
Respondent :

SBG Management Services, Inc. / Marchwood Realty,	:	
Complainant	:	
v.	:	Docket No. C – 2012 – 2308454
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Philadelphia Gas Works,	:	
Respondent	:	
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SBG Management Services, Inc. / Oak Lane Realty Co., LP,	:	
Complainant	:	
v.	:	Docket No. C – 2012 – 2308462
	:	
Philadelphia Gas Works,	:	
Respondent	:	
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SBG Management Services, Inc. / Fern Rock Realty,	:	
Complainant	:	
v.	:	Docket No. C – 2012 – 2308465
	:	
Philadelphia Gas Works,	:	
Respondent	:	
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SBG Management Services, Inc. / Colonial Garden Realty, LP,	:	
Complainant	:	
v.	:	Docket No. C – 2012 – 2334253
	:	
Philadelphia Gas Works,	:	
Respondent	:	

**Philadelphia Gas Works' Response to the
Complainants' Motion to Dismiss PGW's Objections,
Motion for a Determination of Sufficiency of Answer and
Motion to Compel Response to Complainants' Requests for Admissions**

Pursuant to 52 Pa. Code §5.350(d), the Philadelphia Gas Works ("PGW") hereby answers the Complainants' Motion to Dismiss PGW's Objections, Motion for a Determination of Sufficiency of Answer and Motion to Compel Response to Complainants' Requests for Admissions in the above captioned matters by letter dated September 22, 2014 (the "Motions").

I. Introduction

PGW has objected generally to the inclusion of the Complainants' tenants accounts as included in the term "Disputed Transactions" as the Complainants' tenants accounts are not at issue in this proceeding and have no relevance within the meaning of 52 Pa. Code §5.350(a) within the scope of §§ 5.321-5.324 (relating to general discovery) and 52 Pa. Code §5.321(c) Scope. Additionally, to its Request for Admissions the Complainants have attached an exhibit "B" which is a listing of municipal claims, each with a Common Pleas Court Docket Number for the municipal lien filed. PGW provided this information as a courtesy to the Complainants in order to complete information sought on the municipal liens. The accounts of Exhibit "B," however, are not part of these proceedings.

II. PGW's Response: PGW's Objections are proper given the lack of information provided on the face of the request for admission.

1. **Request for Admission No. 38** PGW's original response to Request for Admission No. 38 was an Objection on the grounds of relevance. While the issue of Surcharges for uncollectable expenses or 66 Pa. Code §1408 have not been discussed in pleadings or in the hearings conducted previously in connection with these matters, PGW saw no relevance of 66 Pa. Code §1408 to the issues. Having reviewed the statements contained in the Complainants' Motions, PGW understands the Complainants' purpose and changes its response to the following:

No. 38 Admitted. PGW admits that in Request for Admission No. 38, the Complainants loosely paraphrase the prohibition against reconciliation clauses or automatic surcharges for uncollectible expenses. By way of further answer, none of PGW's rates and charges as approved by the Commission or as applied by PGW are in violation of 66 Pa. Code §1408.

2. **Request for Admission No. 50** PGW's original response to Request for Admission No. 50 was an Objection on the grounds of relevance as the only application of "interest-type" charges at issue in these proceedings are late payment charges. First, Request for Admission No. 50 as stated in the Complainants' Motions on September 22, 2014 is not the same as the original Request for Admission No. 50 as provided under cover letter dated August 25, 2014.

Original No. 50 (August 25, 2014)

Admit that 42 Pa. Code Section 8101 (Post-judgment Interest) provides that charges on overdue balances or portions of the bill, subject to post-judgment liens are limited to the accrual of no more than 6% in interest per annum.

Altered No. 50 (September 22, 2014 in the Motions)

Admit that 42 Pa.C.S §8101 supersedes 52 Pa. Code §56.22 limits post judgment interest to 6% per year and supersedes the regulation that provides for assessing 18% interest per year on amounts owed to a public utility.

The drafting error notwithstanding, PGW acknowledges that the issue of the applicability of PGW's Tariff authorized Late Payment Charges will be among those issues that the parties will briefed in these matters. PGW's objection to the Complainants' original Request No. 50 on relevance grounds is related to the question of jurisdiction. The Complainants assertion that 42 Pa. C.S. §8101 is applicable in these matters requires the Commission to interpret and rule on whether 42 Pa. C.S. §8101 applies to unpaid bills for gas service after liens have been filed on properties. The Complainants ask the Commission to interpret and rule on statutes over which the Commission has no authority.

As the Commission has no jurisdiction over matters pursuant to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207 53 P.S. §7101, et seq. (Municipal Lien Act), the Commission has no jurisdiction to approve or disapprove the applicability of a post judgment interest rate pursuant to 42 Pa. C.S. §8101. The Commission would exceed its authority in interpreting such legislation. Subject matter jurisdiction (which is related solely to the competency of the court or administrative to determine controversies of the general class of cases) is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pennsylvania State Police*, 152 Pa.Cmwlth. 409, 619 A.2d 390 (1992), app. denied, 536 Pa. 633, 637 A.2d 393 (1993) (See also: *Riedel v. The Human Relations Commission of the City of Reading*, 559 Pa. 33, at 39, 739 A.2d 121, at 124 (1999) The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburg v. Pa. Public Utility Commission*, 157 Pa.Super. 595, 43 A.2d 348 (1945). Jurisdiction may not be conferred by the parties where none exists.

Roberts v. Martorano, 427 Pa. 581, 235 A.2d 602 (1967) For this reason PGW objects to the Complainants' original Request No. 50 as it is not relevant to these matters.

As to the altered version of the Complainants' Request for Admission No. 50, PGW denies that 42 Pa.C.S. §8101 supersedes 52 Pa. Code §56.22 and reasserts its objection to the inclusion of 42 Pa.C.S. §8101 on jurisdictional grounds for the reasons stated above. By way of further answer, as has been made known to the Complainants in these matters, there are no 42 Pa.C.S. §8101 post-judgment interest charges on PGW any municipal liens. PGW has provided extensive information on the calculation of Late Payment Charges on all SBG and related accounts that are at issue in these proceedings. PGW's objection to the Complainants Request for Admission No. 50 should be sustained.

3. Request for Admission No. 54 PGW has objected to the Complainants Request for Admission No. 54 on the grounds of relevance. PGW acknowledges that in Request for Admission No. 54, the Complainants loosely paraphrase the statute setting post-judgment interest. PGW further acknowledges that the issue of the applicability of PGW's Tariff authorized Late Payment Charges will be among those issues that the parties will briefed in these matters. PGW's objection to the Complainants Request No. 54 on relevance grounds is related to the question of jurisdiction.

The Complainants' assertion that 42 Pa. C.S. §8101 is applicable in these matters requires the Commission to interpret and rule on whether 42 Pa. C.S. §8101 applies to unpaid bills for gas service after liens have been filed on properties. The Complainants ask the Commission to interpret and rule on statutes over which the Commission has no authority. As the Commission has no jurisdiction over matters pursuant to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207 53 P.S. §7101, et seq. (Municipal Lien Act), the Commission has no jurisdiction to approve or disapprove the applicability of a post-judgment interest rate pursuant to 42 Pa. C.S. §8101 to debt that is the subject of a municipal lien. The Commission would exceed its authority in interpreting such legislation as stated above.

The application of Commission approved, Tariff authorized Late Payment Charges is the only question of "interest" charges properly before the Commission in

these matters. Moreover, PGW has made known to the Complainants in these matters, that there are no 42 Pa.C.S. §8101 post-judgment interest charges on any PGW municipal liens. PGW has provided extensive records on the calculation of Late Payment Charges on all SBG and related accounts that are at issue in these proceedings.

For these reasons PGW objects to the Complainants' Request No. 54 as it is not relevant to these matters. PGW's objection to the Complainants Request for Admission No. 54 should be sustained.

4. **Request for Admission Nos. 67 through 70** PGW's original response to Request for Admission No. 67 was an Objection on the grounds of relevance as the Tenant Accounts as defined by the Complainants are not part of these proceedings. First, Request for Admission No. 67 as stated in the Complainants' Motions on September 22, 2014 is not the same as the original Request for Admission No. 67 as provided under cover letter dated August 25, 2014.

Original No. 67 (August 25, 2014)

Admit that 52 Pa.Code §56.266 since 2001, for each Tenant Account for residential service at the Subject Property, that PGW obtained an actual meter reading once service was discontinued at that address location.

Altered No. 67 (September 22, 2014 in the Motions (actually No. 68))

Admit that 52 Pa.Code §56.266 since 2001, for each Tenant Account for residential service at the named property address or Subject Property (Subject Properties) which are subject of these Complaints ("Tenant Account(s)"), that PGW obtained an actual meter reading once service was discontinued at that address location and billed the tenant for said Tenant Account, as the proper and legally responsible residential customer for prior service at the location where service was discontinued.

The numbering notwithstanding, PGW's objections to the Complainants' original Request Nos. 67 and 68 and its objections to Nos. 69 and 70 are on relevance grounds. The tenant accounts as defined by the Complainants are not part of these proceedings. In the Motions document, the Complainants state that the relevance of these requests is founded in the need to test whether debt that should have been charged to the Complainants' tenants was transferred to the Complainants. A review of the discovery responses submitted thus far, can address the Complainants' concern.

In the discovery responses submitted, all of the SBG and related accounts were that originally placed in the name of SBG (or the related entity). PGW has transferred no debt originating in tenants' accounts into the SBG or related entity accounts. (See PGW's Responses to Discovery Set II, Ques. 25 and Set III Quest 25) The only transfers that occurred involved some tenants at the Fairmount property. In that scenario, the transfer was out of the name of SBG (or related entity) and into a tenant's name. This occurred for apartment units where the tenants for those units failed to apply for gas service. As the tenants came forward to apply for gas service, the entire balance of that account (created for that purpose) was transferred to an account for that tenant. This information has been provided in discovery. (See Exhibit A-3).

Moreover, the Complainants have identified all of the disputed transactions in its "A-1" through "A-8" exhibits, used as the basis for identification of disputed transactions. The Complainants have listed all transactions that are "unexplained transfers." In its discovery responses, PGW has attempted to explain these transfers. (See Set II, No. 20) PGW has transferred no tenant debt into the Complainants' accounts that are the subject of these proceedings.

When this group of Requests for Admissions (Nos. 67 through 70) is read in conjunction with Request for Admission No. 91, the inclusion of the exhibit "B" to the Request for Admissions, as well as the Complainants' discovery Set IV, (objections pending) it is clear that the Complainants now seek to expand the scope of the proceeding to include a review of tenant account activity in order to challenge the municipal liens filed for those debts. These accounts are not part of these proceedings. Therefore, PGW's objections to Requests for Admissions 67, 68, 69 and 70 should be sustained.

5. **Request for Admission Nos. 68 through 70** See PGW's response in Paragraph 4, above.

6. **Request for Admission No. 91** PGW objects to Request for Admission No. 91 is on the grounds of relevance. On the accounts that are the subject of these proceedings, the application of LIHEAP grants would not have occurred as the accounts are commercial accounts and are not qualified to receive LIHEAP grants. The only accounts that might be entitled to receive LIHEAP grants are the Complainants' tenants'

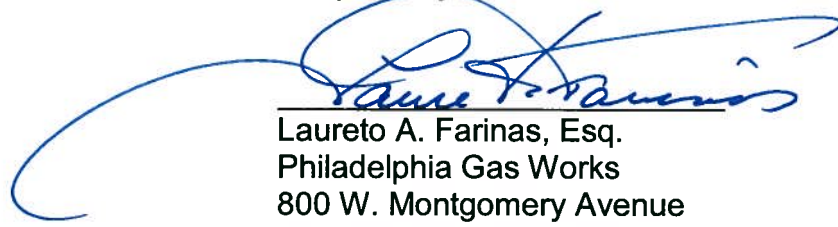
accounts, the inclusion of which PGW objects. Those accounts are not part of these proceedings. As stated in Paragraph 4 above, PGW has provided extensive discovery on the SBG and related accounts. Even though the Complainants now state that they need to see if tenant debt has been transferred into the SBG accounts, the Complainants now seem to expand the scope of the proceeding to include a review of tenant account activity in order to challenge the municipal liens filed for those debts. These accounts are not part of these proceedings.

III. Conclusion

PGW has objected to Requests for Admissions based upon their relevance to the matter before this Commission. The Complainants' tenants' accounts are not at issue in this proceeding and have no relevance within the meaning of 52 Pa. Code §5.350(a) within the scope of §§ 5.321-5.324 (relating to general discovery) and 52 Pa. Code §5.321(c) Scope. Therefore, PGW's objections to Requests for Admissions should be sustained.

September 29, 2014

Respectfully submitted,



Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT, UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §§1.54 and 5.342(c) (RELATING TO SERVICE BY A PARTICIPANT).

Service List

For Complainants:

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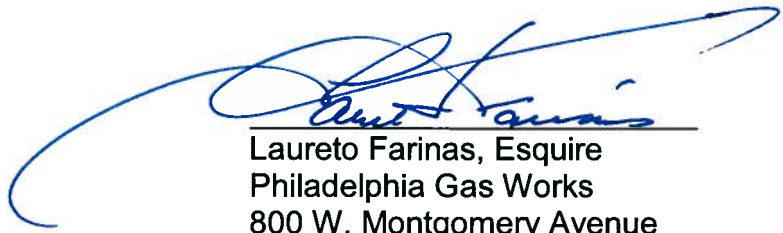
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September 29, 2014



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