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October 19, 2015

VIA ELECTRONIC FILING

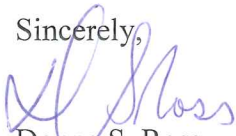
The Honorable Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd FL
400 North Street
Harrisburg, PA 17105-3265

Re: Filing of Complainants Reply To Exceptions; In the Matters of SBG Management Services, Inc/Colonial Garden Realty Co., L.P. v. PGW: Docket No. C-2012-2304183; SBG Management Services, Inc/Simon Garden Realty Co., L.P. v. PGW: Docket No. C-2012-2304324

Dear Secretary Chiavetta:

Kindly, accept for filing with the Commission, Complainants' Reply To PGW's Exceptions in the above-referenced consolidated matters. I certify that copies have been served upon Respondent and the presiding officer, ALJ Eranda Vero in accordance with the service requirements of the Commission. Please contact me if you have any questions or concerns at 215-938-6665 or on my mobile at 484-888-9578.

Sincerely,



Donna S. Ross
Counsel for Complainants

Encs.

Cc: Honorable, Eranda Vero, ALJ

Mr. Laureto Farinas, Esq. for Respondent

Mr. Carl Schultz, Esq. and Mr. Daniel Clearfield, Esq. – Special Counsel



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."

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc./
Colonial Garden Realty Co., L.P. : Docket No. C-2012-2304183

v.

Philadelphia Gas Works

SBG Management Services, Inc./
Simon Garden Realty Co., L.P. : Docket No. C-2012-2304324

v.

Philadelphia Gas Works

**COMPLAINANTS' REPLY TO THE EXCEPTIONS OF
PHILADELPHIA GAS WORKS**

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***Pursuant to PGW's Exceptions, for reference, "ID" refers to the "Initial Decision"; Findings of Fact are referenced as "FF at ¶ ___"; "COL ¶ ___" refers to Conclusions of Law; and "OD at ¶" refers to "Ordering Paragraph".

I. INTRODUCTION

A. The Exceptions Should Be Dismissed Because The Exceptions Were Not Filed By An Attorney of Record In The Proceedings, Who Has Yet To File An Entry of Appearance With The Commission And Serve Complainants With Said Entry of Appearance Which Is A Violation Of The Commission's Procedural Rules at 52 Pa.Code §§ 1.4(d), 1.15, 1.22, 1.23 and 1.24(b)(2)(A) and 5.533(c).

Complainants, SBG Management Services, Inc./Colonial Garden Realty Co., L.P and SBG Management Services, Inc./Simon Garden Realty Co., L.P., collectively referred to herein as ("SBG"), hereby submits its reply to the Exceptions filed by Respondent, Philadelphia Gas Works, referred herein as "PGW". On October 7, 2015, PGW submitted for filing to the Commission Exceptions to the Initial Decision and Order entered on September 17, 2015 by Administrative Law Judge ("ALJ") Eranda Vero, who found that PGW violated various sections of the Public Utility Code and the Commission's regulations, ordered PGW to cease and desist its violative accounting and billing practices of re-sequencing/reordering payments applied to partial payments which has the effect of acerbating interest bearing account balances in favor of increasing collection of non-interest bearing sums in the form of late fees, continually charging 18%per month interest to account balances which included amounts that had been filed as judgment liens against Complainants' subject properties and ordered civil penalties because PGW's long-standing practices were conducted without repentance and with willful disregard of the law.

Complainants contend that PGW's Exceptions should be dismissed and stricken as being deficient (52 Pa.Code § 1.4(d) and untimely (52 Pa. Code § 1.15) because, the Exceptions were signed and filed by Daniel Clearfield, Esq., and/or Carl R. Schultz, Esq., of Eckert Seamans Cherin & Mellot, LLC, attorneys who have not entered appearances in these proceedings pursuant to the Commission's regulations, per (52 Pa.Code § 1.22). To date, neither, Mr.

Clearfield, nor Mr. Schultz has failed file an entry of appearance with the Commission and serve Complainants' notice of their appearance per 52 Pa.Code § 1.24(b)(2)(A), and because neither has filed a timely entry of appearance **prior to or in concert with filing the Exceptions**, PGW failed to follow proper Commission procedures to submit any filing for review and therefore, the filing is faulty and untimely and counsel should be precluded from participating in these matters per 52 Pa.Code § 1.23. While the submission has other PGW counsel listed on the filing, the only attorney of record for PGW is Mr. Laureto Farinas, who is not the signatory on these Exceptions filed with the Commission. Moreover, pursuant to 52 Pa.Code §5.533(c) a separate brief in support of Exceptions is not allowed under the Commission's rules, thus the filing cannot be considered a 'friendly' amicus filing and should not be accepted. PGW should not have the benefit of submitting timely Exceptions, since their *only counsel of record failed to file timely* Exceptions by its due date, October 7, 2015.

Complainants submit that PGW's actions disregarding the Commission's rules and regulations on something as simple as the filing an entry of appearance by its outside counsel in order to meet its Exceptions deadline is par for the course for the company, who vehemently defends its entitlement to exercise "superpowers" and governmental authority by wantonly inflicting the protections afforded under the Municipal Claims and Tax Lien Law asserting that enforcement affords concurrent collection action with the Tariff as its means to reinforce its dubious billing and collections practices which allows PGW to circumvent the Commission's rules and regulations and flagrantly disregard the Public Utility Code.

PGW's desperation to maintain its violative practices and customs is evident by the manner in which their Exceptions launched a vicious attack and diatribe as to the legal acumen of the Administrative Law Judge, Eranda Vero. As an officer of the court, I was personally appalled and

offended, because the language was nothing more than a contemptuous assault against the presiding officer for ruling against them and highlighted PGW's inability to present a cogent, well-reasoned legal argument contesting the merits of the ALJ's decision. As a Commission, I would ask that the Commission not only dismiss the Exceptions for PGW's breach of the procedural rules for failing to file a timely entry of appearance with its appeal, but also consider sanctions for the contemptuous tenor of these Exceptions submitted before the tribunal under 52 Pa.Code §1.26 and §1.27.

Insofar as the Commission will not consider Complainants' argument and theory for dismissing these Exceptions based upon procedural grounds, the following arguments shall address SBG's responses to the Exceptions.

1. Point of Clarification/Exception To The Record

As a point of clarification or exception to the record, Complainants request that the record be corrected to reflect that Complainants' counsel, Ms. Francine Thornton Boone, Esquire represented them and entered her appearance in the consolidated matters from August 13, 2013 until she withdrew her appearance on October 14, 2014, not October 14, 2013, as reported in the initial decision. Ms. Thornton Boone was an integral part of the Complainants' litigation team and her efforts should be acknowledged.

B. SBG's Reply to Exception No. 1: The ALJ's Initial Decision Is Correct, Based Upon The Legal and Statutory Authority Bestowed Upon The Commission Under The Public Utility Code And Is Reasoned According to Its Rules and Regulations.

1. SBG's Reply: The Exception Misinterprets the ALJ's Initial Decision Which Does Not Exceed The Commission's Jurisdiction and Is Not An Interpretation of The Municipal Claims and Tax Lien Law (MCTLL), 53 P.S. §§ 7101, et. seq., and 42 Pa.C.S. § 8101 (ID at 54-64); COL at ¶ 1, 14-16; Ordering 5-6.

PGW's first exception states the initial decision exceeds the Commission's jurisdiction by interpreting the MCTLL and Statutory Interest Statute at 42 Pa.C.S. § 8101. This conclusion is not only a misreading and a misstatement of the ALJ's decision, conclusions of law and order, it colors the issue before the Commission as being an attack on the MCTLL, rather than allowing for a proper jurisdictional question and determination on PGW's billing practices and the deleterious cumulative effect that their systemic abusive actions have had on Complainants' and others', similarly situated, gas accounts. Specifically, the ALJ's conclusion of law states at "14) The Commission **does not** have jurisdiction over the placement of municipal liens; 15) The Commission **does not** have jurisdiction to decide the rate of interest on a municipal lien; and 16) While the Commission lacks subject matter jurisdiction over the placement of municipal liens, **it retains jurisdiction over the utility's service and billing practices reflected in the outstanding balance on which the municipal lien was filed.** (emphasis added). *See Dennis J. Vicario v. Philadelphia Gas Works*, C-2010-2213955 (Opinion and Order entered November 16, 2011). Moreover, Complainants are not challenging the validity of PGW's right to impose a lien under the MCTLL. Complainants are challenging PGW's billing practices that lead to the account balance that is subject to being liened, which is a valid distinction and an issue that falls squarely before the authority of the Commission. The lien is predicated on the billings and balances amassed as a result of the accounting methodologies for payments received, applied and interest charges assessed on gas debt. PGW cannot assert that the liens imposed on the subject property appear in a vacuum. PGW spends the first nine pages of its Exceptions giving the Commission a tutorial on the jurisdictional proposition of the MCTLL and the definition of a lien. The learned Commission is well versed in the definition of a municipal lien and where its jurisdiction lies as it pertains to the validity of a municipal lien. PGW insults the intelligence of

the Commission and counsel by putting forth such a self-serving diatribe that does nothing to refute the Complainants' legal arguments or Judge Vero's analysis based upon the law, the Commission's regulations and the duties dictated by the Public Utility Code. PGW cannot refute the legal arguments, cannot refute the evidence presented and cannot show why they have the authority to reorder/re-sequence customer payments to maximize collections of late payment/finance charges. PGW cannot prove the legal authority to continue to charge 18% interest in late fees and include in the running account balances sums determined to be overdue which have been filed as a judgment lien and docketed with the prothonotary and court.

In its introduction in these Exceptions, PGW strenuously argues the merits of having the use of the MCTLL as a collection tool in its arsenal, to which no one takes exception in theory. However, where they fail is by continuing to validate their right to assess liens without addressing the underlying systemic abusive and violative billing practices of re-sequencing or reordering payments to maximize accumulated interest charges which is one of the issues before the Commission. The other issue is whether PGW's billing practices leading to the balances liened are just and reasonable according to the Tariff, the Commission's regulations and comport to the requirements of the Public Utility Code. The Commission's regulations contemplate public utilities may impose late payment charges and may have to account for the receivables of partial payments and application of late payments thereon which are codified in its regulations under 52 Pa.Code §56.22, 56.23, and 56.24, the tariff and the Public Utility Code. The regulations are clear that no "additional" penalties shall be assessed on the balance of overdue portions of public utility bills in excess 18% simple interest per annum pursuant to **52 Pa.Code § 56.22. Accrual of late payment charges.** (emphasis added):

- (a) Every public utility subject to this chapter is prohibited from levying or assessing a late charge or penalty on any overdue public utility bill, as defined in § 56.21

(relating to payment), in an amount which exceeds 1.5% interest per month on the overdue balance of the bill. These charges are to be calculated on the overdue portions of the bill only. The interest rate, when annualized, may not exceed 18% simple interest per annum.

The regulations contemplate the imperfection of ratepayers to timely meet their payment obligations and allow for the public utility to be compensated for delays in receiving payment. However, a public utility is strictly prohibited from penalizing the ratepayer by *assessing a penalty on the balance of penalty not fully paid* because the public utility reorders payment posts in a manner to maximize remaining gas service debts in order to reassess late payment fees on accrued balances. Additional violations are inflicted upon property owner ratepayers when PGW will in essence “confess judgment” on the property by causing the City to impose a lien judgment and continue to assess and include in the overall unpaid account balance a penalty interest charge of 18% (*compounded*), rather than separate the amount adjudicated as a lien and charging a post-judgment rate of 6%, like any other public utility in the state.

PGW obfuscates and avoided these issues completely throughout these proceedings, and has not presented any competent evidence, law or legal analysis to show why they are entitled to maintain these practices other than to say ‘because we said so and no one said it was wrong’ and the Commission has no jurisdiction to tell us what to do with liens on accounts. PGW’s response is not grounded in sound legal reasoning or law. After three years of litigation, ten days of hearing testimony, additional written direct testimony and reviewing all the evidence, briefs and legal arguments presented in these consolidated proceedings, ALJ Vero concluded PGW’s system is wrong and their billing practices and customer service practices violate the Public Utility Code. PGW had more than enough time to put forth a defense and to counter the testimony and evidence presented, but they failed to articulate a defense or valid counter proposition for maintaining the practices for the ALJ to consider upon submission of its main and reply briefs.

PGW's exceptions fail to argue any bonafide legal error in the ALJ's decision or refute any of the Complainants' legal analysis, other than to state that liens collection under MCTLL is not within the jurisdiction of the PUC. Not to be flip, but both the Complainants and Judge Vero get that, and interpretation of statutory construct is not the issue before the Commission. Whether its ignorance or arrogance, PGW refuses to admit, understand, acknowledge or address the real issues to be decided which concern PUC regulated matters involving just and reasonable tariff rates, billing practices, and customer service mandates as construed under the Public Utility Code and the governing regulations. PGW's billing practices and how PGW accounts for and applies payments to interest bearing and non-interest bearing charges, especially postings to partial payments violates the Public Utility Code. PGW's practice of continuing to include and pile onto balances that have been liened, which are docketed with the prothonotary inclusive of 18% interest for late payment charges is a clear violation of the Commission's regulations codified at 52 Pa.Code §56.22, the Public Utility Code and the law as determined by the superior court in Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002).

Respondent does not provide any credible legal authority, legal analysis or credible testimony or evidence to dispute Complainants' claims that PGW's imposition of 18% compounded interest is inapplicable to amounts docketed as lien judgments and insists upon perpetuating a continuing pattern, practice and process of reordering Complainants' payments such that PGW's imposition and collection of late payment fees and finance charges results in a compounded annual interest rate of 19.562% in excess of the 18% annual simple rate authorized by the Tariff, the Commission's regulations and violates various provisions of the Pennsylvania Public Utility Code 66 Pa.Code § 1303 et seq. and State Law.

Regarding liens and charging post-judgment interest to Complainants account, Respondent's provide no credible legal authority, analysis or justification for ignoring the Commission's regulations under 52 Pa.Code §56.22, statutory law (42 Pa.C.S.§ 8101 or even 53 Pa.C.S. §7143 (10% maximum interest for liens)) and caselaw, Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002). PGW, on *their own authority*, using the Municipal Claims Act as their shield, continues to charge and collect prejudgment interest at the compounded rate of 19.562%. Such action constitutes a penalty, which is a violation of sections of the Public Utility Code and tariff at 66 Pa.C.S. §1303 (regarding just and reasonable rates) and §1501 (relating to good service), subject to order of refund under §1312(a) and §3301 (relating to imposition of civil penalty).

Under 66 Pa.C.S. §315, the burden now shifts to PGW to justify their practice and prove that it is just and reasonable and does not violate the Tariff, the Commission's regulations and Pennsylvania State Law. This authority is further reiterated by the statutory language found in 66 Pa.C.S.§315(d), whereby PGW has the burden to prove to the Commission that PGW's underlying accounting practices, methods and payment reordering processes comport with the Commission's billing and collection regulations, comply with the authorized Tariff, and produce just, reasonable and the most advantageous rates for the consumer in accordance with provisions proscribed at 66 Pa.C.S.§1303 et seq., the Commissions regulations and Pennsylvania State Law.

Pursuant to 66 Pa.C.S. §315. Burden of proof.

- (a) **Reasonableness of rates.**--In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

- (b) **Compliance with commission determinations and orders.**--In any case involving any alleged violation by a public utility, . . . The burden of proof shall be upon the public utility... to show that the determination or order of the commission has been complied with.
- (c) **Adequacy of services and facilities.**--In any proceeding upon the motion of the commission, involving the service or facilities of any public utility, the burden of proof to show that the service and facilities involved are adequate, efficient, safe, and reasonable shall be upon the public utility.
- (d) **Justification of accounting entries.**--**The burden of proof to justify every accounting entry questioned by the commission shall be upon the public utility making, authorizing, or requiring such entry, and the commission may suspend any charge or credit pending submission of such proof by such public utility. (*emphasis added*).**

The Pennsylvania legislature has granted the Commission the express authority to regulate municipally owned public utilities, such as PGW, pursuant to 66 Pa.C.S. §2212 . “City natural gas distribution operations.(a) **Application.**--The provisions of this section shall apply only to city natural gas distribution operations. (b) **Commission jurisdiction.**--Subject to the provisions of this section, commencing July 1, 2000, public utility service being furnished or rendered by a city natural gas distribution operation within its municipal limits shall be subject to regulation and control by the commission with the same force as if the service were rendered by a public utility.” PGW raises no defenses and failed to meet its burden under §315, thus, under 66 Pa.C.S. §508, **Power of commission to vary, reform and revise contracts.**

The commission shall have power and authority to vary, reform, or revise, upon a fair, reasonable, and equitable basis, any obligations, terms, or conditions of any contract heretofore or hereafter entered into between any public utility and any person, corporation, or municipal corporation, which embrace or concern a public right, benefit, privilege, duty, or franchise, or the grant thereof, or are otherwise affected or concerned with the public interest and the general well-being of this Commonwealth. Whenever the commission shall determine, after reasonable notice and hearing, upon its own motion or upon complaint, that any such obligations, terms, or conditions are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth, the commission shall determine and prescribe, by findings and order, the just, reasonable, and equitable obligations, terms, and conditions of such contract. Such contract, as modified by the order of the commission, shall become effective 30 days after service of such order upon the parties to such contract. The

Commission has ‘broad and flexible authority to find that a contract’s terms are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest.’

(*Quoting PPL Electric Utilities Corporation v. Pennsylvania Public Utility Commission*, 912 A.2d 386; 2006 Pa.Comm.w., LEXIS 665); *See also*, *Kentucky West Virginia Gas v. Pennsylvania Public Utility Commission*, 837 F.2d 600; 1988 U.S. App. LEXIS 463; 92 P.U.R.4th 542; and *LP Water and Sewer Co. v. Pennsylvania Public Utility Commission*, 722 A.2d 733; 1998 Pa. Commw. LEXIS 912).

PGW abuses the safe harbor of the Act of 1923, May 16, P.L. 207, Municipal Claims and Tax Lien Law at 53 Pa.C.S. §7101 et seq., and argues that the Act is sacrosanct and beyond the purview of the Commission. While the Commission may not have the authority to adjudicate the validity of the lien imposed, PGW is bound by the Commissions regulations pursuant to 66 Pa.C.S. §2212. Moreover, the Commission has direct authority over public utility rates, billing and collections practices and ensuring that a public utility does not usurp its bounds and exceed its Tariffs.

Pursuant to 52 Pa.Code § 56.1. **Statement of purpose and policy.** (a) This chapter establishes and enforces uniform, fair and equitable residential public utility service standards governing credit and deposit practices, and account billing, termination and customer complaint procedures. This chapter assures adequate provision of residential public utility service, to restrict unreasonable termination or refusal to provide that service and to provide functional alternatives to termination or refusal to provide that service while eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills and protecting against rate increases for timely paying customers resulting from other customers’ delinquencies. Public utilities shall utilize the procedures in this chapter to effectively manage customer accounts to prevent the accumulation of large, unmanageable arrearages. Every privilege conferred or duty required under this chapter imposes an obligation of good faith, honesty and fair dealing in its performance. This chapter will be liberally construed to fulfill its purpose and policy and to insure justice for all concerned.

Complainants do not suggest that the Commission abrogate PGW’s power to collect receivables pursuant to a lien filed as a judgment. However, the Commission’s own regulations,

under §56.22, citing Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002) and the Pennsylvania statute 42 Pa.C.S. §8101 specifically address post-judgment interest and its direct application to late payment charges. PGW's refusal to consider the Commission's regulations and ignore its implementation is an affront to the authority of the Commission and does a disservice to its customers. If the regulations at §56.22 reference 42 Pa.C.S. §8101 and the statute orders the legal rate of interest to apply absence another statute, it is reasonable to presume the legislature contemplated the Commission's interpretation regarding late fees are implicit and not a conflict of authority and in no way abrogates the City's right to collect on outstanding debts.

However, if private gas service companies and electric companies, such as Equitable Gas, PPL or PECO are limited to obtaining liens subject to post-judgment interest in the amount of 6% because they are not subject to the MCTLL, it seems somewhat discriminatory to other utility providers in the state who provide the same service.

The underlying accounting goes to service and will be adjusted by the Commission according to the facts. In Re Duquesne Light Co. 1977 Pa. PUC LEXIS 151, Pa. PUC v Philadelphia Electric Co. 1978 Pa PUC LEXIS 42; Grace Scrutching v. Philadelphia Gas Works, 2003 Pa. PUC LEXIS 70; Laura Maisch v. PECO Energy, 2011 Pa.PUC LEXIS 739, (PUC finding that customer service is broadly construed under 66 Pa.C.S. §1501). Angie's Bar v. Duquesne Light Co., 72Pa. PUC 213 (1990). 1305 Walnut St. Corp. dba Holiday Inn Express v. PGW, 2013 Pa. PUC LEXIS 734.

C. SBG's Reply to the Exception No. 2: The ALJ's Decision Was Correct. There Was No Error Because The Decision Was Not An Interpretation of Statutes Beyond The Jurisdiction of The Commission's Purview And The Significance Between an In Rem and In Personam Action Has The Same Net Effect On A Debtor. The ALJ's Decision Is Based Upon The Regulations, Tariff and Law As Found In the Public Utility Code.

Pursuant to **Pa.R.C. P. Rule 3001**, a judgment is defined as a judgment or order requiring the payment of money or adjudicating the right to possession in an action of replevin. **Pa.R.C.P. Rule 3021. Verdict. Order. Judgment.** Entry in Judgment Index, the prothonotary shall immediately enter in the judgment index a verdict or order or a specific sum of money with the notation “verdict” or “order.” The entry shall state the amount of the verdict or order. Section 8142(e) of the Judicial Code, 42 Pa.C.S. § 8142(e), requires the prothonotary to “note on the dockets in such office where each verdict, judgment, order, instrument or *writ creating a lien against real property* is entered, the time it was recorded, rendered, left for filing, or issued.” The rule presumes a channel of communication between the court and prothonotary so that the prothonotary may “immediately” docket a judgment entered by the court. **Pa.R.C.P. Rule 3023. Judgment. Lien. Duration.** (a) Except as provided by subdivision (b), a judgment when entered in the judgment index shall create a lien on real property located in the county, title to which at the time of entry is recorded in the name of the person against whom the judgment is entered. **42 Pa.C.S. §8101, Interest on judgments.** Except as otherwise provided by another *statute*, a judgment for the specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment, if the judgment is not entered upon a verdict or award. *41 P.C.S. §201* establishes that the legal interest rate in Pennsylvania is 6%, which comports to the comments and notes of decisions in 52 Pa.Code §56.22.

Apart from reiterating the same argument in their first Exception, which Complainants have addressed above, we reiterate, the ALJ’s decision was never predicated upon an interpretation of the two statutes as PGW has claimed. The crux of PGW’s second Exception really establishes the practical effect of a lien judgment adjudicated as a debt securitized by position on the property. PGW would have the Commission believe that the municipal claim/lien is legally different from

the underlying debt and the docketing of the lien has no preclusive effect on the use of the property. In their own Exceptions PGW admits the lien is perfected upon docketing. The practical effect is that the property cannot be sold, refinanced, transferred until the lien is satisfied, and as in the case of Complainants, they were unaware of the existence of many of the liens attached to the property until they were undergoing the refinancing process of the properties. In the matter of In Re Upset Sale, Tax Cl. Bureau of Berks, 505 Pa. 327 (Pa. 1984), the Pennsylvania Supreme court considered a detailed analysis of the due process notice requirements for judgment creditors related to tax sales who held valid judgment liens. The court explained the practical effect of a judgment lien on a property as follows:

“Judgment liens are a product of centuries of statutes which authorize a judgment creditor to seize and sell land of debtors at a judicial sale to satisfy their debts out of the proceeds of the sale. The judgment represents a binding judicial determination of the rights and duties between the parties, and establishes their debtor-creditor relationship for all the world to notice when the judgment is recorded in a Prothonotary’s Office. When entered of record, the judgment also operates as a lien upon all real property of the debtor in that county. 42 Pa.C.S.A. Sections 4303(a)(b), 1722(b), and 2737(3). The judgment lien represents security for the underlying debt, Commonwealth v. Meyer, 169 Superior Ct. 40, 82 A.2d 298 (1951), and conveys a right of execution to the judgment creditor in satisfaction of his debt. The judgment not only affects all real property owned by the debtor, but extends to his equitable interests, Auwerter v. Mathiot, 9 Serg. and R. 397 (1823) and beneficial interests as well Davis v. Commonwealth Trust Company, 335 Pa. 387 (/case/davis-v-commonwealth-tr-co), 7 A.2d 3 (1939). The existence of a judgment lien prevents a debtor from encumbering or conveying any property he might own in such a way as to divest the effect of the judgment, ...without first paying the earlier lien. The judgment lien thus constitutes a liquidated claim, Educational Society v. W.D. Gordon, 310 Pa. 470, ...166 A. 499(1933), which has value to the judgment creditor. The judgment can be assigned, pledged, or used as collateral and is a valuable form of property”. Id. at 334, 335.

The Municipal Claim and Tax Lien Law reads in part:

53 P.S. §7106. (b) With the exception of those claims which have been assigned, any municipal claim, municipal lien, tax, tax claim or tax lien, including interest, penalty and costs, imposed by a city of the first class, shall be a judgment only against the said property when the lien has been docketed by the prothonotary. The docketing of the lien shall be given the effect of a judgment against the said property only with respect to which the claim is filed as a lien. The prothonotary shall maintain an in rem

index, the form and location of which shall be within the prothonotary's discretion. All tax claims, water rents or rates, lighting rates, power rates and sewer rates heretofore filed are hereby ratified, confirmed and made valid subsisting liens as of the date of their original filing.

53 P.S. § 7106. (c) A writ of execution *may* issue directly without prosecution to judgment of a writ of scire facias. Any property sold in execution shall be sold in compliance with the provisions of section 31.2.

The writ scire facias *is not a mandatory proceeding* as to the imposition of the lien. It is only the procedural due process prerequisite necessary to effect a judicial sale. The proceeding is nothing more than a novation and a judicial reinforcement of the existence of the municipal claim. The writ proceeding is not a meaningful challenge to the underlying basis of the debt and PGW knows that. It is costly to the defending debtor who has to post a bond in the amount of the debt to challenge the claim before the court, which is unduly burdensome, especially in this case, where time was of the essence due to the nature of the Complainant's need to refinance and the expense of posting hundreds of thousands of dollars in a bond was cost prohibitive. The true legal process of advancing the writ is such that the trial court evaluates the face of the lien for the following: "1) The Claim setting forth the a) the name of the municipality which filed; b) the name of the owner of the property against which the claim is filed; c) the description of the property against which the claim is filed; d) the authority under or by virtue the tax/claim was levied and e) the time for which the claim was levied. The claim shall be signed by or have stamped the signature of the solicitor or chief executive officer of the claimant." The courts virtually rubber stamps the notice of the claim. (Citing Elizabeth Township Sanitary Authority v. Scenery Heights, LLC, Appellant, No. 319 C.D. 2012, 2012 Pa. Commw. Unpub. LEXIS 929, 59 A.3d 691.) Moreover, courts have concluded that where claimants file affidavits of defense that go to the merits of challenging the validity of their underlying utility bills, the courts will not consider the defense because the defendant failed to exhaust their administrative remedies by

seeking redress through the PUC. This was exactly the case in Western Clinton County Municipal Authority v. Estate of Charles R. Rosamillia, Sr. Charles R. Rosamillia, Jr., Executor, Appellant, 826 A.2d 52; 2003 Pa. Commw. LEXIS 385 (No. 1522 C.D. 2002).

In McLean v. City of Philadelphia Water Revenue Bureau Aikens, 891 F.2d 474, 477, 1989 U.S. App. LEXIS 18496; Bankr. L. Rep. (CCH) P73,187; 19 Bankr. Ct. Dec. 1783, the court found “[c]harges for water and sewage services are among those that, if unpaid, may be attached as liens. *Id.* In order for such liens to take effect in a municipality of the first class, however, the municipality must docket the lien properly. According to section 7106 of the Pennsylvania Municipal Claims and Lien Law:[A municipal claim] shall be a lien only against the said property after the lien has been docketed by the prothonotary. The docketing of the lien shall be given the effect of a judgment against the said property only with respect to which the claim is filed as a lien. ***The prothonotary shall enter the claim in the judgment index.***

Pa.Stat.Ann. tit. 53, § 7106(b) (emphasis added).”

Furthermore, PGW is perpetrating a fraud upon the Commission to say that the proper forum to challenge the underlying accounting and calculations of the account balances attached to the liens as argued in these Exceptions lies with the court of common pleas when they argued the exact opposite on March 25, 2014, in the Philadelphia Court of Common Pleas trial court before Judge Ceisler, which was reported by Complainants’ attorney, Ms. Francine Thornton Boone, to ALJ Vero during a pretrial hearing in these proceedings, and which was confirmed on the record by PGW counsel, Laureto Farinas. (Tr. July 11, 2014, pg. 23, line 8 -25). PGW counsel, Gerald Clark represented to the court of common pleas that the PUC had exclusive jurisdiction and expertise regarding the determination of underlying debts that concerned liens that were then before the court of common pleas on foreclosure actions pursuant to Writs of Scire

Facias. The Court of Common Pleas deferred jurisdiction until the completion of these cases and PGW ultimately withdrew their foreclosure actions. Complainants' filed a motion to compel on September 8, 2014 in these proceedings which Judge Vero ruled upon that included the transcript and testimony from the court hearing whereby PGW attorney, Gerald Clark made a representation to another tribunal that the PUC had the expertise and jurisdiction to consider the underlying accounting for the debts that constituted the debt that was subject to being liened in the Philadelphia Court of Common Pleas. Now PGW selects to have it the other way. This information probably should have been disclosed to the Commission in its Exceptions by PGW, but true to form, PGW chooses to be selective in the disseminating material information not only to its patrons but also to its regulators.

Regarding PGW's argument on the doctrine of merger, when a lien is docketed in the judgment index of the county in which the real or personal property exists, the doctrine of merger is initiated and the statutory construct controls, the concept of which is articulated in Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002). As the court reasoned in Equitable Gas v. Wade, "[a]ppellant, [Equitable] was certainly entitled to charge 18% per year pursuant to the tariff until ... it obtained a final judgment in the Court of Common Pleas. At that point, the doctrine of merger applies...Appellant's choice to take recourse with the court system required it to be governed by the rules governing actions at law, including statutory provisions governing post-judgment interest". Whether the judgment was in rem or in personam was of no effect. *See Agnes Manu v. City of Philadelphia*, 84 C.D 2012, 2013 Pa. Commw. LEXIS 446.

PGW's entire argument is inappropriate and designed to confuse the Commission and persuade it to redirect jurisdiction to the common pleas court, which in turn will defer to the Commission. Again, SBG reiterates, PGW's argument asserting that the PUC is without

competent jurisdiction to determine the accounting accuracy and proper application of late payment charges on account balances subject to being liened is a red herring and an affront to the integrity of the mission of this Commission and is unfair to the public that it serves.

D. SBG Reply to Exception Nos. 3 and 4: The ALJ Was Correct In Directing/Crediting A Full Refund Of Overpayment of Late Payment Charges Paid Due To PGW's Misapplication Payments and Over Charges Of Interest Charges.

The ALJ based her decision upon the credible evidence and testimony presented in the record. She then applied the law. PGW offers no legal defense, authority or credible evidence to rebut the testimony, calculations or theories presented.

A basic principle of utility regulation dictates that when a utility has more than one alternative rate that might be applied to a customer, the utility has an obligation to apply the rate most advantageous to the customer. (R. Colton Testimony, Tr. 611 - 662). In Pennsylvania, this principle has been incorporated into law. PUC regulations state quite explicitly that “any public utility, having more than one rate applicable to service rendered to a patron, shall, after notice of service conditions, compute bills under the rate most advantageous to the patron. (66 Pa.C. S.§1303).

Given that there is more than one rate applicable to unpaid bills to consumers (to pay all unpaid late charges first, before paying any unpaid principal, which is what PGW does, rather than to pay all unpaid principal first, before paying any unpaid late charges, or to pay the oldest balance first, irrespective of whether that balance is principal or late charge, PGW is under a regulatory obligation, pursuant to §1303 and 52 Pa.Code §56.1 to “compute bills under the rate most advantageous to the patron.” The presiding officer has accepted as credible evidence and proofs that PGW’s process of reordering/re-sequencing payments postings and late payment interest applications to accrued balances that are concurrently liened and docketed with the court

of common pleas constitutes rates that are least favorable to the customer. (SBG SG/CG late-filed Ex. 3).

Other courts have found that similar reordering processes like that of PGW's reordering process results in compounded interest penalties/finance charges and negative amortization by both the public utility industry, mortgage and credit card industries; and the courts have concluded similar accounting practices are illegal. The payment reordering process of applying payments made to cumulative late fees first before principle has the effective *of charging late fees upon late fees is called "pyramiding" and it is an illegal practice under 12 C.F.R. §227.15.* The accounting practice was evaluated by the court in Waterman v. Jurupa Community Services, 53 Cal.App.4th 1550, 62 Cal.Rptr.2d 264, 1996 Cal. App. LEXIS 1228, a public utility, a water company and **perfectly illustrates** PGW's reordering payment application process, and the compounding effect of late fees that result therefrom and determined it to be invalid. The court plainly holding that the manner in which the water company applied payments and computed penalties, late fees and charges to customer's water bill account resulted in compound interest in violation of the public utility statute. In Waterman, the Court of Appeals reversed summary judgment for the public utility in favor of the appellant, hospital, holding that the utility was charging a 10% penalty on prior 10% penalties by applying the current monthly payment to any earlier outstanding bill, if the current bill thereby became fully unpaid, a new 10% penalty was applied to the outstanding balance of the current bill. The court also found that the statute authorized a basic penalty of not more than 10% for late payments, *not a penalty for partially unpaid monthly account balances*. The court accepted plaintiff's argument that after the first penalty is calculated, this initial penalty merges with the initial delinquent payment to become the new delinquency upon which the next month's penalty is to be calculated. *Id.* at 1555. The

court further found, there was no legislative intent in the statute to allow for compounding penalties. Where the utility in Waterman argued, like PGW, that their late payment charges would never be paid, the court discounted that argument stating the statute allowed for an additional 5% per month penalty for nonpayment of the charges and basic penalty. Like PGW, the court took notice of the utility's accounting and collection practices, finding that the application of monthly payment to the preceding month's unpaid penalty generated an unpaid cumulative balance in the current month which then provided the basis for another 10% penalty, which compounded the penalty in clear violation of the statute. *Id.* at 1556. *See also, In Re: Michael L. Jones v. Wells Fargo*, 2012 Bankr. LEXIS 1450. (The court held the improper amortization resulted in the assessment of additional interest, default fees and costs against the loan).

Considering the testimony of SBG's witness Ms. Kathy Treadwell and the evidence presented, clearly SBG over - paid late payment charges on its accounts and PGW was unjustly enriched by that overpayment. In Pennsylvania, there is an explicit imposition of an obligation of good faith and fair dealing by Commission regulation. According to the PUC, "[e]very privilege conferred or duty required under this chapter imposes an obligation of good faith, honesty and fair dealing in its performance and enforcement. (52 Pa.Code §56.1). The obligation of "good faith, honesty, and fair dealing" imposed on Pennsylvania utilities reflects the obligation imposed on all merchants by the Uniform Commercial Code ("UCC"). The majority view is that Article 2 of the UCC applies to consumer purchasers of utilities, and courts have held that the UCC was applicable to the sale of natural gas. See Gardiner v. Philadelphia Gas Works, 413 Pa. 415, 197 A.2d 612 (Pa. 1964).

The ALJ was correct in refunding and crediting SBG's accounts given the facts and evidence presented on the record. Moreover, the ALJ was very cognizant of her jurisdictional

constraint to determine interest sums attributable to amounts subject to lien which were paid by the Complainant. If she had truly overreached should would have considered the reality of other public utility companies that provide similar services across the state, such as PECO, PPL, UGI, Equitable Gas, etc., who are not so privileged to be the only gas service provider in the state that can exercise super-authority and governmental power by claiming safe harbor under the MCTLL, and must relegate themselves to receiving post-judgment lien interest of only 6%. See Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002), 52 Pa.Code §56.22, 66 Pa.Code §1312.

Pursuant to 66.Pa.C.S. §1303. “No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility.” PGW’s billing and collection practices wrongfully collect finance charges by way of imposing interest penalties and late fees by reordering payment postings in a way that compounds the legal interest rate for collections from 18% simple interest to 19.562% APR compounded, which indirectly increases company revenue and rates in excess of the approved tariff which violates PGW’s Tariff, the Public Utility Code, Title 66 Pa.C.S. Ch. §1303 and the Commission’s regulations at 52 Pa.Code §56.22 and 56.23.

The record is clear regarding PGW’s motivations for maintaining its violative practices, and the answer lies in PGW’s Vice President of Billing and Collections, Bernard Cummings’ testimony, who in response to questioning by SBG’s counsel, Ms. Francine Thornton Boone states as follows, Ms. Thornton Boone, Question: “I want to understand how PGW ensures that a property that has been liened is no longer being charge the 18 percent interest and instead has

been converted to six percent. The late payment charge doesn't indicate what lien charge, what interest is being charged on the debt. Witness, Bernard Cummings, V.P, PGW, Answer: I understand the question. It's my understanding that late payment charges are applied at 18 percent for all unpaid balances. That means if they're liened or not liened. So if a balance has not been paid, it's my understanding that the 18 percent late payment charges apply."(Tr. 8/26/2013 Hearing Test. pg.14.lines 5-9, 14-19); Ms. Boone, Question: So even after a lien is imposed, you continue to charge 18 percent? Witness, Bernard Cummings, V.P. PGW Billing and Collections, Answer: That is my understanding right now. Ms. Boone, Question: ...The authority to continue to charge 18 percent, where do you get that from? Witness, Bernard Cummings, V.P, PGW, Answer: The 18 percent, I believe, is a tariff rate that we can charge... Or maybe the rate, the highest rate that is applicable by state law; I believe." (Tr. 8/26/2013 Hearing Test. pg.15, lines 5-11, 13-14).

Another telling statement about PGW's scienter on its practices related to imposing late fees and penalties on customer accounts is evident in the record when the context of Mr. Cummings' testimony was reiterated by PGW counsel, Laureto Farinas, who in the course of oral argument before the court on the appropriate interest rate to be applied to docketed post judgment liens, offers to the court, Mr. Farinas, PGW counsel: "Your Honor, as I stated, and I can bring a witness tomorrow that will testify as to how interest is charged. My witness will state that municipal interest is not charged on municipal liens and we can explain *the scheme* in which the tariff rate is continued to be charged, because it is not a finalized account. We can explain *our scheme* for that, and I believe it is consistent with both the municipal lien code and with the tariff." (Tr. 8/29/2013 Hearing Test. Mr. Laureto Farinas, Esq., PGW counsel, pg. 209, lines 20-25, pg 210, lines 1 - 4). Scheme, defined as 'a large scale systematic plan or arrangement for

attaining some particular object or putting a particular idea into effect. The 'scheme' is profitable for PGW and constitutes nearly 20% of PGW's annual revenues. PGW's insistence the Complainants' payment history was the primary source of their large arrearages and disputed accounts reinforces their scienter in not wanting to reveal the underlying cause of the disputes. It works for PGW to blame the victim and paint them with a broad brush as 'deadbeats'. While the presiding officer may want to hold Complainants to a higher standard for not filing sooner, the Commission must consider that Complainants did file suit without knowing the extent of and actual cause of their injuries. And while mere negotiations will not give rise to estoppel, where there is concealment, omissions of material facts, or unintentional deception by the defendant may be estop from barring Complainants claims. Nesbitt v. Erie Coach Co. , 416 Pa. 89, 96. (1964). In Re: Michael L. Jones v. Wells Fargo, 2012 Bankr. LEXIS 1450. Instead of looking at the Complainants as the bad actors, a vivid picture that PGW wants to paint, let's look at PGW's sins. PGW knew its scheme, and knows its scheme is wrong, and yet, PGW continues its abusive billing and collection practices.

E. SBG's Reply To Exception No. 5: The ALJ Was Correct To Assess Civil Penalties Against PGW For Violating The Public Utility Code And Correctly Considered The Factors Under 52 Pa. Code §69.1201(c) To Determine An Appropriate Remedy.

The ALJ's factual determinations, conclusions of law and legal analysis of the Public Utility Code, the Commission's regulations and state law justify the imposition of civil penalties against PGW for violating the Public Utility Code in the manner so proven in these consolidated cases which is supported by the evidence presented, the facts, the law and the record filed herein. PGW has not put forth any credible legal argument that the ALJ's decision on any of PGW's Exceptions is an abuse of discretion and without a sound or reasonable basis to warrant being adopted and sustained by this Commission.

CONCLUSION

- A. The Exceptions Should Be Dismissed Because The Exceptions Were Not Filed By An Attorney of Record In The Proceedings, Who Has Yet To File An Entry of Appearance With The Commission And Serve Complainants With Said Entry of Appearance Which Is A Violation Of The Commission's Procedural Rules at 52 Pa.Code §§ 1.4(d), 1.15, 1.22, 1.23 and 1.24(b)(2)(A) and 5.533(c).
- B. The ALJ's Initial Decision Is Correct, Based Upon The Legal and Statutory Authority Bestowed Upon The Commission Under The Public Utility Code And Is Reasoned According to Its Rules and Regulations.

The Exceptions Misinterpret the ALJ's Initial Decision Which Does Not Exceed The Commission's Jurisdiction and Is Not An Interpretation of The Municipal Claims and Tax Lien Law (MCTLL), 53 P.S. §§ 7101, et. seq., and 42 Pa.C.S. § 8101, but Rather An Appropriate Application of the Laws, Rules and Regulations Promulgated Under 52 Pa.Code §56.1 et seq. and 69.1201 and Title 66 of the Public Utility Code Based Upon The Record And The Evidence Presented.

- C. SBG's Reply to the Exception No. 2: The ALJ's Decision Was Correct. There Was No Error Because The Decision Was Not An Interpretation of Statutes Beyond The Jurisdiction of The Commission's Purview And The Significance Between an In Rem and In Personam Action Has The Same Net Effect On A Debtor. The ALJ's Decision Is Based Upon The Regulations, Tariff and Law As Found In the Public Utility Code and State Law.
- D. SBG's Reply to Exception Nos. 3 and 4: The ALJ Was Correct In Directing/Crediting A Full Refund Of Overpayment of Late Payment Charges Paid Due To PGW's Misapplication Payments and Over Charges Of Interest Charges On Its Account Balances Relating To Partial Payments And Concurrent Assessment Of Prejudgment Interest Charges of 18% per annum (*compounded*) to Balanced Due Which Are Adjudicated Liened Judgments Docketed With the Prothonotary.
- E. SBG's Reply To Exception No. 5: The ALJ Was Correct To Assess Civil Penalties Against PGW For Violating The Public Utility Code And Correctly Considered The Factors Under 52 Pa. Code §69.1201(c) To Determine An Appropriate Remedy.

For the reasons set forth herein and incorporating by reference the transcripts, exhibits admitted into the record, the evidence and testimony presented before the presiding officer, ALJ Vero, and upon consideration of the arguments presented in the Main and Reply Briefs submitted by the Complainants, SBG respectfully requests that this honorable Commission consider the entire record, documentary evidence and legal arguments presented in these consolidated proceedings and adopt the decision of the honorable Administrative Law Judge Eranda Vero.

Respectfully Submitted By:



Donna S. Ross, Esq. - Attorney for SBG et. al.

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of:

Complainant's Reply To Exceptions Filed By PGW

In the Matters of: SBG Management Services, Inc./Colonial Garden Realty, LP v. Philadelphia Gas Works, Docket No. C-2012-2304183 and SBG Management Services, Inc./Simon Gardens Realty, LP v. Philadelphia Gas Works, Docket No. C-2012-2304324

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The Honorable ALJ Eranda Vero

For Pennsylvania Public Utility Commission
via email/ U.S. Mail

Mr. Daniel Clearfield, Esquire

For Respondent PGW via email, fax or Fed Ex

Carl R. Schultz, Esquire

For Respondent PGW via email, fax or Fed Ex

Mr. Laureto Farinas, Esquire

For Respondent PGW via email/ U.S. Mail

Mr. Phil Pulley and Ms. Kathy Treadwell

For Complainants by hand delivery

The Honorable Rosemary Chiavetta, Secretary

For Pennsylvania Public Utility Commission
via efileing/Fed Ex

Date: 10/19/2015

By: 

DONNA S. ROSS, ESQUIRE
SBG MANAGEMENT SERVICES, INC.
P.O. Box 549
Abington, PA 19001
Phone: 484-888-9578
Office: 215-938-6665
Facsimile: 215-938-6987
Email: dsross@sbgmanagement.com; dsross90@gmail.com
Pennsylvania Attorney ID. No. 59747

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FedEx Standard Overnight
Next business afternoon. Saturday Delivery NOT available.

FedEx 2Day A.M.
Second business morning. Saturday Delivery NOT available.

FedEx 2Day
Second business afternoon. Thursday shipments will be delivered on Monday unless Saturday Delivery is selected.

FedEx Express Saver
Third business day. Saturday Delivery NOT available.

2 Your Internal Billing Reference
First 24 characters will appear on invoice.

3 To Recipient's Name Hon. Rosemary Chiave Ha Sec Phone 717 772-7777
 Company PA Public Utility Commission
Commonwealth Keystone Building 2nd Fl Hold Weekday
 Address 400 North STREET 2nd Fl Hold Saturday
 We cannot deliver to P.O. boxes or P.O. ZIP codes. Dept./Floor/Suite/Room FedEx First Overnight
 Address Hold Saturday
 Use this line for the HOLD location address or for continuation of your shipping address. FedEx Priority Overnight and
 City Harrisburg State PA ZIP 17105-3265 FedEx 2Day to select locations.
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Direct Signature
Someone at recipient's address may sign for delivery.

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If not on file, available at recipient's address, someone at a neighboring address may sign for delivery for residential deliveries only.

Does this shipment contain dangerous goods?
 No Yes As per attached Shipper's Declaration Yes Shipper's Declaration not required Dry Ice Dry Ice & UN 1845 _____ kg
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