

 **SBG Management Services, Inc.**

P.O. Box 549 Abington, PA 19001

Phone 215.938.6665

Fax 215.935.6987

January 8, 2016

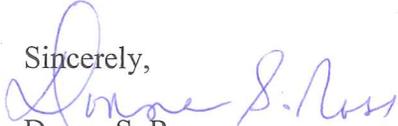
The Honorable Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd FL
400 North Street
Harrisburg, PA 17105-3265

Re: Filing of Complainants Reply To PGW's Exceptions; In the Matters of SBG Management Services, Inc. et al. v. PGW: Docket Nos.C-2012-2304303, C-2012-2304167, C-2012-2304215

Dear Secretary Chiavetta:

Kindly, accept for filing with the Commission, Complainants' Reply To Exceptions in the above-referenced consolidated matters. I certify that copies have been served upon Respondent's counsel 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, SBG

Cc:ALJ Eranda Vero

Mr. Laureto Farinas, Esq. for Respondent

Mr. David Clearfield, Esq. and Mr. Carl Shultz, Esq. for Respondent



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./	:	
Fairmount Manor Realty Co., L.P.	:	Docket No. C-2012-2304215
	:	
v.	:	
	:	
Philadelphia Gas Works	:	
	:	
SBG Management Services, Inc./	:	
Elrae Garden Realty Co., L.P.	:	Docket No. C-2012-2304167
	:	
v.	:	
	:	
Philadelphia Gas Works	:	
	:	
SBG Management Services, Inc./	:	
Marshall Square Realty Co., L.P.	:	Docket No. C-2102-2304303

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

Donna S. Ross, Esquire
SBG Management Services, Inc.
P.O. Box 549
Abington, PA 19001
(215) 938-6665 (Office)
(484) 888-9578 (Mobile)
(215) 935-6587 (fax)

Attorney for Complainants SBG et al.

TABLE OF CONTENTS

A. SBG’s Reply to Exceptions 1 and 2: The ALJ’s Initial Decision Is Correct. The Issues Decided Are Within The Commission’s Jurisdiction. Based Upon The Legal and Statutory Authority Bestowed Upon The Commission Under The Public Utility Code And Is Reasoned In Accordance With Its Promulgated Rules and Regulations.

1. The Initial Decision Determined PGW’s Accounting, Billing and Collection Policies Are Within The Commission’s Authority To Review. The ALJ Correctly Found PGW’s Accounting Practices Regarding Re-Ordered Payment Postings and Inclusion of Late Payment Charges In Outstanding Balances Subject To Lien Judgments Violates The Public Utility Code. The Initial Decision Is Not An Interpretation of or Harmonization of The Municipal Claims and Tax Lien Law (MCTLL), 53 P.S. §§ 7101, et. seq., and Judicial Code at 42 Pa.C.S.§ 8101 (ID at 84-94); COL at ¶ 1, 13 - 21; Ordering ¶ 18 - 22. 1

B. SBG’s Reply to the Exception Nos. 3 and 4: 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. 16

C. 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 of Full and Partial Payments and Over Charges Of Interest Charges On Its Accounts. 17

D. 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. 22

INTRODUCTION:

Complainants, SBG Management Services, Inc./Fairmount Manor Realty Co., L.P and SBG Management Services, Inc./Elrae Garden Realty Co., L.P., SBG Management Services, Inc./Marshall Square Realty Co., L.P., and collectively referred to herein as (“SBG”), hereby submits its reply to the Exceptions filed by Respondent, Philadelphia Gas Works, referred herein as “PGW”. On December 14, 2015, PGW submitted for filing to the Commission Exceptions to the Initial Decision and Order entered on November 23, 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. The ALJ ordered PGW to cease and desist its violative accounting and billing practices of 1) re-sequencing/reordering payments applied to partial payments which effectively exacerbates interest bearing account balances in favor of increasing collection of non-interest bearing sums in the form of late fees, 2) continually charging 18%per month interest to account balances which included amounts that had been filed as judgment liens against Complainants’ subject properties, and 3) ordered civil penalties because PGW’s long-standing practices were conducted without repentance and with willful disregard of the law.

A. SBG’s Reply to Exceptions 1 and 2: The ALJ’s Initial Decision Is Correct, The Issues Decided Are Within The Commission’s Jurisdiction, Based Upon The Legal and Statutory Authority Bestowed Upon The Commission Under The Public Utility Code And Is Reasoned In Accordance With Its Promulgated Rules and Regulations.

1. The Initial Decision Determined PGW’s Accounting, Billing and Collection Policies Are Within The Commission’s Authority To Review. The ALJ Correctly Found PGW’s Accounting Practices Regarding Re-Ordered Payment Postings and the Inclusion of Late Payment Charges In Outstanding Balances Subject To Lien Judgments Violates The Public Utility Code. The Initial Decision Is Not An Interpretation of or Harmonization of The Municipal Claims and Tax Lien Law (MCTLL), 53 P.S. §§ 7101, et. seq., and Judicial Code at 42 Pa.C.S. § 8101 (ID at 84-94); COL at ¶ 1, 13 - 21; Ordering ¶ 18 - 22.

The Initial Decision is based upon the testimony and evidence presented which proved that PGW utilizes improper accounting practices to 1) apply partial payments out of order, so that the most recent late charges are paid before the gas charges due for prior service, and 2) in order to maximize revenues PGW improperly continues to include lien judgments amounts in the outstanding balance subject to late

payment charges under the PGW tariff all of which constitute a failure to provide reasonable and adequate service in accordance with 66 Pa.C.S.A §1501 and violates 52 Pa. Code §56.24.

PGW asserts that the ALJ exceeded her authority and the Commission's jurisdiction by interpreting the MCTLL and Statutory Interest Statute at 42 Pa.C.S. § 8101 and erred in directing credits or refunds of late payment charges; erred in her analysis regarding the application of payments where there is partial payments and erred in awarding civil penalties for various violations of the Public Utility Code. PGW's assertion is that the initial decision is an attack on the Municipal Tax Claims and Lien Law (MTCLL) and is beyond the Commission's jurisdiction. SBG asserts PGW's reading of the initial decision is factually and legally incorrect and is a deliberate attempt to redirect the Commission's attention from the true issue under review: that GW's accounting, billing and collection practices are designed to maximize company revenues to the detriment of its customers, do not comport with the Commission's rules and regulations and violate reasonable and adequate service requirements of §1501 of the Public Utility Code. The Commission addressed its jurisdictional authority and constraints regarding the liens process and PGW at the Public Meeting held on September 9, 2005, and resolved in its Commission Chapter 14 Implementation policy memo, (Doc. No. M-0004 -1802F0002) published in *35 Pa. Bulletin*. 5338 as follows:

.....It is clear that the General Assembly sought to give PGW an additional collection tool to assist the Company in improving its overall collection rates. **Even more significant, it appears, is that the General Assembly placing this authority under the Public Utility Code puts the full power and authority of Commission jurisdiction over the lien process, 66 Pa.C.S. § 501, and the accessibility of the Commission's formal complaint procedures to PGW customers who have a dispute with the lien process. 66 Pa.C.S. § 701; 52 Pa. Code §§ 56.140--56.181.**

We shall address lien provisions through two methods: (1) approval of filed tariff supplements and, (2) cases brought before the Office of Administrative Law Judge via formal complaints. In this manner, we shall address these issues on a case-by-case basis. [Pa.B. Doc. No. 05-1803. Filed for public inspection September 23, 2005, 9:00 a.m.]

While the Commission lacks subject matter jurisdiction over the placement/enforcement 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, SBG is not challenging the validity of PGW's right to impose or enforce a lien properly filed under the MCTLL. SBG is challenging PGW's illegal revenue generating accounting, billing and collection schemes regarding payment posting methods and assessment of late payment fees that ultimately lead to exacerbated account balances and improper inclusion of late payment charges subject to liened judgments. The liened balance 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 validly assert that the liens imposed on the subject property appear in a vacuum. which are a valid distinction and an issue that falls squarely before the authority of the Commission. The Commission is the only venue with competent and exclusive jurisdiction for a gas customer to obtain review and redress complaints about PGW's accounting practices. The Pennsylvania legislature has specifically authorized the Commission to regulate PGW, as a state regulated public utility, justify to the Commission that their dubious accounting practices are fair, just and reasonable, comport to its tariff, and are lawful. (*See* 66 Pa.C.S. § 315(a) - (d)¹.

During the protracted proceedings, PGW did not refute SBG's legal arguments, did not refute the evidence presented and did not show why they have the authority to reorder/re-sequence customer payments to maximize collections of late payment/finance charges. PGW did not provide the legal

¹ 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*).**

authority to justify their collection practice to continue to charge **18% compounded interest in late fees and continue to 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.** PGW's basic arguments are: 1) the Commission has no jurisdiction to decide these issues and; 2) no governing authority ever told PGW was wrong to increase revenues/tariff rates by illegal means; 3) SBG are bad people; and 4) a newly created argument, if the initial decision stands PGW will lack incentive to impose liens (already inclusive of tariff rate, 18%, late payment charges) if it can only assess and collect post-judgment interest rather the tariff interest rate.

The ALJ credited the testimony and evidence presented by SBG's witnesses, SBG, Senior Accountant, Kathy Treadwell, Public Utility Regulation and Regulatory Economist and expert, Roger Colton, Esq. and Jeremy Gabbel, CPA, testifying as an expert as a Certified Public Accountant, Forensic Accountant and Certified Evaluation Analyst, all of whom testified that neither the billing statements nor the statement of accounts reveal the true manner in which PGW applies payments to customer accounts and [manages its' lien judgments] [sic]. Ms. Treadwell testified that it was only through the protracted and highly adversarial discovery process during litigation did SBG discover PGW's accounting scheme. (ID pages 46-53). For years, SBG requested information regarding PGW's application of payments on its accounts. Prior to SBG filing suit and SBG's necessity to file numerous motions to compel to obtain discovery, PGW never disclosed that it zeroed out late payment charges and security deposits first before applying any payments or partial payments to account balances and continued to assess, collect and include 18% interest on outstanding balances perfected as lien judgments. It was only through the discovery process PGW was compelled to disclose the information.

Both expert witnesses, Jeremy Gabbell and Roger Colton opined that PGW's collection practices were deliberate and purposeful pricing decisions designed to maximize PGW's revenues, ultimately increasing its rates authorized under its tariff. PGW witnesses, Diane Rizzo, a PGW retired analyst and consultant confirmed PGW's payment posting scheme, while PGW's Vice President of Billing and Collections, Bernard Cummings, and Director of Commercial Resource Center, Ralph T. Savage, both

confirmed that lien judgments continue to accrue 18% interest and are included in continually accruing balances as a matter of course, testimony which the ALJ credited and facts proven by the evidence presented.

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. Despite the regulations codified at 52 Pa. Code §56.22 and the dispositive case, Equitable Gas v. Wade, 812 A.2d 715 (Pa.Super. 2002) which contradict PGW's practices and dictate that under the doctrine of merger, gas debt reduced to a lien judgment is no longer eligible for accrual of pre-judgment interest but rather is subject to post-judgment interest at the lower statutory rate. PGW insists its accounting, billing and collection practices to include 18%the balances perfected as lien judgments are just and reasonable in accordance with its Tariff, the Commission's regulations and comport to the requirements of the Public Utility Code. PGW failed to articulate or put forth any evidence that contravened SBG's credible proofs that PGW's accounting and collection methods detrimentally impacted its customer accounts and wrongfully collected sums to which PGW was not entitled and violated the Commission's rules, regulations and 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 §56.22², 56.23, and 56.24³, 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

² 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.

Notes of Decisions

Conflict with Statute: Since 42 Pa.C.S. § 8101 (relating to interest on judgments) limits post judgment interest to 6% per year unless otherwise provided by another statute, it supersedes the regulation that provides for 18% interest per year on amounts owed to a public utility. Equitable Gas Co. v. Wade, 812 A.2d 715 (Pa. Super. 2002).

³ 52 Pa.Code§ 56.24. **Application of partial payments among several bills for public utility service.**

In the absence of written instructions, a disputed bill or a payment agreement, payments received by a public utility which is insufficient to pay a balance due both for prior service and for service billed during the current billing period shall first be applied to the balance due for prior service.

§ 56.22. 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. PGW's exceptions argue that late payment charges are a rate to which they are entitled for the service of carrying delinquent accounts. Under the regulations, that rate is limited to the collection of no more than 18% simple interest, not an effective tariff rate of 19.52% compounded interest or accumulated post-judgment interest which is the effective rate as a result of PGW's re-ordered posting policy and treatment of lien judgments on outstanding balances. . Balances liened and perfected are already inclusive of the 18% plus (19.52%) interest when docketed.⁴ Moreover, PGW 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 charge a post-judgment interest rate of 6%, like any other public utility in the state.

SBG reiterates, 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 establishes the practical effect of a lien judgment adjudicated as a debt securitized by position on the property. PGW would have the

⁴ 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. (*emphasis added*).

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.

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. 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, SBG was 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 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 affect 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 lien defects on the face of the lien as follows: “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). Moreover, the testimony and record shows that PGW’s record keeping and accounting practices when it comes to filing liens is suspect at best, where in 2011, there was a discrepancy of \$60,000 in the amount of lien debt PGW, attorney Gerald Clark and Ted Savage supplied Complainants. (Tr. 8/29/2013 Hearing Test. Phil Pulley, pgs, 62 - 66, SBG Exhibit PGW.Corr0025, PGWCorr00028, PGWCorr00029, PGW Corr00033, PGWCorr00034).

Assuring the veracity of the calculations contained in the stated account balance on liened debt submitted for docketing is essential to customers who face property deprivation as a result of liens. Only the PUC has the jurisdiction to ensure that PGW’s accounting conforms to the mandates of the Commission. The PUC has the exclusive jurisdiction and the expertise to determine the accuracy of underlying utility debts on customer accounts regardless of whether the balance concerns liened debt. PGW agrees the PUC is agency with the authority and exclusive jurisdiction to determine the accuracy of customer account balances subject to liened debt and reiterated this fact during a March 25, 2014 hearing on a writ of scire facias involving SBG’s properties in a colloquy before the Honorable Ellen Ciesler of

the Philadelphia Common Pleas Court. In that proceeding, PGW attorney, Gerald Clark represented to the court that “the PUC had the expertise and jurisdiction to consider the underlying accounting for the debts that constituted the debt liened” and suggested deferring the matters pending before that court until these consolidated matters were concluded. The Court of Common Pleas deferred jurisdiction until the completion of these consolidated cases, however, PGW ultimately withdrew their foreclosure actions. on September 8, 2014, SBG filed a motion to compel in these proceedings that attached the transcript and testimony from the March 25, 2014 court hearing whereby PGW attorney, Gerald Clark stated the Commission had exclusive jurisdiction to determine the accuracy of the underlying account balances subject to the liens; Judge Vero issued a ruling on said motion. SBG’s attorney, Ms. Francine Thornton Boone, reported Mr. Clark’s on the record representation to ALJ Vero during a pretrial hearing in these proceedings which was confirmed on the record by PGW counsel, Laureto Farinas. (Tr. July 11, 2014, pg. 23, line 8 -25). SBG requests the Commission take judicial notice of Gerald Clark’s statements and review the transcript from the March 25, 2014 hearing.

The placement of the lien properly perfected is **inclusive of the 18% interest and penalties that is due on that specified lien judgment⁵ docketed with the Court.** PGW loses none of its liquidated

⁵**34Pa.B. 22, Per Curiam:**

And Now, 19th day of December, 2003, the Pennsylvania Rules of Civil Procedure are amended as follows:

3. New Rules 3020, 3021, 3022, 3023, 3025.1, 3026.1, 3026.2, 3026.3, 3028, 3031.1, 3049.1, and 3101.1 are promulgated to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 2004.

publishing Explanatory Comments III. Judgments

A new chapter of four rules has been added which encompasses the entry of judgment in the judgment index and the effect of a judgment as a lien upon real property. The four rules are Rule 3020 (Definition), Rule 3021 (Verdict. Order. Judgment. Entry in Judgment Index), Rule 3022 (Verdict or Order. Lien. Duration) and Rule 3023 (Judgment. Lien. Duration).

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

damages claim and once docketed the judgment may accrue additional post-judgment interest at the legal rate. In this instance, SBG paid the 18% interest penalties due when they refinanced the properties and paid the liens. Moreover, SBG paid more than the 18% simple interest because of PGW's payment posting scheme which paid off non-interest bearing late charges first and in full on prior balances, leaving interest bearing gas service charges unpaid and subject to another 18% interest charge and delinquent balance subject to a new lien. As gas charges and late fees continued to accrue on that debt (still old debt for prior balances), new liens were filed which in essence included gas debt from prior liens which were inclusive of 18% interest charges. This concept is very complex and difficult to understand and not visibly cognizable on the statement of accounts. (Tr. pg. 1152, lines 23 - 25; pg. 1153, lines 1-13.) The accounting scheme was only revealed through extensive litigation which required PGW to hire Ms. Rizzo as a consultant to produce the evidentiary Late Payment Analyses in response to discovery which was used at the hearing. (*See* Statement of Accounts w/Late Payment Analyses: SBG FEM Exh. Nos. 26 -38, 40, 41, 47, PGW FEM Exh. Nos. 1 - 20.). But for this litigation and the ability to review the detailed accounting records through the PUC, SBG never would have been discern the true nature of PGW's accounting scheme and reconcile their accounts.

To effect payment on amounts liened, PGW has two options, it can enforce payment on the perfected lien by filing a writ of scire facias, which verifies the debt on its face and initiates foreclosure proceedings. Or, in SBG's case who refinanced various properties, pursuant to the MTCLL PGW submits an account payoff statement to the title company and gas debts are paid in order to clear title.

As an accounting function, rather than lump the lien balances in with non-liened outstanding balances, once liened, PGW could very easily create a new SA (Service Agreement) for the liened balance and charged a additional post-judgment interest penalty on the all-inclusive lien balance at the post judgment interest rate. Segregating the sums liened into a newly created SA is a routine accounting

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*.

function for PGW and allegedly is perform when they segregate disputed versus undisputed amounts in the event of a customer dispute or when a formal/informal complaint is filed with the PUC. Therefore, it is not unduly burdensome for the Commercial Resource Center to push a button that establishes a new SA for the amount of the lien when it pushes a button that sends notice to the City directing the sums to be liened for docketing and perfection. Moreover, performing this simple accounting function promotes better record keeping and monitoring by PGW, thus managing customer accounts in a more orderly fashion. The necessary documentation to prove up the lien balance remains easily accessible and available for review and segregated from current outstanding balances.

PGW wants to maintain its super-power authority with minimal effort and accountability. It is easier to hit a button on the office computer to cause and affect a lien through the City. The current lien imposition process allows PGW to abdicate its account management responsibility to ensure the accuracy of the underlying accounting of the balances liened perfected for judicial determination, mostly because attacks under the MTCLL are rather limited to facial defects of the lien docketed and notice of the proceeding. The judicial process does not delve into the correctness of the underlying balance of the lien. It is not surprising that PGW is vehemently protecting its interest and desperately trying to avoid the Commission's review of its accounting and collection practices. The MTCLL enforcement process provides cover to protect PGW's scheme to enhance revenue collections through over-collection of late fees beyond the authorized tariff rate.

This is a case of first impression for the Commission. The Commission has not been confronted with the actual knowledge that PGW's billing and accounting schemes afford it a higher late fee collection rate than that authorized by its Tariff. SBG's litigation bore proof that PGW's practice of posting payments out of time and order, applying payments to the most recent and cumulative late charges and security deposits first before applying payments to prior gas charges, (the balances of which are inclusive of previously determined late payment charges), along with PGW's scheme to include lien judgment debt in outstanding and accruing balances violates PGW's duty to provide adequate and reasonable service under section 1501 of 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 and 56.23, 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). PGW strenuously argues that its billing and collection methods for liened debt are beyond the jurisdiction of the Commission to decide. Moreover, PGW wantonly disregards this Commission's rules, regulations, the Public Utility Code and well-settled law pertaining to the issue. PGW also takes exception to SBG's theory accepted by the ALJ that proves PGW misapplies partial payments such that principle balances are exacerbated and subjected to compounded late fees in excess of 18% simple interest. PGW arrogantly decries the ALJ's findings without offering any substantive argument or evidence to the contrary.

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 provides no credible legal authority, analysis or justification for ignoring the Commission's regulations under 52 Pa.Code §56.22 and 56.24 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. 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. PGW raised no defenses and failed to meet its burden under §315.

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 Commission's 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 §56.1.⁶

SBG does 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 absent 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.

⁶ 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 of 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.

Private gas service companies and electric companies, such as Equitable Gas, PPL or PECO are limited to obtaining lien judgments subject to post-judgment interest in the amount of 6% because they are not subject to the MCTLL, therefore, it seems somewhat discriminatory to allow a different penalty rate of interest for other utility providers in the state who provide the same service as PGW, who contend it's entitled to collect 18% post-judgment interest on lien-ed gas debt.

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.

B. SBG's Reply to the Exception Nos. 3 and 4: 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.

Apart from reiterating the same argument in their first exception, which SBG has addressed above, 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. Id.* at 477. Pa.Stat.Ann. tit. 53, § 7106(b)(emphasis added).”

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.

C. 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 of Full and Partial Payments and Over Charges Of Interest Imposed On Its Accounts.

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. pgs. 611 - 662; 865 - 924). 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).

When there is more than one rate applicable to unpaid bills for consumers (to pay all unpaid late charges first, before paying any unpaid principal *or* prior balances (inclusive of previously assessed late payment charges), which is what PGW does, or 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 posting payments out of time, especially pertaining to partial payments, such that cumulative late fees are paid ahead of prior service balance/arrearages coupled with the practice of including tariff rate late payment interest (18% plus) to accrued balances that are concurrently liened and docketed with the court of common pleas constitutes rates that are least favorable to the customer. Such unilateral action is evidence of PGW failing to provide reasonable and adequate service, which is a violation of §1501 of the Public Utility Code. (SBG-FEM late-filed Ex. 1- 6).

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 effect 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. The Waterman 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).

SBG has proven that it overpaid 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 reflect 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).

PGW breached its duty to SBG to deal fairly and in good faith with its customers because it does not readily disclose or inform customers that it re-orders customer payments and layers previously liened debt into outstanding account balances while continuing to charge 18% plus late fees in order to maximize revenues beyond the authorized tariff rates. Moreover, in any given month there are upwards of 80,000 PGW delinquent customers subject to the same dubiously abusive accounting practices. Without the opportunity to review its accounts and PGW's accounting and billing schemes before the PUC, SBG would not have been able to discover the issues with its gas accounts.

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. The ALJ's mathematical determinations are correct in light of those constraints. 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.

Moreover, PGW, as a municipal service provider has a higher duty to protect the integrity of its accounting, billing and collection processes by ensuring accuracy in its' customers accounts. Especially in light of PGW's unique ability to enforce collections under the MCTLL which grants PGW special powers to affect lien judgments with minimal due process and judicial review, the judiciary and the customer must have the ability to readily confirm the underlying debt. This litigation has shown the Commission that PGW's records on their face are not trustworthy and as its regulators, where there is any doubt, the Commission must maintain and exercise its exclusive jurisdiction to appropriately monitor and ensure the veracity of PGW customer accounts, which may subsequently be reviewed in a judicial proceeding.

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, 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 colloquy 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, 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 SBG’s payment history was the primary source of their large arrearages and disputed accounts reinforces their scienter in not wanting to reveal their accounting schemes. It works for PGW to blame the victim and paint them with a broad brush as ‘deadbeats’. While the presiding officer held SBG to a higher standard for not filing sooner, the Commission must consider that after years of dialogue and PGW promises to investigate, SBG did file suit without knowing the extent of and actual cause of their injuries. PGW was never forthcoming in disclosing its accounting, billing and collection schemes. 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 SBG’s 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 SBG 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 without repentance.

D. 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 legal basis to warrant not being adopted and sustained by this Commission. The Commission has a compelling interest and duty to exercise its authority and jurisdiction to review PGW’s

accounting scheme and provide customers, like SBG, an avenue to adequately address their claims and ensure the accuracy of their account balances, particularly those balances that are the subjected to lien judgments.

CONCLUSION

A. SBG's Reply to Exceptions 1 and 2: The ALJ's Initial Decision Is Correct, The Issues Decided Are Within The Commission's Jurisdiction, Based Upon The Legal and Statutory Authority Bestowed Upon The Commission Under The Public Utility Code And Is Reasoned In Accordance With Its Promulgated Rules and Regulations.

1. The Initial Decision Determined PGW's Accounting, Billing and Collection Policies Are Within The Commission's Authority To Review. The ALJ Correctly Found PGW's Accounting Practices Regarding Re-Ordered Payment Postings and Inclusion of Late Payment Charges In Outstanding Balances Subject To Lien Judgments Violates The Public Utility Code. The Initial Decision Is Not An Interpretation of or Harmonization of The Municipal Claims and Tax Lien Law (MCTLL), 53 P.S. §§ 7101, et. seq., and Judicial Code at 42 Pa.C.S. § 8101 (ID at 84-94); COL at ¶ 1, 13 - 21; Ordering ¶ 18 - 22.

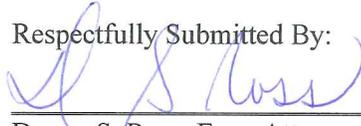
B. SBG's Reply to the Exception Nos. 3 and 4: The ALJ's Decision Was Correct. There Was No Error Because The Decision Was Not An Interpretation of Statutes Beyond The Jurisdiction of The Commission's Purview And The Significance Between an In Rem and In Personam Action Has The Same Net Effect On A Debtor. The ALJ's Decision Is Based Upon The Regulations, Tariff and Law As Found In the Public Utility Code.

C. 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 of Full and Partial Payments and Over Charges Of Interest Imposed On Its Accounts.

D. 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.

Date: January 8, 2016

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./Fairmount Manor Realty Co., LP v. Philadelphia Gas Works, Docket No. C-2012-2304215, SBG Management Services, Inc./Elrae Garden Realty Co., LP v. Philadelphia Gas Works, Docket No. C-2012-2304167 and SBG Management Services, Inc./Marshall Square Realty Co., LP v. Philadelphia Gas Works, Docket No. C-2012-2304303

Certificate of Service

I hereby certify that I have served the foregoing instrument in the above referenced matters, upon the parties set forth below, via Email or fax/First Class, U.S. mail delivery and/or Overnight Delivery by Fed Ex and/or by hand delivery to parties as listed below, in accordance with the requirements of 52 Pa.Code Section 1.54 and the PA Public Utility Commission Orders.

The Honorable ALJ Eranda Vero

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

Mr. Daniel Clearfield, Esquire
Carl R. Schultz, Esquire
Mr. Laureto Farinas, Esquire

For Respondent PGW via email, fax or Fed Ex
For Respondent PGW via email, fax or Fed Ex
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 efilings/Fed Ex

Date:

1-08-2016

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: 215-935-6987
Email: dsross@sbgmanagement.com; dsross90@gmail.com
Pennsylvania Attorney ID. No. 59747

00054

00100

16954

fedex.com 1.800.GoFedEx 1.800.463.3339

05754034

FedEx Express Package US Airbill

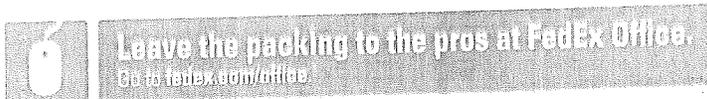
FedEx Tracking Number 8092 5359 9203

Form ID No. 0215

1 From Please print and press hard.
 Date 1-08-2016 Sender's FedEx Account Number 2393-0508-3
 Sender's Name Donna S. Ross, Esq. Phone (215) 938-6665
 Company SBG MANAGEMENT
 Address 120 HUNTINGDON PIKE LOWR LEVEL Dept./Floor/Suite/Room
 City ROCKLEDGE State PA ZIP 19046-4309

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

3 To
 Recipient's Name Mr. Laureto Farinas, Esq. Phone (215) 684-6982
 Company Philadelphia Gas Works
 Address 800 W. Montgomery Ave Dept./Floor/Suite/Room
 We cannot deliver to P.O. boxes or P.O. ZIP codes.
 Address 444 FL
 Use this line for the HOLD location address or for continuation of your shipping address.
 City Philadelphia State PA ZIP 19122



4 Express Package Service * To most locations.

Next Business Day
 FedEx First Overnight
 FedEx Priority Overnight
 FedEx Standard Overnight
Two Business Days
 FedEx 2Day A.M.
 FedEx 2Day
 FedEx Express Saver

5 Packaging * Declared value limit \$500.

FedEx Envelope* FedEx Pak* FedEx Box FedEx Tube

6 Special Handling and Delivery Signature Options Fees may apply. See the FedEx

Saturday Delivery
 No Signature Required
 Direct Signature
 Indirect Signature
Does this shipment contain dangerous goods?
 No Yes Yes Dry Ice Cargo Aircraft Only

7 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below.
 Sender Recipient Third Party Credit Card
 Total Packages 1 Total Weight 1 lbs. Total Declared Value! 00

Your liability is limited to US\$100 unless you declare a higher value. See back for details. By using this airbill you agree to the service conditions on the back of this airbill and in the current FedEx Service Guide, including terms that limit our liability.

MUR 1

00055

00100

16953

fedex.com 1.800.GoFedEx 1.800.463.3339

05754034

FedEx Express Package US Airbill

FedEx Tracking Number 8092 5359 9214

Form ID No. 0215

1 From Please print and press hard.
 Date 1-08-2016 Sender's FedEx Account Number 2393-0508-3
 Sender's Name Donna S. Ross, Esq. Phone (215) 938-6665
 Company SBG MANAGEMENT
 Address 120 HUNTINGDON PIKE LOWR LEVEL Dept./Floor/Suite/Room
 City ROCKLEDGE State PA ZIP 19046-4309

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

3 To
 Recipient's Name Hon. Rosemary Clivette Sec Phone 717 772-7777
 Company PA PUC
 Address Commonwealth Keystone Bldg 2nd Fl Dept./Floor/Suite/Room
 We cannot deliver to P.O. boxes or P.O. ZIP codes.
 Address 400 North Street
 Use this line for the HOLD location address or for continuation of your shipping address.
 City Harrisburg State PA ZIP 17105-3265



4 Express Package Service * To most locations.

Next Business Day
 FedEx First Overnight
 FedEx Priority Overnight
 FedEx Standard Overnight
Two Business Days
 FedEx 2Day A.M.
 FedEx 2Day
 FedEx Express Saver

5 Packaging * Declared value limit \$500.

FedEx Envelope* FedEx Pak* FedEx Box FedEx Tube

6 Special Handling and Delivery Signature Options Fees may apply. See the f

Saturday Delivery
 No Signature Required
 Direct Signature
 Indirect Signature
Does this shipment contain dangerous goods?
 No Yes Yes Dry Ice Cargo Aircraft Only

7 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below.
 Sender Recipient Third Party Credit Card
 Total Packages 1 Total Weight 1 lbs. Total Declared Value! 00

Your liability is limited to US\$100 unless you declare a higher value. See back for details. By using this airbill you agree to the service conditions on the back of this airbill and in the current FedEx Service Guide, including terms that limit our liability.

00100

FedEx Express Package US Airbill

FedEx Tracking Number 8092 5359 9188

Form ID No. 0215

1 From Please print and press hard.

Date 1-08-2016 Sender's FedEx Account Number 2393-0508-3
Sender's Name Donna S. Ross, Esq. Phone (215) 938-6665
Company SBG MANAGEMENT
Address 120 HUNTINGDON PIKE LOWR LEVEL
City ROCKLEDGE State PA ZIP 19046-4309

2 Your Internal Billing Reference

First 24 characters will appear on invoice.

3 To Mr. Carl Shultz, Esq.
Recipient's Name Mr. Daniel Clearfield Phone (717) 237-6000
Company Eckert Seamans Cherin & Mellot, LLC
Address 213 Market ST
Address 8th FL
City Harrisburg State PA ZIP 17101

Hold Weekday FedEx location address REQUIRED. (H) available for FedEx First Overnight.
Hold Saturday FedEx location address REQUIRED. (H) available for FedEx Priority Overnight and FedEx 2Day to select locations.

4 Express Package Service

FedEx First Overnight, FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day A.M., FedEx 2Day, FedEx Express Saver

5 Packaging

FedEx Envelope*, FedEx Pak*, FedEx Box, FedEx Tube

6 Special Handling and Delivery Signature Options

Saturday Delivery, No Signature Required, Direct Signature, Indirect Sig, Does this shipment contain dangerous goods?, Payment Bill to:



00053

00100

FedEx Express Package US Airbill

FedEx Tracking Number 8092 5359 9199

Form ID No. 0215

1 From Please print and press hard.

Date 1-08-2016 Sender's FedEx Account Number 2393-0508-3
Sender's Name Donna S. Ross, Esq. Phone (215) 938-6665
Company SBG MANAGEMENT
Address 120 HUNTINGDON PIKE LOWR LEVEL
City ROCKLEDGE State PA ZIP 19046-4309

2 Your Internal Billing Reference

First 24 characters will appear on invoice.

3 To Hon. Eranda Vero, AGW
Recipient's Name Phone (215) 1560-2105
Company PA PUC
Address 801 Market ST
Address Suite 4063
City Philadelphia State PA ZIP 19107

Hold Weekday FedEx location address REQUIRED. (H) available for FedEx First Overnight.
Hold Saturday FedEx location address REQUIRED. (H) available for FedEx Priority Overnight and FedEx 2Day to select locations.

4 Express Package Service

FedEx First Overnight, FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day A.M., FedEx 2Day, FedEx Express Saver

5 Packaging

FedEx Envelope*, FedEx Pak*, FedEx Box, FedEx Tube

6 Special Handling and Delivery Signature Options

Saturday Delivery, No Signature Required, Direct Signature, Indirect Sig, Does this shipment contain dangerous goods?, Payment Bill to:



16954

fedex.com 1.800.GoFedEx 1.800.463.3339

05754034

16954

fedex.com 1.800.GoFedEx 1.800.463.3339

05754034

PL

MU

*Our liability is limited to US\$100 unless you declare a higher value. See back for details. By using this airbill you agree to the service conditions on the back of this airbill and in the current FedEx Service Guide, including terms that limit our liability. Rev. Date 5/15 • Part #163134 • ©1994-2015 FedEx • PRINTED IN U.S.A. SSM

*Our liability is limited to US\$100 unless you declare a higher value. See back for details. By using this airbill you agree to the service conditions on the back of this airbill and in the current FedEx Service Guide, including terms that limit our liability. Rev. Date 5/15 • Part #163134 • ©1994-2015 FedEx • PRINTED IN U.S.A. SSM