

SBG Management Services, Inc.

P.O. Box 549 Abington, PA 19001

Phone 215.938.6665

Fax 215.935.6987

March 7, 2016

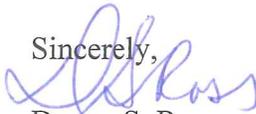
The Honorable Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd FL
400 North Street
Harrisburg, PA 17105-3265

Re: Filing of Complainants Reply To PGW's Exceptions; In the Matters of SBG Management Services, Inc. et al. v. PGW: Docket Nos.C-2012-2308454, C-2012-2308462, C-2012-2308465

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'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



TTY



Equal Housing Opportunity
Equal Opportunity Employer



Wheelchair
Accessible

“SBG Management and the owner of the property in question does 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./ FERN ROCK REALTY CO., L.P. <i>Complainant</i>	: DOCKET NO. C-2012-2308465
V.	:
PHILADELPHIA GAS WORKS <i>Respondent</i>	:
SBG MANAGEMENT SERVICES, INC./ MARCHWOOD REALTY CO., L.P. <i>Complainant</i>	: DOCKET NO. C-2012-2308462
V.	:
PHILADELPHIA GAS WORKS <i>Respondent</i>	:
SBG MANAGEMENT SERVICES, INC./ OAKLANE REALTY CO., L.P. <i>Complainant</i>	: DOCKET NO. C-2012-2308454
V.	:
PHILADELPHIA GAS WORKS <i>Respondent</i>	:

**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. The Initial Decision Determined PGW's Accounting, Billing and Collection Policies Are Within The Commission's Authority To Review and To Correct. The ALJ Correctly Found PGW's Accounting and Billing Practices Regarding Re-Ordered Payment Postings Violates The Public Utility Code.	2
1. The ALJ's analysis regarding the validity of PGW's payment posting scheme is based upon the plain language found in 52 Pa.Code §56.23 & 56.24.	2
2. PGW wrongfully includes and continues to charge 18% compounded interest to the aggregate account balances for sums filed as judgment liens in violation of Ch. § 56.22 and the ruling found in <u>Equitable Gas v. Wade</u> , 812 A.2d 715 (Pa.Super. 2002).	7
3. The Commission has the authority and duty to fashion an equitable remedy for violations of the Public Utility Code. The ALJ was correct in ordering the accounts be recalculated, 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.	19
4. 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 equitable remedy.	22

INTRODUCTION:

Complainants, SBG Management Services, Inc./Fern Rock Garden Realty Co., L.P and SBG Management Services, Inc./Marchwood Realty Co., L.P., SBG Management Services, Inc./Oaklane Court 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 February 24, 2016 PGW submitted for filing to the Commission Exceptions to the Initial Decision and Order entered on 2/4/2016 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) continuing to carry over, include and charge more than 18%per month interest to outstanding account balances on amounts filed as judgment liens, inclusive of sums previously assessed and inclusive of late payment penalties, against Complainants’ subject properties, 3) ordered PGW to recalculate the Complainants’ outstanding account balances from June 2008 through June 2012 and to submit for review and verification said recalculations to the Commission’s Bureau of Technical Utility Service, 4) ordered PGW to refund Complainants for excessive overpayments and 5) ordered civil penalties because PGW’s long-standing practices were conducted without repentance and with wilful disregard of the law.

Contrary to PGW’s assertions, this case is about PGW’s unlawful, unreasonable and unjust billing and collections practices which are subject to the primary and exclusive jurisdiction of the Commission. This case is not about an interpretation of the Municipal Tax Claims and Lien Law or other statutory construct.

A. The Initial Decision Determined PGW’s Accounting, Billing and Collection Policies Are Within The Commission’s Authority To Review and To Correct. The ALJ Correctly Found PGW’s Accounting and Billing Practices Regarding Re-Ordered Payment Postings Violates The Public Utility Code.

- 1. The ALJ’s analysis regarding the validity of PGW’s payment posting scheme is based upon the plain language found in 52 Pa.Code §56.23 & 56.24.**

The Initial Decision is based upon the testimony and evidence presented which proved that PGW utilizes improper accounting and billing practices to apply partial payments out of order, so that the most recent late payment charges are paid before the gas charges for prior service. The decision is correct and the comports to the spirit and intent of the regulations and statute governing public utilities as it relates to the application of partial payments to customer accounts.

PGW has re-ordered SBG's payments to apply those payments against newer non-interest-bearing late charges before applying those payments against older interest-bearing principal. Complainants' expert witness, Roger C. Colton, Esq. explained, "[w]hen a utility applies ... a payment to the late payment charge first and only after eliminating late payment charges applies any remaining payment to principal for prior service that utility is not managing the account to minimize arrears. Indeed it's managing the accounts to maximize revenues, maximize fee revenue; and it will have the impact of maximizing arrears."¹ "By the way you order payments, you [PGW][sic] increase the basic service charges which is subject to interest and relieve the late payment charge which is not subject to interest."² PGW's practice of applying payments out of time and order "makes money for the company" and "there's a certain incentive [for PGW] to reorder payments to suit their needs." The practice is tantamount to compounding interest and results in an interest rate of 19.562% per year instead of the 18% per annum simple interest rate.³ The ALJ credited the testimony of Complainants' expert witnesses and PGW did not challenge or rebut their testimony at the hearing.

The ALJ further credited Roger Colton's testimony when he stated that PGW's accounting practice constitutes a "pricing decision" and rate for purposes of regulation because PGW's payment posting *scheme* includes "any practice which affects the compensation paid to the utility" and "as a rate, it should be tariffed, made subject to a public proceeding, ... through which the PUC would review whether that rate is just and reasonable." He further opined that he believed that [PGW's] payment posting scheme results in generating late fees on an account at an interest rate greater than 18% per annum. Mr. Colton testified, "section 1303 of the Public Utility Code 66 Pa.C.S §1303 prohibits a utility from doing indirectly what it may not do directly. Consequently, PGW is ... prohibited from directly charging an interest rate that exceeds 18% simple interest per year, but also it is prohibited from indirectly, or by any device whatsoever, charging an interest rate that effectively exceeds 18% simple interest per year." PGW's payment posting scheme is not evident from the customer's billing statement, statement of account nor is it published in its Tariff. But for this litigation, neither SBG, the Commission, nor any other customer would be aware of how PGW posts payments to customer accounts, because there is no disclosure on the bill.⁴

In its exceptions PGW agrees that late payment charges are a rate. However, in these exceptions, PGW misquotes the hierarchy of payment order listed in the regulation at 52 Pa.Code §62.74(b)(3)(i) – (xi) by listing security deposits and late payment charges in order of presentation as numbers 1 and 2,

¹ Stipulation, Appendix 1 – Testimony of Roger D. Colton, Esq., Feb. 10, 2015 SBG-FEM Tr. at 876.

² Stipulation, Appendix 2 – Testimony of Jeremy Gabell, CPA, MA, Feb. 10, 2015 SBG-FEM Tr. at 856.

³ Stipulation, Appendix 2 – Testimony of Jeremy Gabell, CPA, MA, Feb. 10, 2015 SBG-FEM Tr. at 850 - 865.

⁴ Stipulation, Appendix 1 – Testimony of Roger D. Colton, Esq., Feb. 10, 2015 SBG-FEM Tr. at 876-7, 883 – 888, 891, 893 – 899, 901-4.

rather than their actual order which are numbers (viii), security deposits and (vii), late payment charges in the regulation. Although the regulations specify that partial payments shall be applied to prior balances, the Commission has not been apprised of PGW's methods of posting partial payments to accounts prior to this case.

This is a case of first impression before the Commission and prior to this action the Commission was not confronted with proofs of the detrimental affect that PGW's practice of ignoring payments being posted and applied via the first in, first out method has on a customer account. PGW ignored Complainants complaints and refused to explain to Complainants the accounting discrepancies which is the cause of this litigation. Complainants have proven that PGW has ignored the plain reading of the regulations at Chapter 56, ignored its prior Tariff and unilaterally made an unauthorized pricing decision to increase revenues and collections of late payment fees by re-ordering the sequence of partial payments posted to accounts. PGW determined that it could circumvent the collection of tariff rate interest of 18% simple interest per annum on overdue accounts by applying payments to non-interest bearing debt first before paying down older arrearage balances for prior service, leaving interest bearing principle balances for prior PGW charges unpaid and subject to new non-interest bearing late payment charges, all of which lead to overdue, exacerbated current principle balances subject to more late fees.

PGW argues in its exceptions that prior service includes both basic services⁵ and non-basic service⁶. The Tariff and regulations at 52. Pa.Code §56.23 and 24 clearly differentiate between basic utility service and non-basic service. Under the regulations at 56.23, partial payments are applied to basic service first in the hierarchy of payment posting. Moreover, under 56.24, a partial payment which cannot pay both current charges and prior service shall first be applied to the balance due for prior service. PGW's Gas Tariff – Pa P.U.C. No. 2 Philadelphia Gas Works Original Pg. No. 26 Issued: August 29, 2003 Effective: September 1, 2003⁷, notated below, gave guidance on how payments should be posted

⁵ BASIC UTILITY SERVICE (or Gas Service) - The provision of Retail Sales Service or Transportation Service to a Customer and all associated fees and charges that are essential to the provision of Retail Sales Service or Transportation Service. Basic Utility Service is also referred to as Gas Service in this tariff.

⁶ NON-BASIC UTILITY SERVICE – Leased or purchased merchandise, appliances or special services including but not limited to merchandise and appliance installation fees, rental and repair costs, meter testing fees, special construction charges and other nonrecurring charges that are not essential to delivery or metering of Gas Service.

PGW CHARGES - The portion of the consolidated PGW bill that itemizes the charges for the Basic Utility Service provided by PGW.

⁷ Gas Tariff – Pa P.U.C. No. 2 Philadelphia Gas Works Original Pg. No. 26 Issued: August 29, 2003 Effective: September 1, 2003

4. Billing and Payment.

4.2. APPLICATION OF PAYMENT. 4.2.A. Acceptable Payment Periods. The due date for payment may be no less than 20 days from the date of transmittal, that is, the date of mailing or physical delivery of the bill by the Company to the Customer. If the last day for payment falls on a Saturday, Sunday, a bank holiday or other day when the offices of the Company which regularly receive payments are not open to the general public, the due date shall be extended to the next business day. Payment to a PGW Customer Service Center or an authorized payment agent shall be deemed to have been made upon actual receipt of payment by the Customer Service Center or payment agent. Payments sent by mail, on or prior to the finance charge date, as evidenced by the United States Postal Service date stamp on the envelope in which they are received, shall be accepted as a tender of payment within such payment period. The Company may not impose a Late Payment Charge unless payment is received more than five days after the due date.

4.2.B. Partial Payments. Payments received by the Company without written instructions that they be applied to merchandise, appliances, special services, meter testing fees or other Non-basic Utility Service charges and which are insufficient to pay the balance due for the items plus amounts billed for Basic Utility Service shall first be applied to the Basic Utility Service portion of the charges.

and applied upon receipt of partial payments, stating that partial payments are to be applied first to **balances for prior PGW charges**, which are charges for basic utility service, next payments are applied to **current balances** for PGW basic utility charges, and subsequently payments are posted to segmented non-basic charges. While the specified application of partial payment provision of the PGW tariff (4.2C 1-7) was subsequently removed in 2007, the regulations govern the spirit of the law and the basic principles for payment postings.

The term **balance** is reiterated in the regulations whether those balances are for prior service or current service. The operative word in both the current Tariff and the regulations is *balances* (meaning inclusive of all charges as a whole) . There is no authority for PGW to segment or parse payments made to the aggregate balance due from the whole payment for prior service. PGW is not authorized to only apply payments to non-interest bearing late payment charges and security deposits first before applying monies to the remaining prior balance, regardless of when the debts are incurred by the customer. PGW sustains this practice because they are well aware that apportioning payments to segmented charges allows them to keep unpaid prior service charges on the “books” and assess late fees at a rate of 1.5% per month. The scheme works like a credit card or a mortgage payment pay the interest due first before paying down principle. The difference is that with a mortgage or credit card the customer knows that their payment is first applied to interest before principle and the interest rate is disclosed as being a compounded rate. PGW’s billing practice violates the tenets of the UCC, of good faith and fair dealing, and the governing regulations because the customer is completely unaware of the practice and can never reconcile their payments based upon their monthly billing statement or a statement of accounts.

PGW fails to comprehend the legal issue before the Commission. PGW does not apply partial payments in accordance with *interest bearing principle balances* paid first as the regulations specify and as intended. PGW instead applies the payment first against **all** of the non-interest-bearing late fees and deposits, no matter how recently incurred, leaving the interest-bearing outstanding balances unpaid despite having an older service date. Only when **all** of the non-interest-bearing late fees are retired is the balance of the payment (if any) then applied to reduce the oldest interest-bearing unpaid principal balance. The result of PGW’s reordering of the customer’s payment is that more recent late payment

Gas Tariff – Pa P.U.C. No. 2 Philadelphia Gas Works Original Pg. No. 27 Issued: August 29, 2003 Effective: September 1, 2003

4.2.C. Application for Partial Payments. When a Customer remits a partial payment, the payment shall be applied as follows:

4.2.C.1. Outstanding pre-September 1, 2003 balance due, or the installment amount of a payment agreement on this balance;

4.2.C.2. Any balance due on prior PGW Charges, or the installment amount for a payment agreement.

4.2.C.3. Any balance due on current PGW Charges.

4.2.C.4. Balance due for prior Supplier charges;

4.2.C.5. Current Supplier charges;

4.2.C.6. Non-basic Utility Service charges; and

4.2.C.7. Hardship Energy Fund Contributions.

4.3. FINANCE CHARGE ON LATE PAYMENTS. PGW will assess a late penalty for any overdue bill, in an amount which does not exceed 1.5% interest per month on the full unpaid and overdue balance of the bill. These charges are to be calculated on the overdue portions of PGW Charges only. The interest rate, when annualized, may not exceed 18% simple interest per annum. Late Payment Charges will not be imposed on Disputed estimated bills, unless the estimated bill was required because utility personnel were unable to access the affected premises to obtain an Actual Meter Reading.

charges are paid before older unpaid principal is paid, leaving higher, exacerbated principal balances which are subject to additional non-interest bearing late fees.

PGW admits to the payment posting order scheme, however their analysis, raised for the first time in these exceptions, argues that the ALJ's findings amount to an ex post facto determination, completing ignoring the fact that the rules for application of partial payments are found in the regulations. The example they provide in their exceptions only contemplates that full payment is made and applied to the current bill and accrued late fee. PGW completely misunderstands and misapplies the rules to the legal issue before the Commission. The ALJ understands the issue and correctly applied the law, the regulations and the tariff to the facts based upon the evidence presented.

Since PGW is barred by law from imposing late charges on late charges, PGW's re-sequencing of the customer's payment, choosing to selectively post that payment against more recent late charges before retiring older charges for principal, artificially inflates total costs to the customer. It leaves older interest-bearing charges outstanding while retiring newer non-interest bearing charges. This practice allows PGW to circumvent the limits imposed by its Tariff to not charge more than 18% simple interest in late fees on overdue bills. By re-ordering the payment postings to eliminate late payment charges first (non-interest bearing charges) before applying payments to older prior balances, PGW can say they are not charging late fees upon late fees, but the net effect is the same and results in the application of compounded interest in the amount of 19.562% and not 18% simple interest being applied to customer accounts.

PGW argues in its exceptions that the ALJ is unilaterally creating a new allocation of payment posting, when in essence the decision reinforces the payment allocation methods proscribed in the existing regulations. Moreover, PGW arrogantly states that Complainants are not subject to the Commission's protections under Chapter 56. This is a complete and total misreading of the regulations and contrary to the law. *See Angie's Bar v. Duquesne Light Company*, 72 Pa.PUC 213, 1990 Pa. PUC LEXIS 4. (The PUC found no distinction between residential and commercial customers in applying section 1312 of the Public Utility Code regarding refunds and ordered that Complainant was not responsible for late fees.) In this instance, PGW's payment posting scheme regarding partial payments made to an account artificially sustains and inflates outstanding customer balances, thus increasing the companies objectives of collecting additional revenue through finance charges, which has been noted in the PGW annual report to account for nearly 20% of its annual revenues. The practice also results in compounding the authorized interest rate under the tariff and Chapter 56 from 18% simple interest to 19.562% compounded interest.

PGW's additional arguments challenging the ALJ's decision regarding payment postings for partial payments received is that the PGW accounting system does not tract payments of late payment

charges on each bill or the collection thereof, which is specious at best. There was no evidence presented at the hearing regarding this allegation. Moreover, under 66 Pa.C.S. §315(d), it is incumbent upon the public utility to justify their accounting practices and mechanisms to the Commission. It is fundamentally unfair to impose late payment charges to a customer and then feign the ability to justify the accounting of such fees. Moreover, the evidence presented and testimony of PGW's, Diane Rizzo, shows that PGW does in fact account for and track late payment charges by the fact that their entire payment posting scheme is based upon applying payments to accrued late payment charges and security deposits first before applying payments to prior usage charges. "Deviation from an approved tariff is not permitted under *any pretext*." (quoting PPL Electric v. PUC, 912 A.2d 386, 405, 2006 Pa. Commw. LEXIS 665, where the court reaffirmed under 66 Pa.C.S §508 the Commission had jurisdiction to oversee, review, modify and reform any contract entered into by a public utility where the terms are "unjust, unreasonable, inequitable or otherwise contrary or adverse to the public interest". *Id.* at 409). 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).

2. PGW wrongfully includes and continues to charge 18% compounded interest to the aggregate account balances for sums filed as judgment liens in violation of Ch. § 56.22 and the ruling found in Equitable Gas v. Wade, 812 A.2d 715 (Pa.Super. 2002).

In order to further maximize revenues PGW improperly continues to include liened judgments amounts in the outstanding aggregate balance subject to subsequently accruing late payment charges of 18% interest, PGW's tariff rate for late payment charges, 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 §56.22. The liened judgments are already inclusive of late payment charges assessed in the debt filed as a lien. PGW continues to layer and include that liened balance onto any additional and accruing balances, and continues to charge late fees on the total balance, which is inclusive of the previously liened balance.

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 argues that the initial decision is an attack on the Municipal Tax Claims and Lien Law (MTCLL) and is beyond the Commission's jurisdiction. Reiterating the holding in PPL Electric v. PUC, 912 A.2d 386, 2006 Pa. Commw. LEXIS 665, under 66 Pa.C.S §508 the Commission has jurisdiction to oversee, review, modify and reform any contract entered into by a public utility where the terms are "unjust, unreasonable, inequitable or otherwise contrary or adverse to the public interest". *Id.* at 409.

We contend PGW's interpretation 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 which is that PGW's accounting, billing and collection practices are designed to maximize company revenues to the detriment of its customers; the practices 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 lien judgments. The lien 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 truthfully or legitimately assert that the liens imposed on the subject property appear in a vacuum.

Complainants are entitled to know the origin of their outstanding account balances that include accumulated late payment charges which are subject to municipal liens; and, PGW's accounting, billing and collections practices constitute issues that fall 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. Pettko v. Pennsylvania American

Water Co., 39 A.3d 473, 479, 480 – 484, 2012 Pa. Commw. LEXIS 26, (the court reiterates the PUC is the court of primary jurisdiction for public utility billing matters, and where it can fashion equitable remedies to make claimant whole, the PUC has exclusive jurisdiction of the matter and may order cumulative remedies (66 Pa.C.S. §103 (c)). The Pennsylvania legislature has specifically authorized the Commission to regulate PGW, as a state regulated public utility, and PGW must 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)⁸).

In Pentlong Corporation v. GLS Capital, Inc., 573 Pa. 34, 820 A.2d 1240, 2003 Pa. LEXIS 383, the Pennsylvania supreme court held that 1) “where the legal remedy cannot afford ‘full, perfect and complete’ relief, ‘equity extends its jurisdiction in the furtherance of justice’. Id. at 573 Pa. 43. The court determined that the legal remedy of the scire facias proceedings for Taxpayers to challenge the legal interest rate and validity of associated fees for tax liens was ill-suited to resolve the Taxpayer’s action. Id. at 46. The court stated that the scire facias proceedings are primarily designed to resolve routine lien challenges, such as factual defenses: actual payment, facial defects of the lien and lack of process. Ibid. The proceeding is not suited to address disputes on the amount of interest to be charged on the lien after its docketed and perfected, would lead to inefficient, inconsistent piecemeal litigation and that equitable relief was a full, perfect and complete remedy at law to address the Taxpayers’ challenges to the interest, fees and costs imposed on tax liens. Id. at 47. The court also found that the General Assembly amended the Municipal Tax Claims and Lien Law Act, 53 P.S. §7143, to read “Interest as determined by the municipality at a rate not to exceed ten percent per annum **shall be collectible on all municipal claims ...from the date of filing of the lien therefor.** (emphasis added). Id. at 51. The court went on to provide an analysis to say “whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two ... is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision...” Ibid. This holding was reiterated in the subsequent companion case, Pentlong Corp. v. GLS Capital, 72 A.3d 818, 821, 2013 Pa. Commw. LEXIS 264.

⁸ Pursuant to 66 Pa.C.S. §315 (a) – (d). 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*).

Moreover, in accordance with the doctrine of primary jurisdiction, the PUC is the first court of competent jurisdiction to determine the appropriate standards for service and billing questions. In Pettko v. Pennsylvania American Water Co., 39 A.3d 473, 2012 Pa. Commw. LEXIS 26, the court undertook an analysis of the role of the PUC where customers challenged the water company's billing practices. The court fashioned its rulings based upon previous decisions where trial courts defer to the expertise rendered by agency determinations. The court stated, "[u]nder the doctrine of primary jurisdiction, a trial court may refrain from hearing a case over which it might otherwise have jurisdiction, where protection of the integrity of a regulatory scheme dictates that the parties preliminarily resort to the agency that administers the scheme for the resolution of disputes. Once the administrative tribunal has determined the issues within its jurisdiction, the civil litigation may continue, guided ... by the ... outcome of the agency determination. Id. at 479, 480.

Only the PUC has the primary 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 lien debt. The PUC has the duty and authority to reform PGW's unfair and unreasonable contracts/policies and to provide equitable remedies for ratepayers who have been the victims of such violative actions. This authority has been reinforced by statute and the reasoning in a line of cases on such matters. *See* 66 Pa.C.S. §508, Re Duquesne Light Co., Investigation Docket No. 243, Pa. PUC, 1977 Pa. PUC LEXIS 151; 50 Pa. PUC 555, Pettko v. Pennsylvania American Water Co., 39 A.3d 473, 2012 Pa. Commw. LEXIS 26, *see also*, DiSanto v. Dauphin Consolidated Water Supply Co., 291 Pa. Super. 440, 436 A.2d 197 (Pa. Super. 1981), PPL v. PA PUC, 912 A.2d 386, 2006 Pa. Commw. LEXIS 665, Grace Scrutching v. PGW, 2003 Pa. PUC LEXIS 70, LP Water & Sewer Co. v Pa. PUC, 722 A.2d 733, 1998 Pa. Commw. LEXIS 912 (Pa. Commw. Ct. 1998). PGW agrees the PUC is the agency with the authority and exclusive jurisdiction to determine the accuracy of customer account balances subject to lien debt and reiterated this fact during a March 25, 2014 hearing on writs 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 lien" 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.

Assuring the veracity of the calculations contained in the stated account balance on lien debt submitted for docketing is essential to customers who face property deprivation as a result of liens. The PUC is the agency that shall exercise primary jurisdiction to review reasonable rates and regulated utilities billing practices. Where the PUC has complete and adequate administrative remedies to award complainants and make them whole, ie. order refunds for overpayments and to order cessation of violative conduct, ie. billing and collection practices, then the PUC has both primary and exclusive jurisdiction over the matter. Pettko v. Pennsylvania American Water Company, 39 A.3d 482 – 484.

PGW failed to show their legal authority to segment or parse partial payments received and apply them solely to itemized late payment charges first rather than apply them to the aggregate balances due. PGW did not prove their practice to reorder/re-sequence customer payments to maximize collections of late payment/finance charges complied with the tariff and 56.24. PGW did not provide the legal authority to justify their collection practices or why PGW was entitled to continue to ignore the regulations at 56.22-24, defy the doctrine of merger per the holding in Equitable Gas v. Wade, 812 A.2d 715 (Pa.Super. 2002) and charge **18% compounded interest in late fees and continue to include in the running account balances, sums determined to be overdue which were filed as perfected judgment liens and docketed with the prothonotary and court.** (emphasis added).

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 the tariff rate of more than 18% for 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.

(SBG-FMO Statement No. 1- Direct Testimony of Kathy Treadwell and Exhibits 2-18). For years, SBG requested information regarding PGW's application of payments on its accounts, but PGW failed to respond and/or conduct a thorough investigation. 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. PGW continued to assess, collect and include 18% interest on outstanding balances perfected as lien judgments and carried those sums over into the aggregate balances. 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 supported by the undisputed facts and 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, the dispositive case, Equitable Gas v. Wade, 812 A.2d 715 (Pa.Super. 2002) encompassing the doctrine of merger and section 7143 of the MTCLL Act, PGW's practices contradict the legal mandates that pre-judgment interest is nullified and lien judgments are 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. Complainants have proven otherwise and the ALJ agreed with Complainants based upon the evidence presented and the ALJ's own calculations.

PGW argues that Equitable Gas v. Wade is inapplicable to this case, because the account in Wade was a finalized account, however, **there is no such fact in the case, nor is there a requirement or distinction in the regulations that 56.22 only applies only to finalized accounts.** (emphasis added). PGW's argument is derived from fiction. Moreover, the MTCLL, the Act upon which PGW stakes its claim for maintaining its illegal practice, clearly mandates under section 7143, that the "interest rate not exceed ten percent per annum shall be collectible on all municipal claims...from that date of filing of the lien therefor." Late payment charges are a rate, designated in terms of an interest rate attributable to the overdue balance. The liens filed include the compounded 18% interest rate when adjudicated and

docketed. Under the MTCLL, section 56.22 and the holding in Equitable Gas v. Wade post-judgment interest at the lower rate may accrue on a municipal claim until satisfied. Section 7143 of the Act generally comports with the holding in Equitable Gas v. Wade and achieves the spirit of the law set forth in section 56.22. PGW is not prohibited from collecting on the debt. The debt when filed includes late payment penalties at the tariff rate of 18% per annum, in theory. And PGW is still entitled to collect the statutory rate of interest when the debt is filed as a municipal claim, even though, other public utilities, like PECO, UGI, Equitable Gas, etc. are only limited to the statutory rate of 6% interest.

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 §56.22⁹, 56.23, and 56.24¹⁰, 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.

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, due to 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.¹¹ Moreover, PGW is strictly prohibited from penalizing the ratepayer by *assessing a penalty on the balance of a 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 and balances docketed as lien judgments. Additional violations are inflicted upon

⁹ 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).

¹⁰ 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 are 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.

¹¹ 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.

53 P.S. § 7143. Interest as determined by the municipality at a rate not to exceed ten percent per annum shall be collectible on all municipal claims ...from the date of filing of the lien therefor.

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 aggregate 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, such as PECO, UGI, Equitable Gas, etc.

SBG reiterates, the ALJ’s decision was never predicated upon an interpretation of the two statutes as PGW has claimed. The issues rightly before the Commission involve billing and servicing matters for which it is the tribunal empowered by the legislature with primary jurisdiction to determine and fashion an equitable remedy pursuant to its authority under 66 Pa.C.S. §§ 101 -103(c) and 508.¹² The Commission has the power and authority to fashion equitable relief against a public utility where there is a violation of the Public Utility Code. (*See Re Duquesne Light Company*, PUC Investigation Docket No. 243, 1977 Pa. PUC LEXIS 151, 50 Pa. PUC 555, March 8, 1977; and *PPL v. PUC*, 912 A.2d 386, 2006 Pa. Commw. LEXIS 665.

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 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.

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

¹² 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.

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 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. (*See Pentlong v. GLS Capital*, Id. at 46-47.) 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 Complainants’ need to refinance and the expense of posting 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). *See also Pentlong v. GLS Capital* at 46 - 47 and Pettko at 482 – 484.

The placement of the lien properly perfected is **inclusive of the 18% interest and penalties that is due on that specified lien judgment¹³ docketed with the Court.** PGW loses none of its liquidated 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 new 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. But for this litigation and the ability to review the deeply embedded information in 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 charge a 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 function for PGW and allegedly is performed 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. It should be noted that in these consolidated cases PGW did not segregate the disputed balances until June 2014, two years after the litigation ensued.

Nevertheless, 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

¹³34Pa.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 docket 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.

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. PGW's current lien process allows PGW to abdicate its account management responsibility to ensure the accuracy of the underlying accounting of the balances liened and 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 and PGW can assert that the lien is beyond the PUC's review. The statutory process for challenging the accounting of the lien is inadequate and does not provide for an equitable remedy to ascertain or delve into the correctness of the underlying balance of the lien. Pentlong at 46 – 47. 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.

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 determined by the superior court's reasoning in Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002). PGW strenuously argues that its billing and collection methods for liened debt is beyond the jurisdiction of the Commission to decide which is contrary to the Commission's regulations, rulings, the Public Utility Code and well-settled caselaw on the subject. The Commission must exercise its jurisdictional mandate and authority to enforce or affix an equitable remedy when PGW wantonly disregards this Commission's rules, regulations, the Public Utility Code and well-settled law pertaining to violations of the Public Utility Code and to protect the public interest.

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, PGW's practice is to ignore 56.22 and the superior court's directive found in Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002), while asserting erroneous facts not articulated in the case, that the holding is only relevant to finalized accounts. Neither the facts of Wade or section 56.22 make a distinction that the rule applies only to finalized accounts. PGW's analysis is faulty and provides no *credible* factual or legal authority, or justification for ignoring the Commission's regulations under 52 Pa.Code §56.22 and 56.24 statutory law (42 Pa.C.S. § 8101 (6% legal post-judgment interest) 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 Tax Claims and Lien Law 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 an order of refund under §1312(a) and §3301 (relating to imposition of civil penalty). Under 66 Pa.C.S. §103(c) of the Public Utility Code, regarding the power of the PUC to fashion appropriate remedies for violations of the code, the statute reads "**Remedies cumulative. Except as otherwise provided in this part, nothing shall abridge or alter the existing rights of action or remedies in equity or under common or statutory law of this Commonwealth, and the provisions of this part shall be cumulative and in addition to such rights of action and remedies.**" (as quoted in Pettko v. Pennsylvania American Water Co., at 484 – 485).

Under 66 Pa.C.S. §315(a) – (d), 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(a) – (d). The Commission has the authority provide equitable relief to Complainants under 66 Pa.C.S §§ 103(c), 508, 1301, 1501, 2212 and 3301 and must exercise its duty to act in the public interest to impose its direct authority over PGW's public utility rates, billing and collections practices ensuring that PGW, as a regulated public utility does not usurp its bounds and exceed its Tariffs pursuant to 52 Pa. Code §56.1.¹⁴

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

¹⁴ 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.

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 ratepayers. 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 in conflict with its statutory authority and the Commission's equitable remedy in no way abrogates the City's right to collect on outstanding debts. 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.

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 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.

3. The Commission has the authority and duty to fashion an equitable remedy for violations of the Public Utility Code. The ALJ was correct in ordering the accounts be recalculated, 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. Throughout the proceedings and at hearing, PGW offered no legal defense,

authority or credible evidence to rebut the testimony, calculations or theories presented. In fact PGW double-downed on its practices and mocked the Commission's authority to address the issues.

SBG has proven that it overpaid late payment charges on its accounts and PGW was unjustly enriched by that overpayment. In Pennsylvania, under the UCC there is an explicit imposition of an obligation of good faith and fair dealing by Commission regulation 56.1. 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).

PGW breached its duty to SBG to deal fairly and in good faith with its customers because it does not disclose or inform customers that it re-orders customer payments and layers previously lien'd 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. Pursuant to 66 Pa.C.S. §§ 102, 103(c), 508, 1501, 1303, 1312, 2212 and 3301, the ALJ had the duty and authority to exercise its jurisdiction and to fashion equitable remedies for such flagrant violations of the code in order to make the Complainants whole based upon the facts and evidence presented.¹⁵

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 extraordinary powers to effect lien judgments without due process and minimal 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

¹⁵ SBG does take exception that the ALJ's decision did not look beyond December 2012 despite PGW's violative conduct continuing to the present. As a result, SBG has filed new complaints which are pending before the Commission in order to preserve its claims from December 2012 to date. The Commission has the power to review all claims and fashion an equitable global remedy.

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 imposing interest penalties and late fees through reordering payment postings in a way that compounds the legal interest rate for collections from 18% simple interest to 19.562% APR compounded, which increases the ratepayers aggregate outstanding account balance, subject to being liened. The practice also 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, 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). 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. For years, PGW’s promises to investigate Complainants’ billing inquiries never materialized in anything other than providing a statement of accounts. 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. In the past, the Commission has ordered equitable remedies, ordered the removal of late fees and allowed refunds where the public utility’s failure to fully investigate and dubious billing practices violated the code. *See Angie’s Bar v. Duquesne Light Company*, 1990 Pa. PUC LEXIS 4, 12, 16, 72 Pa. PUC 213; *Lolly v. Duquesne Light Co.*, 2011 Pa. PUC LEXIS 1931 (where the ALJ found the claims process failed to provide a meaningful investigation thus violating the duty to deliver customer service); *Scrutching v. PGW*, 2003 Pa. PUC LEXIS 70, (where PGW assessed erroneous finance charges causing an unwarranted arrearage, the Commission exercised its jurisdiction to prescribe an equitable and appropriate legal remedy to fully address Complainant’s claims).

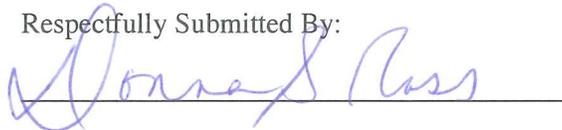
4. The ALJ was correct to assess civil penalties against PGW for violating the public utility code and correctly considered the factors under 52 Pa. Code §69.1201(c) to determine an appropriate equitable remedy.

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. Where there are violations of the provisions of the Public Utility Code by a regulated public utility, it is incumbent upon and within the authority and primary and exclusive jurisdiction of the Commission to fashion an appropriate equitable remedy to make ratepayers whole.

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, Attorney for Complainants

Date: March 7, 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./Fern Rock Realty Co., LP v. Philadelphia Gas Works, Docket No. C-2012-2308465, SBG Management Services, Inc./Marchwood Realty Co., LP v. Philadelphia Gas Works, Docket No. C-2012-2308454 and SBG Management Services, Inc./Oaklane Court Realty Co., LP v. Philadelphia Gas Works, Docket No. C-2012-2308462

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, 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	For Respondent PGW via email or Fed Ex
Carl R. Schultz, Esquire	For Respondent PGW via email or Fed Ex
Mr. Laureto Farinas, Esquire	For Respondent PGW via email or 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 eFiling/Fed Ex

Date: 3/7/2014

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