

**BEFORE THE
PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc./
Colonial Garden Realty Co., L.P.

v.

C-2012-2304183

Philadelphia Gas Works

SBG Management Services, Inc./
Simon Garden Realty Co., L.P.

v.

C-2012-2304324

Philadelphia Gas Works

**COMPLAINANTS' RESPONSE TO PHILADELPHIA GAS WORKS PETITION FOR
RECONSIDERATION, CLARIFICATION AND/OR REHEARING OF THE
COMMISSION'S DECEMBER 8, 2016 FINAL ORDER**

Respectfully Submitted By,

Donna S. Ross, Esquire
Attorney for SBG Management Services, Inc./
Colonial Garden Realty Co. L.P. and Simon Garden Realty Co. L.P.
P.O. Box 549
Abington, PA 19001
215-938-6665 (phone)
484-888-9578 (mobile)
dsross@sbgmanagement.com
dsross90@gmail.com

History of the Proceeding

Before the Pennsylvania Public Utility Commission (Commission) for reconsideration, clarification and/or rehearing are the Exceptions of Philadelphia Gas Works (PGW or Company) filed on October 7, 2015. Following three and one-half years (3 ½ years) of intense litigation which included very contentious and extensive discovery, complainants' multiple motions to compel PGW to produce discovery, numerous days of evidentiary hearings, the submission of briefs and reply briefs, the Recommended Initial Decision (I.D.) of Administrative Law Judge (ALJ) Eranda Vero, was issued on September 17, 2015. Replies to the Exceptions were received from SBG Management Services, Inc./Colonial Garden Realty Co., L.P., and SBG Management Services, Inc./Simon Garden Realty Co., L.P., (collectively, SBG) on October 19, 2015.

This proceeding involves eight (8) formal complaints (Complaints) filed by SBG a designated real estate management agent for the PGW commercial customers who are the Complainants. The gravamen of the Complaints against PGW challenge, *inter alia*, the accuracy of utility bills and the lawfulness of PGW's billing methodology for the gas service PGW provides. The Complaints were consolidated by Order of the presiding ALJ dated July 6, 2012. *See* I.D. at 3. By Order dated July 24, 2013, the proceedings were further divided into discrete groups for adjudication and disposition purposes owing to the numerous transactions involved and common questions of law and fact presented. I.D. at 4-5.

The present group of cases for disposition involves Colonial Garden Realty Co., L.P. (Colonial Garden) and Simon Garden Realty Co., L.P., (Simon Garden). In these complaint proceedings, the Initial Decision dismissed the high billing disputes raised in the Complaints due to the running of the Public Utility Code's (Code) statute of limitations on claims that predated May 11, 2009. *See* I.D. at 1, 21-22; *also* 66 Pa. C.S. § 3314. The Initial Decision also recommended the dismissal of certain allegations of high bills based on the failure of the customers to meet their burden of proof under the Code. *See* I.D. at 1, 36; I.D. Ordering ¶ 2; 66 Pa. C.S. § 331(a).

The Initial Decision sustained the Complaints with regard to challenges concerning PGW's application of partial payments for utility bills that resulted in PGW's imposition of late payment charges on the disputed accounts. The decision also sustained the Complaints' challenges to PGW's application of tariff sanctioned late payment charges to outstanding utility account balances accrued for past due bills that additionally resulted in the imposition of municipal liens on the

subject properties by the City of Philadelphia. The City of Philadelphia imposed municipal liens on the subject properties according to the provisions of the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207, 53 P.S. §§ 7101, *et seq.* (MCTL).¹

See I.D. at 64.

Finally, the Initial Decision directed that PGW issue a refund to Colonial Garden and Simon Garden pursuant to the Commission's authority found at Section 1312 of the Code, 66 Pa. C.S. § 1312, and additionally recommended the imposition of a civil penalty because:

PGW's application of partial payments out of order so that the most recent late payment charges are paid before the gas charges due for prior service constitutes a failure to provide adequate and reasonable service in accordance with 66 Pa. C.S.A. § 1501, as well as a violation of 52 Pa.Code [§] 56.22. In addition, PGW's improper inclusion of liened amounts in the outstanding balance under PGW's tariff also constitutes a failure to provide adequate and reasonable service in accordance with 66 Pa. C.S.A. § 1501.

On consideration of the record, the Initial Decision, the Exceptions and Replies, the Commission adopted the Initial Decision of ALJ Vero in substantial part, as modified by their reasoning that disposed of PGW's Exceptions, whereby the Commission granted and denied the Exceptions of PGW, consistent with the discussion in the December 8, 2016 Final Opinion and Order.

¹ *See, Faye Payne v. Philadelphia Gas Works*, Docket No. C-2011-2247124, at 2 n.2 (Order entered February 16, 2012):

“A lien is a charge on property, either real or personal, for the payment or discharge of a particular debt or duty in priority to the general debts or duties of the owner. It encumbers property to secure payment or performance of a debt, duty or other obligation. Liens fall into three categories: common law liens, equitable liens and statutory liens.” *London Towne Homeowners Ass'n v. Karr*, 866 A.2d 447, 451(Pa. Cmwlth. 2004) (notes and citations omitted).

Also Dennis J. Vicario v. Philadelphia Gas Works, Docket No. C-2010-2213955, at 2 n.1 (Order entered November 6, 2011).

Standard of Review

It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). PGW's Petition was filed pursuant to 52 Pa. Code § 5.572, Petitions for Relief which encompass, *inter alia*, petitions for rehearing, re-argument and reconsideration. The applicable standard of review is set forth in *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa.P.U.C. 553, 559 (1982). Under *Duick*, petitions for reconsideration are likely to succeed **only when they raise "new and novel arguments", not previously heard or considerations that appear to have been overlooked or not addressed by the Commission.** *Id.* at 559. Where granting such relief may result in the disturbance of final orders, courts have held that such petitions for reconsideration or rehearing should be granted judiciously and only under appropriate circumstances. *West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995), *pet. For allow. of app. den.*, No. 576 W.D., Allocatur Docket (April 9, 1996); *City of Pittsburgh v. PennDOT*, 490 Pa. 264, 416 A.2d 461 (1980).

Pursuant to 52 Pa.Code § 5.572, Notes of Decisions, "[w]here the petitioners failed to raise new or novel arguments not previously considered by the Pennsylvania Public Utility Commission in the petition for reconsideration, they did not meet the established standard to warrant that the Commission reopen the proceeding." *Pennsylvania Public Utility Commission v. PECO Energy Co.*, M-00960820, P.U.R. 4th Slip Opinion, (February 12, 1999).

Introduction

And Now, this 2nd day of January, 2017, SBG Management Services, Inc. et al., as agent for Complainants, Colonial Garden Realty Co., L.P. and Simon Garden Realty Co., L.P. by and through their attorney, Donna S. Ross, do hereby respond to Respondent, PGW, petition and avers as follows. Despite the Commission's issuance of its Order on December 28, 2016 (only five (5) after Complainants' counsel received notice of the petition) granting the reconsideration on the merits of the petition, the Commission should deny the relief requested because PGW has failed to raise new or novel arguments not previously considered by the Pennsylvania Public Utility Commission in the petition for reconsideration and their averments do not meet the established standard to warrant that the Commission reopen the proceeding. Furthermore, PGW had a full and fair opportunity to

respond to Complainants' allegations prior to initiating litigation and then during the course of the litigation which has been ongoing since May 2012. PGW refused to acknowledge Complainants' complaints, delayed and deferred resolution of the matter because it was to the Companies' benefit to ignore, deflect and deny their violative practices.

The Complaints in these matters were filed in 2012, over four (4) years ago. PGW has been on notice for over a decade that these Complainants were seeking disclosure of PGW's manner, methodology and practices on how it applied/posted payments, late payment charges to its accounts for accumulated debt and debt that was docketed as lien judgments with the Court of Common Pleas of Philadelphia. There are no material issues of fact in dispute. PGW readily agrees they maintain these practices which violate the Public Utility Code and they do not see anything wrong with their actions. After reviewing the record, hearing numerous days of testimony of all witnesses, synthesizing the evidence presented in the record, reading legal briefs and reply briefs submitted, ALJ Vero, penned a seventy-four (74) page Initial Decision that considered over three (3) years of legal argument from the parties.

Judge Vero's decision finds that "[i]t is an undisputed fact in these consolidated matters that, as part of its regular practice, PGW does not distinguish in its application of the late payment charges between an outstanding balance that is the subject of a municipal lien and one that is not. As stated *supra*, according to PGW "The fact that the amount was liened for non-payment should have no effect on the assessment of LPCs." PGW's Main Brief, PGW Reply Brief, at 16. Through this practice PGW is maintaining two separate claims on the same amount of outstanding debt: one claim under the PGW's Tariff and Commission regulation at 52 Pa.Code § 56.22 (reflected in its imposition of 18% interests rate of late payment charges on the outstanding balance or debt), and a second claim under the Municipal Lien Act in the form of a lien, an *in rem* judgement [sic] against the Complainants' property." I.D. at page 62.

ALJ Vero also credited Complainants' expert witness, Roger Colton's, testimony regarding PGW's thirty (30) year practice of re-ordering payments posted to the account to extinguish service agreements and late fees first before applying partial payments to prior balances in accordance with §56.24. I.D. at page 40. The Initial Decision finds "the re-ordering of payments is a practice that affects compensation paid to PGW so it is a rate, and as a rate, it needs to be just and reasonable in accordance with 66 Pa.C.S. §1301.² Tr. 616. Mr. Colton

² § 1301. Rates to be just and reasonable.

continued his testimony explaining that the primary issue of just and reasonableness is whether a practice is dictated by costs or reflects costs. According to Mr. Colton, PGW's practice of reordering payments is not cost-based. "There is no difference in the staff people that [PGW uses] for collection processes based upon the composition of an unpaid bill. There's no difference in the cost of money. There is no difference in the time that's expended." Tr. 617. Mr. Colton testified that PGW's posting process is also in violation of 66 Pa.C.S. §1303, which prohibits a utility from directly or indirectly by any means or device whatsoever charge a customer more than what their tariff provides. Tr. 618. PGW's tariff provides that the Company will charge a late payment charge of 1.5 percent, not to exceed 18 percent simple interest annually; however, Mr. Colton's expert opinion is that through the reordering of payments practice, PGW is in effect, or indirectly, charging and collecting more than 18% simple interest on outstanding service charges. Tr. 618-19, see also 620-22, 626, 632-633.

Mr. Colton summarized the conclusion he reached upon reviewing the Complainants' account statements and bills from PGW as follows: 1) PGW reorders customer payments in order to reduce more recent noninterest bearing balances while leaving older interest bearing balances; 2) PGW does not manage bills so as to minimize customers' arrears; 3) payment reordering constitutes a rate because it is a practice which affects the compensation to be paid to PGW; 4) as a rate payment reordering has not been presented to the Commission for review and approval; 5) as a rate payment reordering is not cost based or mandated by any costs incurred by PGW; and 6) the reordering of payments has been found to be an unreasonable commercial practice in analogous circumstances (referring to the banking and credit card industry). Tr. 620, 660. *See I.D. at page 40.*

Ultimately, the ALJ sustained in part Complainants' complaint, found PGW violated several sections of the Public Utility Code ordered PGW to credit Complainants accounts with sums certain as follows: 1) Philadelphia Gas Works shall credit the Colonial Garden Realty Co., L.P.'s Account # 6128000245, SA # 1375369694, in the amount of \$281.36; 2) Philadelphia Gas Works shall credit the Colonial Garden Realty Co., L.P.'s Account # 6128000245, SA#4018739567, in the amount of \$218.96; 3) Philadelphia Gas Works shall refund \$94,626.23 to Colonial Garden Realty Co., L.P., Account # 6128000245, plus interest at the legal rate from

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable...

the date of each excessive payment; and 4) Philadelphia Gas Works shall refund \$471,351.38 to Simon Garden Realty Co., L.P., Account # 539547187, plus interest at the legal rate from the date of each excessive payment. She also ordered civil penalties against PGW in the amount of \$27,000 for violating the Public Utility Code. PGW filed Exceptions to the ALJ's initial decision.

The Commission's Final Order and Opinion dated December 8, 2016 noted that ALJ Vero reached sixty-eight (68) Findings of Fact and drew twenty-six (26) Conclusions of Law. The Commission adopted the Findings of Fact of presiding ALJ Vero. After a painstaking one hundred and twelve (112) page opinion, the Commission adopted the Conclusions of Law of ALJ Vero to the extent the said conclusions were not expressly rejected or modified, or rejected or modified by necessary implication from their discussion and disposition of the Exceptions of PGW. *See Commission Opinion and Order Dated December 8, 2016.*

Now that PGW's financial schemes have been revealed and disclosed to the Commission and PGW customers as a direct result of this litigation, PGW now asks for reconsideration of the Commission's final order. It's as if the curtain has been pulled back and the wizard is exposed for the fraud that he is. And now, PGW wants a 'do over'! They have not presented any new legal theory or any novel argument as to why the Commission's order should be reviewed. In fact, in its briefs submitted to ALJ Vero in April and May of 2015, PGW emphatically argued that the PUC lacked jurisdiction to consider or address municipally liened debt. "PGW argues that, since the question of the applicable interest rate is governed by the Municipal Liens Act, it follows that the question of the applicable interest rate is also a question for the Court of Common Pleas and outside of the Commission's jurisdiction. PGW's Main Brief, PGW Reply Brief, at 15-16." I.D. at page 61. Next, PGW explains that it is not charging LPC's on all amounts that are the subject of a municipal lien, but rather only to those amounts that are owed on an active PGW account. According to PGW, "**The fact that the amount was liened for non-payment should have no effect on the assessment of LPCs.**"³ PGW's Main Brief, PGW Reply Brief, at 16. (Emphasis added). *Id.*

PGW, in reply to the contentions of SBG, confirmed its practice of reordering partial payments on past due accounts consistent with the manner observed by SBG's witnesses on the

³ I note that PGW does not address in its briefs the question of when a municipal lien becomes a judgment, nor does it reiterate its argument that a lien is simply a "marker."

subject. PGW witness, Mr. Bernard Cummings, admitted that PGW applied partial payments to late payment charges first. I.D. at 41; Fact # 48, 49; Tr. 753-54. PGW took the position that, according to Commission Regulations, absent written instructions by the customer, all partial payments should be applied to “basic” charges first, and, he explained, late payment charges are “basic” charges. *Id.* Thus, PGW responded that it did not violate any Commission Regulation with its application of partial payments and that the Commission Regulations do not specify a “hierarchy” in the order of payments within the basic charges themselves. *Id.*; Tr. 753.

The Commission summarized PGW’s arguments raised in its Exceptions listing its core objections to the Initial Decision. PGW objects to the ALJ’s conclusion that the charging of late payment fees on Complainants’ arrearages is, essentially, barred, once PGW files a lien on Complainants’ property. Exc. at 2. “PGW also argues that such claims are not within the jurisdiction of the Commission to adjudicate in these proceedings. *Id.* Even where the Commission is authorized to adjudicate the legality of the MCTLL concerning the Company’s practice involving liened amounts and late payment charges under its tariff, PGW asserts that the conclusions reached are erroneous. They are erroneous for reasons that the conclusions, *inter alia*, fail to recognize the legal distinctions between a “judgment” under the law and a municipal lien under the statutory provisions of the MCTLL. Exc. at 3.”

The Commission’s order also concludes “PGW also opposes the Initial Decision’s findings that its allocation methodology concerning the order of payments for partial payments on past due balances was improper. PGW takes the position that the allocations mandated by the Initial Decision are not supported by the plain language of the Commission’s existing regulation, would permit delinquent account customers to systematically avoid paying late payment charges, and are not consistent with the policy objectives of Chapter 14 of the Code, 66 Pa. C.S. § 1402(1), which expresses an intent to provide city natural gas distribution operations additional collection tools. Exc. at 4.”

Finally, PGW objects to the imposition of a civil penalty on the basis that the penalty is based on a standard of conduct that is newly created and, therefore, *ex post facto*, in its application to the Company in this proceeding. PGW argues that the ultimate effect of the Initial Decision will operate to “disincentivize” it from using the MCTLL as a tool to collect delinquent accounts. Exc. at 5. PGW explains, “If a civil action is used against the customer of record, the account will need to be closed for a final bill.” *Id.*”

The arguments presented to the Commission in its petition for reconsideration reiterate the same arguments that it raised in its exceptions. The only difference is that they present an absurd explanation about inchoate and choate liens, which has no effect on these proceedings since a lien is perfected once docketed with the prothonotary, and for purposes of these proceedings, the liens at issue are choate.

Furthermore, during the course of this litigation, in its main briefs, reply briefs and even in its Exceptions, PGW strenuously argued that the PUC lacked jurisdiction to consider the accounting for the liens. They repeatedly raised that the liens were in the purview of the court of common pleas for determination. They raise a contrary argument in their Petition for review. The PGW petition wrongly concludes that the decision rendered by the PUC abrogates PGW's ability to use the lien enforcement tool as derived in the MTCLL. This is far from the case. The Commission's reasoning was well within its authority and carefully considered its legal constraints, public policy, the rules and regulations and law when deciding the issues presented. These are matters of first impression, and in August 2013 at the first set of hearings, Francine Thornton-Boone, Complainants counsel, informed the presiding officer and PGW counsel that these were matters of first impression.

Ms. Boone was very clear when she raised her arguments about PGW's practice of continuing to charge the tariff interest rate of 18% to liened debt. See Tr. August 26, 2013, pgs. 13-15. Later, in November 2014, at a pre-hearing conference before Judge Vero, where attorneys Ross and Farinas were present, Attorney Ross reiterated the primary issues were narrowed to PGW's application/posting of payments and late fees imposed in excess of 18% rather than the post-judgment rate of 6% on amounts liened on the SBG accounts. See also, Tr. November 24, 2014, pgs 106, 107 and 118. PGW had over two (2) years to consider and defend against SBG's argument and to advocate its case on the merits. PGW repeatedly failed to rebut Complainants arguments and evidence. They did not rebut any of SBG's legal theories raised at any of the hearings spanning over two years from August 2013 through March 2015. PGW had an opportunity to refute SBG's arguments regarding late payment charges when it filed its Main briefs and reply briefs, but PGW confident in its position that the PUC would not assert jurisdiction over late fees pertaining to liens rested on its position that the MTCLL provided safe harbor and refuge from the PUC's purview and jurisdiction.

Even in this petition, PGW does not offer any new information or alternate theory of the case to warrant the Commission granting relief. The only issue PGW raises is their mistaken belief that they cannot administer their lien collection tool as a result of this decision. Nothing in either the ALJ's Initial Decision nor the Commission's Order and Opinion suggests that PGW cannot use the MTCLL lien provision to enforce collection of gas debt in conjunction with other remedies available to PGW to ensure payment of gas debt. The decisions hold that PGW can enforce debt collection by placing a lien on the service property, *in rem*, and may also seek redress *in personam*. However, PGW must follow the plain, unambiguous language of the Public Utility Code when calculating bills and applying late fees. The fact that PGW is held to its tariff and the promulgated rules and regulations under the Public Utility Code is not a new or novel concept that warrants the Commission's review.

SBG Response to PGW's Petition

1. Admitted.
2. Admitted in part; denied in part. The allegation calls for a legal conclusion and the language of the MTCLL speaks for itself.
3. Neither admitted, nor denied. PGW's allegation calls for a conclusion of law that is not at issue before this tribunal. PGW fails to articulate sufficient legal authority for this allegation. For purposes of this litigation, the liens at issue have been filed and docketed with the Office of the Prothonotary in the Court of Common Pleas of Philadelphia and therefore are choate.
4. Admitted.
5. Admitted.
6. Admitted in part. Denied in part. SBG also raised for the Commission's consideration tolling the statute of limitations to include payment posting practices beyond the three (3) year statute of limitations under 66 Pa.C.S. §3312.
7. Admitted.
8. Denied. The Commission adopted the decision of the presiding officer and further supported her findings in accordance with the law, rules, regulations, tariff and policies found in the Public Utility Code and case law.

9. Denied. PGW's allegation is a misreading and misstatement of the Commission's decision. The Commission's decision is well-reasoned and grounded in the clear, unambiguous language of the Public Utility Code and its promulgated rules and regulations.
10. Denied. PGW's petition fails to advance any new or novel theories or arguments not previously considered by the Commission upon reviewing PGW's Exceptions. As such, the Petition does not meet the standard of review warranted to reopen the proceeding. *Pennsylvania Public Utility Commission v. PECO Energy Co.*, M-00960820, P.U.R. 4th Slip Opinion, (February 12, 1999).
11. Denied. PGW is raising issues that have already been litigated. There were full and complete evidentiary hearings on the issues presented and PGW was afforded due process to prosecute and defend its practices. PGW has been on notice for years that Complainants wanted information on its payment posting process and lien interest calculations. PGW offers no legal analysis or legal authority to refute or rebut the evidence presented and the Commission's findings. In fact, PGW readily admits its practice, of posting partial payments out of order and applying tariff approved late fees to debts adjudicated as liens all of which directly violate the Public Utility Code. Furthermore, PGW's petition is unwarranted since it fails to plead any newly discovered evidence or errors of law and does not show a change of circumstances.
12. Denied. The Commission's decision is not erroneous as a matter of law and it is a well-reasoned interpretation of the clear and unambiguous language of the law and regulations.
13. Denied. This allegation is a conclusion for which no response is required.
14. Denied. It is only as a result of this litigation that PGW's undisclosed fiscal schemes were discovered and as a matter of law and public policy the Commission must ensure that PGW's financial accounting practices are conducted in accordance with the Tariff and comports with the Public Utility Code to effect just and reasonable rates for ratepayers.
15. Denied. The allegation fails to allege anything new for the Commission to consider. Both the Initial Decision and the Commission's Final Order addressed and considered the impact PGW's imposition of late fees on lien debt and its payment posting process had on ratepayers and the company. I. D. at 67 *See Commission Order, pages 105 - 107*. PGW deliberately prolonged this litigation and failed to disclose its accounting methodology to the Complainants upon repeated requests and inquiry.

16. Denied. PGW has not alleged any new or novel arguments that warrant the Commission to review under the standards espoused in *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al*, 56 Pa.P.U.C. 553, 559 (1982).
17. Denied. The allegation misinterprets the Commission's Order and Opinion and erroneously misstates the Commission's rulings.
18. Denied. PGW obfuscates the rule of law and erroneously raises points of law that are not at issue.
19. Admitted in part. Denied as to any conclusions of law.
20. Neither admit, nor deny. PGW concedes a position that it has opposed throughout this litigation and fails to advance any new arguments not previously considered by the Commission.
21. Denied. PGW's allegation is a conclusion to which no response is required.
22. Denied. The allegation is a conclusion to which no response is required. However, for purposes of this litigation all liens at issue are perfected because they were docketed with the Office of the Prothonotary in the Court of Common Pleas.
23. Denied. The allegation is a self-serving statement and misreading of the law. PGW's lien practices are dubious at best and PGW's misuse of the MCTLL is widespread and prevalent. PGW invokes its lien authority as a means to deny ratepayers due process and to circumvent the PUC's authority. *See Memorandum and Order Augustin et. al v. City of Philadelphia, No. 14-CV-4238 (3rd Cir. 2016).*
24. Denied. The language of section 7106(b) is plain and unambiguous. The allegation does not raise any new or novel argument not previously considered.
25. Neither admit, nor deny. The allegation is a conclusion not supported by the law, facts of the case or the record.
26. Denied. PGW's allegation is a conclusion not supported by the law, facts of the case or the record.
27. Admitted in part. Denied in part. The PUC exercised its jurisdiction and found that PGW violated its Tariff and the Public Utility Code.
28. Neither admit, nor deny. The holdings in the cases cited speak for themselves and are corroborated by sections 56. 22 – 24 of the Code.

29. Neither admit, nor deny. The holdings in the cases cited speak for themselves and are corroborated by section 56. 22 – 24 of the Code.
30. Neither admit, nor deny. The holdings in the cases cited speak for themselves and are corroborated by section 56. 22 – 24 of the Code.
31. Denied. The allegation is a conclusion to which no response is required, is a misinterpretation and misstatement of the law. Moreover, throughout these proceedings, PGW has advocated the opposite position stating the PUC lacks jurisdiction to hear any allegations over liened gas debt.
32. Neither admit, nor deny. Regardless of the conclusory nature of this allegation, PGW may not usurp its bounds and abuse its lien authority by violating its Tariff and the Public Utility Code.
33. Neither admit, nor deny. The decision finds that PGW deliberately intended to remove the validity of the underlying debt liened from the purview of the Commission and uses the MCTLL as a vehicle to avoid the Commission's review.
34. Neither admit, nor deny. There is not sufficient information to reach a conclusion to respond to this allegation.
35. Neither admit, nor deny. The allegation is not stated with specificity to warrant a finding that the standard of review has been met in accordance with *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al*, 56 Pa.P.U.C. 553, 559 (1982).
36. Neither admit, nor deny. The statement speaks for itself.
37. Neither admit, nor deny. The statement is a conclusion of law to which no response is required.
38. Denied. The allegation is a conclusion and a misreading of the Commission's Order and Opinion. The statement raises a false equivalence that is neither explicit nor implied by the conclusions reached in either the Initial Decision or the Commission's Order and Opinion.
39. Denied. The allegation is a conclusion, unsupported in fact and at law.
40. Denied. The Commission's Order and Opinion was clear and unambiguous and their direction to PGW was reasonable, just and authorized by Chapter 14 of the Public Utility Code and the Commissions rules and regulations.
41. Denied. The allegation is a conclusion, unsupported in fact and at law.

42. Denied. The allegation is a conclusion, unsupported in fact and at law. The PUC has not abrogated or impaired any of PGW's collection remedies, to suggest that is just false. PGW's fiscal practices cannot abridge nor circumvent the just and reasonable rate doctrine under §1303 of the Public Utility Code to the detriment ratepayers as a matter of public policy.
43. Denied. The allegation is a conclusion, unsupported in fact and at law. The PUC has not abrogated or impaired any of PGW's collection remedies, to suggest that is just false. PGW's fiscal practices cannot abridge nor circumvent the just and reasonable rate doctrine under §1303 of the Public Utility Code to the detriment ratepayers as a matter of public policy.
44. Denied. The allegation is a conclusion, unsupported in fact and at law. The PUC has not abrogated or impaired any of PGW's collection remedies, to suggest that is just false. PGW's fiscal practices cannot abridge nor circumvent the just and reasonable rate doctrine under §1303 of the Public Utility Code to the detriment of ratepayers as a matter of public policy.
45. Denied. PGW chose not to rebut or refute its violative practices. PGW should not get a second bite of the apple after nearly four (4) years of litigation in which they fought tooth and nail to conceal their fiscal practices that have worked to the detriment of its patrons for over thirty (30) years. PGW has not alleged any facts or points of law that warrant a review of the issues before the Commission in accordance with standard of review under *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al*, 56 Pa.P.U.C. 553, 559 (1982).
46. Denied. The affidavits submitted for review are self-serving and are unsupported allegations that fail to meet the standard of review under *Duick*. *Id.*
47. Denied. This allegation is false and unsupported by the facts, evidence and record before the Commission.
48. Denied. PGW chose not to rebut or refute its violative practices. PGW should not get a second bite of the apple after nearly four (4) years of litigation in which they fought tooth and nail to conceal their fiscal practices that have worked to the detriment of its patrons for over thirty (30) years. PGW has not alleged any facts or points of law that warrant a review of the issues before the Commission in accordance with standard of review under *Duick v.*

Pennsylvania Gas and Water Co., Docket No. C-R0597001 *et al*, 56 Pa.P.U.C. 553, 559 (1982).

49. Denied. PGW violated its Tariff because for many years, it failed to disclose its hierarchy of payments to an inquiring customer. PGW's failure to disclose was an internal business decision known only to PGW. "It is internally inconsistent for PGW to argue that a proper reading of the Regulations requires treatment of all basic charges under the regulations and then proceed to unilaterally prioritize partial payments among the various charges within the same class in a manner that increases the accumulation of interest bearing charges to the detriment of the ratepayer and to the benefit of the Company." *Commission Order and Opinion at page 99*.
50. Denied. PGW's allegation is false and unsupported by the facts, evidence and record before the Commission.
51. Denied. PGW violated its Tariff because for many years, it failed to disclose its hierarchy of payments to an inquiring customer. PGW's failure to disclose was an internal business decision known only to PGW. "It is internally inconsistent for PGW to argue that a proper reading of the Regulations requires treatment of all basic charges under the regulations and then proceed to unilaterally prioritize partial payments among the various charges within the same class in a manner that increases the accumulation of interest bearing charges to the detriment of the ratepayer and to the benefit of the Company." *Commission Order and Opinion at page 99*.
52. Denied. The Public Utility Code and the Commission's promulgated rules and regulations are clear and unambiguous and PGW has an affirmative duty to adhere to the PUC's authority in maintaining customer accounts. The fact that this litigation exposed their errant accounting practices to the benefit of its shareholders and to the disadvantage of ratepayers is not a basis for this Commission to grant reconsideration of their well-reasoned analysis and opinion.
53. Denied. PGW chose not to rebut or refute its violative practices. PGW should not get a second bite of the apple after nearly four (4) years of litigation in which they fought tooth and nail to conceal their fiscal practices that have worked to the detriment of its patrons for over thirty (30) years. PGW has not alleged any facts or points of law that warrant a review of the issues before the Commission in accordance with standard of review under *Duick v.*

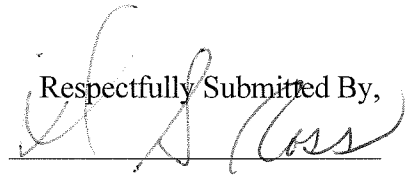
Pennsylvania Gas and Water Co., Docket No. C-R0597001 *et al*, 56 Pa.P.U.C. 553, 559 (1982).

54. Denied. PGW violated its Tariff because for many years, it failed to disclose its hierarchy of payments to an inquiring customer. PGW's failure to disclose was an internal business decision known only to PGW. "It is internally inconsistent for PGW to argue that a proper reading of the Regulations requires treatment of all basic charges under the regulations and then proceed to unilaterally prioritize partial payments among the various charges within the same class in a manner that increases the accumulation of interest bearing charges to the detriment of the ratepayer and to the benefit of the Company." *Commission Order and Opinion at page 99*.
55. Denied. The language of the regulation is plain and unambiguous. PGW violated its Tariff because for many years, it failed to disclose its hierarchy of payments to an inquiring customer. PGW's failure to disclose was an internal business decision known only to PGW. "It is internally inconsistent for PGW to argue that a proper reading of the Regulations requires treatment of all basic charges under the regulations and then proceed to unilaterally prioritize partial payments among the various charges within the same class in a manner that increases the accumulation of interest bearing charges to the detriment of the ratepayer and to the benefit of the Company." *Commission Order and Opinion at page 99*.
56. Denied. PGW's allegation is self-serving and false. PGW had ample time to prepare its case and a defense. PGW failed to abide by its Tariff and for many years, it failed to disclose its hierarchy of payments and liened debt interest charges to an inquiring customer. PGW's failure to disclose was an internal business decision known only to PGW. "It is internally inconsistent for PGW to argue that a proper reading of the Regulations requires treatment of all basic charges under the regulations and then proceed to unilaterally prioritize partial payments among the various charges within the same class in a manner that increases the accumulation of interest bearing charges to the detriment of the ratepayer and to the benefit of the Company." *Commission Order and Opinion at page 99*.
57. Neither admit, nor deny. The allegation is a self-serving conclusion to which no response is required. It is incumbent for the Commission to ensure that PGW is providing the most advantageous rate to the customer and to regulate PGW in accordance with the Commission's promulgated rules and regulations.

58. Neither admit, nor deny. The allegation is a self-serving conclusion to which no response is required.
59. Denied. The allegation is a self-serving conclusion to which no response is required.
60. Denied. The allegation is a self-serving conclusion to which no response is required.

Wherefore, for the reasons set forth above, Complainants respectfully request that this honorable Commission deny PGW's relief requested and issue a final order consistent with the findings of fact and conclusions of law articulated in its Final Order and Opinion dated December 8, 2016.

Respectfully Submitted By,



Donna S. Ross
Attorney for Complainants
SBG Management Services, Inc./Colonial Garden Realty Co. L.P.
Simon Garden Realty Co. L.P.

Dated: 1/2/2017

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of:

Complainant's Response to Petition for Reconsideration Filed By PGW

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

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 by hand delivery to all 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
Commission

For Pennsylvania Public Utility

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

For Respondent PGW
For Respondent PGW
For Respondent PGW

Mr. Phil Pulley and Ms. Kathy Treadwell

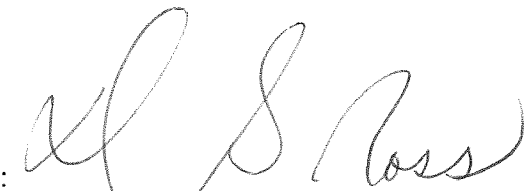
For Complainants

The Honorable Rosemary Chiavetta, Secretary
Commission

For Pennsylvania Public Utility

Date: 1/2/2017

By:



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

1 From Please print and press hard.

Date 11/3/2017 Sender's FedEx Account Number SENDER'S FED 2393-0508-3 ONLY

Sender's Name Donna S. Ross 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. OPTIONAL

3 To

Recipient's Name Secretary Rosemary Chaveth Phone ()

Company PA Public Utility Commission

Address 400 North St, 2nd FL Dept./Floor/Suite/Room

Address Commonwealth Keystone Bldg Dept./Floor/Suite/Room

City Harrisburg State PA ZIP 17105-3265

0125448868

4 Express Package Service *To most locations. Packages up to 150 lbs. For packages over 150 lbs., use the FedEx Express Freight US Airbill.

Next Business Day	2 or 3 Business Days
<input type="checkbox"/> FedEx First Overnight Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless Saturday Delivery is selected.	<input type="checkbox"/> FedEx 2Day A.M. Second business morning.* Saturday Delivery NOT available.
<input type="checkbox"/> FedEx Priority Overnight Next business morning.* Friday shipments will be delivered on Monday unless Saturday Delivery is selected.	<input type="checkbox"/> FedEx 2Day Second business afternoon.* Thursday shipments will be delivered on Monday unless Saturday Delivery is selected.
<input checked="" type="checkbox"/> FedEx Standard Overnight Next business afternoon.* Saturday Delivery NOT available.	<input type="checkbox"/> FedEx Express Saver Third business day.* Saturday Delivery NOT available.

5 Packaging *Declared value limit \$500.

FedEx Envelope* FedEx Pak* FedEx Box FedEx Tube Other

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

Saturday Delivery
NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

No Signature Required
Package may be left without obtaining a signature for delivery.

Direct Signature
Someone at recipient's address may sign for delivery.

Indirect Signature
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only.

Does this shipment contain dangerous goods?
One box must be checked.

No Yes As per attached Shipper's Declaration. Yes Shipper's Declaration not required.

Dry Ice
Dry Ice, 9, UN 1845 x _____ kg

Cargo Aircraft Only

Restrictions apply for dangerous goods — see the current FedEx Service Guide.

7 Payment Bill to: Enter FedEx Acct. No. or Credit Card No. below.

Sender Acct. No. in Section I will be billed. Recipient Third Party Credit Card Cash/Check

FedEx Acct. No. Credit Card No. Exp. Date

Total Packages 1 Total Weight _____ lbs. Total Declared Value* \$ _____ .00

*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. SRM

