**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held January 18, 2018 |
| Commissioners Present:  Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  Norman J. Kennard  David W. Sweet  John F. Coleman, Jr. |  |

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

**OPINION AND ORDER**

**BY THE COMMISSION:**

The matter before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration, Clarification and/or Rehearing (Petition), filed by Philadelphia Gas Works (PGW) on December 23, 2016. The Petition is directed to our Opinion and Order entered December 8, 2016 (*December 8 Order*) in the above-captioned proceedings. By Order entered December 28, 2016, we granted reconsideration, within the meaning of Pa. R.A.P. 1701(b)(3), pending review of, and consideration on, the merits of the Petition.[[1]](#footnote-2)

On January 3, 2017, SBG Management Services, Inc./Colonial Garden Realty Co., L.P., and SBG Management Services, Inc./Simon Garden Realty Co., L.P., (collectively, SBG), filed an Answer in opposition to the Petition (Answer).

We note that on October 3, 2017, the Commission received a filing styled, “Supplemental Petition for Rehearing of the Commission’s December 8, 2016 Final Order” (Supplemental Petition) submitted on behalf of PGW at the above-captioned docket.[[2]](#footnote-3) The Supplemental Petition requests that the record in this matter be reopened as PGW proposes to incorporate evidence and testimony submitted in a general rate increase proceeding filed by PGW, February 17, 2017, at Docket No. R-2017-2586783. This matter is the subject of a November 8, 2017, final order of the Commission. A petition for reconsideration and response thereto have been filed in the general rate increase proceeding.[[3]](#footnote-4) The Supplemental Petition in the present matter states, *inter alia*, that the petition addresses issues pertaining to “discrete” sections of the *December 8 Order* relating to the application of partial payments to prior basic service and does not address any other issues. *See* Supplemental Petition at 1, n. 3.

On October 11, 2017, we received a letter-extension request of SBG to respond to the Supplemental Petition. We granted the extension request and on October 18, 2017, SBG filed a Response and Motion to Deny and Strike the Rebuttal and Rejoinder Testimony of Bernard Cummings and Attached Exhibits to PGW’s Supplemental Petition for Rehearing of the Commission’s December 8, 2016 Final Order. (SBG Response).

On October 19, 2017, the Office of Consumer Advocate (OCA) filed a letter responsive to the PGW Supplemental Petition. The OCA expresses its position for the limited purposes of clarifying that it is not a party to the above-captioned proceedings and that it has intervened in the general rate increase proceeding at Docket No. R-2017-2586783 to represent the interests of residential ratepayers in that proceeding regarding PGW’s payment prioritization practices.

On November 3, 2017, we received the Answer of Philadelphia Gas Works to Motion to Strike or Dismiss of SBG Management Services, Inc. (PGW Answer to SBG Response).

On consideration of the Petition and Answer, reconsideration of the *December 8 Order* is, hereby, denied.

PGW’s Supplemental Petition states, *inter alia*, that it needs fifty-seven weeks to modify its billing systems to change the out of order (prioritization) application of payments that are applied to late fees. Our *December 8 Order* found this practice is non-compliant with our Regulations based on the application of such charges to reduce, *inter alia*, late fees, prior to the reduction of bills for current usage. PGW stated that software changes and systems testing cannot be carried out in the forty-five-day compliance period established in our *December 8 Order*.

On consideration of the representations of PGW, we conclude that PGW has failed to submit compelling evidence supporting a compliance period of fifty-seven weeks. PGW has been on notice of its violation of 52 Pa. Code § 56.24 since 2011. Because this is a billing mechanism which affects any similarly situated PGW customer, it would not be prudent to grant PGW a lengthy compliance period. Therefore, we find that a ninety-day compliance period is sufficient for the necessary billing modifications and shall so order.

Also, with regard to the Supplemental Petition and the issues involving PGW’s application of partial payments to prior basic service, rehearing and reconsideration is denied without prejudice to our consideration and disposition of said issues in the PGW general rate increase proceeding at Docket No. R‑2017-2586783.[[4]](#footnote-5)

**Background**

Colonial Garden Realty Co., L.P., (Colonial Garden) and Simon Garden Realty Co., L.P. (Simon Garden) are the owners of two, multi-unit,[[5]](#footnote-6) garden-style apartment complexes located in the City of Philadelphia. The apartment complexes (Service Properties) receive gas utility service from PGW pursuant to separate commercial service agreements and separate accounts. SBG is a designated real estate managing agent for Colonial Garden and Simon Garden with respect to the Service Properties. *December 8 Order* at 8-9; 23.

PGW is a municipal utility that is wholly owned by the City of Philadelphia. At all times material to these proceedings, PGW provided gas utility service to the Service Properties pursuant to Commission-approved, commercial, end-user tariffs. These tariffs and related facilities and service are subject to the statutory jurisdiction of this Commission based on PGW’s classification as a “city natural gas distribution operation.” 66 Pa. C.S. § 2212; *See* 66 Pa. C.S. § 2212(b), “ . . . Subject to the provisions of this section, commencing July 1, 2000, public utility service being furnished or rendered by a city natural gas distribution operation within its municipal limits shall be subject to regulation and control by the commission [Public Utility Commission] with the same force as if the service were rendered by a public utility.”

Notwithstanding the jurisdiction and authority of the Commission over the rates and service provided by PGW to the Service Properties, according to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207, 53 P.S. §§ 7101, *et seq.* (MCTLL), the City of Philadelphia, as owner of PGW, is dually authorized to impose municipal liens on the subject properties to collect for unpaid utility bills. *See* 66 Pa. C.S. § 2212(n):

**(n)  Collections.--**Nothing contained in this title shall abrogate the power of a city natural gas distribution operation to collect delinquent receivables through the imposition of liens pursuant to section 3 of the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, or otherwise.

Concerning the relationship between the MCTLL, PGW, the City of Philadelphia, and the collection of utility payments for past due utility accounts, we favorably cite the explanation of ALJ Marta Guhl:

Respondent [PGW] consists only of the real and personal assets that are used to manufacture and deliver natural gas to entities within the City’s borders. [*Public Advocate v. Philadelphia Gas Comm’n*, 544 Pa. 129, 674 A.2d 1056 (1996).](http://www.lexis.com/research/buttonTFLink?_m=8cd9ac73d7e3d1533491ced6565487b4&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2014%20Pa.%20PUC%20LEXIS%20257%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=17&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b544%20Pa.%20129%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=7&_startdoc=1&wchp=dGLzVzt-zSkAz&_md5=1b1ea2071c708a9c0aab098970b361b9)

Respondent does not meet the legal definition of an entity authorized to file a lien to enforce a municipal claim as set forth in the Municipal Claim and Tax Lien Law. *See*, [53 P.S. § 7101](http://www.lexis.com/research/buttonTFLink?_m=8cd9ac73d7e3d1533491ced6565487b4&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2014%20Pa.%20PUC%20LEXIS%20257%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=18&_butInline=1&_butinfo=53%20PASTAT%207101&_fmtstr=FULL&docnum=7&_startdoc=1&wchp=dGLzVzt-zSkAz&_md5=7dbcd23446eb13cb31d5c92077a9edbf). Consequently, when Respondent provides natural gas service to an entity within the borders of the City and is not paid, it is the City that has a municipal claim which it can enforce by way of a lien on the property that was provided natural gas service.

The procedure which the City must follow to establish a lien on a specific property, such as the Premises, is set forth in the Municipal Claim and Tax Lien Law. *See*, [53 P.S. §§ 7106(b)](http://www.lexis.com/research/buttonTFLink?_m=8cd9ac73d7e3d1533491ced6565487b4&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2014%20Pa.%20PUC%20LEXIS%20257%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=19&_butInline=1&_butinfo=53%20PASTAT%207106&_fmtstr=FULL&docnum=7&_startdoc=1&wchp=dGLzVzt-zSkAz&_md5=79fa8e7b7e8fc70044767a19f66048ae), (c), 7143. The lien is docketed with the Prothonotary (a clerk of the court) and maintained in an *in rem* index (an index maintained by property identification rather than by party name). *See*, [53 P.S. § 7106(b)](http://www.lexis.com/research/buttonTFLink?_m=8cd9ac73d7e3d1533491ced6565487b4&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2014%20Pa.%20PUC%20LEXIS%20257%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=20&_butInline=1&_butinfo=53%20PASTAT%207106&_fmtstr=FULL&docnum=7&_startdoc=1&wchp=dGLzVzt-zSkAz&_md5=142cf23fffd7543d177bbeb1f77d6c77). Enforcement of the lien is a judicial procedure controlled by the Court of Common Pleas, with due process safeguards provided to protect the rights of interested parties. *See*, Newberry Twp. V. Stambaugh, 848 A.2d 173 . . .

*In Hynn Yoo and Yu Shin Yoo v. Philadelphia Gas Works*, Docket No. C-2013-2369915, (Initial Decision Issued June 4, 2014); Final Order entered July 10, 2014; 2014 Pa. PUC LEXIS 257: I.D. at 6-7. (Emphasis supplied).[[6]](#footnote-7)

SBG, on behalf of the owners of the Service Properties, filed and prosecuted the above-captioned formal complaints (Complaints) against PGW.[[7]](#footnote-8) The Complaints challenged, *inter alia*, the accuracy of utility bills rendered to the Service Properties and the lawfulness of PGW’s billing methodology that PGW applied to partial payments made for past due utility bills.

SBG disputed the lawfulness of bills rendered by PGW under authority of the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.*, (Code) and Commission Regulations. The SBG Complaint allegations were identified and coded to allege, generally, excessive billings, disputed estimated billings, disputed late payment charges and disputed meter reads. *See* *December 8 Order* at 18. During the litigation of the Complaints and after discovery was obtained, the SBG allegations were amended to include a claim that PGW improperly applied Commission-tariffed late-payment charges to amounts which were placed in collection through the filing of municipal liens by the City of Philadelphia.[[8]](#footnote-9)

Separate Complaints were filed on behalf of Colonial Garden and Simon Garden on May 11, 2012. The Complaints were docketed at Docket No. C-2012-2304183 and Docket No. C-2012-2304324, respectively. As noted, the Complaints were consolidated by Order of presiding ALJ Vero. *December 8 Order* at 1; 10.

After lengthy and vigorously contested proceedings before ALJ Vero, a consolidated record was developed. The Commission issued the Initial Decision of ALJ Vero on September 17, 2015 (*SBG* I.D.). Exceptions to the *SBG* I.D. were filed by PGW, to which SBG filed Replies.

By Initial Decision, ALJ Vero found that PGW violated 52 Pa. Code § 56.24 (Application of partial payments among several bills for public utility service) by applying payments to current late fees before paying down prior overdue balances. The ALJ directed PGW to issue a bill credit and assessed a civil penalty in the amount of $2,000 for PGW’s violation of 52 Pa. Code § 56.24. The ALJ also found that PGW improperly assessed late payment charges to overdue amounts subject to a municipal lien and imposed a civil penalty in the amount of $25,000 to deter PGW from applying its tariff and rates to liened indebted amounts. The ALJ also directed PGW to issue a refund of over $500,000 to SBG Management Services, Inc. (SBG) for the improperly assessed late payment charges.

PGW filed Exceptions, arguing that it should not have to choose between pursuing debt for past due utility service with a lien and imposing late charges per its tariff. PGW argued, *inter alia*, that Chapter 14 of the Code gives it the right to use the lien process, and that the Commission has no jurisdiction over the 10% interest charges established in the MCTLL. Our *December 8 Order* rejected these arguments and affirmed the ALJ’s decision on both the partial payment issue and the late payment charge issue. Within forty-five days of the entry of the *December 8 Order*, PGW was directed to certify to the Commission that it has modified its business practices, including services performed by third party vendors, to bill in compliance with the Order.

On December 23, 2016, PGW filed the instant Petition arguing, *inter alia*, that (1) PGW can impose late fees on a debt where a municipal lien has been filed up until a final judgment on the lien is entered by the court; and 2) the Commission failed to give effect to Sections 2212(n) and 1414 of the Public Utility Code, 66 Pa.C.S. §§ 2212(n); 1414 (provisions that allow PGW to file liens to collect debt).

On October 3, 2017, as noted, PGW filed a Supplemental Petition for Rehearing to fully explore the legal, policy, and operational effect of the *December 8th Order*. In the Supplemental Petition PGW argues, *inter alia*, that forty-five days is not enough time to change its billing system to comply with the Order and that it needs fifty-seven weeks to comply.

The pertinent Ordering Paragraphs of the *December 8 Order* are reprinted below:

1. That the Exceptions of Philadelphia Gas Works filed on October 7, 2015, are granted in part and denied in part, consistent with the discussion contained in this Opinion and order.

\* \* \*

3. That the Initial Decision issued by Administrative Law Judge Eranda Vero on September 17, 2015, is adopted as modified, consistent with the discussion contained in this Opinion and Order.

4. That the recommendation of Administrative Law Judge Vero is adopted, subject to corrections in the calculations, and Philadelphia Gas Works shall credit the Colonial Garden Realty Co., L.P.’s Account # 6128000245, SA # 1375369694, in the amount of $348.40.

5. That the recommendation of Administrative Law Judge Vero is adopted and Philadelphia Gas Works shall credit the Colonial Garden Realty Co., L.P.’s Account # 6128000245, SA # 4018739567, in the amount of $218.96.

6. That the recommendation of Administrative Law Judge Vero is adopted and Philadelphia Gas Works shall credit the amount of $94,626.23 to Colonial Garden Realty Co., L.P., Account # 6128000245 which shall be subject to collection through civil judicial process.

7. That the recommendation of Administrative Law Judge Vero is adopted and Philadelphia Gas Works shall credit the amount of $471,351.38 to Simon Garden Realty Co., L.P., Account # 539547187 which shall be subject to collection through civil judicial process.

8. That Philadelphia Gas Works is hereby assessed a civil penalty of Twenty-seven Thousand Dollars ($27,000.00) for its violations of the Public Utility Code, 66 Pa. C.S. § 1501, for failure to provide adequate, efficient, safe and reasonable service, to Complainants and for a violation of the Commission Regulation at 52 Pa. Code § 56.22, for failing to disclose its billing methodology concerning the assessment of late payment charges under its tariff, PGW Gas Service Tariff - Pa. PUC No. 2, Section 26 Page 4.2. Finance Charge on Late Payments.

\* \* \*

10. That Philadelphia Gas Works cease and desist from further violations of the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq*., and the regulations of the Pennsylvania Public Utility Commission, 52 Pa. Code §§ 1.1 *et seq*. Philadelphia Gas Works, shall, within Forty-five (45) days of the entry of this Opinion and Order certify to the Commission that it has ceased any automated billing practices which violate the Public Utility Code of Commission Regulations concerning the application of municipal liens or related collection procedures as between the Commission and the Courts.

11. That these consolidated proceedings be marked closed.

*December 8 Order* at 110-112.

**Discussion**

We advise the Parties that any issue that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

**1. Legal Standards – Reconsideration and/or Rehearing**

The Code establishes a party’s right to seek relief following the issuance of the Commission’s final decision pursuant to Subsections 703(f) and (g), [66 Pa. C.S. §§ 703(f)](http://www.lexis.com/research/buttonTFLink?_m=d97d976809c17dbc8b706cf0d3fb11c9&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2013%20Pa.%20PUC%20LEXIS%20365%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=3&_butInline=1&_butinfo=66%20PACS%20703&_fmtstr=FULL&docnum=13&_startdoc=11&wchp=dGLzVzk-zSkAb&_md5=0bac42b84c189738312c8b8972dc206e) and [703(g)](http://www.lexis.com/research/buttonTFLink?_m=d97d976809c17dbc8b706cf0d3fb11c9&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2013%20Pa.%20PUC%20LEXIS%20365%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=4&_butInline=1&_butinfo=66%20PACS%20703&_fmtstr=FULL&docnum=13&_startdoc=11&wchp=dGLzVzk-zSkAb&_md5=66e961e991ab6ffa2ab6e45126fdbc6a), relating to rehearing, as well as the rescission, clarification and amendment of orders.

Requests for relief in the nature of reconsideration, rehearing and/or rescission or amendment, must be consistent with Section 5.572 of our Regulations, [52 Pa. Code § 5.572](http://www.lexis.com/research/buttonTFLink?_m=d97d976809c17dbc8b706cf0d3fb11c9&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2013%20Pa.%20PUC%20LEXIS%20365%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=5&_butInline=1&_butinfo=52%20PA%20CODE%205.572&_fmtstr=FULL&docnum=13&_startdoc=11&wchp=dGLzVzk-zSkAb&_md5=e5937121213b252361c14a5e6af79c68), addressing petitions for relief following the issuance of a final decision. 52 Pa. Code § 5.572.

The standards for our review and consideration of petitions seeking reconsideration, rehearing and clarification are well settled and are governed by the factors extensively discussed by the Commission in the case of *Duick v. Pa. Gas and Water Company*, 56 Pa. P.U.C. 553 (1982) (*Duick*); *see, also* [*AT&T Comm. of Pa. v****.*** *Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990)](http://www.lexis.com/research/buttonTFLink?_m=15f29cdbfe8e3891c8a5b6d0440c9110&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2005%20Pa.%20PUC%20LEXIS%20126%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b568%20A.2d%201362%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=6&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=86ed0f14980fc9dddc55d9b85f7932dc).

In *Duick* the Commission reasoned that, while a petition under Section 703(g) of the Code may raise any matter designed to convince the Commission that it should exercise its discretion to amend or rescind a prior order, at the same time “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Duick* at 559 (quoting [*Pa. Railroad Co. v. Pa. PSC*, 179 A. 850, 854 (Pa. Super. Ct. 1935)).](http://www.lexis.com/research/buttonTFLink?_m=d97d976809c17dbc8b706cf0d3fb11c9&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2013%20Pa.%20PUC%20LEXIS%20365%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=7&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b179%20A.%20850%2cat%20854%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=13&_startdoc=11&wchp=dGLzVzk-zSkAb&_md5=fd5ab9b5c849f65bb2aa5901ac9f15ba) Under the standards of *Duick*,such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

We consider the Petition and Supplemental Petition of PGW in light of the standards of *Duick*.

**A. Standards of *Duick***

In its Petition, PGW asserts that the standards of *Duick* support reconsideration and/or rehearing. Petition at 12-13. PGW explains that the Commission has erred as a matter of law in interpreting the Code, the MCTLL, and applicable law concerning the preemptive effect of the filing of a municipal lien for utility indebtedness on a Commission tariff. PGW claims it has a right to continued application of Commission-tariffed charges for the indebtedness and the contrary conclusion reached in the *December 8 Order* is incorrect as a matter of law. PGW argues that the Commission’s interpretation of the preemptive effect of municipal liens on the utility debt is a matter that has not been previously articulated by the Commission and the instant Petition is PGW’s first opportunity to respond. Petition at 12.

PGW also argues that reconsideration is warranted as the *December 8 Order* fails to consider, or has overlooked, “ . . . the proper weight to the unforeseen consequence and practical impacts of its (flawed) interpretations on jurisdiction.” Petition at 13.

Based on the foregoing, PGW advises that the Commission should reopen the record, accept the proffered verified statements of Mr. Bernard Cummings and Ms. Denise Adamucci into the record, and revise the legal conclusions reached concerning the legal effect of a municipal lien on amounts subject to Commission tariff. In the alternative, PGW requests that the Commission initiate an investigation into the legal, operational, and policy considerations of the *December 8 Order* on a natural gas operation.[[9]](#footnote-10)

In its Supplemental Petition, PGW asserts that specific evidence proffered in the petition is responsive to a proposal by the Office of Consumer Advocate (OCA) in its base rate proceeding, to revise PGW’s partial payment allocation practices as those practices relate to PGW’s entire residential customer base. Supplemental Petition at 2.

**Disposition**

Upon review, we do not agree that PGW’s Petition meets the standards of *Duick* in this matter. As noted, Petitions for reconsideration are governed by the considerations of *Duick*, which, on application, essentially, require a two-step analysis. *See, e.g., Application of La Mexicana Express Service, LLC, to transport persons in paratransit service, between points within Berks County*, Docket No. A-2012-2329717; A-6415209 (Order entered September 11, 2014).

First, we determine whether a Party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. We will not reconsider our previous decision based on arguments that have already been considered. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument, or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. *Application of La Mexicana Express Service*.

The second step of the *Duick* analysis is to evaluate the new or novel argument, or overlooked consideration that is alleged, in order to determine whether to modify our previous decision. *Application of La Mexicana Express Service*.

The PGW arguments for reconsideration focus on PGW’s legal position that the reasoning of the *December 8 Order* was based on legal positions and analysis which were not briefed or argued in the proceedings resulting in the *December 8 Order*. PGW asserts thatthe Petition represents its first opportunity to address the reasoning of the Commission’s prior order. Petition at 12.

We agree that PGW has identified a consideration that was not addressed by the Parties or the presiding ALJ in the *December 8 Order*. The issue concerns the preemptive effect of the existence of a municipal lien on debt that PGW purports to simultaneously apply Commission tariff charges. In the prior order we noted that the dispute between SBG and PGW focused upon the appropriate rate of interest that PGW should be permitted to apply to unpaid utility debt when such debt became the subject of a municipal lien. *See December 8 Order* at 46. SBG challenged the lawfulness of PGW’s application of the 18% annual or 1.5% monthly late payment charges authorized by Commission Regulations and PGW’s tariff. SBG contested the fact that PGW also applied this rate to outstanding balances on which it also filed a lien. *Id*., citing *SBG I.D*. at 54-55; Tr. 206-207.

In the prior proceedings, PGW essentially argued that the Commission lacked subject matter jurisdiction to make a determination of the proper interest rate to be charged on amounts for past due utility service which amounts were also the subject of municipal liens. PGW took the position that a determination of the proper rate of interest, in effect, required the Commission to interpret the MCTLL and the statutes involving the applicability of pre-judgment and/or post-judgment interest resulting from a final determination of a court of law. *See December 8 Order* at 19; SBG Answer at 9-10.

In the *December 8 Order* proceedings, presiding ALJ Vero directed the Parties to address their respective legal positions and to specifically brief three issues which we later found were not dispositive of the legal contentions raised in the Complaints. *See December 8 Order* at 49; Petition at 10, n. 20. The Parties were requested to brief the following issues:

1. Does the Commission have jurisdiction to determine whether PGW has applied the correct interest rate in late payment charges to the portion of an outstanding balance that is also the subject of a lien filed by the City of Philadelphia? Provide legal grounds for your position.

2. Explain whether or not a lien filed by the City of Philadelphia for unpaid gas service is considered a judgement under 42 Pa.C.S. § 8101? If yes, explain when a lien becomes a judgement. Provide legal grounds for your position.

3. What is the correct interest rate in late payment charges that should be applied on that portion of an outstanding balance which is the subject of a municipal lien (or unpaid gas service) filed by the City of Philadelphia? Provide legal grounds for you position.

*December 8 Order* at 61-62, citing *SBG I.D.* at 57.

We also noted that issues of first impression were raised by the Complaint. *December 8 Order* at 61. *See* SBG Answer at 9.

Based on the foregoing, on application of the first step of the *Duick* analysis concerning the preemptive effect of a municipal lien on Commission tariff charges for the same indebtedness, the Commission’s reasoning in support of the ALJ’s recommendation was not specifically briefed or addressed by the Parties. This observationcounsels in favor of reconsideration. However, on application of the second step of the *Duick* analysis, which is to evaluate the new or novel argument(s), we are not persuaded that we have committed legal error.

PGW’s request for reconsideration concerning our finding that its billing methodology for partial payments on past due balances of Colonial Garden and Simon Garden were in violation of the Code does not meet the second step of the *Duick* analysis. *See* Petition at 28-34. We shall, therefore, deny reconsideration and/or rehearing consistent with our discussion, below.

PGW’s argument in support of reopening and rehearing in the Supplemental Petition is related to PGW’s arguments in support of reconsideration concerning our findings that PGW’s partial payments methodology violated the Code. The Supplemental Petition request is based on PGW’s need to respond to issues raised by the Office of Consumer Advocate (OCA) in the PGW base rate proceeding.

As discussed below, reopening the instant docket to receive evidence submitted in the base rate proceeding is not advised. We shall, therefore, deny reconsideration and/or rehearing as requested in the Supplemental Petition. SBG, the Complainant in these proceedings, is not a party to the base rate proceeding and cannot reasonably be expected to respond to the testimony proffered by Parties in those proceedings. This is so, notwithstanding that the expert witness testimony sponsored by the OCA in the base rate proceeding is proposed, in substantial part, by the same witness (Mr. Colton) that was used by SBG in these formal complaint proceedings.

Conversely, the OCA was not a party to the instant, formal complaint proceedings. Rather, the OCA has used the findings and conclusions of the *December 8 Order* regarding PGW’s violation of the applicable provisions of the Code and Regulations to prosecute similar challenges concerning PGW’s partial payment methodology in its advocacy on behalf of PGW residential ratepayers.

**B. Preemption of Tariff Charges on Amounts Subject to**

**Municipal Liens**

In the Introduction to its Petition, PGW expresses its overall disagreement with the conclusions in the *December 8 Order* concerning the legal authority of Commission-authorized tariff charges to accrue on amounts that are, simultaneously, the subject of municipal liens. In this context, PGW suggests that a “clarification” of the ruling in the *December 8 Order* should be made and the Commission’s ruling modified to conclude that divestment of Commission jurisdiction over the indebtedness for past due utility service occurs upon the docketing of a municipal lien regarding the indebtedness. Petition at 2. PGW argues for this modification based on the position that an “inchoate” lien is created virtually immediately after a customer’s bill becomes past due. *Id*. By choate, PGW appears to refer to the fact that the lien is “perfected” upon its docketing (filing of record) with the proper court officer, *i.e.* prothonotary.

PGW, however, would not be satisfied with such clarification. PGW presses its concern and argument that the mere existence of a municipal lien does not have any bearing on the Commission’s jurisdiction over the indebtedness that the lien secures. PGW argues that the Commission continues to have jurisdiction over PGW’s “rates and services until such time as a court enters a judgment following the commencement of judicial proceedings on the lien.” *See* Petition at 2. (Emphasis omitted).

The essential disagreement with the legal conclusion reached in the *December 8 Order* may be summarized in the following argument of PGW:

Accordingly, the Commission must reconsider and revise its final decision to recognize that it loses jurisdiction over the arrearages that are the subject of municipal liens only when the lien has been reduced to a final judgment by action of either party. In turn, all of PGW’s rights (and obligations) continue to attach to the amount in dispute, including the provisions of its tariff that permit it to assess a late payment charge on past-due amounts. Since, as explained above, an inchoate municipal lien exists by operation of law and is created the moment a gas bill becomes past due, failure to revise its interpretation would mean that the Commission

would divest itself of virtually all authority over PGW’s collection practices, a result the PUC likely did not intend.

Petition at 4. (Emphasis original).

As an alternative position, PGW seeks reconsideration of our *December 8 Order*,in the nature of rehearing. Rehearing is suggested for the purpose of pursuing policy arguments regarding the financial impact of the *December 8 Order* on PGW’s collection practices for past due utility accounts.

Based on the foregoing, the legal position of PGW is grounded on an extended analysis and emphasis on the doctrine of *res judicata*. PGW asserts that a lien is not entitled to conclusive and final effect and our *December 8 Order* is in error concerning the preemptive effect of a municipal lien on Commission jurisdiction over the same subject matter, *i.e.*, indebtedness resulting from a past due utility bill. *See, e.g.,* Petition at 14; 19-20.

In its Answer, SBG disagrees that reconsideration is warranted in this matter. SBG asserts that, where granting relief in the nature of reconsideration 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. Answer at 4, citing *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).

SBG emphasizes that the proceedings began in 2012. And, at all times during the course of litigating the matter, PGW was placed on notice that SBG sought disclosure of the manner, methodology and practices on how PGW applied/posted payments, and late payment charges to its accounts for accumulated debt and debt that was docketed as liened judgments. Answer at 5. SBG advises that there are no material facts in dispute and that PGW has admitted it engaged in the practices which have been determined contrary to the Code and Commission Regulations. *Id*.

**Disposition**

On consideration of the positions of the Parties, we find that reconsideration is not merited and reject PGW’s position that the Commission is divested of subject matter jurisdiction only when a municipal lien becomes a final judgment [[10]](#footnote-11)

The persistent flaw in PGW’s reasoning and argument is the failure to acknowledge that the Commission lacks jurisdiction and authority over any aspect of a municipal lien. *See December 8 Order* 67-69. As noted in the *December 8 Order*, all challenges and disputes – both procedural and substantive, concerning the lien cannot be entertained or adjudicated before this agency. These disputes must, according to the statutory scheme of *scire facias*, take place in the courts. As noted in the *December 8 Order*, when the utility indebtedness becomes the subject of a municipal lien, whether the final sum owing is modified is ultimately a determination that can only be made by the appropriate court. The statutory scheme of *scire facias* is a civil process – not an administrative one. Based on the foregoing, we would cite the holding and discussion in *East v. Workers’ Comp. Appeal Bd. (USX Corp./Clairton)*, 574 Pa. 16, 828 A.2d 1016 (Pa. 2003), as consistent with our position. That position is that an administrative proceeding and a civil action are distinct legal processes that, from our research, only overlap in the context of cases discussing primary jurisdiction. *See East v. Workers' Comp. Appeal Bd. (USX Corp./Clairton)* 574 Pa. 16, 26-27, 828 A.2d 1016, 1021-1022 (notes omitted) – **“**Most revealing in this regard are those provisions in which “civil actions” are expressly distinguished from “administrative proceedings”, thereby demonstrating that the former excludes the latter. The majority of these statutory exemplars express the understanding that “civil actions” are those commenced and conducted in a court of record, involving traditional common law claims for damages or equitable relief governed by the Pennsylvania Rules of Civil Procedure.”

In its Petition at 15, PGW cites cases standing for the proposition that the Commission retains jurisdiction over the rates and services of a public utility – notwithstanding the filing of a civil action for collection of a past due utility bill. As noted in the *December 8 Order*, the Code, Section 1302, 1303, provide inherent authority of the Commission to determine whether a public utility has billed a patron consistent with its tariff. We find the cases cited by PGW to be distinguishable from the issue involved in this Complaint and that PGW has misinterpreted the holdings of these cases.[[11]](#footnote-12) A review of the cases discloses that they are, in fact, consistent with the conclusion reached in the *December 8 Order*.

As an example, PGW refers the Commission to *Ronald Ford v. Duquesne Light Co.*, Docket No. Z-00245911 (Final Order entered May 9, 1995); 1995 Pa. PUC LEXIS 49, as a case supporting its position that the Commission retains jurisdiction under Sections 1301, 1501, and 1503 of the Code, 66 Pa. C.S. §§ 1301, 1501, 1503, to consider issues related to the validity of a final bill issued by the utility. *See* Petition at 15, n. 34. The *Ford v. Duquesne Light Co.* case arose in the context a dispute regarding a final utility bill where the ratepayer was no longer a customer of the utility which was owed a debt for the prior service. However, we cite below the pertinent discussion of ALJ Paist, adopted as the Commission’s Final Order, in the matter:

Therefore, the Commission has held that it has jurisdiction to set payment arrangements on the final utility bill of a person who is not currently the utility's customer as long as the utility has not pursued or does not pursue civil remedies to collect the amount owed on the final utility bill. *Ballard; Washington v. Duquesne Light Co*., C-00935257 (order adopted June 2, 1994, entered August 1, 1994); *Sentner; Clark v. Philadelphia Electric Co*., Z-00105129 (order entered July 2, 1993); *Stallworth v. Philadelphia Electric Co*., F-09231349 (order entered May 6, 1993); *Sigman v. Bell Telephone Co. of Pennsylvania*, C-00924214 (order adopted November 24, 1992, entered February 4, 1993); *Ashman v. National Fuel Gas Distribution Corp.*, F-09031384 (order adopted October 17, 1991, entered January 21, 1993); *Huff; Thompson; Gordon*; accord section 103 of the Public Utility Code, [66 Pa. C.S. § 103](http://www.lexis.com/research/buttonTFLink?_m=f435b2ce11c0f96ce7cbf844630e2acf&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1995%20Pa.%20PUC%20LEXIS%2049%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=10&_butInline=1&_butinfo=66%20PACODE%20103&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAl&_md5=fce10e5e70089c63545a8ab638e5460d); Commission regulation at [52 Pa. Code § 56.35](http://www.lexis.com/research/buttonTFLink?_m=f435b2ce11c0f96ce7cbf844630e2acf&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1995%20Pa.%20PUC%20LEXIS%2049%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=11&_butInline=1&_butinfo=52%20PA%20CODE%2056.35&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAl&_md5=c445b6d8fb40fa240bbad3ebb69f6ce4). **Otherwise stated, if a utility has pursued or is pursuing civil remedies to collect a final bill, then neither the Bureau of Consumer Services nor the Commission may set a payment arrangement for the collection of any portion of the final bill pursued through civil collection remedies**. *Ballard; Washington*; *Sentner; Clark*; *Stallworth; Sigman; Ashman*; *Huff;*

*Thompson*; [*Uplinger v. Pennsylvania Power and Light Co., 75 Pa. P.U.C. 29 (1991)*](http://www.lexis.com/research/buttonTFLink?_m=f435b2ce11c0f96ce7cbf844630e2acf&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1995%20Pa.%20PUC%20LEXIS%2049%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=12&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b75%20Pa.%20PUC%2029%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAl&_md5=6886b206f26d38278c6bfb988e8d2f66) n1; *Gordon*; accord [66 Pa. C.S. § 103](http://www.lexis.com/research/buttonTFLink?_m=f435b2ce11c0f96ce7cbf844630e2acf&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1995%20Pa.%20PUC%20LEXIS%2049%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=13&_butInline=1&_butinfo=66%20PACODE%20103&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAl&_md5=b7ac62c91e01360e84ab9995429c9384); [52 Pa. Code § 56.35](http://www.lexis.com/research/buttonTFLink?_m=f435b2ce11c0f96ce7cbf844630e2acf&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1995%20Pa.%20PUC%20LEXIS%2049%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=14&_butInline=1&_butinfo=52%20PA%20CODE%2056.35&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAl&_md5=f36562d001fce24377f3f0fe664df577).

*See* 1995 Pa. PUC LEXIS \*11-12; emphasis added.

Also, the language of Section 1414 of the Code, 66 Pa. C.S. § 1414, referenced by PGW, Petition at 8, n. 8-9, strongly counsels against the position of PGW in this Complaint. Section 1414 of the Code states, in pertinent part:

**§ 1414. Liens by city natural gas distribution operations.**

**(a) General rule.--**A city natural gas distribution operation furnishing gas service to a property is entitled to impose or assess a municipal claim against the property and file as liens of record claims for unpaid natural gas distribution service and other related costs, including natural gas supply, in the court of common pleas of the county in which the property is situated or, if the claim for the unpaid natural gas distribution service does not exceed the maximum amount over which the Municipal Court of Philadelphia has jurisdiction, in the Municipal Court of Philadelphia, pursuant to sections 3 and 9 of the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, and Chapter 22 (relating to natural gas competition). (Emphasis added)

Upon review, Section 1414(a) of the Code reiterates the unqualified right of the City of Philadelphia and PGW, previously established in the MCTLL, to pursue collection of indebtedness for unpaid utility bills through the filing of a lien of record with the appropriate court. Specifically, the imposition of a municipal lien to secure payment of a debt for gas services supplied is a civil action for collection of a “municipal claim” under the MCTLL. As a “municipal claim,” the civil action regarding the claim cannot be maintained concurrently with an administrative action or process for the same subject matter, *i.e.,* debt for a sum certain resulted from a past due PGW gas bill.[[12]](#footnote-13)

Moreover, the plain language of Section 1414 of the Code divests the Commission of subject matter jurisdiction over the indebtedness for unpaid utility bills subject to a municipal lien regardless of whether a final judgment has been entered on the lien.[[13]](#footnote-14)  There is no language in the Code giving the City of Philadelphia and/or PGW the right to simultaneously collect or assess charges for the same indebtedness in both forums. To the contrary, Section 1414(a) of the Code expressly refers to Section 2212(n) of the Code, 66 Pa. C.S. §2212(n), which specifically states that “nothing contained in this title shall abrogate the power of a city natural gas distribution operation to collect delinquent receivables through the imposition of liens” under the MCTLL. This language supports the view that at the time a municipal lien is imposed to secure payment for the unpaid PGW gas bill, the proceeding, thereupon, is exclusively a matter of judicial, not administrative jurisdiction.

In its Petition, PGW avers it is unclear how its collection process will proceed under the *December 8 Order* as written. PGW notes that, under the Order, once a municipal lien exists, the Commission relinquishes its jurisdiction to hear billing disputes and to rule upon agreements between the utility and that customer to decrease the amount of arrearages. According to PGW, this means that under the *December 8 Order*, the Commission’s formal complaint procedures may no longer be available to PGW’s customers once a municipal lien exists.

In our view, the Commission’s approach in lien-related formal complaints will not change under the *December 8 Order*. Namely, with a formal complaint that challenges the imposition of a municipal lien for an unpaid PGW gas bill, our precedent is clear that the Commission does not have subject matter jurisdiction over the complaint. *See, e.g., Jacqueline Stevens v. Philadelphia Gas Works*, C-2015-2472728 (Final Order entered July 30, 2015). However, to the extent a formal complaint that challenges the imposition of a lien also raises a jurisdictional billing or service issue, the Commission does have subject matter jurisdiction over that portion of the complaint. *See, e.g., Dennis Vicario v. Philadelphia Gas Works*, C-2010-2213955 (Opinion and Order entered November 16, 2011); *Habana Holding Corporation v. PGW***,** C-2014-2413775, Final Order entered July 24, 2014). This approach is nothing new, and we believe PGW’s concerns about process are unfounded.

**2. Rehearing and Request for Commission Investigation**

At pages 26-28, PGW makes out a case for a Commission-initiated investigation. It is not clear what would be the subject of the investigation. At paragraph 44 of the Petition, Petition at 27-28, PGW alludes to “coordination” issues with its Commission-regulated operations and, presumably, its operations that are not subject to Commission regulation. Petition at 28.

PGW’s primary argument is that the *December 8 Order* will, speculatively, result in negatively impacting the manner in which PGW and/or the City of Philadelphia pursues uncollectible accounts. PGW references the Verified Statement of Mr. Bernard Cummings to assert that, “ . . . the City/PGW relies upon municipal liens for PGW’s fiscal stability and about $30 million in collections *could* be negatively impacted.” (Emphasis supplied).

PGW continues to advance its policy argument that the fiscal impact of our *December 8 Order* is uncertain and that a full investigation of policy and operational issues should be conducted. Petition at 28.

In its Answer, SBG generally denies that the *December 8 Order* impairs any collection rights or privileges of PGW and/or the City of Philadelphia.

**Disposition**

We are constrained to decline PGW’s invitation to conduct a far-reaching investigation of the policy and operational impact of the *December 8 Order* on the City of Philadelphia’s collection practices at the present Complaint docket. As noted, PGW is the only city natural gas distribution operation in the Commonwealth. Therefore, we are not certain of the administrative efficiency of such a proceeding regarding the issues litigated in these complaint proceedings.

The record of this proceeding indicates that PGW was less than forthcoming in the disclosure of the actual mechanics of its collection practices regarding the application of interest and late payment charges for its accounts with Colonial Garden and Simon Garden. Also, it was after several years of litigation that such methodology became apparent and it was found that PGW employed a “hierarchy” of application of partial payments on past due amounts and/or amounts that were simultaneously the subject of municipal liens. *See December 8 Order* at 19.[[14]](#footnote-15) PGW has acknowledged that these decisions concerning its collection practices were business decisions. As such, these decisions were made independent of, and without consultation with, PGW’s stakeholders or the Commission.

Also, this Commission only retains jurisdiction over the City of Philadelphia to the extent authorized by Section 2212(b). Thus, any deliberations concerning what, if any, coordination must be implemented as between PGW and the City of Philadelphia in order to comply with the billing of rates that are just and reasonable under the Code, 66 Pa. C.S. § 1301, would necessarily occur with limited involvement of this agency.

Based on the foregoing, we decline to transform the instant Complaint proceeding into a generic investigation of PGW’s treatment of uncollectible accounts. This Complaint, and the other consolidated and pending proceedings, has been prosecuted by SBG to vindicate its specific rights under the Code and Commission Regulations as a commercial end-user who was subjected to bills for natural gas service. SBG, as proponent of a rule or order from this agency, was charged with the burden of proof in this matter. 66 Pa. C.S. § 332(a). SBG successfully met its burden in several substantive areas of this dispute. We shall not countenance any further delay in disposing of the claims of SBG that arose under the Code and which it has successfully prosecuted in this docket. As noted, these proceedings have spanned several years and now are entitled to finality.

We shall deny PGW’s request in the nature of reconsideration and/or rehearing, for purposes of a Commission initiated investigation. This shall be without prejudice to our consideration and review in a separate proceeding, any issues litigated by parties in interest concerning allegations of PGW’s violation of the Code, Commission Regulations, or any statute under which the Commission has been given authority to administer.

**3. Rehearing and Reconsideration to Implement Billing Revisions,**

**Partial Payments for Basic Service and Rate Case Proceeding**

**A. Violation of 52 Pa. Code § 56.24, *et seq.***

We have concluded that PGW’s request for reconsideration of our conclusions that its billing methodology violated the Code and Commission Regulations does not meet the standards of *Duick* for reconsideration. Related to PGW’s request for reconsideration and/or rehearing, is also a request for an extension of time in which to implement any necessary modifications to its billing systems in order to comply with the directives set forth in the *December 8 Order*. *See* Petition at 33-35. Pursuant to the Verified Statement of Ms. Denise Adamucci, Vice President of Regulatory Compliance and Customer Programs, the system modifications required by Ordering Paragraph No. 10 of the *December 8 Order* are described as “extensive.”

Ordering Paragraph No. 10 provides as follows:

10. That Philadelphia Gas Works cease and desist from further violations of the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq*., and the regulations of the Pennsylvania Public Utility Commission, 52 Pa. Code §§ 1.1 *et seq*. Philadelphia Gas Works, shall, within Forty-five (45) days of the entry of this Opinion and Order certify to the Commission that it has ceased any automated billing practices which violate the Public Utility Code of Commission Regulations concerning the application of municipal liens or related collection procedures as between the Commission and the Courts.

Ms. Adamucci, in her Statement, advises that the modifications would involve, *inter alia*, modifications of PGW’s current payment application and billing process, new code development, and wide-ranging quality assurance and user acceptance testing. *See* Statement at 2. As a result, Ms. Adamucci avers that it is not feasible to accomplish such changes in forty-five days. *Id*. PGW requests, under a “rough” estimate, an extension of time to accomplish said modifications. In its opinion it will take, approximately, fifty-seven weeks to accomplish the changes. *Id*.

In its Answer, SBG criticizes PGW for a violation of its tariff and Commission Regulations. Contrary to the position of PGW, SBG asserts that the language of the Commission Regulation(s) is clear and unambiguous. Thus, SBG finds little or no justification for PGW’s conduct in this area.

**B. Supplemental Petition and Rate Case at No. R-2017-2586783**

As noted, PGW has filed a Supplemental Petition. In the Supplemental Petition, PGW advises of the following:

29. The situation has changed since the time when PGW was developing an evidentiary record in the SBG proceeding, in which it responded to the allegations of the individual complainants and the request for refunds in connection with the way that partial payments were allocated to late payment charges for those individual commercial customers. Specifically, in PGW’s pending base rate proceeding, OCA raised an issue concerning the application of partial payment allocation practices that is identical to the issue raised by the complainants in these SBG proceedings. While the SBG proceeding involved commercial complainants, OCA sought in the base rate proceeding to have PGW’s partial payment allocation practices revised on the system-wide basis for all residential customers.

Supplemental Petition at 13, ⁋ 29.

PGW asserts that the relief sought in the Supplemental Petition, to reopen the current proceeding for rehearing, has become needed based on the developments in its base rate proceeding at Docket No. R-2017-2586783 (*2017 General Rate Increase Proceeding*).

As noted, PGW filed its *2017 General Rate Increase Proceeding* on

February 27, 2017, proposing a general rate increase of $70 million, to become effective, April 28, 2017. *See* 66 Pa. C.S. § 1308(d); Supplemental Petition at ⁋ 8. By Order entered March 16, 2017, the Commission instituted an investigation into the lawfulness, justness and reasonableness of the proposed rate increase and suspended PGW’s proposed tariff supplement, Supplement No. 100, until November 28, 2018. *Id*. at ⁋ 9.

In the *2017 General Rate Increase Proceeding*, the OCA filed a formal complaint with the Commission against Supplement No. 100 and against PGW’s existing tariff and rates. The *2017 General Rate Increase Proceeding* has resulted in a proposed joint settlement among the Parties with the exception of two issues which were the subject of continued litigation as between the OCA and PGW. The two issues are: PGW’s payment prioritization practices and allocation of universal services costs. *See* Supplemental Petition at ⁋ 19; OCA Main Brief (M.B.) *2017 General Rate Increase Proceeding*.

In the *2017 General Rate Increase Proceeding*, the OCA has challenged PGW’s partial payment methodology and allocation as contrary to Commission Regulations at 52 Pa. Code §§ 56.1, 56.22-56.24 and Sections 1301 and 1303 of the Code, 66 Pa. C.S. §§ 1301, 1303. OCA M.B. at 22. The OCA position relies, in substantial part, on the discussion and resolution of PGW’s compliance with the Commission Regulation at 52 Pa. Code § 56.24, as resolved in the *December 8 Order*. In the *December 8 Order*, as noted, we concluded thatPGW’s methodology was in violation of the Commission Regulation. *See December 8 Order* at 96-99. However, our determinations were based on the record of that proceeding, which pertained to the evidentiary presentations of the commercial complainants, Colonial Garden and Simon Garden.[[15]](#footnote-16)

In the *2017 General Rate Increase Proceeding*, the presiding ALJs, on consideration of PGW’s objections to consideration of the OCA formal complaint raising the issue of the lawfulness of PGW’s allocation of partial payments as applied to residential users, granted PGW relief. In a Recommended Decision (R.D.) issued September 28, 2017, presiding ALJs Christopher P. Pell, Deputy Chief Administrative Law Judge and Marta Guhl, ALJ, dismissed the OCA claim, without prejudice. *See* R.D. at 77.

As a result of the foregoing, PGW, in the Supplemental Petition, requests that we reopen these complaint proceedings and consider, *inter alia*, the evidentiary record that has been developed in the *2017 General Rate Increase Proceeding*, approximately, five (5) years after SBG initiated formal complaints with the Commission. *See* Supplemental Petition at 12, ⁋ 26.

SBG and the OCA have filed responses in opposition to reopening the record in this matter as requested in the Supplemental Petition.

**Disposition**

On consideration of the position of PGW, we shall deny the relief sought in the Supplemental Petition, consistent with the discussion in this Opinion and Order on Reconsideration.

In the PGW Petition, filed December 28, 2016, and PGW’s position throughout the litigation of the instant Complaints, PGW has not contested its billing methodology and billing practices as a matter of fact:

49. . . . It is not in dispute that PGW first applied partial payments received from Complainants to the balances due for prior basic service. It is also not in dispute that security deposits and late payments charges are components of basic service. Therefore, in first applying Complainants’ partial payments to the balance due for prior security deposits and latte payment charges, PGW did precisely what Section 56.24 mandates: accordingly, PGW did not violate Section 56.24 of the Commission’s regulations.

Petition at 30, (notes omitted).

Based on the foregoing, PGW does not, in this matter, factually dispute its allocation method. Rather, the dispute concerns PGW’s position that its partial payment allocation and methodology – as applied to the specific, commercial end-users in these proceedings, Colonial Garden and Simon Garden, were consistent with our Regulations. In a fully litigated proceeding in which customer specific data was reviewed, this Commission has determined that PGW’s methodology did not comply with our Regulations and, therefore, violated the applicable Regulations.

The question raised and essentially prosecuted in the *2017 General Rate Increase Proceeding* by the OCA is whether the modifications directed by this Commission in the *December 8 Order* should be given system-wide application in their application to residential customers - customers other than the specific commercial complainants in *December 8 Order*.

We shall deny, without prejudice, the PGW Supplemental Petition. We shall defer any finding and/or conclusions regarding the applicability of the determinations in the *December 8 Order* to parties other than the litigants herein, to a separate proceeding.

**Conclusion**

On consideration of the PGW Petition and the Supplemental Petition, the Petitions are denied, consistent with the discussion in this Opinion and Order on Reconsideration.; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration, Clarification and/or Rehearing, filed on December 23, 2016, by Philadelphia Gas Works is denied.

2. That Philadelphia Gas Works is given an extension of time of ninety (90) days, said time to run from the date of the entry of this Opinion and Order, in which to comply with Ordering Paragraph No. 10 set forth in the December 8, 2016 Order in the above-captioned docket.

3. That the Supplemental Petition for Reconsideration of the Commission’s December 8, 2016 Final Order, filed on October 3, 2017, by Philadelphia Gas Works is, denied, consistent with the discussion in this Opinion and Order.

4. That Philadelphia Gas Works shall credit and refund the monies owed to SBG Management Inc. within fifteen (15) days of entry of this Final Opinion and Order.

5. That these proceedings shall be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 18, 2018

ORDER ENTERED: May 18, 2018

1. The December 28, 2016 Order was entered pursuant to the conduct of a notational vote that was ratified at Public Meeting held January 19, 2017. [↑](#footnote-ref-2)
2. Simultaneous with the filing, an Entry of Appearance for counsel, Karen O. Moury, Esquire was noted. [↑](#footnote-ref-3)
3. *See* Supplement No. 100 to PGW Gas Service Tariff-Pa. P.U.C. No. 2, proposing an increase in annual distribution revenues of $70 million. [↑](#footnote-ref-4)
4. PGW and the OCA litigate, *inter alia*,whether issues determined in the *December 8 Order* affect similarly situated residential end-user PGW customers. [↑](#footnote-ref-5)
5. 72 units per complex. *December 8 Order* at 8; 23. [↑](#footnote-ref-6)
6. *See also* PGW Petition at 8, n. 8. [↑](#footnote-ref-7)
7. These proceeding are two formal complaints of five formal complaints filed by SBG on behalf of commercial properties that it manages. The complaints were consolidated by Order of presiding ALJ Eranda Vero dated July 6, 2012. By Order dated July 24, 2013, the cases were further divided into two groups for adjudication and disposition. *December Order* at 1; 4-6. [↑](#footnote-ref-8)
8. We acknowledge that PGW disputes that the legal effect of placing a municipal lien on a property for unpaid utility balances is, legally, a “collection” act that renders the amounts subject to the exclusive jurisdiction of the courts. *See* Petition, *infra*. [↑](#footnote-ref-9)
9. PGW is the only entity that qualifies as a natural gas operation in the Commonwealth. Petition at 7. [↑](#footnote-ref-10)
10. PGW’s argument in this regard does not appear to be consistent with its practice before the Commission to file a preliminary objection to a formal complaint involving a dispute over a municipal lien on the ground that the Commission lacks subject matter jurisdiction over the *imposition* of a lien. *See, e.g., Jacqueline Stevens v. Philadelphia Gas Works*, Docket No. C-2015-2472728 (Preliminary Objections and Motion to Strike dated April 8, 2015), ⁋ 11, p. 5. Consequently, it appears that, historically, PGW does not require a lien to become a final judgment as a condition precedent to moving to dismiss a lien-related Commission complaint on jurisdictional grounds. [↑](#footnote-ref-11)
11. PGW also misinterprets and misrepresents the Dissenting Statements of Chairman Brown and Commissioner Cawley, in the matter of *Habanna Holding Corp. v. PGW*, Docket No. C-2014-2413775 (Final Order July 24, 2014). [↑](#footnote-ref-12)
12. In its Petition, PGW discusses the difference between “inchoate” and “choate” liens. However, we do not believe any differences between these two types of liens has any bearing on a jurisdictional analysis. Under the MCTLL, there is an inherent right of a municipality to collect a claim through the imposition of a lien as an *in rem* guarantee of payment, and what matters with our jurisdictional analysis is that the imposition of a municipal lien by the City of Philadelphia to secure payment of a debt owed to PGW is a “municipal claim” under the MCTLL. [↑](#footnote-ref-13)
13. *See* 1Pa. C.S. § 1921(b) (“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”) [↑](#footnote-ref-14)
14. We dddscommend the efforts of the presiding ALJ in establishing the record in this matter and the detailed rulings on discovery and other procedural disputes. [↑](#footnote-ref-15)
15. We duly note PGW’s objection that the *December 8 Order* interpreted and found a violation of 52 Pa. Code § 56.24, *et seq*., in the context of a formal complaint by commercial end-users and not residential users. *See* Petition at 30, n. 80. [↑](#footnote-ref-16)