

Carl R. Shultz
717.255.3742
cshultz@eckertseamans.com

June 4, 2018

VIA ELECTRONIC FILING

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

RE: SBG Management Services, Inc./Colonial Garden Realty Co., L.P.;
Docket No.C-2012-2304183 **and**
SBG Management Services, Inc./Simon Garden Realty Co., L.P.;
Docket No. C-2012-2304324

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Petition for Reconsideration, Clarification and/or Rehearing of the Commission's May 18, 2018 Final Order, in the above-referenced matter. Copies are being served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please contact me at your convenience.

Sincerely,



Carl R. Shultz

CRS/jls

Enclosure

cc: Certificate of Service (w/enc)
Hon. Eranda Vero, ALJ (w/enc)
Office of Special Assistants (w/enc via email only)
Christy M. Appleby, Esq., Office of Consumer Advocate (w/enc)


CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing **Petition for Reconsideration** upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

Donna S. Ross, Esquire
Mr. Philip Pulley
Ms. Kathy Treadwell
SBG Management Services, Inc.
P.O. Box 459
Abington, PA 19001
dsross@sbgmanagement.com
phil@sbgmanagement.com
ktreadwell@sbgmanagement.com

Date: June 4, 2018



Carl R. Shultz, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v.

Philadelphia Gas Works

:
: Docket No. C-2012-2304183
:
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:
:

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

v.

Philadelphia Gas Works

:
: Docket No. C-2012-2304324
:
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:
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**PETITION OF PHILADELPHIA GAS WORKS
FOR RECONSIDERATION AND/OR CLARIFICATION
OF THE COMMISSION'S MAY 18, 2018 OPINION AND ORDER**

Laureto A. Farinas, Esquire
Senior Attorney

Philadelphia Gas Works
800 W. Montgomery Ave.
Philadelphia, PA 19122

Daniel Clearfield, Esquire
Karen O. Moury, Esquire
Carl R. Shultz, Esquire

Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

Attorneys for Philadelphia Gas Works

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**PETITION FOR RECONSIDERATION, CLARIFICATION AND/OR REHEARING
OF THE COMMISSION'S MAY 18, 2018 OPINION AND ORDER**

Pursuant to Sections 703(f) and 703(g) of the Public Utility Code,¹ and Section 5.572 of the Pennsylvania Public Utility Commission's ("Commission" or "PUC") regulations,² Philadelphia Gas Works ("PGW") submits this Petition for Reconsideration and/or Clarification ("Petition") of the Commission's Opinion and Order entered May 18, 2018 ("May 18 Order") and, to the extent necessary or appropriate, of the Opinion and Order entered December 8, 2016 ("December 8 Order") (collectively, "Final Order") in the above-captioned consolidated complaints.

Stated simply, the practical impacts of the Commission's (flawed) interpretations on jurisdiction: (1) will shut down entirely the Commission's ability to address consumer complaints related to billing the moment the service is rendered; and, (2) leave PGW in the position of not being permitted to include any amounts subject to a municipal lien on a current/jurisdictional bill, or in other words, any sums due and owing.

Neither of these results is in the public interest because both of them needlessly and negatively impact consumer protections that the Commission has so carefully developed over the years and that PGW has reflected in its business practices. Such results are simply not necessary as the Commission's jurisdiction over PGW, and PGW's right to rely on municipal liens, can operate together to ensure that the Commission's consumer protection rules are enforceable and that PGW's statutory right to rely on

¹ 66 Pa.C.S. § 703(f) and (g).

² 52 Pa. Code § 5.572.

municipal liens is not impeded. The Final Order does not achieve that outcome. Rather, in an apparent effort to disassociate the Commission from any issue related to municipal liens, it goes much too far, essentially divesting the Commission of jurisdiction to adjudicate any issue over any amount owed to PGW. To be clear, PGW does not support this result and urges the Commission to modify its Final Order to address these very real negative consequences that will flow if no further action is taken.

In support of this Petition, PGW states as follows:

I. BACKGROUND

1. PGW is a city natural gas distribution operation as defined in the Public Utility Code, 66 Pa.C.S. § 102, that provides natural gas distribution utility service pursuant to Section 2212 of the Code, 66 Pa.C.S. § 2212. It is a municipal utility that is wholly owned by the City of Philadelphia (“City”), and consists only of the real and personal assets that are used to manufacture and deliver natural gas to entities within the City’s borders. Notably, PGW is the *only* operation that qualifies as a “city natural gas distribution operation” and is subject to Section 2212.

2. Pursuant to The Municipal Claims And Tax Lien Law³ (“MCTLL”), the City, as owner of PGW, has the right to collect on municipal claims for amounts owed to PGW for gas service provided to a service address.⁴

³ 53 P.S. §§ 7101, *et. seq.*

⁴ The “right” to file a municipal lien may be referred to as right of the City or PGW (or both). Both Section 1414 and Section 2212(n) of the Public Utility Code authorize “a city natural gas distribution operation” to file liens for unpaid gas bills. PGW is that “operation.” It is not a separate legal entity, but rather an instrumentality of the City. The City is the actual entity that is authorized to file a lien under the MCTLL. That is why the City docketed liens for unpaid gas bills before the Commission obtained jurisdiction over

3. The PGW customers in these proceedings are Colonial Garden Realty Co., L.P., owner of Colonial Garden Apartments (“Colonial Garden”), and Simon Garden Realty Co., L.P., owner of Simon Garden Apartments (“Simon Garden”). Both Colonial Garden and Simon Garden are managed by a real estate management company, SBG Management Services, Inc. (“SBG”). For ease of reference, unless the context indicates otherwise, Colonial Garden, Simon Garden and SBG are collectively referred to as “SBG.”⁵

4. Multiple municipal liens for unpaid gas service were docketed against the properties owned by Colonial Garden and Simon Garden and managed by SBG.⁶

5. In its December 8 Order, the Commission entered an Opinion and Order which, *inter alia*, granted and denied the Exceptions of PGW and modified the Initial Decision issued on September 17, 2015 by Administrative Law Judge (“ALJ”) Eranda Vero. In its May 18 Order, the Commission denied PGW’s Petition for Reconsideration, Clarification and/or Rehearing (“December Petition”)⁷ and Supplemental Petition for

PGW in 2000, and why, even now, gas liens are filed in the name of the City. These are ordinary municipal liens.

⁵ SBG explained that, pursuant to an Exclusive Management Agreement, SBG was given full agent authority to represent the various, listed, property owners in legal proceedings against PGW. December 8 Order at 18.

⁶ December 8 Order at 89, *citing*, Finding of Fact Nos. 65, 67.

⁷ In the December Petition, PGW challenged two aspects of the Commission’s Final Order: 1) PGW challenged the Commission’s conclusion regarding PGW’s legal authority to impose tariff-approved late payment charges on amounts that are the subject of municipal liens; and 2) PGW challenged the Commission’s conclusions regarding PGW’s partial payment allocation and methodology. In its Supplemental Brief, PGW sought, among other things, that it needs fifty-seven (57) weeks to modify its

Reconsideration, Clarification and/or Rehearing filed (“Supplemental Petition”), respectively, of the Commission’s December 8 Order.

II. LEGAL STANDARD

6. The Public Utility Code establishes a party’s right to seek relief following the issuance of a final decision.⁸ Such requests for relief must be consistent with Section 5.572 of the Commission’s Regulations.⁹

7. It is well settled that petitions made pursuant to Section 703(g) may properly raise any matters designed to convince the Commission that it should exercise its discretion under the Public Utility Code to rescind or amend a prior order in whole or in part.¹⁰ Parties cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them. What the Commission expects in petitions for reconsideration are new and novel arguments, not previously heard or considerations which appear to have been overlooked by the Commission. Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly

billing systems to change the prioritization of the application of payments applied to late fees. Issues related to PGW’s partial payment allocation and methodology are being addressed in PGW’s rate case proceeding at Docket No R-2017-2586783.

⁸ 66 Pa.C.S. § 703(f) relating to rehearings and § 703(g), relating to the rescission, clarification and amendment of orders.

⁹ 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

¹⁰ *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 et al., Order entered December 17, 1982; 56 Pa. P.U.C. 553 (1982).

discovered evidence, alleges errors of law, or a change in circumstances.¹¹

8. In addition, the Commission is required to render consistent opinions that must follow, distinguish or overrule its own precedent.¹² An agency abuses its discretion if it fails to interpret statutes, regulations or orders consistent with their clear and plain meaning or when an agency fails to follow its own regulations and procedures.¹³

III. RECONSIDERATION, REHEARING AND/OR CLARIFICATION IS WARRANTED

9. In the Final Order, the Commission declared that it lacks jurisdiction and authority over any aspect of a municipal lien.¹⁴ Under the Commission's interpretation of the Public Utility Code, once a debt becomes subject to a municipal lien, the debt itself has moved from the jurisdiction of the Commission to the jurisdiction of the courts.¹⁵ As a result, the Commission found that, once a lien comes into existence PGW can no longer impose late payment charges, as those charges are authorized by PGW's PUC tariff.¹⁶

10. But that finding must also mean that PGW is neither permitted nor required to apply *any other provision* of its tariff or any other PUC regulation to the amount liened. Nor would it be able to continue to bill the amount liened as an arrearage, on the basic service portion of PGW's bill, since it is no longer jurisdictional to the PUC.

¹¹ *Id.*

¹² *Standard Fire Insurance v. Insurance Department*, 611 A.2d 356, 359 (Pa.Cmwlth. 1992).

¹³ *See Peoples Natural Gas Company v. Pennsylvania Public Utility Commission*, 542 A.2d 606, 608 (Pa.Cmwlth. 1988), *affirmed*, 567 A.2d 642 (Pa. 1989).

¹⁴ *See, e.g.*, May 18 Order at 19, 20-22, 23.

¹⁵ It is PGW's position that — consistent with *Gasparro v. Pa. PUC*, 814 A.2d 1282 (Pa.Cmwlth. 2003), *Equitable Gas v. Wade*, 812 A.2d 715 (Pa.Super. 2002) and Commission precedent — the Commission retains jurisdiction unless and until a municipal lien is reduced to a final judgment for money or the underlying claims are otherwise conclusively and finally resolved by the court.

¹⁶ PGW Gas Service Tariff, Pa P.U.C. No. 2, at Rule 4.2.

11. As part of its interpretation, the Commission rejected¹⁷ any distinction between an inchoate lien¹⁸ and a choate lien¹⁹ and attributed no significance to subsequent events that can occur during the life of a choate lien, such as the commencement of an enforcement action before the court²⁰ and a final judgment by the court.²¹

12. Importantly, the Final Order does not dispute that an “inchoate” lien is created immediately (by operation of law) when a customer’s bill becomes past due.²² So, when the

¹⁷ May 18 Order at 23, n12 (rejected distinction between inchoate and choate liens); May 18 Order at 23 (attributing no significance to the existence of a judgment on a lien). It is PGW’s position that, in so doing, the Commission incorrectly equated the legal effect of the existence of a municipal lien with that of the entry of a final judgment by a court.

¹⁸ Under the MCTLL, a municipal lien comes into existence may exist from the time the bill is rendered (rather than the date the bill becomes overdue). So, an inchoate lien (or unperfected) commences — at the earliest — when the bill is rendered, and — at the latest — when the bill is past due. Stated otherwise, it is clear that an inchoate municipal lien arises automatically by operation of law whenever there are unpaid natural gas services rendered by PGW at a specific property. 53 P.S. § 7106; *Twp. of Summit v. Prop. Located at Vacant Land in Summit Twp.*, 92 A.3d 121, 127 (Pa.Cmwth. 2014), appeal denied, 2014 Pa. LEXIS 3477 (Pa. 2014); *North Coventry Township v. Tripodi*, 64 A.3d 1128, 1132 (Pa.Cmwth. 2013); *Borough of Ambler v. Regenbogen*, 713 A.2d 145, 148 (Pa.Cmwth. 1998).

¹⁹ That inchoate lien becomes a choate lien when docketed with the Prothonotary. 53 P.S. §§ 7106(a), (b), 7143. Claims may be filed in the Municipal Court of Philadelphia if the amount is within its jurisdiction. 53 P.S. § 7143. *See also In re Aikens*, 87 B.R. 350 (Bankr. E.D. Pa. 1988); *Ransom v. Marrazzo*, 848 F.2d 398, 405-406 (3d Cir. 1988). The term “choate” refers to the fact that the lien is “perfected.”

²⁰ A choate lien can be enforced by the filing of a writ of *scire facias*, thereby forcing a hearing on the lien. *See, e.g., City of Philadelphia v. Perfetti*, 119 A.3d 396, 399-400 (Pa.Cmwth. 2015), appeal denied, 131 A.3d 493 (Pa. 2016) (“Under Section 16 of the MCTLL, a property owner may dispute a lien by requesting a lienholder to issue a writ of *scire facias*. A municipality may also pursue a writ without the owner filing notice. Alternatively, both parties may choose to do nothing and let the municipal lien remain recorded indefinitely subject to revival of the lien in every twenty years. After the lienholder issues the writ, the owner may file an affidavit raising defenses to the lien, such as actual payment of taxes, a defective claim or lien, fraud, or lack of process or notice.”) (citations and internal quotes omitted).

²¹ Following a hearing, the final amount of the municipal lien is conclusively determined by the court enters a judgment. The court judgment enforceable in the same manner and to the same extent as any other judgment for money. 53 P.S. § 7106(a)(2). Ultimate recovery of the amount of said court judgment may be effectuated by a court ordered sheriff’s sale. 53 P.S. § 7283. 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 (Pa.Cmwth. 2004), appeal denied, 860 A.2d 491 (Pa. 2004); 53 P.S. §§ 7106(c), 7283.

²² *See, e.g., December 8 Order at 73* (“Transformation of the indebtedness resulting from the unpaid utility bill into a municipal lien, whether by operation of law, or by the volitional act of the City of Philadelphia as creditor of the utility patron, is an act that results in the preemption of this agency’s ability to exercise any degree of authority or jurisdiction over its collection.”).

Commission declares that it loses jurisdiction when past due amounts are “subject to a lien,” the clear result is that the Commission’s jurisdiction is immediately lost over any and all past due amounts (together with any related late payment charges). Therefore, it follows that the Commission — without jurisdiction over said amounts — also lacks jurisdiction to apply (and enforce) numerous other consumer protections related to past due amounts in the Public Utility Code and Chapter 56 of its Regulations, such as payment arrangements, late payment charges, partial payment practices, billing practices complaint resolution practices, etc.

13. PGW continues to believe that recognizing these distinctions (and their legal import) is a critical part to addressing the concerns raised in this proceeding.²³ However, for the purpose of this Petition only, PGW urges the Commission to focus on the important consequences of its decision to ignore these distinctions as these consequences will have a significant negative impact on the Commission’s future ability to carry out its customer protection functions for PGW as well as any other PUC regulated entity that has municipal lien authority.

²³ It is PGW’s position that the Commission constitutes an abuse of discretion and is wrong as a matter of law in its reading and interpreting the Public Utility Code, the Municipal Claims and Tax Lien Law (“MCTLL”) and applicable precedent as providing that the existence of a municipal lien has a preemptive effect on the Commission’s jurisdiction. In doing so the Commission failed to give effect to the clear language of Sections 2212(n) and 1414 of the Public Utility Code. The Legislature simply did not intend to have the City’s/PGW’s use of liens divest the Commission of jurisdiction over any and all past due amounts. In addition, the Commission exceeded its jurisdiction by interpreting the MCTLL.

A. The Commission's Interpretation Will Preclude The Commission From Addressing Any And All Complaints About Incorrect Billing By PGW

14. Prior to the Final Order, the Commission's position was that the Commission has jurisdiction to address a complaint about incorrect billing even if that amount was subject to a lien.²⁴

15. However, if the Final Order is allowed to stand it means that PGW's customers can no longer challenge, before the Commission (by way of an informal complaint, formal complaint or otherwise), any past due amount owed to PGW or any payment arrangement between PGW and a customer.²⁵

16. While the May 18 Order continues to assert that jurisdiction is retained over billing disputes,²⁶ such a conclusion is irreconcilable with the Commission's concomitant

²⁴ See, e.g., *Dennis J. Vicario v. PGW*, C-2010-2213955, Opinion and Order entered November 16, 2011; 2011 Pa. PUC LEXIS 417. See also the PUC's Formal Complaint Form, at 3, which states as follows: "If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien."

²⁵ For example, suppose a PGW consumer only pays half of his/her utility bill in a given billing payment period (of 30 days) because he/she challenges the remaining amount owed. On (or before) the 31st of that payment period, an inchoate lien exist for the remainder of the amount owed. The consumer subsequently files a formal complaint with the Commission, challenging the charges that are the subject of the inchoate lien. Because the amount in question is the same amount that is subject to the municipal lien, the Commission – in accordance with its May 18th ruling – would not have the authority to rule that PGW incorrectly charged the entire amount challenged. To the extent the Commission Order's intends to somehow reserve jurisdiction over this example under the guise of a "billing dispute," its ability to do so does not reconcile with the determination on the lack of jurisdiction when liens are at play. Thus, clarification about how billing and service-related issues can be effectively separated from lien-related issues in disputes before the Commission in light of the Commission's new determinations is needed to provide appropriate guidance for PGW, consumers and Commission staff. To be clear, PGW does not support a result where the Commission's jurisdiction is divested either when the bill is rendered or on the 31st day. PGW asserted that the Commission retained either (primary or concurrent) jurisdiction until the court enters a final judgment on the lien. The reason that PGW has urged the Commission to find that its jurisdiction is divested only when a final judgment by a court is issued on the lien is to avoid the significant negative effects on customers as well as the confusion and expense of sorting through all of the consequences of a PUC decision that it loses jurisdiction the moment a lien is created, which by law is when a customer first is in arrears on a municipal debt.

²⁶ May 18 Order at 24.

determination that as soon as a municipal lien becomes operational, the Commission has lost any and all jurisdiction over the any and all past due amounts (together with any related late payment charges). Simply put, nothing in the Final Order creates any exception from its logic/interpretation or any way to reconcile these two irreconcilable holdings.

17. Reconsideration is justified because the Final Order creates a new legal interpretation of the effect of PGW's lien authority which will have significant negative impacts on the Commission's ability to exercise its traditional consumer protection authority and impose significant confusion and expense on PGW and its customers.

B. The Commission's Interpretation Will Prevent PGW From Including Past Due Amounts on the Current/Jurisdictional Bill

18. The Commission's prior position was that PGW could include past due amounts on its current/jurisdictional bill to customers, even if that amount is subject to a lien.

19. However, based on its interpretation and the imposition of a civil penalty of \$25,000 upon PGW for the inclusion of lien amounts in PGW's jurisdictional bills,²⁷ the Commission has clearly indicated that PGW must stop issuing bills to customers which show past due amounts that are subject to a lien.

20. Reconsideration is justified because the Final Order creates a new standard that is likely to cause customer confusion as to amounts owed to PGW and increased costs

²⁷ See, e.g., December 8 Order at 49-50. It is PGW's position that the Final Order's imposition of a penalty upon PGW constitutes an abuse of discretion, an error of law, and a violation of PGW's constitutional rights. The absence of prior notice to the Commission's interpretations before those interpretations were announced, applied to, and enforced against, the PGW, denies PGW its constitutional right to due process. Stated otherwise, the Commission erred in assessing a civil penalty against PGW without giving PGW a right to a full evidentiary hearing on the propriety of issuing a penalty. The Commission further erred in directing credits or refunds of late payment charges in their entirety.

to ratepayers, since PGW will need to create and issue separate non-jurisdictional bills for past due amounts to be consistent with the directives in the Final Order,²⁸ bills that the PUC will not be able to review. Moreover, despite acknowledging the existence of issues of first impression, the Final Order applied the Commission's interpretation (which was not set out or explained in advance) so as to impose a civil penalty upon PGW in violation of PGW's right to due process.²⁹

C. The Commission's Order Will End The Commission's Oversight of Numerous Consumer Protections

21. The Commission — if it were to follow its own logic/determination — would no longer have jurisdiction over numerous consumer protections, including PGW's late payment charges³⁰ or partial payment practices.

22. Because liens are only available to municipal utilities, the result of the Final Order is to treat PGW's customers differently from the customers of other utilities by not

²⁸ The system-wide modifications directed by the Commission are not supported by any evidence in the record and, therefore, constitute an abuse of discretion. In directing system-wide modifications to PGW's billing practices, the Commission does not even acknowledge the cost estimate or other financial impacts that PGW set forth in this proceeding — costs that would have to be shouldered by ratepayers. Nor did the Commission consider or acknowledge that the use of a dual-billing system could negatively impact PGW's ability to collect amounts owed to PGW. The increased costs mandated upon PGW interfere with PGW's reasonable ratemaking expectations and constitute a regulatory taking and/or an abuse of discretion. Expenditures made by PGW to comply with the requirements in the Final Order may not be fully recouped by PGW in its next base rate case. In addition, the Commission-established timeframe (90 days per the May 19 Order) for compliance constitutes an abuse of discretion because it is arbitrary and not supported by any evidence in the record.

²⁹ The Commonwealth Court decision in *D.E.R. v. Rushton Mining Co.*, 591 A.2d 1168, 1173 (Pa.Cmwlt. 1991) establishes the proposition that an agency may establish policy through adjudications also makes it clear that an agency must promulgate regulations to establish binding norms. In fact, in *Rushton Mining*, the Court invalidated standards that had been developed by an administrative agency through an adjudication.

³⁰ Section 56.22(a) of the Commission's Regulations provides the late payment charge on amounts owed to a public utility shall not exceed 1.5% interest per month or 18% simple interest per annum. 52 Pa.Code § 56.22(a). That Regulation is reflected in Rule 4.2 in PGW's Commission-approved tariff. PGW Gas Service Tariff, Pa P.U.C. No. 2, at Rule 4.2. However, if the Commission's new interpretation as expressed in the Final Order is reaffirmed, neither Section 56.22 nor Rule 4.2 are applicable to any past due amount owed to PGW.

affording them the same consumer protections and to treat PGW differently from other utilities by not permitting it to apply the Commission-approved late payment charges in any circumstances.

23. Reconsideration is justified because said different treatment imposes burdens upon PGW which are not cast upon similarly situated utilities so as to deny PGW's right to equal protection and violate Section 2212³¹ of the Public Utility Code.

D. The Commission's Interpretation Was Not Properly Applied To The SBG Complaint Proceedings

24. The Commission — if it were to follow its own logic/determination — was required to direct SBG to the jurisdiction of the courts, since SBG was challenging past due amounts (and the related late payment charges) which were the subject of liens. Instead, however, the Commission proceeded to decide the late payment charges owed by SBG and to direct PGW to the refund of the entire amount of late payment charges assessed on liened amounts involved in the SBG complaint proceedings.³²

³¹ See, e.g., 66 Pa.C.S. § 2212(b) and (c), which generally provides that the Public Utility Code (with certain noted exceptions) shall apply to PGW “with the same force” as if PGW was a public utility, as defined in the Public Utility Code; and 66 Pa.C.S. § 2212(e), which generally provides that the Commission shall not interfere with PGW's ratemaking methodology and requirements.

³² The Commission's failure to follow its own interpretation constitutes an abuse of its discretion and an error of law. In addition, the Commission's final treatment — in this proceeding — of the mandate to make system-wide changes related to partial payments is unclear and confusing. In the December 8 Order, the Commission directed inter alia that PGW make system-wide changes related to partial payments in 45 days. December 8 Order at Ordering Paragraphs No. 10. Then, as to the partial payment issue, the May 18 Order purports to sever said issue as between SBG and other residential customers. May 18 Order at 32 (“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.”). However, nothing in the May 18 Order explicitly and clearly modifies or removes the mandate to make such changes as a part of this proceeding. Instead, the May 18 Order reinforces the directive to comply with Ordering Paragraph 10 of the December 8 Order (i.e. make the system-wide changes). So, the Commission should

IV. CONCLUSION

25. The Final Order creates a new standard that departs from prior Commission precedent, removes long-established Commission jurisdiction regarding customer protection issues and raises additional questions about how the Company, the Commission and consumers are expected to proceed in light of the Commission's determinations.

Accordingly, the Commission should: a) grant this Petition; and b) open an investigation into the legal, policy and operational consequences of the Commission's jurisdictional decision (as well as its decision about application of partial payments). While PGW is the only municipal natural gas distribution company in the Commonwealth, the potential consequences of the Commission's Final Order are significant to PGW (and its customers/ratepayers) and may have a substantial impact on the Commission's jurisdictional authority to hear disputes related to PGW's billing practices. It also may affect other PUC regulated municipal utilities. Any such investigation should consider the effects on any other similarly situated entity.

modify or clarify the Final Order so as to delete any directive for PGW to make system-wide modifications to PGW's business practices as to partial payments, as a part of this proceeding. That being said, PGW continues to disagree with the resolution of the Commission's interpretation of 52 Pa.Code § 56.24 and is dealing with the partial payment issue in the rate case proceeding (R-2017-2586783). To the extent deemed necessary, PGW's requests and responses in the rate case proceeding are incorporated herein by reference. Additionally, it is PGW's position that the Commission erred as a matter of law in mandating that PGW make system-wide changes in the context of a complaint case where indispensable parties are absent (and where the Commission — under its own logic/interpretation — lacks jurisdiction).

26. PGW respectfully requests that the Commission grant reconsideration, within the meaning of Pa.R.A.P. Rule 1701(b)(3), on or before Friday, May 15, 2018³³ pending review of and consideration of the merits of this Petition.

27. PGW also respectfully requests that, following review of and consideration of the merits of the Petition in the above requested investigation, the Commission issue an order which declares that:

- a. The Commission lacks jurisdiction to address issues related to the imposition, removal, modification or enforcement of a municipal lien. Only local courts in Philadelphia County can address those issues; and
- b. The Commission retains (primary or concurrent) jurisdiction to address issues about service or billing — even if that amount is subject to a lien, until the point the court enters a final judgment on the lien. The court’s final judgment, and not the municipal lien itself, has preclusive effect on the Commission’s jurisdiction to address issues related to past due amounts subject to a lien.

WHEREFORE, PGW respectfully requests that the Commission: (1) revise the Commission’s legal conclusions regarding the issues discussed above in this Petition or, alternatively, (2) open an investigation into the legal, policy and operational consequences of the Commission’s jurisdictional decision on liens (and its decision about

³³ Pursuant to Rule 1701 of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P. Rule 1701, the Commission must act to grant a petition for reconsideration within thirty days of the entry date of the order for which reconsideration is sought, or otherwise lose jurisdiction to do so if a petition for review is timely filed. The thirtieth day after the Final Order is Sunday, June 18, 2017. Therefore, that day is not included in the computation of the thirty-day time period. 1 Pa.C.S. § 1908. Accordingly, **the thirty day period within which PGW may file an appeal and/or the Commission must act upon this Petition in order to preserve jurisdiction ends on Monday, June 18, 2017.** Failure to act on the request on or before Friday, June 15, 2018 could cause a waste of time and resources, since PGW may file an appeal on that date and any such appeal would be rendered inoperative by the Commission’s grant of reconsideration on that same date. *See* Pa.R.A.P. 1701(b)(3).

application of partial payments); and (3) grant any other relief in favor of PGW as may be just and proper under the circumstances.

Laureto A. Farinas, Esquire
Senior Attorney

Philadelphia Gas Works
800 W. Montgomery Ave.
Philadelphia, PA 19122

Date: June 4, 2018

Respectfully submitted,



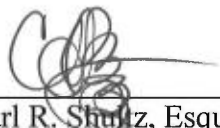
Daniel Clearfield, Esquire
Karen O. Moury, Esquire
Carl R. Shultz, Esquire

Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

Attorneys for Philadelphia Gas Works

Verification

I, Carl R. Shultz state that I am an Attorney of Record for Philadelphia Gas Works (“PGW”) and that as such I am authorized to make this verification on its behalf. I hereby state that the facts contained in the foregoing document are true and correct (or are true and correct to the best of my knowledge, information and belief). I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



Carl R. Shultz, Esquire
Attorney for Philadelphia Gas Works