**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held August 23, 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./ C-2012-2304183

Colonial Garden Realty Co., L.P.

 v.

Philadelphia Gas Works

SBG Management Services, Inc./ C-2012-2304324

Simon Garden Realty Co., L.P.

 v.

Philadelphia Gas Works

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration, Clarification and/or Rehearing (Petition) of our Opinion and Order entered May 18, 2018 (*May 18 Order*)in the above-captioned proceedings filed by Philadelphia Gas Works (PGW) on June 4, 2018. By Order entered June 14, 2018, we granted reconsideration pending consideration of and review on the merits. *See* Pennsylvania Rule of Appellate Procedure, Pa. R.A.P. 1701. No reply to the Petition has been received. For the reasons set forth herein, we shall grant, in part, and deny, in part, the Petition.

**Background**

By Opinion and Order entered December 8, 2016, at the above-captioned dockets (*December 8 Order*),the Commission disposed of Exceptions filed to the Initial Decision of Administrative Law Judge (ALJ) Eranda Vero. *See* Initial Decision issued September 17, 2015 (*SBG* I.D.). Exceptions to the *SBG* I.D. were filed by PGW. *See May 18 Order* at 7.

The matters before the Commission are the Formal Complaints (Complaints) of property owners of apartment complexes who receive natural gas service from PGW. These proceedings involve two Formal Complaints of a total of five Formal Complaints filed on behalf of commercial apartment complex owners which challenged, *inter alia*, the lawfulness of PGW’s billing practices for the service provided.[[1]](#footnote-1) By Order of presiding ALJ Vero, the cases were divided into two groups for adjudication and disposition. *See* *December 8 Order* at 1; 4-6.

The complainants in these proceedings are Colonial Garden Realty Co., L.P., and Simon Garden Realty Co., L.P. (Complainants), owners of two, multi-unit, garden-style apartment complexes located in the City of Philadelphia. The apartment complexes receive gas utility service from PGW pursuant to separate commercial service agreements and separate accounts. SBG Management Services, Inc. (SBG) is the designated real estate management agent for the property owners and was authorized to prosecute the Complaints before the Commission with respect to the Service Properties. *See May 18 Order* at 4, referencing *December 8 Order* at 8-9; 23. The Complaints were consolidated for hearing and disposition by the presiding ALJ. *See* *May 18 Order* at n.7.

In the *SBG* Initial Decision, ALJ Vero sustained the Complaints with regard to the Complainants’ challenges to the lawfulness of PGW’s application of partial payments made for past due utility bills. PGW applied such partial payments in a manner that prioritized such late payments in violation of Commission Regulations, the Public Utility Code, 66 Pa. C.S. §§ 1301; 1303; 1304 (Code), and PGW’s Tariff.

In the *SBG* Initial Decision,ALJ Vero also sustained SBG’s challenges to the lawfulness of PGW’s business practice whereby the utility engaged in the imposition and collection of Commission-tariffed late payment charges on past due utility account balances that PGW, through the City of Philadelphia, simultaneously placed in collection through the filing of municipal liens. *See December 8 Order* at 2.

As recognized by the Commission, PGW is a wholly-owned asset of the City of Philadelphia. *May 18 Order* at 4. PGW is subject to the jurisdiction of this Commission based on PGW’s classification as a “city natural gas distribution operation.” *See May 18 Order* at 5, citing 66 Pa. C.S. § 2212(b). As a city natural gas distribution operation, the only utility having this classification in the Commonwealth, PGW is expressly entitled under the Code to avail itself of statutory rights pertaining to the collection of delinquent receivables, through the imposition of municipal liens. *Id*., citing 66 Pa. C.S. § 2212(n). PGW, however, is not *sui generis* for purposes of prosecuting an action before the courts under the rights of a municipal corporation. PGW consists only of the real and personal assets that are used to manufacture and deliver natural gas to entities within the City of Philadelphia’s borders and does not meet the legal definition of an entity authorized to file a lien to enforce a municipal claim as set forth in the statute, *infra*. Consequently, when PGW provides natural gas service to an entity within the borders of the City of Philadelphia and is not paid, it is the City of Philadelphia that has a municipal claim which it can enforce by way of a lien on the property that was provided natural gas service. *See May 18 Order* at 4-6.

The City of Philadelphia, in collection of the debt for past due utility accounts, filed municipal liens on the subject properties, *i.e*., recipients of gas utility service, represented by SBG. The filing of liens by the City of Philadelphia was according to the provisions of the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207, 53 P.S. §§ 7101, *et seq.* (MCTLL), in furtherance of the recovery of the utility account balances. *Id*.

At pages 61-86 of the *December 8 Order*, we extensively discussed the statutory and legal considerations applicable to our disposition of the Exceptions to the Initial Decision of ALJ Vero. We expressly adopted the Findings of Fact and Conclusions of Law of the ALJ, consistent with our disposition of the Exceptions of PGW, concerning the lawfulness of its conduct. We concluded, *inter alia*, that the presiding ALJ correctly determined that PGW violated the Code, Commission Regulations, and the law, by, *inter alia*,applying Commission-tariffed charges to indebtedness for past due utility bills while simultaneously pursuing collection of the same indebtedness in the courts.[[2]](#footnote-2)

In the *December 8 Order* we agreed with the ALJ’s conclusions, albeit for reasons different than those on which ALJ Vero relied, however. Collection on municipal claims, through enforcement of a municipal lien in the courts is, by law, governed by the applicable statutory provisions of the MCTLL and the legal process of, *inter alia*, *scire fascias*. *See* Title 53 Pennsylvania Consolidated States, 53 Pa. C.S. §§ 7101, *et seq*.

Our *December 8 Order* found that the voluntary act of invoking the jurisdiction and authority of the courts for collection of an indebtedness removed this indebtedness from the applicability of Commission tariffs. In the order we extensively addressed several legal contentions, certain of which were matters of first impression, but concluded that, *inter* *alia*, the practice under which PGW, through the City of Philadelphia, applied Commission-approved tariff charges, resulted in rates that were neither just nor reasonable because such rates were not “Commission-made rates” and were neither consistent with the “carrying charges” or interest as permitted by the Code or PGW’s Tariff. Additionally, the practice of PGW concerning its application of Commission tariffs to these amounts (past due utility balances) under which it placed municipal liens in furtherance of the collection of the indebtedness was neither transparent nor consistent with the Commission’s Regulations. *See December 8 Order*.

After we entered the *December 8 Order*,PGW filed a petition seeking, *inter alia*, reconsideration of the *December 8 Order*. By our *May 18 Order*, we denied the PGW’s request for reconsideration.

In our *May 18 Order* we also declined the request of PGW to institute a “generic” proceeding for purposes of “coordinating” the utility’s collection of receivables and/or uncollectible accounts. We additionally provided PGW with a time certain in which to accomplish certain changes in its billing system to bring its billing into compliance with Commission Regulations and the Code. *See* Ordering Paragraph No. 2. PGW represented that such changes would be necessary to comply with the legal determinations made by this Commission.

Finally, in the *May 18 Order* we declined to consider the PGW’s request that was presented in a “Supplemental Petition” to consolidate the issue of its allocation of partial payments for past due utility bills in a manner that prioritized such payments in violation of the Code, Commission Regulations, and its Tariff, with the substantially similar issue litigated in a separate, general rate increase proceeding.[[3]](#footnote-3)

The Petition currently before us, therefore, is the second petition seeking reconsideration, rehearing, and/or clarification of issues originally considered and disposed of in the *December 8 Order.*[[4]](#footnote-4)

**Discussion**

**A. Standards for Reconsideration, Rehearing and/or Clarification**

The Code establishes a party’s right to seek relief following the issuance of the Commission’s final decision. *See* [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.

PGW acknowledges that the standards for our review and consideration of petitions seeking reconsideration, rehearing and clarification are well settled and are governed by the factors 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.

The considerations of *Duick*, 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). The first step is that 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. *Id*. 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. *Id*. 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. *Id*.

Finally, by the terms Section 703(g) of the Code, the Commission has the power to amend or rescind its own orders at any time subject only to the requirements of due process. *See Department of Highways v. Pa. P.U.C*., 185 Pa. Super. 418, 138 A.2d 143 (1958). Because such relief may result in disturbance of final orders, a petition to amend or rescind a final order must be granted judiciously and only under appropriate circumstances. *See City of Pittsburgh v. Pennsylvania Department of Transportation,* 490 Pa. 264, 416 A.2d 461 (1980). In the instant proceeding, we note that SBG, on behalf of its managed real estate properties, has been involved in the instant litigation against PGW for several years.

We shall consider the instant Petition under the standards of *Duick*.

**PGW Petition**

PGW raises four arguments for which reconsideration, clarification, and/or rehearing is premised:

1. The Commission’s interpretation will preclude the Commission from addressing any and all complaints about incorrect billing by PGW

2. The Commission’s interpretation will prevent PGW from including past due amounts on the Current/

 Jurisdictional Bill

3. The Commission’s Order will end the Commission’s oversight of numerous consumer protections

4. The Commission’s interpretation was not properly applied to the SBG Complaint Proceedings

On application of the two-step inquiry under the standards of *Duick*, we do not find that any of PGW’s contentions support reconsideration, clarification, and/or rehearing of our *May 18 Order*. In short, we do not believe PGW has raised any new or novel arguments or that the Commission has overlooked any considerations that warrant reconsidering the merits of our *May 18 Order.* We shall address each of PGW’s four arguments it made in support of its Petition below.

**1. The Commission’s Interpretation will preclude the Commission from addressing any and all Complaints about incorrect billing by PGW**

In this Section, PGW makes a policy argument in support of reconsideration, *et al*. PGW argues that our “interpretation” of the jurisdiction and authority of the Commission concerning municipal liens and the concomitant ability of PGW to dually apply Commission-tariffed charges to indebtedness that PGW, through the City of Philadelphia, has placed under the civil collection process of the Courts of Common Pleas, will preclude the exercise of Commission jurisdiction over other aspects of any past due amount owed to PGW. PGW, magnanimously, is concerned that, *inter alia*,payment arrangements between PGW and a customer or other aspects of billing disputes would be impacted by our decision. This is so based on PGW’s view that the “logical” result of the holding of our prior orders is that once a sum becomes past due by any degree, Commission jurisdiction is lost.

In Footnote No. 25 of the Petition, PGW presents a hypothetical scenario of what it theorizes could happen if a customer does not pay a utility bill within the period as set forth in the billing statement accompanying the said bill. Here, PGW references its view concerning a “choate” versus “inchoate” lien and states:

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 jurisdiction its 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.

Petition at 8.

PGW acknowledges that the *May 18 Order* expressly provides that the Commission retains authority over billing disputes. Yet, PGW argues that this conclusion is “irreconcilable” with the Commission’s related determination that as soon as a municipal lien becomes operational, the Commission has lost any and all jurisdiction over any and all past due amounts, together with any related late payment charges. Petition at 8-9.

In conclusion, PGW argues that reconsideration is justified based on its position that the prior Commission orders create a “new” legal interpretation of the effect of PGW’s lien authority which will negatively impact this Commission’s ability to exercise “traditional” consumer protection authority and impose significant “confusion” and expense on PGW and its ratepayers. Petition at 9.

**2. The Commission’s interpretation will prevent PGW from including past due amounts on the Current/Jurisdictional Bill**

In its second point in support of reconsideration, *et al*, PGW makes the following statement: “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.” *See* Petition at 9. PGW does not include a citation nor a reference to a Commission Opinion and Order, provision of the Code, or applicable Commission Regulation as a basis for this assertion.

Having made the above-cited statement, PGW argues that reconsideration is justified because the “Final Order” creates a “new” standard. Petition at 9. PGW complains that the Final Order and its imposition of a civil penalty upon PGW constitutes an abuse of discretion, an error of law, and a violation of PGW’s constitutional rights because PGW lacked prior notice of the Commission’s “interpretations” before those “interpretations” were announced, applied to, and enforced against it. Petition at 9, n. 27.

PGW also cites to a violation of its due process rights based on the civil penalty imposed and repeats its notion of customer confusion caused by the prior orders. Petition at 10.

**3. The Commission’s Order will end the Commission’s oversight of numerous consumer protections**

In this Section, PGW asserts that if the Commission were to follow its own logic/determination, it would no longer have jurisdiction over “numerous” consumer protections, including PGW’s late payment charges or partial payment practices. Petition at 10. In this section of the Petition, PGW further raises an equal protection argument. The argument, summarized, is that the result of the Commission’s prior orders is to treat PGW customers differently from the customers of other utilities by not 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 charge in any circumstance. *See* Petition at 10-11.

**4. The Commission’s interpretation was not properly applied to the SBG Complaint Proceedings**

We reprint the PGW pertinent text of PGW’s argument in this Section below:

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 [*sic*] refund of the entire amount of late payment charges assessed on liened amounts involved in the SBG complaint proceedings.

Petition at 11. PGW continues that the Commission’s failure to follow its own interpretation constitutes an of discretion and an error of law.

PGW, in Footnote No. 32, appears to repeat considerations raised in its Supplemental Petition that were rejected in the *May 18 Order* concerning the implementation of changes to its billing system. As noted, PGW represented that these changes were required to eliminate those violations of the Code and the Commission’s Regulations concerning its prioritization of partial payments on past due bills.

**Disposition**[[5]](#footnote-5)

As a threshold consideration, we are constrained to note that, unbeknownst to this Commission and disclosed only after Complainant, SBG, expended considerable legal and administrative resources in pursuing discovery in the underlying litigation, was it revealed that PGW engaged in the practice of filing and docketing with the Prothonotary, municipal liens in collection of debt for unpaid utility bills, while dually applying Commission-approved tariffed charges on the liened amount. *See, e.g., May 18 Order* at 8.

As noted in the *December 8 Order* and our citation to caselaw in Note No. 31, in 1963, the Pennsylvania legislature, by enactment of [53 P.S. § 7106(b)](http://www.lexis.com/research/buttonTFLink?_m=068786a583affff79890a2e191d2dbf8&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b87%20B.R.%20350%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=44&_butInline=1&_butinfo=53%20P.S.%207106&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAz&_md5=143f9743a9153041009a3fd812ae81cd), changed the principle pertaining to when a municipal “claim” becomes a lien as against a debtor for services provided by a municipal entity. The change, applicable only to the City of Philadelphia, provided that municipal claims become liens only after their docketing by the Prothonotary. *December 8 Order* at 68-69,n. 31. This Section of the MCTLL provides, in pertinent part:

(b) With the exception of those claims which have been assigned, any municipal claim, municipal lien, tax, tax claim or tax lien, including interest, penalty and costs, imposed by a city of the first class, shall be a judgment only against the said property when the lien has been docketed by the prothonotary. The docketing of the lien shall be given the effect of a judgment against the said property only with respect to which the claim is filed as a lien. The prothonotary shall maintain an in rem index, the form and location of which shall be within the prothonotary’s discretion. . . .

[53 P.S. § 7106(b)](http://www.lexis.com/research/buttonTFLink?_m=068786a583affff79890a2e191d2dbf8&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b87%20B.R.%20350%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=44&_butInline=1&_butinfo=53%20P.S.%207106&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAz&_md5=143f9743a9153041009a3fd812ae81cd); (emphasis added)

Based on the foregoing, the policy arguments of PGW that are centered on the theory that a municipal claim is transformed into a municipal lien, by operation of law, immediately after the PGW account becomes past due, lack merit and are rejected. Rather, the above Pennsylvania law is clear that a municipal claim becomes a municipal lien upon docketing by the prothonotary. By statute, as a city of the first class, it is necessary for the City of Philadelphia to file and docket with the Prothonotary for a claim to become a lien expressly setting forth the amount of indebtedness it seeks to collect from a debtor. This is a statutory pre-condition to conversion of the municipal claim into a municipal lien.[[6]](#footnote-6) The Commission’s use of the word “lien,” as applied to the City of Philadelphia in the context of this litigation, has always assumed that the word only applies to a lien that has been filed with the Prothonotary. However, it is important to clarify that, when the Commission uses the word “lien,” the intent is that the meaning is strictly those liens which have been filed and docketed with the appropriate Prothonotary and not inchoate liens. Thus, PGW’s arguments that the Commission did not abide by its own holding that it had no jurisdiction or past due amounts that are subject to a lien and ordered refunds, is moot. As observed in the *December 8 Order*, the decision to engage in the collection of a past due account in the courts is an act that is solely a managerial business decision of PGW and the City of Philadelphia.

Additionally, the arguments of PGW that its constitutional due process or equal protection under the law rights have been harmed by an alleged lack of notice are equally without merit and are rejected. Principally, we observe that Section 1505(a) of the Code expressly provides as follows regarding the available corrective remedies to address a finding of unreasonable service under the Code:

Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the service or facilities of any public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this part, the commission shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service or facilities to be observed, furnished, enforced, or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public.

66 Pa. C.S. § 1505(a). Furthermore, Section 3301 of Code, 66 Pa. C.S. § 3301, expressly authorizes the Commission to impose a civil penalty upon a public utility for providing unreasonable service in violation of the Code.

These proceedings began in 2012. We find that PGW has had more than adequate notice furnished upon the filing and prosecution of the Complaint by SBG concerning the allegations of unreasonableness of PGW’s billing practices, including the allegation that PGW improperly imposed late payment charges on overdue amounts subject to a municipal lien. Furthermore, Section 3301 of Code puts PGW on notice that the Commission can impose civil penalties for failing to provide reasonable billing service in violation of the Code.

PGW also argues that the result of the Commission’s prior orders is to treat PGW customers differently from the customers of other utilities by not affording them the same consumer protections and to treat PGW differently from other utilities by not permitting PGW to apply the Commission-approved late payment charge in any circumstance. We note that the City of Philadelphia is authorized to obtain municipal liens for unpaid PGW gas bills and that no other Commission-regulated gas utility has such authority. This makes the regulation of PGW unique and is an aspect of the regulatory landscape that we cannot ignore when regulating PGW. Also, we note that the Commission does not intend to relinquish jurisdiction over PGW’s billing practices or any other consumer protections, including, but not limited to, inadequate service or incorrect bills. On the other hand, the Commission has no jurisdiction to adjudicate complaints that seek to contest municipal liens that have been filed with the appropriate prothonotary; those claims must be adjudicated in the appropriate court of common pleas. In any event, the Commission’s prior orders in this case do not change the fact that PGW’s customers are and will continue to be afforded all consumer protections available to them under applicable law, including the Code, the Commission’s regulations, and Commission orders. In fact, we view our prior orders in this matter as enforcing a key consumer protection against the imposition of unlawful or unreasonable late payment charges.

**There Can Be No Simultaneous or Concurrent Jurisdiction Between the Commission and the Court in This Dispute**

PGW’s position, summarized to its essential element, is that it should be able to impose Commission-tariffed, late payment charges on an indebtedness for unpaid utility bills until the municipal lien it has created for the collection of this indebtedness is reduced to a final judgment. *See,* Petition at 8. PGW, in pleadings, has advocated that this Commission view a municipal lien merely as a “marker,” *i.e.,* on no legal significance, for unrecovered debt. *See, May 18 Order* at 8, 17-18, 23.

PGW’s plea in the name of policy concerns, for “concurrent jurisdiction” as between the Commission and the courts, as a means to validate its business practices, must fail. There is no jurisprudence that this Commission has uncovered through research that permits two forums – administrative and judicial, to simultaneously exercise jurisdiction and/or authority over the same subject matter.

As observed in the *December 8 Order*, under the doctrine of primary jurisdiction that exists between this Commission and the Courts, the requisite delineation of jurisdiction and/or authority is properly observed. To the extent required for adjudication of a matter properly before it, each forum relinquishes authority as the need arises and returns the matter to the other for purposes for a disposition within their respective spheres of jurisdiction. *See December 8 Order* at 78-79; citing [*U.S. v. Western Pacific Ry*., 352 U.S. 59, 63-64, 77 S. Ct. 161, 1 L. Ed. 2d 126 (1956)](http://www.lexis.com/research/buttonTFLink?_m=5c2328e9b5724e0ebd00edc905ed67ce&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b551%20F.3d%20587%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=114&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b352%20U.S.%2059%2c%2063%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzk-zSkAz&_md5=9dd94d6f9d4e5e07b4bf3de8b2234811): *-*  . . . the doctrine of primary jurisdiction, like the rule requiring exhaustion of administrative remedies, is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties . . . . “Primary jurisdiction” . . . applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views . . . *.*

Based on the foregoing, the position advocated by PGW runs counter to the principles of primary jurisdiction as between administrative agencies and the courts. Unless addressed by a Court of competent jurisdiction that rules to the contrary, PGW’s position on the law would create confusion rather than eliminate it.

**Exclusiveness of the MCTLL**

When a municipal lien is placed against the property owner for recovery of the debt, *i.e*., municipal claim, the property owner must present any defenses to the collection in accordance with the statutory provisions applicable to municipal claims and municipal liens. *See* 53 P.S. § 7184.[[7]](#footnote-7) The property owner and/or debtor does not have recourse to any other forum or any other means to strike off the lien or to reduce the indebtedness secured by the lien. Thus, the debtor cannot adjust the amount or have the lien taken off the subject property under any authority possessed by this Commission. *See May 18 Order* at 24; *December 8 Order* at 67-68.

Conversely, under the applicable statutory provisions of the MCTLL, PGW and/or the City of Philadelphia, as a municipal creditor, have the panoply of relief available against the debtor, including the potential recovery of reasonable attorney’s fees and court costs. It is well established that the Commission is purely a creature of statute and does not have jurisdiction or authority to award damages or attorney’s fees.

As noted, a writ of *scire facias* prosecuted under the MCTLL is a statutory remedy. Thereby, the provisions of Title 53, Pennsylvania Consolidated Statutes, *et al,* apply. When these procedures are applied – at the voluntary and discretionary decision of the City of Philadelphia – they are exclusive. *See Shapiro v. Center Township*, 632 A.2d 994, 997 (Pa. Cmwlth. 1993) – in Pennsylvania a writ of *scire facias* is purely statutory. And, the statutory requirements of the MCTLL must be strictly pursued by both, the City of Philadelphia and the property owner. *Borough of Greentree v. Bd. of Prop. Assess., Appeals & Review*, 459 Pa. 268, 328 A.2d 819 (1974); *LCN Real Estate, Inc. v. Wyoming*, 544 A.2d 1053, 1057 (Pa. Cmwlth. 1988).[[8]](#footnote-8)

The exclusivity of a statutory remedy has been codified inSection 1504 of the Statutory Construction Act, 1 Pa. C.S. § 1504, states:

In all cases where a remedy is provided or a duty is enjoined or anything is directed to be done by any statute, the directions of the statute shall be strictly pursued, and no penalty shall be inflicted, or anything done agreeably to the common law, in such cases, further than shall be necessary for carrying such statute into effect.

At the same time, the authority of this Commission to regulate the adequacy of rates, service and billing of public utilities subject to our jurisdiction under the Code has been clearly set forth in the *May 18 Order* at 24. In the *May 18 Order* we concluded, in pertinent part:

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.

*Order* at 24; (emphasis added).

We do not agree with PGW that retaining jurisdiction over billing disputes as discussed in the *May 18 Order* is “irreconcilable” with our determination that the Commission does not have jurisdiction over a past due balance that is subject to a municipal lien. We also do not agree that deciding whether PGW properly applied late payment charges in this case is contrary to our interpretation that we lack jurisdiction over a past due balance subject to a municipal lien. The above-cited determination is wholly consistent with the line of cases, beginning with Josephine Pitt v. Philadelphia Gas Works, Docket No. C-2009-2140025 (Order entered April 29, 2010) and remains consistent with this Commission’s precedent that it has subject matter jurisdiction over a service or billing issue raised in a lien-related complaint. Thus, in finding that PGW improperly imposed late payment charges on past due amounts subject to a municipal lien, the Commission was simply exercising its jurisdiction over a utility billing issue.

**Conclusion**

On consideration of the PGW Petition, the Petition is 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, of our Opinion and Order entered May 18, 2016, in the above-captioned proceedings filed on June 4, 2018, by Philadelphia Gas Works is granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That these proceedings shall be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 23, 2018

ORDER ENTERED: August 23, 2018

1. In addition to the five formal complaints referenced, our *December 8 Order* further noted four (4) other complaints prosecuted by SBG Management Services, Inc. on behalf of commercial property owners against PGW. *See December 8 Order* at 6. [↑](#footnote-ref-1)
2. In the *December 8 Order* we expressly declined to engage in any interpretation of the MCTLL or statute pertaining to the proper amount of interest that PGW should be permitted to charge on past due utility account balances which had been placed under the jurisdiction of the courts. *See December 8 Order* at 48-50; 70: “We agree with the argument of PGW that a conclusion regarding the permissible rate of interest on a municipal lien is a determination that is also beyond the scope of jurisdictional authority of this agency. We, therefore, expressly decline to adopt the following Conclusions of Law in the Initial Decision . . .” *Id*. at 70. [↑](#footnote-ref-2)
3. In a PGW general rate increase proceeding, the issue of PGW’s allocation of partial payments made for past due bills for residential customers was addressed by the Commission upon complaint of the Office of Consumer Advocate (OCA). In the proceeding we concluded, *inter alia*, that the allocation practices litigated in this complaint proceeding were also employed with respect to PGW’s residential class of ratepayers and such practices were, similarly, in violation of the Code, Commission Regulations, and PGW’s Tariff. *See Pa. PUC, et al. v. Philadelphia Gas Works*,Docket No. R-2017-2586783, *et al.* (Order entered May 18, 2018); (Order on Reconsideration adopted August 23, 2018). [↑](#footnote-ref-3)
4. *See* PGW Petition at 1, “. . . Philadelphia Gas Works . . . submits this Petition . . . of the Commission’s Opinion and Order entered May 18, 2018 . . . and, to the extent necessary or appropriate, of the Opinion and Order entered December 8, 2016 . . .” [↑](#footnote-ref-4)
5. PGW is advised that any issue that we do not specifically address has been duly considered and should be deemed denied without further discussion. *See* *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993), cited for the proposition that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties; *also see, generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). [↑](#footnote-ref-5)
6. Recently the U.S. Third Circuit Court of Appeals noted that “Municipal liens in Pennsylvania are created and enforced in three steps as set out in the Pennsylvania Municipal Claim and Tax Lien Law . . . . First, a lien is automatically created when a municipality acquires a claim against a property, since the Lien Law ‘declare[s]’ that all such claims are ‘to be a lien on said property’ with ‘priority to … the proceeds of any judicial sale.” *53 Pa. Stat. Ann*. §7106(a)(1). Such liens arise by operation of law, *City of Philadelphia v. Manu*, 76 A. 3d 601, 604 (Pa Commw. Ct. 2013), and “without any form of hearing,” when a municipal claim is “lawfully assessed,” *Shapiro v. Center Township*, 632 A.2d 994, 997 (Pa. Commw. Ct. 1993).” *See* *Augustin v. City of Philadelphia*, 2018 U.S. App. Lexis 19811\*; 2018 WL 343350 . [↑](#footnote-ref-6)
7. *See* [*Penn Twp. v. Hanover Foods Corp*., 847 A.2d 219 (Pa. Cmwlth. 2004)](https://advance.lexis.com/document/documentlink/?pdmfid=1000516&crid=3162a1ee-462e-4112-add3-b668e08e83a6&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4C6K-1M90-0039-4365-00000-00&pdcontentcomponentid=9295&pddoctitle=Penn+Twp.+v.+Hanover+Foods+Corp.%2C+847+A.2d+219+(Pa.+Cmwlth.+2004)&pdproductcontenttypeid=urn%3Apct%3A30&pdiskwicview=false&ecomp=5g8bk&prid=72bb375e-7569-4f8b-bc2f-62f27d4acc1f) – after a municipal claim is filed, three procedural alternatives are available to the parties: (1) the owner may contest the municipal claim or the amount of assessment by filing and serving a notice on the claimant municipality to issue a writ of *scire facias*, thereby forcing a hearing on the municipal claim; (2) the municipality may pursue a writ of *scire facias* without the owner’s action; or (3) the owner and the municipality may choose not to do anything, thereby letting the municipal lien remain recorded indefinitely subject to revival of the lien every twenty years upon the issuance of a suggestion of nonpayment and an averment of default. [↑](#footnote-ref-7)
8. The statutory procedure need not be followed only if it is inadequate to the task of resolving plaintiffs’ objections or its pursuit will cause them irreparable harm. *Id*., citing [*Pennsylvania* Life Insurance Co. v. *Pennsylvania* National Life Insurance Co., 417 Pa. 168, 173, 208 A.2d 780, 783 (1965)](https://advance.lexis.com/document/documentlink/?pdmfid=1000516&crid=8e6af758-8a14-489f-84de-e2135e0ac778&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A3S3K-18C0-003C-S4CM-00000-00&pdcontentcomponentid=9295&pddoctitle=LCN+Real+Estate%2C+Inc.+v.+Borough+of+Wyoming%2C+117+Pa.Commonwealth+Ct.+260%2C+544+A.2d+1053+(1988)&pdproductcontenttypeid=urn%3Apct%3A30&pdiskwicview=false&ecomp=5g8bk&prid=0fae59bb-7189-4f78-a074-1b36968300ee). [↑](#footnote-ref-8)