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October 12, 2018

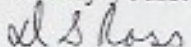
The Honorable Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

Re: Accept for Filing SBG Management Services, Inc. et al v. PGW Response in Answer to PGW 's Petition for Stay Pending Review, Dockets No. C-2012-2304183 and Docket No. C-2012-2304324

Dear Secretary Chiavetta:

Please accept for filing SBG Management Services, Inc. response in answer to PGW's Petition for Stay Pending Review in the above-reference matter. I hereby certify I have served the foregoing instrument in the above referenced matters, upon the parties set forth below, via First Class, U.S. mail and to all parties and the presiding officer, ALJ Eranda Vero in accordance with the requirements of 52 Pa.Code Section 1.54 and the PA Public Utility Commission Orders.

Sincerely yours:


Donna S. Ross, Esq.

Donna S. Ross, Esq.
Counsel for Complainants

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 :

**SBG MANAGEMENT'S RESPONSE IN ANSWER TO PGW'S
PETITION FOR STAY PENDING JUDICIAL REVIEW**

SBG Management Services, Inc./Simon Garden Realty Co., L.P. and Colonial Garden Realty Co., L.P. ("SBG") respectfully file this Response in answer to PGW's Petition for Stay Pending Judicial Review pursuant to Pa.R.A.P. 1781(a) and 52 Pa.Code § 5.572. After over six (6) years of litigation before the PUC, on September 24, 2018, PGW filed an appeal of the Commission's Final Orders issued on December 8, 2016, May 18, 2018 and August 23, 2018, respectively, all of which denied PGW's Exceptions and multiple requests for Reconsideration and Rehearing. The Commission has ordered that PGW cease and desist its' previously undiscovered and unknown methodology of applying partial payments to first extinguish all cumulative late fees and service charges before applying payments to prior balances (inclusive of previously assessed late fees and interest charges) which is in contravention to the public utility

regulations codified at 52 Pa. Code § 56.24¹ and the rules codified in the Pennsylvania Public Utility Code, 66 P.S. §§ 101 *et seq.*

In addition, PGW continues to charge and accrue interest charges in excess of 18% interest to past due balances which have been filed as docketed perfected judgment liens with Philadelphia Court of Common Pleas, thus maintaining two claims on the same amount due for unpaid gas charges. Pursuant to 52 Pa. Code § 56.22², PGW is limited to collecting 18% simple interest on unpaid balances. However, post-judgment interest is limited to 6% or ½% per month pursuant to statute (42 Pa.C.S. §8101) and the ruling found in caselaw, *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002). Moreover, six (6%) percent interest per annum is the amount of post-judgment interest the City of Philadelphia's municipally owned Water Department charges on overdue balances which are the subject of municipal claims.

The Commission was previously unaware of PGW's illegal accounting practices until SBG brought this case of first impression to the Commission's attention. After three years of comprehensively intense litigation, numerous hearings, the Commission found that PGW had duplicitously deceived its' ratepayers, the Commission, SBG Complainants and reiterated its conclusions that PGW's billing and collections practices violated the Public Utility Code and per its Orders issued on December 8, 2016, May 18, 2018 and August 23, 2018. The Commission

¹ 52 Pa. Code § 56.24. Application of partial payments among several bills for public utility service. In the absence of written instructions, a disputed bill or a payment agreement, payments received by a public utility which are insufficient to pay a balance due both for prior service and for service billed during the current billing period shall first be applied to the balance due for prior service.

² § 56.22. **Accrual of late payment charges.**

(a) Every public utility subject to this chapter is prohibited from levying or assessing a late charge or penalty on any overdue public utility bill, as defined in § 56.21 (relating to payment), in an amount which exceeds 1.5% interest per month on the overdue balance of the bill. These charges are to be calculated on the overdue portions of the bill only. The interest rate, when annualized, may not exceed 18% simple interest per annum. . . . 42 Pa.C.S. § 8101 (relating to interest on judgments) limits postjudgment interest to 6% per year unless otherwise provided by another statute, it supersedes the regulation that provides for 18% interest per year on amounts owed to a public utility. *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002).

ordered PGW to cease and desist its practices, revamp its billing and collections system to comply with the public utility code and to refund overpayments made to PGW by SBG complainants. SBG filed its formal complaints to the PUC in spring 2012 and has engaged in vigorous litigation with PGW for over six (6) years now. At the very least, PGW has been on notice since the Commission issued its Final Order and Opinion on December 8, 2016 that its' payment and collections practices violated the Public Utility Code. Despite this notice and the Commission's indulgence granting PGW numerous extensions of time to consider multiple requests for re-hearing and reconsideration to implement Commission ordered changes to PGW's billing and collections system, PGW has refused to comply with the Commission's orders and has neither corrected its illegal practices and nor refunded any monies to SBG as ordered. Instead, PGW has taken every opportunity to delay and stall on implementing the Commission's directives and continues its illegal billing and collections practices causing SBG's complainants (and all PGW ratepayers) to suffer continued harm and injury.

On September 25, 2018, PGW filed its Petition for Review of the Commission's collective orders dated December 8, 2016, May 18, 2018 and August 23, 2018 respectively requesting appellate review of the Commission's decisions³. The Commission ordered PGW to serve counsel for SBG with its' Petition for Review or this Petition for Stay Pending Review which PGW counsel served upon SBG counsel on September 28, 2018. In its Petition for Stay PGW seeks to "preserve the *status quo*, i.e., to stay any compliance, application or enforcement of Orders pending the ultimate disposition." As it states in its' petition, PGW does not want to be "forced to bear the substantial time and effort and expense of complying with the PUC".

³ *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 1291 C.D. 2018

PGW is the only municipally owned gas company in the state. PGW is the only gas company that has a unique position under the Municipal Claims and Tax Lien Law (“MCTLL”), Act 153 of 1923, P.L. 207, 53 P.S. §§ 7101, *et seq.*, whereby PGW can use its automatic lien system to docket and perfect as liens claims for outstanding gas debt attaching such *claims as a legal judgment* on the property without notice to the property owner. Notwithstanding PGW’s special position as a municipal gas entity with an ability to push a button in its’ office to automatically docket a lien judgment with the common pleas courts in the city of Philadelphia, unlike its private utility competitors such as PECO, PGW is still subject to the authority of the PUC Commission, its’ rules and regulations codified at 52 Pa.Code §§ 56.1 *et seq.* and the statutory laws found under title 66 P.S. §§ 101 *et seq.* of the Pennsylvania Public Utility Code.

The Commission evaluated the evidence presented and found that PGW flagrantly disregarded the Commission’s rules, regulations and the Public Utility Code warranting imposition of civil penalties and refunds ordered to the SBG Complainants. The Commission’s orders held PGW’s feet to the fire and ordered PGW to comply with the *existing* rules, regulations and laws pertaining to billing and collections practices for public utilities in the state. The law as applied by the Commission is not new; what is new is that as a result of this litigation PGW’s illegal practices were discovered by the public, the Commission and the SBG complainants. In this filing, PGW admits that its billing systems and practices have been in place since before July 1, 2000, as noted on page 3 of PGW’s Petition for Stay and is further evident in the record by the testimony of PGW’s witness, Diane Rizzo.

The regulations at 52 Pa. Code §§ 56.22, 56.23 and 56.24 regarding late fees and the application of partial payments posted to public utility accounts has been in existence since 1978. PGW has been obfuscating and circumventing PUC regulations regarding application of

payments since it has been under the purview of the Commission's authority, never disclosing its' illegal practices to the Commission, SBG Complainants and or its ratepayers until it was forced to do so during the course of the SBG litigation. Despite the clear unambiguous language of the regulations, PGW has ignored the statutory construct and has illegally and wrongfully collected sums outside its approved tariffs for decades. Now that they have been caught, they are fighting tooth and nail not to be held accountable to patrons in the City of Philadelphia. PGW's wrongful practices were first disclosed to the Commission in 2015 and PGW has evaded affirmative action to implement lawful billing and collections systems since being ordered by ALJ Eranda Vero in September 2015. It is SBG Complainants' belief that PGW's plan is to use the appellate review process as a means to circumvent compliance under the code for an additional six (6) years unreasonably delaying justice for the SBG complainants and all other PGW ratepayers. For the reasons outlined below, PGW's Petition for Stay Pending Review should be denied.

Background

1. Agreed and admitted. 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.*

2. Admitted in part, denied in part. As stated in the August 23, 2018 Order, the Commission opined 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. § 7184.⁴ 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.

⁴ *See Penn Twp. v. Hanover Foods Corp.*, 847 A.2d 219 (Pa. Cmwlth. 2004) – 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.

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. However, the Commission has subject matter jurisdiction over a service or billing issue raised in a lien-related complaint. The Commission has jurisdiction to review the underlying billing issue that gives rise to a lien. The Commission determined in *Josephine Pitt v. Philadelphia Gas Works*, Docket No. C-2009-2140025 (Order entered April 29, 2010) that to the extent a formal complaint 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 also, 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).

3. Agreed and admitted. PGW has filed a Petition for Review with the appellate court. SBG reiterates PGW is using the appeals process as a delay tactic to implement corrective changes to its billings and collections system which comply with the Commission's regulations because PGW admittedly relies on the extra fees as a means to inflate its approved tariff rate.

4. Agreed and admitted. However, neither SBG's Complainants nor their counsel was initially served with PGW's Petition for Review and Petition for Stay until the Commission intervened to compel PGW to file a certificate of service upon SBG and counsel. The certificate of service for SBG and its counsel is dated September 28, 2018.

Legal Standard

5. Agreed and admitted.

6. Agreed and admitted. PGW properly states the elements of the legal standard PGW must set forth to be granted a stay of the proceedings pending review by the Commonwealth court.

Request for Stay Pending Appeal

7. Disagree and deny. In paragraph 7 of its' Petition before the Commission, PGW admits their 'illegal' billing and collections "systems and practices have been in place since before July 1, 2000 when PGW came under the jurisdiction of the PUC". PGW has maintained its illegal and unlawful payment posting and collections practices for decades and continues this practice as of this writing. Throughout the ten years SBG inquired about PGW's underlying accounting practices from the early 2000s until spring 2012 when SBG filed its eight (8) formal complaints against PGW with the PUC, PGW's violative practices were undiscoverable by both ratepayers, SBG complainants and the Commission until PGW was forced to disclose its underlying payment posting methods through discovery. In the Petition to Stay, PGW argues that there is no immediate need to change its' illegal practices in violation of its tariff. PGW argues "that is far more practical and in the public interest to wait until a final decision is handed down by the courts before it is forced to expend time and money modifying its billing systems."

PGW fails to consider that its illegal practices are a clear violation of the plain, unambiguous language of the regulations (§§ 56.22, 56.24) and statutes (42 Pa.C.S § 8101) and the Public Utility Code. But for the SBG litigation, no one, not the Commission, other ratepayers (residential or commercial) nor the SBG complainants were aware of PGW's decades-long illegal accounting scheme. Moreover, on September 20, 2018, the Commission issued its Final Opinion and Order in the next set of the SBG complainants' cases, (SBG Management Services, Inc./Elrea Garden Realty Co, L.P. v. Philadelphia Gas Works, C-2012-2304167; SBG Management Services, Inc. /Fairmount Manor Realty Co., L.P. v. Philadelphia Gas Works, C-2012-2304215; SBG Management Services, Inc. /Marshall Square Realty Co., L.P. v. Philadelphia Gas Works, C-2012-2304303)⁵ and noted in its opinion and order PGW's history

⁵ See PUC Commission's Final Opinion and Order Dated September 20, 2018, attached as Appendix A: SBG Management Services, Inc. /Elrea Garden Realty Co, L.P. v. Philadelphia Gas Works, C-2012-2304167; SBG Management

of deceitful and intentionally misleading conduct that it has used against ratepayers who adjudicate complaints before the PUC, especially when litigates want to understand their billings related to gas liens.

PGW has challenged the assessment of civil penalties in these consolidated complaints. However, the Commission has painstakingly considered whether PGW's long-standing practices to ignore the Code and the regulations as mere negligence or bad faith actions, opining in its order dated September 20, 2018 that "[t]he determination of PGW to engage in the practices which have been found in violation of the Code and Commission Regulations in this Complaint were made with an express business intent and business objective of maximizing revenues derived from uncollectible accounts, in excess of what was permitted by PGW's tariff and Commission Regulations." The Commission referenced the third circuit case of *Augustin v. City of Philadelphia*, 897 F.3d 142 (3d Cir. 2018), a recent decision that involved plaintiff landlords' due process challenges to PGW's lien practice for tenant gas debt. The decision accurately depicts PGW's duplicitous conduct towards ratepayers, including the SBG complainants who challenge PGW liens. The *Augustin* court referenced how PGW treats property owners who contest liens against their property as articulated below:

Unsurprisingly, property owners regularly contact PGW to ask how they may challenge a lien. When that happens, the owner is often told to "file a complaint with the Pennsylvania Public Utility Commission ("PUC"), . . . [which] has repeatedly taken the position that it has no jurisdiction to act in matters which arise under the [Lien Law]." *Augustin v. City of Philadelphia*, 171 F. Supp. 3d 404, 414 (E.D. Pa. 2016). The record shows that the utility knew this and took advantage of it by continuing to steer customers in the PUC's direction in spite of the fact that the PUC declined jurisdiction over such complaints. Indeed, when two of the named Plaintiffs here filed complaints with the PUC, PGW

Services, Inc. / Fairmount Manor Realty Co., L.P. v. Philadelphia Gas Works, C-2012-2304215; SBG Management Services, Inc. / Marshall Square Realty Co., L.P. v. Philadelphia Gas Works, C-2012-2304303

immediately turned around and successfully challenged the agency's jurisdiction. (Emphasis supplied). See 2018 U.S. App. LEXIS 19811 at *7-*8.

The Commission noted PGW's conduct to circumvent the PUC's jurisdictional review as outlined in the *Augustin* decision coupled with PGW's practice to conceal its billing and collection practices from the SBG complainants, the public and the Commission constitutes bad faith, "find[ing] the above-cited statements from the Third Circuit to evince duplicitous conduct on the part of PGW. This is "bad faith" under our Regulations and weighs in support of a higher level of penalty against PGW."

PGW has cheated ratepayers for more than two decades. PGW has duped the Commission since July 2000 receiving authorized increases in its tariff rates while concealing its' accounting and collection scheme to boost collection revenues beyond the authorized tariff. The SBG litigation has been ongoing for over six (6) years and is likely to continue for another six (6) years as the cases make their way through the appellate courts. Consequently, not only will the SBG complainants continue to be injured, all other PGW patrons will continue to suffer harm if the PUC and/or Commonwealth court stay PGW's duty to comply with the Public Utility Code, the Commission's rules, regulations and state law as it is written.

PGW's likely success on the merits.

8. Disagree and deny. PGW's practice to "reorder" past due, partial payments directly violates the plain language of the Commission's regulations, specifically those regulations at 52 Pa. Code § 56.22(a); 52 Pa. Code § 56.23; and 52 Pa. Code § 56.24. 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. In addition, PGW's long-standing practice of charging 18% interest on sums set to lien judgment violates Section 1303 of the Public Utility Code (Code), 66 Pa. C.S. §1303, to the extent the rates applied to late payments exceed the permissible, "Commission-made," rates in PGW's tariff. See *December 8 Order* at 71; *SBG L.D.* at 54-55; Tr. 206-207. The ruling in *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002) holds that post-judgment interest is limited to 6% per annum under 42 Pa.C.S. §8101 where the statute control over regulations as noted in § 56.22 regarding late fees.

The record of this proceeding proves PGW was less than forthcoming on disclosing 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. Only after several years of litigation and multiple motions to compel, PGW finally divulged its accounting methodology revealing 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. PGW has misappropriated the regulations for as long as it has been under the purview and authority of the PUC. PGW has deliberately misled the Commission, SBG complainants, its gas customers and the public by illegally collecting monies from its patrons beyond its approved tariff.

9. Neither admit nor deny. The averment calls for a legal conclusion. However, PGW has cited *PUC v. Process Gas Consumers Group*, 467A.2d 805 (Pa. 1983), for the proposition that criterion to determine whether the Commission's order should be stayed pending review, there is a requirement to balance all the interests of the parties including the public interest. In balancing the interests to determine whether a stay should be granted, SBG urges the Commission to

consider the following: 1) The Commission's regulations regarding application of partial payments has existed in the PUC regulations since 1978. *See* 52 Pa. Code §56.24⁶. 2) PGW admits that it has maintained its accounting systems and practices since prior to coming under the jurisdiction of the PUC in July 2000. 3) PGW refused to disclose its' accounting methods to SBG complainants for over ten years, and induced SBG complainants to sleep on its rights and delay prosecution before the PUC. 4) PGW had to be compelled to disclose its accounting methods to the SBG complainants, and ultimately the Commission. 5) SBG complainants filed their actions against PGW in 2012, after over six (6) years of litigation, and three (3) final orders and opinions issued by the Commission, PGW has not taken any corrective action to comply with the regulations regarding its billing and collections system and practices, nor has it issued refunds to the SBG complainants. 6) PGW continues its illegal billing and collections practices with impunity and arrogance as of this writing. 7) PGW is using the appellate review process to forestall and delay taking corrective action to its billings and collections systems for as long as it can, delaying justice for SBG complainants and PGW ratepayers for years to come until all appeals are exhausted, in all likelihood another six (6) years.

In balancing the interests, the Commission must also consider that PGW has always defied the regulations and rules of the PUC. SBG Complainants have had to vigorously litigate their claims for over six (6) years and continue to do so. Moreover, other residential and

⁶ § 56.24. **Application of partial payments among several bills for public utility service.** In the absence of written instructions, a disputed bill or a payment agreement, payments received by a public utility which are insufficient to pay a balance due both for prior service and for service billed during the current billing period shall first be applied to the balance due for prior service. **Source: The provisions of this § 56.24 adopted June 16, 1978, effective June 17, 1978, 8 Pa.B. 1655.**

commercial gas customers have likely suffered great injury and over-collection of monies by PGW and continue to be harmed as a result of PGW's continuing illegal actions.

10. Disagree and deny. The Commission has the authority to invoke and order PGW to comply with the Commission's rules and regulations. The language contained in §56.24 regarding the application of partial payments is clear and unambiguous. PGW admits that it does not apply partial payments to customer accounts in the manner prescribed. In addition, PGW's practice of maintaining tariff interest charges (pre-judgment interest 18% per annum) to post-judgment liened debt is in contravention to the regulations codified at §56.22(a), the statute at 42 Pa.C.S. §8101, and the ruling in *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002), a case that PGW has ignored since its entry in 2002.

PGW will not suffer irreparable injury without a stay. The SBG complainants, PGW patrons and the public will continue to suffer irreparable injury with a stay for several years as PGW appeals proceed through the courts.

11. Disagree and deny. PGW's billing and collections practices have violated the Public Utility Code and the Commission's regulations for decades. They admit that they rely upon the collections they receive from the municipal liens for their fiscal stability. PGW does not offer any consolation to the SBG complainants who have over-paid or suffered economic injury as a result of PGW over-collecting monies from them and others similarly situated.

At its January 18, 2018 public meeting, the Commission opined "upon 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.”

This sentiment was reiterated by the Commission in its May 18, 2018 opinion and final order. Using dubious legal maneuvers to delay the process by filing multiple requests for rehearing/reconsideration, PGW has been afforded additional time to comply with the Commission’s order dated August 23, 2018. PGW has had nearly three years to conduct the necessary research, acquire financing to implement system-wide changes to its billing and collections system and train staff on a compliant billing and lien system. PGW does not lose any protections afforded under the MCTLL or chapter 14 of the Public Utility Code, 66 P.S. §1414, to docket liens with the court of common pleas for municipal claims by operating in compliance with the Code. To suggest otherwise is a ludicrous assertion. PGW is abusing its position as the sole municipal gas entity in the state by suggesting that its fiscal stability is grounded in its ability to maintain two claims on the same debt. PGW has not offered a legitimate reason as to how compliance with the Code and the Commission’s regulations will make it insolvent.

12. Disagree and deny. PGW has operated in contravention to the Code and regulations for so long, it cannot fathom its own illegal actions. In essence, PGW has never complied with the PUC rules and regulations since coming under its jurisdiction, a fact which PGW admits in this filing. However, as a regulated public utility, it has a duty to the public to deal fairly and in good faith with its ratepayers. The Commission has a duty and significant interest to protect the public and ensure that PGW complies with the

Code and the regulations. Therefore, PGW's specious arguments that the Commission's orders for PGW to initiate changes to its billing and collections system that comply with the Code is somehow laborious, violates statutory provisions and causes *per se* irreparable harm is unfounded.

13. Disagree and deny. PGW has not initiated any corrective action to its billing and collections system since this litigation began in 2012. PGW has fought the SBG complainants since the early 2000s, refusing to divulge any meaningful information on how the company applied payments and interest to its customer accounts. After a decade of inquiry to PGW on their billing practices, in spring 2012, SBG had to file suit with the PUC to gain an understanding of how PGW applied its payments.

PGW was not honest with the Commission in any of its prior rate cases because PGW never disclosed its practice to reorder payments in such a way as to subject prior balances to new interest-bearing late fees and extinguished late fees and service charges first before applying payments to prior balances, which is a deceptive method to achieve a higher tariff rate than authorized by the Commission. PGW never informed ratepayers or the Commission that it continued to charge tariff approved interest rates (18%) to debts that were docketed as lien judgments rather than 6%, the statutory interest rate approved under the regulations at §56.22 and held in *Equitable Gas v. Wade*, 812 A.2d 715 (Pa. Super. 2002).

It is disingenuous for PGW to argue that it will take at least 57 weeks to implement changes to its' billing and collections system. As a city-owned public utility, PGW does not have to look any further than the City of Philadelphia's own water department to view an accounting system that operates in conformity to §56.22 and §56.24⁷.

The Philadelphia Water Department's website offers a page that informs the patron of the hierarchy of applied payments. The water department applies partial payments to aged debt in the following manner: "**If you pay less than the total amount due on your bill then payments are distributed from oldest to newest debt.** When all the debt is the same age, payment goes in the following order toward however much you owe in each of these categories: 1. Sundry invoices (for example: bad check fees, meter tamper charges, and lien fees); 2. Penalties and interest; 3. Storm-water charges; 4. Water and sewer service and usage charges; 5. Payments against payment agreements; 6. Repair charges; 7. HELP Loans". (emphasis added).

The Philadelphia Water Department Regulations provide: **305.1 Billing**. 305.1(d) Penalties for Late Payments'. (1) If current water, sewer, and storm-water bills are not paid within thirty (30) days from the date indicated on the bill, a penalty of five percent (5%) shall be imposed, (2) An additional penalty of one half of one percent (0.5%) shall be imposed and added to water, sewer, and storm-water bills, and their penalties, on the due date of the bill of each succeeding cycle, except that a period of thirty (30) days shall elapse before the first additional penalty is imposed. Like PGW, the city's Water Department may file a lien with the City as a municipal claim, however, once the lien is filed, the Water Department charges only ½ percent

⁷ Appendix B – Philadelphia Water Department application of payments (website archive); <https://www.phila.gov/services/water-gas-utilities/pay-or-dispute-a-water-bill/pay-a-water-bill/>

⁸ Appendix C - PWD regulations; <https://www.phila.gov/water/wu/ratesregulationsresp/Pages/Regulations.aspx>

per month or 6% interest per annum to lien water debt claims. As a city-owned utility, PGW need only look to the city's water department to gage how to apply partial payments to prior balances in accordance with §56.24 under the Code.

14. Disagree and deny. PGW avers that it will suffer irreparable harm if it is forced to comply with the Commission's directives to "expend substantial money, time and energy to change its systems and practices. PGW complains that "the costs for such changes will occur before start of PGW's next base rate and there is serious doubt that PGW will be able to recover the costs of such changes from rate payers". PGW's motivations for maintaining their illegal practices result from their conscious and intentional business decisions to maximize revenues; and, they woefully complain that **they cannot timely recoup costs for implementing changes to their billing and collections system by the next base rate request.** Nowhere in their argument does PGW balance their company interest with that of the ratepayer or SBG complainants who have unwittingly overpaid monies to PGW due to their illegal and unlawful collection practices in violation of §1303 of the Public Utility Code and §§ 56.22 and 56.24 of the Commission's regulations. SBG has endured nearly eighteen (18) years of abusive illegal practices by PGW. The Commission has painstaking reviewed PGW's practices and considered the broader impact that PGW's billing and collections practices has on other ratepayers, in addition to the harm caused to SBG complainants, in deciding that PGW has violated its rules, regulations and the Code. PGW has ignored the Commission's orders and continues to cause undue harm and injury to SBG complainants and others similarly situated.

Other interested parties will be substantially harmed by the stay.

15. Disagree and deny. While SBG complainants are an interested party in these proceedings, PGW's practices extend to all of its patrons. Staying these proceedings for an indefinite amount of time to allow for appellate review, which could take a number of years, only serves to continue to harm the SBG Complainants, deny them their recovery for over-payments made, and subject them to constructive defaults and mortgage foreclosure, all of which are injuries SBG complainants have endured. There are other ratepayers who are similarly situated and have been harmed by PGW's violative and illegal practices. At hearing, SBG's expert witness, Roger Colton, Esq. stated that on any given month there are 80,000 PGW gas customers who make partial payments. Based upon how PGW posts partial payments and extinguishes current and accumulated late fees first before applying payments to prior balances, if there is only a \$5 per month per household over-collection from these patrons, that would equate to an extra \$400,000 per month or \$4.8 million dollars annually that PGW collects in late fees. Of course, PGW relies heavily on this scheme to boost its collections. And since the Commission was previously unaware of this practice, PGW is lamenting having to now follow the law and cease their illegal conduct.

The City is also hurt by PGW's practices. The City issues municipal bonds based upon PGW's receivables and collections. Late fees make up 20% of PGW's revenues. If PGW's collections are based upon illegal acts, the City and taxpayers are at risk for SEC violations, should PGW's practices be allowed to continue unchecked and unfettered. If the City's water department can follow the law and properly apply partial payments to outstanding water claims, then PGW should also be able to conform and perform accordingly.

16. Disagree and deny. PGW cavalierly avers that SBG's interest are only monetary. This is not true. SBG Complainants property have sustained constructive mortgage defaults as a result of PGW liens placed upon them forcing the filing writs of scire facias. PGW is dismissive of the SBG complainants' injuries. PGW continues its illegal collections practices. PGW has never refunded money to the SBG complainants as ordered by the Commission. In November 2017, when SBG/Colonial was sold, PGW wrongfully collected over \$129,000, without ever crediting the over \$96,000 that the Commission ordered refunded to Colonial. PGW continues to misapply payments and to charge 18% interest to post-judgment, liened gas debts on SBG accounts. SBG's complainants have had to spend enormous amounts of money in legal fees and costs to defend foreclosure actions from PGW. SBG complainants has been substantially harmed by PGW's illegal practices since the early 2000s and continues to suffer injury from PGW today.

17. Disagree and deny. Issuing a stay pending appeal adversely affects the public interest and PGW ratepayers who do not have the ability to intensely litigate these issues for over six (6) or more years. PGW's resistance to implementing the Commission's orders demonstrates that PGW has no intention of complying with the Code and the Commission's regulations until it has exhausted every avenue of appeal. PGW has engaged in these accounting practices for decades and they have no intention of giving up their revenue scheme until they are forced to do so. The SBG complainants have been engaged with getting to the truths of their underlying billing since the early 2000s. This litigation is likely to be a ten (10) year event by the time all appeals are exhausted and the matter is finally resolved. If the Commission grants the stay pending review of the Commission's orders, PGW will continue to over-charge patrons and collect monies to which it is not entitled. It is incumbent upon the Commission to protect the interest of the public

and require PGW to comply with the rules, regulations found in the Public Utility Code and public utility statutes of this state.

Request for Expedited Action

18. Disagree and deny. PGW avers that the Orders require them to complete changes to its systems and practices on or before November 21, 2018. Despite being on notice since at least spring 2012 when these proceedings started, and at the latest December 8, 2016 when the Commission issued its first Opinion and Final Order, PGW has not initiated any corrective action to address the Commission's directives. In fact, PGW continues to violate the law by reordering partial payments to extinguish cumulative late fees first before applying payments to prior balances in contravention to §56.24 and continues to charge 18% interest to gas debt that is docketed as a lien judgment against the property, thus maintaining two claims against the same debt. PGW does not dispute that they impose these accounting practices to its customer's accounts. PGW admits that this has been their practice and system since prior to July 2000 when they came under the jurisdiction of the PUC. It is undisputed that PGW was not forthcoming with this practice and did not inform the Commission about its accounting methods. Furthermore, it is undisputed that PGW does not follow the regulations at §56.24 when applying partial payments to customers' prior balances or apply late fees to accounts in the manner prescribed in §56.22.

PGW seeks expedited review, however, they do not effectively articulate why they should be entitled to receive that relief. PGW has resisted implementing the Commission's multiple Orders since December 8, 2016, seeking multiple requests for rehearing and reconsideration. Moreover, PGW continues to violate the regulations and the Code and PGW

admits that they have maintained these practices since prior to 2000. Needless to say, PGW is not interested in expediting resolution of these genuine claims. PGW did not even serve SBG's counsel with this Petition for Stay until September 28, 2018, and only after the Commission required them to serve her. Therefore, it is unfair and prejudicial to the SBG Complainants to grant expedited review, while PGW has slow-walked implementing the Commission's orders.

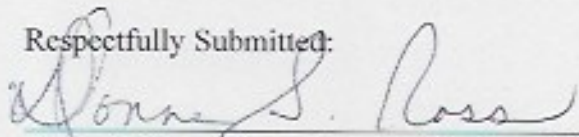
Under Pa.R.A.P. 123, an Answer to a Petition for Stay Pending Review may be filed within fourteen (14) days after service of the Petition. SBG was served on September 28, 2018 and an Answer is not due until October 12, 2018.

Conclusion

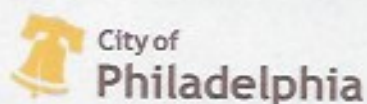
WHEREFORE, SBG Complainants respectfully requests that the Commission issue an Order:

- A. denying PGW's Petition for Stay Pending Review;
- B. enter an Order compelling PGW to comply with the Commission's previously issued Orders;
- C. grant such further relief in favor of SBG Complainants as may be just and reasonable under the circumstances.

Respectfully Submitted:



Donna S. Ross, Esq.- Attorney for Complainants
SBG Management Services, Inc. et al.



🏠 / Services / Payments, assistance & taxes / File and/or make payments / Water bill

☰ Payments, assistance & taxes

Water bill

Instructions and fees for accessing and paying your water and sewer services bill.

🚩 Before you start

You'll need:

Your 16-digit water/sewer account number (found on your bill)

If paying by eCheck, you'll also need:

- Your bank's nine-digit routing number
- Your savings or checking account number

You can pay with any of the following

- Automatic Bank Payments
- Credit Card (processing fee applies)
- Check or Money Order
- eCheck (FREE)

To set up automatic monthly payments from your bank account, use the **ZipCheck payment authorization form**

Fees

- Automatic Bank Payments: Free
- eCheck Payment: Free
- Credit Card Payment (Residential): \$3.95
- Credit Card Payment (Commercial): \$13.95
- Returned Checks: \$20.00
- Late Fees: 5% of the total due will be added to your bill if you do not pay it on time. An additional 0.5% charge will be added for each month your charges are not paid.

Other ways to pay

By mail

Mail in the return portion of your bill with a check or money order, made payable to:

Water Revenue Bureau
P.O. Box 41496
Philadelphia, PA 19101-1496

By phone

Pay through an interactive voice system by calling (877) 309-3709

In person

Visit one of our three authorized payment centers.

Center City

Municipal Services Building
1401 JFK Blvd., Concourse Level

Hours: Open Monday through Friday, 8:30 a.m. – 5 p.m.

North Philadelphia

Hope Plaza
22nd & Somerset Street

Hours: Open Monday through Friday, 8:30 a.m. – 5 p.m.
Cash payments are not accepted.

Northeast Philadelphia

7522 Castor Ave.

Hours: Open Monday through Friday 8:30 a.m. – 5 p.m.
Cash payments are not accepted.

Need help paying?

If you can't afford to pay your water bill in full and on time, you can set up a **payment agreement**, or apply for **water bill assistance**.

How payments are applied

If you pay less than the total amount due on your bill then payments are distributed from oldest to newest debt. When all the debt is the same age, payment goes in the following order toward however much you owe in each of these categories:

1. Sundry invoices (for example: bad check fees, meter tamper charges, and lien fees)
2. Penalties and interest

3. Stormwater charges
4. Water and sewer service and usage charges
 1. Sewer service
 2. Water service
 3. Sewer usage
 4. Water usage
5. Payments against payment agreements
6. Repair charges
7. HELP Loans

Get an old water bill

If you need a copy of an old water bill please contact the Water Revenue Department at (215) 685-6300, or visit us in the Municipal Services Building Concourse Level at 1401 John F. Kennedy Blvd.

Contact the Water Revenue Bureau

By phone

(215) 685-6300

Hours: Open Monday through Friday, 8:00 a.m. to 5:00 p.m.

This content was last updated on January 11, 2018 by Philadelphia Water Department .

By email

wrbhelpdesk@phila.gov

By mail

Water Revenue Bureau

P.O. Box 41496

Philadelphia, PA 19101-1496

PHILADELPHIA WATER DEPARTMENT REGULATIONS
As of 2/7/14

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SWMS charge shall be described in the Credits and Adjustment Appeals Manual.

(f) Administration of Credits.

(1) A Customer shall apply for credits using application forms and submitting the required documentation as defined in the Credits and Adjustment Appeals Manual.

(2) Any engineering or other costs incurred in completing the application shall be borne by the Customer.

(3) There shall be an application fee of one hundred and fifty dollars (\$150) for each credit application. The Customer may apply for one or more classes of credits in one application.

(i) The application fee shall be waived for recipients of Stormwater Management Incentives Program (SMIP) or equivalent funds.

(ii) The Department may waive the application fee for properties subject to Chapter 6 of these Regulations.

(4) Credits shall be effective upon receipt of a complete application.

(5) All credits shall expire four (4) years from the effective date of the credit. A Customer may renew credits by submitting a renewal application, documentation required by the Department as defined in the Credits and Adjustment Appeals Manual, and paying a renewal fee of fifty dollars (\$50).

(g) Termination of Credits.

(1) The Department may review any approved credit at any time to verify its continued applicability. Customers may

from time to time be asked to submit documentation and/or grant access to the Property receiving the credit. Failure to comply with such requests may result in the termination of the credit(s).

(2) The Customer's failure to meet credit requirements or comply with inspection and reporting obligations, in accordance with Section 304.5(a)(3) of these Regulations, shall result in a suspension or revocation of all affected credits pursuant to the procedures issued by the Department.

(h) The Department may, at its sole discretion, issue stormwater credits to individual parcels where stormwater management is being implemented on a shared, collective basis by an organization representing different parcel owners within a defined geographic area.

305.0 BILLING FOR WATER, SEWER AND STORMWATER SERVICE

305.1 Billing.

(a) Estimated Usage and Billing. When an accurate meter reading cannot be obtained at the time of a scheduled meter reading or when necessary for administrative purposes, the quantity of water used may be estimated for billing purposes. Estimated usage will be based upon actual meter readings from prior cycles or by such other fair and reasonable methods as shall be approved by the Water Commissioner. Where the water usage is estimated because of inability to read the meter, any necessary corrections shall be made at the time of the next actual meter reading, or when appropriate.

(b) Charges to be Combined. At the discretion of the Water Commissioner, each bill may combine in one amount the service

charge and any quantity charges for water, sewer and stormwater, if applicable.

(c) Bills Due and Payable. All bills are due and payable when rendered.

(d) Penalties for Late Payments.

(1) If current water, sewer, and stormwater bills are not paid within thirty (30) days from the date indicated on the bill, a penalty of five percent (5%) shall be imposed.

(2) An additional penalty of one half of one percent (0.5%) shall be imposed and added to water, sewer, and stormwater bills, and their penalties, on the due date of the bill of each succeeding cycle, except that a period of thirty (30) days shall elapse before the first additional penalty is imposed.

(3) If any water, sewer, and stormwater bill remains unpaid for two cycles after the bill has been rendered, the Revenue Department shall serve a notice of termination upon the delinquent Property Owner and, if the charge, with penalties thereon, is not paid within ten (10) days after such service of notice, the Department, in its discretion, may suspend water service to the Property until the charge with penalties is paid. Penalties for late payment are set by ordinance, not by regulation, and any amendments to the current ordinance shall apply as provided therein.

(e) Balance Due. Each bill shall include any balances due for bills issued from October 1, 1997, including penalties.

(f) Changes in Meter Size. When a change in meter size is made, the charge for the new meter size shall become effective on the date of such change.

(g) Unmetered Customers.

(1) Unmetered Customers shall be billed the same charges established for metered Customers. The water and sewer service charges will be determined by the size of the meter which would be installed for an equivalent service at a similar property. The SWMS charges will be determined based on Section 304.0 of these Regulations. The Revenue Department shall estimate the quantity of water used and bill accordingly using the applicable water and sewer quantity charges.

(2) Where unmetered wastewater is discharged to the sewer system without adequate sewer metering, the Department reserves the right to bill the amount of flow based upon its engineering judgment of a reasonable estimate of unmetered usage.

(h) Unoccupied Property.

The billing of unoccupied Properties for water and sewer shall be discontinued only on issuance of a Discontinuance of Water permit. Nothing in this Section shall relieve a Property Owner of his responsibility for maintaining a service line unless a Discontinuance of Water permit has been secured. Under no circumstances will the stormwater service charge be terminated.

(i) Extraordinary Uses or Appliances.

In the event that extraordinary or peculiar uses or appliances, in the opinion of the Water Commissioner, warrant a special charge not provided herein, such charges shall be as fixed by the Water Commissioner in writing.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Petition for Stay Pending Judicial Review upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via First Class Mail

Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921

Office of Small Business Advocate
Commerce Bldg., Suite 1102
300 North Second St.
Harrisburg, PA 17101

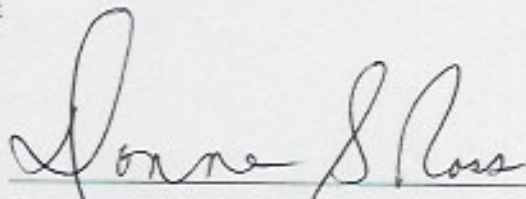
Bureau of Investigation & Enforcement
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor, West
Harrisburg, PA 17120

Office of Special Assistants
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 3rd Floor, East
Harrisburg, PA 171020

Bureau of Technical Utility Services
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 3rd Floor, East
Harrisburg, PA 17120

Daniel Clearfield, Esq.
Carl Shultz, Esq.
Karen O. Moury, Esq.
Eckert Seamans Cherin & Mellott, LLC 213 Market Street
8th Floor
Harrisburg, PA 17101

Date: October 12, 2018


Donna S. Ross, Esq. for SBG et al.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Petition for Stay Pending Judicial Review upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via First Class Mail

Ms. Rosemary Chiavetta, Secretary
PA Public Utility Commission
400 North Street
Commonwealth Keystone Bldg., 2nd Floor
Harrisburg, PA 17120

Hon. Eranda Vero, ALJ (courtesy)
PA Public Utility Commission
801 Market St
Philadelphia, PA 19107

Mr. Laureto Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Ave, 4th Floor
Philadelphia, PA 19122

Date: October 12, 2018

By: 

Donna S. Ross, Esq. on behalf of
SBG Management Services, Inc. et al.

P.O. Box 549

Abington, PA 19001

(484) 888 - 9578

Email: dsross90@gmail.com; dsross@sbgmanagement.com

Atty ID No. 59747