**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held March 28, 2019

Commissioners Present:

Gladys M. Brown, Chairman

David W. Sweet, Vice Chairman

Norman J. Kennard

Andrew G. Place

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 a Petition for Stay (Petition) filed by Philadelphia Gas Works (Petitioner or PGW[[1]](#footnote-1)) on September 25, 2018.[[2]](#footnote-2) In its Petition, PGW requests a stay of its duty to comply with the prior final orders of the Commission entered on December 8, 2016 (*December 2016 Order*), May 18, 2018 (*May 2018 Order*), and August 23, 2018 (*August 2018 Order*), pending the Commonwealth Court’s consideration of PGW’s Petition for Review filed in response to our *August 2018 Order.[[3]](#footnote-3)* An Answer to the Petition for Stay was filed on October 15, 2018, by SBG Management Services, Inc., *et al*. (SBG) (Answer).

Upon review of PGW’s Petition for Stay*,* SBG’s Answer thereto, and the applicable law, we find that the substantive allegations of the petition lack merit. Therefore, for the reasons discussed below, we shall deny PGW’s Petition for Stay.

1. **Background and Procedural History of the Proceeding[[4]](#footnote-4)**
2. **Background**

PGW requests a stay of its duty to comply with the *Commission Orders* to provide billing for utility service in compliance with Section 56.22-24 of the Commission’s regulations, 52 Pa. Code §§ 56.22-24 (pertaining to late fees and application of partial payments to utility accounts); to reimburse SBG for overpayments made due to PGW’s unlawful billing practices; and to pay penalties due to PGW’s failure to provide reasonable service and failure to disclose its accounting and billing practices.

Our *December 2016 Order* was the culmination of protracted litigation which commenced in 2012 upon the filing of Formal Complaints (Complaints) by SBG on behalf of Colonial Garden Realty Co., L.P., and Simon Garden Realty Co., L.P., (Complainants),[[5]](#footnote-5) The Complainants ultimately prevailed in their challenge of the lawfulness of PGW’s utility service billing practices.[[6]](#footnote-6), [[7]](#footnote-7) See, *December 2016 Order* at 8‑9; 23.

1. **Procedural History**

By our *December 2016 Order*,the Commission adopted, as modified, the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Eranda Vero, thereby disposing of the PGW Exceptions filed to the ALJ’s order requiring PGW, *inter alia*, to bring its billing practices into compliance with Chapter 56 of Commission regulations. 52 Pa. Code § 56.1 *et seq*. *See* Initial Decision issued September 17, 2015 (*SBG Initial Decision* or *SBG I.D.*). In addition to adopting the *SBG* *Initial Decision*, as modified, by our *December 2016 Order*, we expressly directed PGW to comply with the following actions within the time specified:

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

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

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

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

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

9. That Philadelphia Gas Works shall pay a civil penalty in the amount of Twenty-seven Thousand Dollars ($27,000.00) by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA  17120

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

Utility Code of Commission Regulations concerning the application of municipal liens or related collection procedures as between the Commission and the Courts.

*December 2016 Order*, at 110-112.

After the entry of our *December 2016 Order*,PGW filed a petition seeking, reconsideration, rehearing, and/or clarification of issues considered and disposed of in the *December 2016 Order*. At that time, PGW did not file a petition for stay of compliance with our *December 2016 Order*. By our *May 2018 Order*, we denied PGW’s request for reconsideration. *May 2018 Order* at 32, Ordering Para. 1.

While denying reconsideration of the substantive determinations of our *December 2016 Order*, our *May 2018 Order* modified the *December 2016 Order* by granting PGW an additional ninety-day period in which to certify to the Commission it had ceased the automated billing practices which violate the Code and the Commission’s regulations. *See, May 2018 Order,* Ordering Paragraph No. 2.

Finally, we declined in our *May 2018 Order* to consider PGW’s request that it presented in a “Supplemental Petition” to consolidate the issue regarding PGW’s 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 PGW’s separate, general rate increase proceeding.[[8]](#footnote-8)

In response to our *May 2018 Order*, PGW filed a second Petition seeking reconsideration, rehearing, and/or clarification of issues originally considered and disposed of in the *December 2016 Order.*[[9]](#footnote-9)At that time, PGW did not Petition for Stay of compliance with our *May 2018 Order,* but as part of the reconsideration of that order, did seek qualified reconsideration of our *December 2016 Order*, “to the extent necessary or appropriate.” By our *August 2018 Order,* we denied PGW’s second request for reconsideration.

PGW’s present Petition for Stay of our *August 2018 Order* purports to also seek a stay of our prior final orders of *May 2018* and *December 2016*.

**II. Discussion**

1. **Legal Standards**

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

1. **Burden of Proof and Standard for Granting a Stay**

Section 332(a) of the Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. As to its request for a stay, the burden of proof is therefore on the Petitioner. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

The Commission has adopted the standards set forth in *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805 (1983) (*Process Gas*), in reviewing petitions which seek to stay the effect of Commission Orders. To meet the standards set forth in *Process Gas*, a petitioner must:

1. Make a strong showing of likelihood to prevail on the merits;
2. Show that denial of relief will cause irreparable injury;
3. Show that the issuance of a stay will not substantially harm other interested parties in the proceedings; and
4. Show that the issuance of a stay will not adversely affect the public interest.

502 Pa. at 552-553, 467 A.2d at 808-809. The *Process Gas* decision also provides that, when the second through fourth factors strongly support the grant of a stay, a petitioner may succeed by establishing a substantial case on the merits. *Process Gas*, 502 Pa. at 553, 467 A.2d at 809.

1. **Position of the Parties**
2. **PGW’s Petition**

PGW asserts that the Petition satisfies the *Process Gas* enumerated standards 1-4, for supporting the grant of a stay of the Commission’s orders. First, PGW submits that it has shown a likelihood of success on the merits in the present case because it has asserted “significant questions of Commission legal authority” for the Commission’s orders. Petition at 4-5.

Second, PGW submits that it has shown it will suffer irreparable harm without a stay because:

* The *Commission Orders* will adversely impact PGW’s financial stability by precluding PGW from filing municipal liens to collect unpaid gas utility bill. *Id.* at 5.
* PGW’s compliance with the *Commission Orders*, if unlawful, is *per se* irreparable harm. *Id.*
* The unrealistic timeframes for compliance set by the *Commission’s Orders* will result in PGW being found in immediate noncompliance. *Id.*
* PGW will be required to expend substantial money, time and energy to change its billing systems and practices. *Id.* at 6.

Third, PGW submits that it has shown that other interested parties will not be harmed by granting a stay because SBG is the only other interested party, and since SBG’s only interest is a monetary refund, no harm will be caused for SBG because the refund may be granted at a later date. Petition at 6.

Fourth, PGW submits that it has shown that granting the requested stay will not jeopardize public safety or harm the public interest because a stay will only delay its compliance with the *Commission Orders* that require it to conform its billing practices with Commission regulations, refund SBG, and pay penalties to the Commission at a later point in time, which does not jeopardize public safety or harm public interest. Petition at 6-7.

1. **SBG’s Answer**

In its Answer in opposition to PGW’s Petition for Stay, SBG countered that PGW failed to meet the enumerated standards 1-4 for granting a stay under Process Gas, and refuted PGW’s assertions *seriatim.*  First, SBG asserted that PGW failed under the first prong of *Process Gas* to show a likelihood of success on the merits since there is no “case of first impression” as to the Commission’s legal authority to impose the requirements of utility billing practices established by Commission regulations at Sections 56.22(a), 56.23 and 56.24 (pertaining to utility billing, application of partial payments to utility bills and imposition of late fees). SBG noted that those billing regulations have been in effect since 1978, and the percentage rate of post-judgement interest charged is controlled under the regulation as limited by case law, under *Equitable Gas Co. v. Wade,* 812 A. 2d 715 (Pa. Super. 2002). Answer at 10-13.

SBG next asserted that PGW failed under the second prong of *Process Gas* to show it will suffer irreparable harm in the absence of a stay because:

* The *Commission Orders* requiring PGW billing practices’ compliance with the Code do not impact PGW’s financial stability or ability to recover unpaid utility bills, because the orders do not preclude PGW from exercising its municipal right to docket liens in the Court of Common Pleas for municipal claims. Answer at 13‑14.
* PGW fails to show that the *Commission Orders* cause PGW *per se* harm as unlawful orders because they clearly fall under the Commission’s regulatory authority to ensure that utilities conduct billing practices in good faith and in accordance with long-standing billing practices established for consumer protection under the Public Utility Code. *Id.* at 14-15.
* PGW fails to show that the *Commission Orders* impose an unrealistic compliance period of ninety days because the Commission’s decision regarding the time period for compliance gave important reasons for rejecting PGW’s proposed lengthy compliance period of fifty-seven weeks. The reasons included that PGW was on notice of the potential compliance violation since 2011; PGW has acted in bad faith in not disclosing its practices to either the Commission or consumers; PGW’s unlawful billing practice impacts not only SBG but also any similarly situated PGW customer; that ninety days was sufficient time to perform any necessary billing modifications; and that, as a municipal utility for the City of Philadelphia, PGW already has a model for Commission-compliant billing practices to follow in the Philadelphia water department, which is also governed by the Commission’s billing regulations. *Id.* at 15-17.
* PGW fails to show that the *Commission Orders* will cause PGW to expend substantial money, time and resources which is unlikely to be recovered by PGW in a future rate case because as a municipal gas utility for the City of Philadelphia, PGW could easily adopt Commission-compliant billing practices already established by the municipal water authority for the City of Philadelphia, the Philadelphia Water Department, but continues to refuse to do so, as it now admits, because of PGW’s “conscious and intentional business decisions to maximize revenues.” *Id.* 17-18.

Under the third prong of *Process Gas*, SBG further asserted that PGW failed to show that other interested parties will not be substantially harmed by a stay because a stay will perpetuate the harm suffered by SBG and similarly situated parties which was found to be unreasonable by the Commission’s imposition of penalties for PGW’s bad faith conduct because other interested parties exist and include all similarly situated ratepayers currently receiving unlawful bills from PGW. In addition, SBG maintained that PGW’s unlawful billing practices cause harm to interested parties which is not only monetary but also legal harm. SBG noted the non-monetary legal consequences of PGW’s unlawful billing practices to the City of Philadelphia and Complainants, where, if unlawful, the PGW liens relied upon by the City of Philadelphia for the issuance of municipal bonds under the jurisdiction of the Federal Security and Exchange Commission (SEC) puts the City at risk of being found in violation of SEC requirements, and because PGW’s municipal liens impact the Complainants’ legal property rights, *i.e*., constructive mortgage defaults. Answer at 18-19.

Finally, SBG asserted that PGW had failed under the fourth prong of *Process Gas* to show that a stay will not adversely affect the public interest because all similarly situated ratepayers have an interest in PGW’s good faith billing practices in compliance with the consumer protections in place under the Code. Further, the public interest in having public utilities comply with Commission regulations and final orders is harmed by PGW’s flagrant and continued disregard of Commission billing practices harms the public interest. Answer at 18-19.

**III. Disposition**

1. **Timeliness of the Petition**

As a threshold procedural matter, we shall address the timeliness of the petition. PGW’s Petition for Stay was filed with the Commission on September 25, 2018, associated with PGW’s concurrent filing of a Petition for Review with the Commonwealth Court of our *August 2018 Order*,which referenced our *May 2018 Order* and our *December 2016 Order*. Petition at 2-3. We note that PGW’s Petition for Stay was not filed with the Commission within fifteen days of entry of any of the *Commission Orders* to which it purports to relate. Therefore, we find that the Petition for Stay is not timely, pursuant to Section 5.572(c) of our regulations.[[10]](#footnote-10),[[11]](#footnote-11)

Further, PGW’s filing of a Petition for Review of our *August 2018 Order* with the Commonwealth Court does not postpone the effect of our orders, unless specifically stayed by order of the Commission or the Commonwealth Court.[[12]](#footnote-12) See, Section 316 of the Code, 66 Pa. C. S. § 316 (providing that Commission orders are binding upon issuance, unless set aside or modified), and Rule 1701 of the Pennsylvania Rules of Appellate Procedure, Pa. R.A. P. 1701 (providing that the agency may proceed with enforcement of its order following Petition for Review).

However, the Commission may exercise its discretion to treat PGW’s Petition as timely to consider the Petition, as per Section 1.2 of Commission Regulations, 52 Pa. Code § 1.2 (pertaining to liberal construction of the regulations in the interest of just and expeditious proceedings). Further, Rule 1701 authorizes the agency to act to preserve the “*status quo*.” Pa. R.A.P. 1701.

Accordingly, we shall exercise our discretion to treat PGW’s Petition as timely and consider PGW’s Petition, in the interest of a just and expeditious resolution of the matter, as per 52 Pa. Code §1.2, and Pa. R.A. P. 1701.

1. **Merits of the Petition**

Upon review of PGW’s Petition, SBG’s Answer thereto, and the applicable law, we find that the substantive allegations by PGW in its Petition in support of its request for stay lack merit. PGW’s allegations fail to satisfy the criterion enumerated under the *Process Gas* standard, that Petitioner:

1. Make a strong showing of likelihood to prevail on the merits;
2. Show that denial of relief will cause irreparable injury;
3. Show that the issuance of a stay will not substantially harm other interested parties in the proceedings; and
4. Show that the issuance of a stay will not adversely affect the public interest.

*Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805 (1983).

As to the first *Process Gas* criterion, we find that PGW fails to establish a strong likelihood of success on the merits. PGW argues that because the matter presents a “case of first impression,” our orders are not founded on solid legal authority, such that PGW shows a strong likelihood of success on the merits. We disagree. Rather, we agree with SBG’s position in its Answer that the prior *Commission Orders* in this proceeding did not present a “case of first impression” or create new law regarding lawful utility billing practices established under Sections 56.22-24 of the Commission’s regulations. 52 Pa. Code §56.22-24. As SBG duly noted, Commission regulations governing utility billing practices have been in place since 1978, and were enacted to establish uniform billing standards for the protection of utility customers from unreasonable billing practices.

We noted in our prior orders that the Complaints raised a “case of first impression” involving PGW’s unique classification as a “city natural gas distribution operation.” In fact, PGW is the only gas utility operating under this classification in the Commonwealth. Therefore, PGW’s authority as a gas utility to collect past due balances *via* imposition of municipal liens presented a case of first impression regarding the interplay between municipal lien law and a utility tariff. *See, i.e., May 2018 Order* at 4-7, citing 66 Pa. C.S. § 2212(b).

However, our disposition of the underlying Complaints and the legal authority relied upon for the determination of whether PGW’s billing practices were unlawful and whether PGW’s conduct was unreasonable, fell squarely within our jurisdiction and broad discretion to interpret the provisions of the Code to oversee and ensure the good-faith conduct of public utilities, including implementation of our consumer protection regulations governing utility billing practices under Sections 56.22‑24 of our regulations. 52 Pa. Code §56.22–24. *December 2016 Order at 71-77.* Our disposition of the underlying proceedings was expressly limited to matters within Commission authority. *See,* *Id*.

As to the second *Process Gas* criterion, we find that PGW fails to show it will suffer irreparable harm in the absence of a stay. As a general matter, PGW’s claims of financial harm, if required to comply with the *Commission Orders*, are unsupported and do not weigh in favor of granting a stay. It is well settled in the law that financial harm is not considered irreparable.[[13]](#footnote-13) Thus, for reasons discussed in more detail below, we are unpersuaded by PGW’s arguments that the *Commission Orders* negatively impact PGW’s financial stability or preclude PGW from entering municipal liens, inflict *per se* harm as unlawful orders, impose an unreasonable compliance schedule, or would require PGW to expend “substantial money, time and energy” to implement lawful billing practice.

We note that a Petition for Stay, which asserts harm due to the financial cost of compliance with an order, should include some realistic representation or estimate of the actual financial costs, based on a reasonable calculation of the actual foreseeable costs necessary for compliance. PGW’s Petition asserted that substantial costs in “money, time and energy” are required for compliance with the *Commissions Orders*; however, these costs are completely unsubstantiated in the Petition. Petition at 5-7. PGW provided no dollar figures, no calculation based on facts, no estimated dollar amounts, no estimated labor hours required, and no estimated “energy” costs (for human energy we presume).

For example, the Verified Statement attached to PGW’s Petition in support of the general assertion of the substantial “money, time and energy” required to adjust PGW’s billing practices, expressly states that PGW *does not have an estimate of costs* to make the lien modifications required.[[14]](#footnote-14) Therefore, it appears that during the six-plus years of litigation over utility billing compliance issues, and after the three final *adverse* *Commission Orders* requiring compliance and imposing a civil penalty, PGW failed to take *any* affirmative steps toward complying with the *Commission Orders*, including to conduct a fact-based assessment of the necessary actions and determining the actual costs associated with full compliance.

We further find that PGW’s assertion that the *Commission Orders’* directives that PGW revise its billing practices to comply with the Code would adversely impact PGW’s financial stability or ability to recover unpaid utility bills is unsupported. PGW has asserted no legal basis for this claim. The *Commission Orders* do not preclude PGW from exercising its municipal right to docket liens in the Court of Common Pleas for municipal claims. PGW remains free to impose municipal liens for collection of unpaid utility bills. Further, as SBG noted, the fact that the Philadelphia Water Company operates as a municipal water utility and retains the right to file municipal liens appears to directly refute PGW’s assertion, that compliance with the Commission’s billing regulations precludes the municipal utility from filing municipal liens. Answer at 16-17.

PGW’s claim that the *Commission Orders* cause PGW *per se* harm as unlawful orders is also without merit. Petition at 5. PGW cites *PUC v. Israel*, 356 Pa. 400, 406, 52 A.2d 317, 321 (1947) as an example of a case in which a statutory violation of the Code was found to be *per se* harm.However, in *Israel*, *per se* harm was found by the court where the Commission had established a *prima facia* case for violation of the Code.

In *Israel,* the court rejected the argument that a party should be permitted to continue an unlawful practice (*i.e.*, providing taxi service without a certificate of public convenience), based on the argument that the continued violation of the Code did not cause irreparable harm. Rather, the court found that, once the Commission has established a *prima facia* case of violation of the Code, preservation of the “*status quo*” is extended back to the point in time in which the unlawful practice had not yet occurred.  *Id*. The court rejected the argument of a “wrongdoer” that they be granted the right to continue to violate the Code.

In the present case, as in *Israel*, there is *prima facia* evidence establishing a violation of the Code. Our *December 2016 Order*, which found PGW’s billing practices unlawful, established *prima facia* evidence of a violation of the Code.[[15]](#footnote-15) In the present facts, it is *SBG’s statutory rights* which have been found to be violated. Therefore, if any party, it is SBG, rather than PGW, which could raise *Israel* to claim *per se* harm due to violation of its statutory rights.

Moreover, in the present case, PGW is the “wrongdoer,” found by the Commission to have violated the Code. Like the wrongdoer in *Israel*, PGW asks the court to preserve the “*status quo*” to authorize PGW to continue its current billing practices in violation of the Code. However, in *Israel,* the court noted that “[t]he rule is ‘that the status quo . . . is the last actual, peaceable [and, we may add, lawful] noncontested status which preceded the pending controversy.’”[[16]](#footnote-16) Like the *Israel* court, we decline to grant a stay to preserve the “*status quo*” in which PGW’s billing practices constitute ongoing violations of the Code.

Further, for PGW to even allege *per se* harm in the present case, it must assert an *argument* (that the Commission’s order violates PGW’s statutory rights under the Code) that is analogous to either the *Israel* court’s finding of a *prima facia* violation of the Code, or the Commission’s final order finding that PGW’s billing practices violate the Code. PGW’s claim of *per se* harm assumes that the weight of its own argument is equal to the finding of a court or administrative agency. It is not. Therefore, PGW fails to assert a colorable claim of *per se* harm.

Similarly, PGW’s claim of irreparable harm unless a stay is granted to forestall the imposition of a compliance period of ninety days is without merit. As SBG notes, our *December 2016 Order’s* analysis of the time necessary for compliance discussed the reasons for rejecting PGW’s proposed fifty-seven-week compliance period. PGW has been on notice of the potential compliance violation since 2011 which provided PGW with ample time to plan for the contingency of compliance with Commission billing practices. Further, we agree with SBG that ninety days is a sufficient time for PGW to perform any necessary billing modifications. This is especially true given that, as a municipal utility for the City of Philadelphia, PGW already has a model to follow for Commission-compliant billing practices in the Philadelphia water department, which is also a municipal utility governed by Commission billing regulations.

We note that if PGW had reason to believe that compliance with Commission billing requirements would take considerable time, PGW’s failure to take any affirmative steps to plan for such compliance, even after a final Commission order requiring it, is curious. Rather than prepare to comply with Commission billing practices, PGW precluded the parties and the Commission from learning exactly what PGW’s unlawful billing practice entailed. Consequently, PGW was found to have violated a Commission regulation by not disclosing its practices to either the Commission or consumers. *December 2016 Order* at 104.

Finally, PGW fails to show that the *Commission Orders* will cause PGW to expend substantial money, time and resources which would be unlikely to be recovered by PGW in a future rate case. As SBG pointed out, as a municipal gas utility for the City of Philadelphia, PGW could easily adopt the same billing practices already established by the municipal water authority for the City of Philadelphia, the Philadelphia Water Department. Yet, PGW continues to refuse to provide billing practices which comply with our regulations. PGW admits that its present unlawful billing practices are PGW’s “conscious and intentional business decisions to maximize revenues.” Answer at 13-18.

As a general matter, PGW’s claims regarding irreparable harm all fail due to the fallacy of PGW’s main premise – that any harm to PGW results from the *Commission Orders*. The fact is that any harm to PGW, financial or otherwise, results from PGW’s own conduct and unlawful billing practice. Since coming under Commission jurisdiction, it appears, based on PGW’s own assertions, that PGW chose to reap substantial financial gain by unlawful billing practices which it failed to disclose to the Commission or its customers. It was PGW’s choice to adopt billing practices for financial gain which makes the financial cost to PGW necessary to bring its billing practices into compliance. In addition, the fact that PGW may not recover the costs associated with establishing lawful billing practices does not weigh in favor of finding irreparable harm, where PGW admits to financial benefit from its unlawful practices. Accordingly, we find that PGW has failed to show that, in the absence of the requested relief, it will suffer irreparable injury.

As to the third *Process Gas* criterion, we find that PGW fails to show that other interested parties will not be substantially harmed by the stay. SBG is not the only interested party. Other interested parties exist and include the other similarly-situated ratepayers who are billed by PGW. Further, the harm suffered by the SBG Complainants was found to be unreasonable to the extent we found it necessary to impose penalties due to PGW’s violations of the Code and the Commission’s regulations. As noted by SBG, PGW’s unlawful billing practices cause other non-monetary legal harm to Complainants and, potentially, the City of Philadelphia, where PGW’s liens impact Complainants’ legal property rights, and, if unlawful, liens relied upon by the City for issuance of municipal bonds under the jurisdiction of the SEC, may put the City at risk of being found in violation of SEC requirements. *See,* Answer at 19-20.

As to the fourth *Process Gas* criterion, we find that PGW fails to show that a stay will not adversely affect the public interest. As noted by SBC, all similarly situated ratepayers have an interest in PGW’s billing practices complying with the consumer protection regulations for billing practices under the Code. If we were to grant PGW a stay of the *Commission Orders* which require the same compliance with billing practices that is required of *every gas utility*, it would be unfair to every other gas utility which daily expend money, time and resources to comply with those billing regulations. It would further be unfair to ratepayers if we authorized billing in a manner which does not comply with Commission regulations.

Finally, we note again that PGW’s conduct was found to be unreasonable in the underlying proceeding, and in the separate-related consolidated cases. See*, December 2016 Order* at 111 and *SBG et al. v. PGW*, Docket No. C-2012-2304167 (Order entered September 20, 2018). PGW’s bad faith conduct regarding utility liens has been noted not only before this administrative agency, but in the civil courts by the Third Circuit Court of Appeals. *Id*. at 33. (quoting *Augustine v. City of Philadelphia*, 897 F. 3d 142 (3d Cir, 2018).

By PGW’s own Petition and SBG’s Answer thereto, it appears PGW has taken *no affirmative steps of any kind* to comply with our *December 2016 Order*. Petition at *passim*, Answer at 12, 19 (after years of litigation and three final Opinions and Orders by the Commission, PGW has not taken any corrective action to adjust its billing practices and has issued no refunds to SBG Complainants). In this regard, granting a stay in the present circumstances would harm the public interest. Therefore, we conclude that PGW fails to show that a stay will not harm the public interest.

Based on the applicable law, the allegations of the Petition, and the Answer thereto, we conclude that the Petitioner has failed to satisfy the standards enumerated under *Process Gas* to support the issuance of a stay in this proceeding. Further, given PGW’s failure to act in compliance with our *December 2016* *Order,* we shall direct that a copy of this Opinion and Order be served upon the Commission Bureau of Investigation and Enforcement (BI&E), for such enforcement action as deemed necessary.

**IV. Conclusion**

Based upon the foregoing discussion, we shall deny PGW’s Petition for Stay; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Stay filed by Philadelphia Gas Works, Inc., on September 25, 2018, is denied, consistent with this Opinion and Order.
2. That Philadelphia Gas Works shall comply with the Pennsylvania Public Utility Commission’s Opinions and Orders entered on December 8, 2016, May 18, 2018, and August 23, 2018, at the consolidated Docket Nos. C-2012-2304183, and C‑2012-2304324.
3. That a copy of this Opinion and Order shall be served upon the Commission’s Bureau of Investigation and Enforcement, for such enforcement action as deemed necessary.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 28, 2019

ORDER ENTERED: March 28, 2019

1. PGW is owned by the City of Philadelphia and is subject to Commission jurisdiction due to its classification as a “city natural gas distribution operation.” *See May 18 Order* at 4-5, citing Section 2212(b) of the Public Utility Code (Code), 66 Pa. C.S. § 2212(b). As such, 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.* [↑](#footnote-ref-1)
2. Although we find, *infra*, that PGW’s Petition for Stay was not timely filed pursuant to the Commission’s regulations at Section 5.572 (pertaining to Petitions for relief), we shall exercise our discretion to consider the Petition, pursuant to both the Commission’s regulations at Section 1. 2 (pertaining to liberal construction of regulations) and Rule 1701 of the Pennsylvania Rules of Appellate Procedure (pertaining to stay of agency orders on Petition for Review by the Commonwealth Court). 52 Pa Code § 1.2, and Pa. R.A.P. 1701. [↑](#footnote-ref-2)
3. *See,* Commonwealth Court 1291 C.D. 2018. In its Petition for Review by Commonwealth Court, PGW requested review ofthe *December 2016 Order,* *May 2018 Order* and *August 2018 Order* (collectively, the *Commission Orders*). [↑](#footnote-ref-3)
4. Below are relevant background and portions of the History of the Proceeding. For a background and a full summary of the proceedings see our *August 2018 Order* at 2-6. [↑](#footnote-ref-4)
5. SBG, as the designated real estate management agent for the property owners, was authorized to prosecute the Complaints. The Complainants are owners of multi-unit, garden-style apartment complexes located in the City of Philadelphia that receive natural gas service from PGW. [↑](#footnote-ref-5)
6. The Complaints at issue are two of a total of five Formal Complaints that were filed and subsequently consolidated for hearing and disposition by the presiding ALJ. *See* *May 2018 Order* at n.7. By Order of presiding ALJ Vero, the cases were divided into two groups for adjudication and disposition. *See* *December 2016 Order* at 1; 4-6. [↑](#footnote-ref-6)
7. In addition to the five Formal Complaints referenced, our *December 8 Order* further noted four other complaints prosecuted by SBG Management Services, Inc. against PGW on behalf of commercial property owners. *See December 2016 Order* at 6. [↑](#footnote-ref-7)
8. The issue was, however, decided by our *December 2016 Order*. Furthermore, in the PGW general rate increase proceeding that concluded last year, the issue of PGW’s allocation of partial payments made for past due bills for residential customers was addressed by the Commission in response to a complaint of the Office of Consumer Advocate (OCA). In that proceeding we concluded, *inter alia*, that the allocation practices litigated in this complaint proceeding regarding commercial customers 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-8)
9. *See* PGW Petition at 1 (PGW petition seeking reconsideration 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-9)
10. Pursuant to Section 5.572(c) of our regulations, a party’s petition for relief from a final order of the Commission, including petitions for stay, must be filed within fifteen days of entry of the final order. In the present case, our *August 2018 Order* became final when entered on August 23, 2018. *See*, 52 Pa. Code § 5.572(c). Therefore, PGW’s Petition for Stay was due to be filed within fifteen days of the issuance of the *August 2018 Order*, or by September 7, 2018 (fifteen days from August 23, 2018). Since PGW filed its Petition for Stay on September 25, 2018, PGW’s Petition was not timely filed. [↑](#footnote-ref-10)
11. Similarly, we reject the proposition that PGW’s Petition serves as a valid request for stay of our *December 2016 Order* and our *May 2018 Order.* Our prior orders were issued on December 8, 2016, and May 18, 2018, respectively. Therefore, to timely petition for stay, PGW should have filed a petition within fifteen days of entry of those orders, on or before December 23, 2016, and June 4, 2018, respectively. [↑](#footnote-ref-11)
12. We note that by filing the present Petition for Stay which relates back to our *December 2016 Order*, PGW concedes that a stay is required to forestall PGW’s obligation to comply with our *December 2016 Order*. Further, by purporting to relate back to all three orders (*December 2016 Order, May 2018 Order and August 2018 Order*), PGW’s present Petition for Stay assumes that the finality of the Commission’s *December 2016 Order* did not take effect due to PGW’s successive petitions for reconsideration. We disagree. [↑](#footnote-ref-12)
13. *See, e.g., Duquesne Interruptible Complainants v. Duquesne Light Co.*, Docket No. C-913424, (Order entered May 14, 1993) at 10 (citing *Sameric Corporation v. Gross*, 448 Pa. 497, 295 A.2d 277 (1972), *Goadby v. Philadelphia Electric Co.,* 639 F.2d 117 (3d Cir. 1981), and *Virginia Jobbers Ass’n v. Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958)). [↑](#footnote-ref-13)
14. *See*, Petition, Verified Statement of Denise Adamucci at 3, ¶ 9. [↑](#footnote-ref-14)
15. Section 316 of the Code, 66 Pa. C.S. §316 (Commission findings establish *prima facia* evidence). [↑](#footnote-ref-15)
16. See, *Israel* at 407, n.5. Citing, *Commonwealth v. Cohen*, 1942, 150 Pa. Super.Ct. 487, 489, 28 A.2d 723, 724. [↑](#footnote-ref-16)