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April 12, 2019

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' Petition for Reconsideration of the Commission's Opinion and Order entered on March 28, 2019, in the above-referenced matters. Copies are being served in accordance with the attached Certificate of Service.

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

Sincerely,



Karen O. Moury

KOM/lww
Enclosure

cc: Certificate of Service (w/enc)

CERTIFICATE OF SERVICE

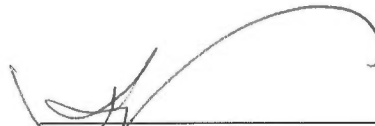
I hereby certify that this day I served a copy of PGW's Petition for Reconsideration upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and First Class Mail

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Date: April 12, 2019



Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc. / Colonial Garden Realty Co., L.P.	:	Docket No. C-2012-2304183
v.	:	
Philadelphia Gas Works	:	
SBG Management Services, Inc. / Simon Garden Realty Co., L.P.	:	Docket No. C-2012-2304324
v.	:	
Philadelphia Gas Works	:	

PETITION FOR RECONSIDERATION

Pursuant to Section 703 of the Public Utility Code¹ and Section 5.572 of the regulations of the Pennsylvania Public Utility Commission (“Commission”),² Philadelphia Gas Works (“PGW” or “Company”) files this Petition for Reconsideration of the Opinion and Order entered March 28, 2019 (“March 2019 Order”) denying the Petition for Stay Pending Judicial Review filed by PGW.

Confronting issues of first impression, the Commission entered the Orders³ which hold that a docketed lien has a preemptive effect on the Commission’s jurisdiction.⁴ The effect of the

¹ 66 Pa.C.S. § 703.

² 52 Pa. Code § 5.572.

³ For ease of reference, the term “Orders” collectively refers to Opinion and Order issued December 8, 2016 (“December 2016 Order”) and the related orders denying reconsideration that were issued on May 18, 2018 (“May 2018 Order”) and on August 23, 2018 (“August 2018 Order”) in the complaints filed by SBG Management Services, Inc./Colonial Garden Realty Co., L.P. and SBG Management Services, Inc./Simon Garden Realty Co., L.P. (“SBG”). There are, however, Opinions and Orders that were entered in two related groups of complaints. For the second group of complaints (Elrea Garden Realty Co., L.P., C-2012-2304167; Fairmount Manor Realty Co., L.P., C-2012-2304215; and Marshall Square Realty Co., L.P., C-2012-2304303) the Commission issued the Opinions and Orders dated September 20, 2018 (“September

Orders is that either (i) PGW would no longer be able to docket liens as a remedy for non-payment or (ii) PGW would have to create an entirely new billing platform and bill so that amounts subject to docketed liens are not shown on the customer's regular (Commission-jurisdictional) monthly bills, both of which options would result in PGW losing millions of dollars, all of which is to the detriment of ratepayers.

PGW's Petition for Stay requested to preserve the *status quo*, i.e., to stay any compliance, application or enforcement of Orders pending the ultimate disposition of the PGW's appeal from said Orders.⁵ As noted, the March 2019 Order denied the Petition for Stay.

Reconsideration is warranted of the March 2019 Order because the Orders address issues of first impression concerning the interplay between municipal lien law and utility tariffs. Notably, they are also contrary to clear directives of the General Assembly declaring that it is "appropriate to provide additional collection tools to city natural gas distribution operations to recognize the financial circumstances of the operations and protect their ability to provide natural

2018 Order"), which is the subject of the related appeal at Commonwealth Court Docket No. 1405 CD 2018. For the third group of complaints (Marchwood Realty Co., L.P., C-2012-2308454; Oak Lane Court Realty Co., L.P., C-2012-2308462; and Fern Rock Realty Co., L.P., C-2012-2308465), the Commission issued the Opinions and Orders dated October 4, 2018 ("October 2018 Order"), which is the subject of the related appeal at 1404 CD 2018. The September 2018 Order and the October 2018 Order expressly rely upon and affirm the Commission's Opinions and Orders in the first group, i.e., the December 2016 Order, the May 2018 Order and the August 2018 Order.

⁴ "[T]he legal effect of the municipal lien is to remove the indebtedness for the unpaid utility bill from Commission purview." December 2016 Order) at 65. The Commission characterizes "the effect of the municipal lien on the same debt as accrued pursuant to a Commission-approved tariff, as 'removed.'" December 2016 Order at 73. *See also* December 2016 Order at 65, 75-80, 109; May 2018 Order at 14, 19-24; August 2018 Order at 16.

⁵ PGW's appeals from the Order is pending at Commonwealth Court Docket No. 1291 CD 2018. As noted in footnote 3, related appeals are pending at Commonwealth Court Docket Nos. 1404 CD 2018 and 1405 CD 2018.

gas for the benefit of the residents of the city.”⁶ Given the extensive changes that PGW would have to make to its practices or system in order to comply with the Orders, and the fact that those changes could not simply be undone if PGW prevails on appeal, it is appropriate to await judicial review before PGW is forced to undertake them. Since PGW would experience irreparable harm through the loss of important collection tools and revenues, which would not be capable of being recouped and would negatively impact its paying customers, a stay is warranted. The impact on the massive volume of existing arrearages that are liened is harm that could never be repaired. Moreover, no party nor the public interest would be irreparably harmed by awaiting Commonwealth Court action before requiring PGW to make the changes directed by the Orders. PGW respectfully files this Petition for Reconsideration because it does not appear that the PUC recognized these facts or that a stay would be the most reasonable course.

In further support hereof, PGW avers as follows:

I. BACKGROUND

1. PGW is empowered — through its owner, the City of Philadelphia (“City”) — to impose municipal liens. The Public Utility Code expressly preserves the ability to use municipal liens as a collection tool.⁷ If a customer does not pay for natural gas services provided by PGW, a municipal lien on the served property is automatically created by operation of the Pennsylvania Municipal Claim and Tax Lien Law, 53 P.S. §§ 7101, *et. seq.* (“MCTLL”), and may be perfected in Philadelphia by publicly docketing the lien (i.e., the lien is entered on the public in rem index) with the Office of Judicial Records (formerly the prothonotary).⁸

⁶ 66 Pa.C.S. § 1402(4) (Chapter 14 Declaration of policy).

⁷ See 66 Pa.C.S. § 1402, 1414(a) and 2212(n). These statutory provisions — together with precedent — prohibit the Commission from interfering with PGW’s ability to lien.

⁸ 53 P.S. §§ 7106(b), 7143.

2. At the same time, the Public Utility Code, the Commission's regulations and PGW's Commission-approved tariff authorize PGW to assess a late payment charge at the rate of 1.5% per month on the overdue balance of a utility bill until service to the customer is terminated.⁹ That is the only "interest" rate applied to overdue balances (i.e., debt or arrearages) for service by PGW, whether (or not) a lien is docketed as a result of the unpaid gas bill.¹⁰

3. In issuing the Orders, the Commission held, *inter alia*, that a docketed lien has a preemptive effect on the Commission's jurisdiction.¹¹

4. Based upon that holding, the Commission concluded that once PGW docketed a lien, PGW no longer may apply rules set forth in its Commission-approved tariff to the arrearage amount giving rise to the lien¹² and may not show that arrearage amount on PGW's monthly (Commission-jurisdictional¹³) bills.¹⁴

⁹ See 52 Pa. Code § 56.22(a); Appendix B (December 2016 Order) at 45-46; PGW GAS SERVICE TARIFF, Page 26 Section 4.2 (Finance Charge on Late Payments).

¹⁰ December 2016 Order at 45.

¹¹ See footnote 4. There are two key holdings in the Orders. One relates to the Commission's jurisdiction over docketed liens. The other relates to the application of partial payments to prior basic service. The May 2018 Order notes that the partial payment issue is not final (as to system modifications or otherwise) because that issue is being considered in a different proceeding (i.e., the PGW general rate increase proceeding at Docket No. R 2017-2586783). May 2018 Order at 30-32. PGW is working with the Office of Consumer Advocate (OCA) on a settlement of that issue. That being said, based on the partial payment violation, the PGW was assessed a \$2,000 penalty for violations of the partial payment regulation, 52 Pa. Code § 56.22 (December 2016 Order at Ordering Paragraph 8) and directed to make refunds to Colonial Garden (of \$348.40 and \$218.96), totaling \$567.36 (December 2016 Order at Ordering Paragraphs 4-5).

¹² December 2016 Order at 62, 70, 71, 73, 81, 88; May 2018 Order at 17.

¹³ December 2016 Order at 73, 80, 90.

¹⁴ Additionally, based upon that jurisdictional holding, the Commission also assessed a \$25,000 penalty upon PGW (December 2016 Order at Ordering Paragraph 8) and directed PGW to make refunds to Colonial Garden (of \$94,626.23) and Simon Gardens (of \$471,351.38), totaling \$565,977.61 (December 2016 Order at Ordering Paragraphs 6-7). Both the penalty and refund are being challenged in appeal at 1292 CD 2018.

II. LEGAL STANDARDS FOR RECONSIDERATION

5. The Public Utility Code establishes a party's right to seek relief following the issuance of a decision.¹⁵ Such requests for relief must be consistent with Section 5.572 of the Commission's regulations.¹⁶

6. It is well settled that petitions made pursuant to Section 703(g) may properly raise any matters designed to convince the Commission that it should exercise its discretion under the Public Utility Code to rescind or amend a prior order in whole or in part.¹⁷ Parties are not permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them. What the Commission expects in petitions for reconsideration are new and novel arguments, not previously heard or considerations which appear to have been overlooked by the Commission. Additionally, a petition for reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.¹⁸

III. RECONSIDERATION IS WARRANTED

7. Contrary to the March 2019 Order, PGW's Petition for Stay was not untimely filed. As the March 2019 Order recognized, the fifteen-day period under Section 5.572(c) of the regulations need not be strictly applied.¹⁹ Indeed, the fifteen-day period specified in Section 5.572(c) is intended to afford the Commission the opportunity to grant reconsideration prior to the affected party filing an appeal, thereby retaining jurisdiction to reconsider its decision. In fact, the power of the Commission to grant a stay or supersedeas subsequent to an appeal to the

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

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

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

¹⁸ *Id.*

¹⁹ 52 Pa.Code § 1.2(c).

Commonwealth Court is prescribed by Pa. R.A.P. 1781.²⁰ Further, Section 703(g) permits the Commission to rescind or amend an order at any time, after notice and opportunity to be heard.²¹ PGW's Petition for Stay was essentially a request to amend the Orders so as to delay any obligation for PGW to comply with their directives pending judicial review.

8. In its Petition for Stay, PGW satisfied the criteria set forth in *PUC v. Process Gas Consumers Group*, 467 A.2d 805 (1983).²² The Commission's March 2019 Order should be reconsidered to address each of those factors and be modified to conclude that, on balance, it is appropriate to stay the effect of the Orders and preserve the status quo pending judicial review of cases that the Commission itself describes as presenting issues of first impression.²³

PGW Presented Substantial Case on Merits

9. The March 2019 Order finds that "PGW fails to establish a strong likelihood of success on the merits." March 2019 Order at 15-16. In reaching this determination, the March 2019 Order wholly overlooks the Pennsylvania Supreme Court's discussion in *Process Gas*, which states that the requirement that an applicant for a stay show that it will likely prevail on the merits should not be an inflexible rule. Specifically, the Court noted that this criterion must be considered and weighed relative to the other criteria. Explaining that the petition is being presented in the first instance to the tribunal that rendered the order being challenged, the Court explained that if "the

²⁰ A party seeking a stay pending disposition of an appeal generally must apply to the Commission for a stay, Pa. R.A.P. 1781(a), and, if that application is denied, may apply to the Commonwealth Court for a stay. Pa. R.A.P. 1781(b). Contrary to the suggestion in the March 2019 Order, there is no explicit ability for seeking a stay pending judicial review before judicial review is actually initiated.

²¹ 66 Pa.C.S. § 703(g).

²² A stay is appropriate and necessary when a moving party demonstrates that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable injury without the requested relief; (3) issuance of a stay will not substantially harm interested parties in the proceedings; and (4) issuance of the stay will not adversely affect the public interest.

²³ This is particularly true given the fact that the appeal is scheduled for oral argument in June 2019 and will likely result in a decision from the Commonwealth Court later this year. It makes no sense to require PGW to modify its practices and systems now when in just a few months, the Commonwealth Court could reverse the Commission's Orders. Also because the Court is scheduled to soon consider the issues of the appeal on the merits, PGW is reluctant to avail itself of the opportunity to seek a stay from the Court.

likelihood of success on the merits is a rigid standard, then the requirement of seeking the stay in the first instance would be a futile gesture.” *Process Gas* at n. 8. While the Court observed that it is extremely unlikely that the lower tribunal will find it likely that its order will be reversed on the merits, it recognized that “there are ample instances where the lower tribunal could find that the applicant has presented a substantial case on the merits even though it disagree.” *Id.*²⁴

10. The mere fact that this case presents issues of first impression is a sufficient basis for finding that PGW has met the standard of presenting a substantial case on the merits. Indeed, in the March 2019 Order, the Commission acknowledges that the Orders “presented a case of first impression regarding the interplay between municipal lien law and a utility tariff.” March 2019 Order at 15. This acknowledgement alone justifies a stay pending judicial review. Yet, in discussing PGW’s likelihood of success on the merits, the March 2019 Order concludes that the Orders did not present a “case of first impression” or create new law regarding lawful utility billing practices established under Section 56.22-24 of the Commission’s regulations that have been in effect since 1978. March 2019 Order at 15. It is of no consequence that the regulations in question have been in effect for 40 years. What is significant, for purposes of the *Process Gas* criterion, is that the Orders are the first time when the Commission has determined that PGW, as a city natural gas distribution operation, may not impose late payment charges pursuant to its Commission-approved tariff once it has recorded a municipal lien, and may not include arrearages that have been liened on a jurisdictional bill.

11. PGW has likewise presented a substantial case on the merits by pointing to the General Assembly’s mandates as part of Chapter 14 declaring as a matter of policy that PGW needs

²⁴ The analysis in the March 2019 Order also ignores the Commission’s own precedent stating that when “deciding whether to stay one of our orders pending appeal, this Commission should not indulge in a further review of the case. Rather, this Commission should concentrate solely on the effect our Order will have pending appeal.” *PUC v. Makovsky Brothers, Inc.*, 53 Pa. PUC 510, 511 (1979).

additional collection tools because of its financial circumstances so that it is able to provide natural gas to the residents of Philadelphia. 66 Pa.C.S. § 1402(4). This declaration of policy was implemented by the legislature through Section 1414 that explicitly entitles PGW to impose and file municipal claims against property for unpaid natural gas distribution service. 66 Pa.C.S. § 1414(a). The Orders defy these legislative directives, which essentially mandate that PGW does not have to choose between using liens and using Public Utility Code remedies to and collections; unless and until the lien is converted into a final judgment on the merits.²⁵

PGW Will Suffer Irreparable Harm Without a Stay

12. In addressing the second *Process Gas* criterion, the March 2019 Order concludes that “PGW fails to show it will suffer irreparable harm in the absence of a stay.” March 2019 Order at 16-20. The fundamental premise of this conclusion is that financial harm is not considered irreparable. What the March 2019 Order overlooks is that the rationale for financial harm not being considered irreparable is that the applicant for a stay can be made whole if it later prevails on appeal.²⁶ That is not the case in this situation.

13. The Orders primarily require PGW to remove liened sums (with or without late payment charges) from jurisdictional bills, or stop liening altogether. Taken in turn, if PGW must remove liened sums from jurisdictional bills, both the confusion suffered by ratepayers in receiving two separate “bills” (for jurisdictional arrearages and liened arrearages) will significantly diminish the effectiveness of PGW’s existing collection process, resulting in irreparable harm to PGW and its paying customers.²⁷ Alternatively, if PGW, to avoid the chaos and collection disruption that would

²⁵ See, e.g., *Equitable Gas Co. v. Wade*, 812 A.2d 715, 718 (Pa.Super. 2002) (utility is “entitled to 18% per year pursuant to the tariff until and unless it obtained a final judgment in the Court of Common Pleas).

²⁶ See, e.g., *Goadby v. Philadelphia Elec. Co.*, 639 F.2d 117 (irreparable injury does not exist when monetary damages are available).

²⁷ It is worth noting that if PGW dissociates liened arrearages from “jurisdictional debt”, PGW will be under no obligation to offer jurisdictional payment arrangements, or any other jurisdictional benefit to customers

result from stripping liened amounts from existing jurisdictional bills and also issuing separate lien bills, ceases liening and/or vacates existing liens, PGW – or rather, its paying customers – will forever lose its security interest in the properties that have used unpaid gas. If a property that could have been liened is then sold, PGW will have forever lost its certain ability to receive payment upon such sale. Similarly, if a property is mortgaged or refinanced, PGW will have lost its security priority irretrievably. Given the risk of irreparable harm to PGW’s ratepayers associated with the imposition of the Orders, it makes a great deal more sense for the Commission to stay the Orders pending the Commonwealth Court’s forthcoming determination. (PGW’s appeal is scheduled for oral argument in June.)

14. If the Commonwealth Court ultimately finds that PGW may indeed continue to impose late payment fees pursuant to its Commission-approved tariff after recording a lien, the implementation of the directives of the Orders prior to that finding will mean that PGW will have already lost countless opportunities to effectively use its bills, the lien process and/or to assess late payment fees to encourage payment by customers. In the event PGW changes its system so that late payment fees are not billed upon the recording of a lien, it will not be able to later recoup those fees or simply “undo” those system changes with incurring additional expenses. In either situation, revenues will be irrevocably lost to the detriment of ratepayers who do pay their bills because they

with respect to such arrearages that are billed separately as liens. Conceivably, PGW could docket liens immediately after the due date of any billed amount, rendering all of PGW’s arrearages outside of the purview of the Commission’s jurisdictional billing protections.

are the only source of PGW revenues and therefore will have to shoulder the burden of higher uncollectibles or the loss of revenues being generated from late payment fees.

15. In analyzing the second criterion, the March 2019 Order erroneously compares PGW to the “Philadelphia Water Company,” (actually, the Philadelphia Water Department) which is the non-jurisdictional public water utility for the City of Philadelphia. As the Philadelphia Water Department is not regulated by the Commission or subject to the Commission’s billing regulations, three key findings in the March 2019 Order that are relied upon to support denial of PGW’s Petition are patently erroneous.

16. Specifically, the March 2019 Order finds that “the fact that the Philadelphia Water Company operates as 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.” March 2019 Order at 17. The March 2019 Order also concludes that 90 days is sufficient for PGW to make the directed changes since “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.” March 2019 Order at 19. Further, the March 2019 Order suggests that “PGW could easily adopt the same billing practices already established by the municipal water authority for the City of Philadelphia, the Philadelphia Water Department.” March 2019 Order at 20. As these observations erroneously assume that the Philadelphia Water Department is subject to the Commission’s jurisdiction, which it is not, and must comply with the Commission’s billing regulations, which it does not, they can in no way be relied upon to support denial of PGW’s Petition or refute PGW’s position.

17. Moreover, despite the characterization in the March 2019 Order of the issue in this proceeding as involving “PGW’s compliance with the Commission’s billing regulations,” nothing in Section 56.22-24 of the regulations limit PGW’s ability to impose late payment charges on past due amounts that are the subject of a recorded lien under municipal lien statutes. Indeed, the only limitation set forth in those provisions on the ability of a public utility to impose late payment charges is if the Commission orders a waiver as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level. 52 Pa. Code § 56.22(d). *See also* 66 Pa.C.S. § 1409 (“The commission may *only* order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level”) (emphasis supplied). Notably, no language in the regulations or Chapter 14 of the Public Utility authorizes the Commission to order a waiver of late payment charges levied by a public utility as a result of a lien being lawfully recorded. In fact, as PGW has emphasized during this proceeding, Chapter 14 explicitly preserves PGW’s entitlement to file liens of record claims for unpaid natural gas distribution service. 66 Pa.C.S. § 1414(a). Yet, the Orders in question improperly limit PGW’s ability to impose late payment fees pursuant to its Commission-approved tariff and seek to have PGW choose between recording liens and imposing late payment charges.

18. In continuing to address irreparable harm, the March 2019 Order also contains an inaccurate discussion concerning the effect of PGW’s practices of assessing late payment charges on outstanding balances that are the subject of a recorded lien. Specifically, the March 2019 Order refers to PGW’s practices as a conscious and intentional business decision to maximize revenues. It also suggests that “PGW chose to reap substantial financial gain” through these practices and that it “was PGW’s choice to adopt billing practices for financial gain.” March 2019 Order at 20.

19. This discussion reflects a fundamental misunderstanding of PGW's operations. PGW's efforts to maximize revenues are made exclusively for the benefit of its often poor yet paying customers who effectively subsidize customers like SBG who don't pay their bills either in whole or in part or timely. As ratepayers represent the only source of revenue that PGW has as a municipal utility without shareholders, PGW reaps no "financial gain" through its use of tools that are designed to collect amounts that are owed for natural gas distribution service. Indeed, every dime that PGW collects through late payment charges and by recording liens is a dime that paying customers need not absorb or subsidize.

Other Interested Parties Will Not Be Substantially Harmed By Stay

20. The March 2019 Order finds that SBG is not the only interested party in this proceeding and suggests that other similarly situated ratepayers who are billed by PGW are also interested parties. March 2019 Order at 21. Notably, SBG is the only party in this proceeding and any adverse effect of a stay of the Orders on other ratepayers is speculative at best.

21. As to the impact on SBG's property rights resulting from the recording of a lien, PGW notes that SBG holds the power to avoid any such harm. By simply paying its bills on time and in full, instead of expecting to be carried by other ratepayers, SBG can avoid the recording of liens by PGW. Alternatively, as noted in *Augustin v. City of Philadelphia*, 897 F.3d 142, 145 (3d Cir. 2018), the MCTLL affords any lien property owner with an expedited process to contest a lien.

A Stay Will Not Adversely Affect the Public Interest

22. The March 2019 Order finds that "PGW fails to show that a stay will not adversely affect the public interest." March 2019 Order at 21. Again referring to other similarly situated ratepayers – who like SBG refuse to pay their bills in full and on time – the March 2019 Order

speculates about the effect of PGW's practices on them. Perhaps, as described in more detail above, a more compelling and relevant inquiry would be the adverse impact on paying customers of limiting PGW's legislatively-granted collection tools.

23. The March 2019 Order also refers to the effect of a stay on other gas utilities. March 2019 Order at 21. As the other gas utilities are not municipal utilities and do not file liens pursuant to the MCTTL, the effect of a stay of the Orders on them is irrelevant. Notably, no other gas utility sought to intervene or in any way influence the outcome of the Commission's decision in this proceeding as they are not statutorily authorized to file municipal liens.

Other Errors in March 2019 Order

24. The March 2019 Order refers to PGW's practices of recording liens and imposing late payment fees as constituting "bad faith conduct" that has been noted by the Third Circuit Court of Appeals in *Augustin*. March 2019 Order at 21-22. Contrary to this characterization of the *Augustin* opinion, the Third Circuit confirmed the lawfulness and validity of PGW's lien procedures. Notably, the Third Circuit did not even discuss PGW's practice of imposing late payment fees on outstanding balances that are the subject of a recorded lien. The only criticism of PGW noted by the Third Circuit related to information given by PGW to customers with respect to filing complaints with the Commission and then successfully challenging the Commission's jurisdiction to act in matters that arise under the lien law.²⁸ As the *Augustin* Court completely upheld PGW's lien procedures, it is not fair or appropriate to suggest that the Third Circuit found "bad faith conduct" regarding its general practices.

²⁸ It is also worth noting that former Commission Administrative Law Judge Marlane Chestnut provided expert testimony on behalf of PGW in the *Augustin* matter at the District Court, and opined that PGW's practice of referring liened customers who wished to file a complaint to the Commission was entirely proper, and perhaps obligatory, given that areas of the complaint might also fall within the jurisdiction of the Commission.

25. The March 2019 Order criticizes PGW for taking no affirmative steps of any kind to comply with the first order that was issued in December 2016, and suggests that the December 2016 took effect despite PGW's petition for reconsideration. March 2019 Order at 13 (n. 12), 22. This discussion overlooks the fact that PGW timely sought reconsideration of the December 2016 Order and, more importantly, that the Commission granted reconsideration, pending a review of the merits. By Order entered on December 28, 2016, the Commission acted to preserve its jurisdiction by granting reconsideration of the December 2016 Order, pending further review of, and consideration on, the merits. Those actions tolled the appellate period and relieved PGW of any duty to comply with the December 2016 Order. The same is true of the May 2018 Order of which the Commission entered an Order on June 14, 2018 granting reconsideration, pending further review of, and consideration on, the merits. While the Orders were pending reconsideration, they were not final appealable orders and, as such, were not enforceable by the Commission. See *Pennsylvania State University v. Pa. P.U.C.*, 988 A.2d 771, 776, n. 13 (Pa. Cmwlth. 2010) (When PUC grants reconsideration within the 30-day appeal period, that order has the effect of rendering "inoperative" a petition for review of the PUC's order).

26. Moreover, it would make no sense for the Commission to expect a public utility to comply with an order that is pending a review of the merits, by the Commission's grant of reconsideration. Indeed, on January 23, 2018, the Commission issued a Secretarial Letter in *Petition of UGI Utilities, Inc. – Gas Division for Approval of its Long Term Infrastructure Improvement Plan*, Docket No. P-2013-2398833, confirming that the utility did not need to provide certain data directed by an ordering paragraph pending reconsideration. That outcome is particularly appropriate in a situation where the Commission has directed costly system wide

changes with irreparably harmful financial consequences for PGW's ratepayers that cannot simply be undone if the Commission later grants reconsideration on the merits.

IV. CONCLUSION

WHEREFORE, on the basis of the foregoing, PGW respectfully requests that the Commission: (1) grant this Petition for Reconsideration; (2) enter an Order staying the compliance, application or enforcement of the Orders pending the ultimate disposition of PGW's appeal from the Orders; and, (3) grant any other relief in favor PGW as may be just and proper under the circumstances.

Respectfully submitted,



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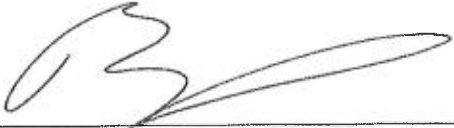
Date: April 12, 2019

Attorneys for Philadelphia Gas Works

VERIFICATION

I, Bernard L. Cummings, hereby state that I am Vice President Customer Service and Collections for Philadelphia Gas Works ("PGW"), I am authorized to make this verification on its behalf, and that the facts set forth in the attached Petition for Reconsideration are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C .S. § 4904 (relating to unsworn falsification to authorities).

April 12, 2019
Dated



Bernard L. Cummings, Vice President
Customer Service and Collections
Philadelphia Gas Works