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March 6, 2020

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./Simon Garden Realty Co., L.P. v. PGW*; Docket No. C-2015-2486642; *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. PGW*; Docket No. C-2015-2486677; *SBG Management Services, Inc./Elrea Garden Realty Co., L.P. v. PGW*; Docket No. C-2015-2486674; *SBG Management Services, Inc./Fern Rock Gardens Realty Co., L.P. v. PGW*; Docket No. C-2015-2486670; *SBG Management Services, Inc./Fairmont Manor Realty Co., L.P. v. PGW*; Docket No. C-2015-2486664; *SBG Management Services, Inc./Oak Lane Realty Co., L.P. v. PGW*; Docket No. C-2015-2486655; *SBG Management Services, Inc./Marchwood Realty Co., L.P. v. PGW*; Docket No. C-2015-2486648; and ; *SBG Management Services, Inc./Marshall Square Realty Co., L.P. v. PGW*; Docket No. C-2015-2486618;

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' Status Update Memorandum, in the above-referenced matters.

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

Sincerely,



Carl R. Shultz

CS/jls
Enclosure

cc: Hon. Eranda Vero, ALJ (w/enc)
Certificate of Service (w/enc)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing **Status Update Memorandum** 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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L.P., Fairmont Manor Realty Co., L.P., Marshall Square Realty Co., L.P., Marchwood Realty
Co., L.P., Oak Lane Court Realty Co., L.P., and Fern Rock Realty Co., L.P.*

Honorable Eranda Vero
Office of Administrative Law Judge
Philadelphia District Office
Pennsylvania Public Utility Commission
801 Market Street
Philadelphia PA 19107
evero@pa.gov

Date: March 6, 2020



Carl R. Shultz, Esquire
Attorney for Philadelphia Gas Works

SBG Management Services, Inc. / :
Marchwood Realty Co., L.P. : Docket No. C-2015-2486648

v. :

Philadelphia Gas Works :

SBG Management Services, Inc. / :
Marshall Square Realty Co., L.P. : Docket No. C-2015-2486618

v. :

Philadelphia Gas Works :

**STATUS UPDATE MEMORANDUM BY
PHILADELPHIA GAS WORKS**

Pursuant to the Order dated February 7, 2020,¹ Philadelphia Gas Works (“PGW” or “Respondent”) submits this Status Update Memorandum.

I. BACKGROUND

A. The Prior Complaints

In May 2012, the Complainants filed the formal complaints² (“2012 Complaints”) against PGW. The 2012 Complaints were divided into three groups for hearings and disposition.³

¹ <http://www.puc.pa.gov/pcdocs/1653998.docx>

² The 2012 Complaints are at the following docket numbers: C-2012-2304183 by Colonial Garden Realty Co., L.P. and SBG; C-2012-2304215 by Fairmont Manor Realty Co., L.P., and SBG; C-2012-2304324 by Simon Garden Realty Co., L.P., and SBG; C-2012-2304167 by Elrea Garden Realty Co., L.P., and SBG; C-2012-2304303 by Marshall Square Realty Co., L.P., and SBG; C-2012-2308454 by Marchwood Realty Co., L.P., and SBG; C-2012-2308462 by Oak Lane Court Realty Co., L.P., and SBG; and, C-2012-2308465 by Fern Rock Realty Co., L.P., and SBG.

³ The “first group” of complaints involves the following landlords and PUC Docket Numbers: Colonial Garden Realty Co., L.P., C-2012-2304183 and Simon Garden Realty Co., L.P., C-2012-2304324.

The “second group” of complaints involves the following landlords and PUC Docket Numbers: 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 “third group” of complaints involves the following landlords and PUC Docket Numbers: 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.

Litigation of the 2012 Complaints covered the period from May 2009 through December 2012.⁴

In 2018, the Commission entered its determinations on the 2012 Complaints.⁵

PGW filed separate timely appeals⁶ to the Commonwealth Court on portions of the Commission's determinations in the 2012 Complaints. Specifically, PGW challenged the Commission's holding that a docketed lien has a preemptive effect on the Commission's jurisdiction.⁷ It also challenged the Commission's related conclusions that once PGW elects to docket a lien, PGW (a) may no longer may apply rules set forth in its Commission-approved

⁴ With the 2012 Complaints, the partial payment refund calculations included billing periods through December 2012. *See Colonial Garden Realty Co., L.P. et al. v. PGW*, PUC Docket Nos. C-2012-2304183 and C-2012-2304324, Initial Decision dated August 21, 2015 at 45, 49. *See also Elrea Garden Realty Co., L.P., et al., v. PGW*, PUC Docket Nos. C-2012-2304167, C-2012-2304215 and C-2012-2304303, Initial Decision dated October 21, 2015 at 56, 58, 60, 62, 64, 65, 67, 68, 70, 71, 73, 74, 76, 77 and 79.

⁵ In the first group of complaints, the Commission entered the Opinion and Order dated December 8, 2016. *See Colonial Garden Realty Co., L.P. et al. v. PGW*, PUC Docket Nos. C-2012-2304183 and C-2012-2304324, Opinion and Order entered December 8, 2016 ("December 2016 Order"). PGW sought reconsideration of the December 2016 Order. Following PGW's requests for reconsideration, the Commission clarified — but did not alter — its main conclusions in the Opinions and Orders issued on May 18, 2018 and on August 23, 2018. *See Colonial Garden Realty Co., L.P. et al. v. PGW*, PUC Docket Nos. C-2012-2304183 and C-2012-2304324, Opinion and Order May 18, 2018 ("May 2018 Order"); *See Colonial Garden Realty Co., L.P. et al. v. PGW*, PUC Docket Nos. C-2012-2304183 and C-2012-2304324, Opinion and Order entered August 23, 2019 ("August 2018 Order").

For the second group of complaints the Commission issued the Opinions and Orders dated September 20, 2018. *Elrea Garden Realty Co., L.P., et al., v. PGW*, PUC Docket Nos. C-2012-2304167, C-2012-2304215 and C-2012-2304303, Opinion and Order entered September 20, 2018 ("September 2018 Order").

For the third group of complaints, the Commission issued the Opinions and Orders dated October 4, 2018. *Marchwood Realty Co., L.P., et al., v. PGW*, PUC Docket Nos. C-2012-2308454, C-2012-2308462, and C-2012-2308465, Opinion and Order entered October 4, 2018 ("October 2018 Order"). The September 2018 Order and the October 2018 Order expressly rely upon and affirm the Commission's Opinions and Orders in the first group.

⁶ PGW's appeal from the Commission's determination for the first group of complaints was docketed at Commonwealth Court Docket No. 1291 CD 2018. PGW's appeal from Commission's determination for the second group was docketed at Commonwealth Court Docket No. 1405 CD 2018. PGW's appeal from the Commission's determination for the third group was docketed at Commonwealth Court Docket No. 1404 CD 2018.

⁷ "[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.

tariff to the arrearage amount giving rise to the lien⁸ and (b) may not show that arrearage amount on PGW's monthly (Commission-jurisdictional) bills.⁹ The other issue in those determinations PGW's application of partial payments was not appealed by PGW. No other party filed an appeal from the Commission's determinations.

In December 2019, the Commonwealth Court agreed with PGW and reversed the Commission's incorrect legal findings.¹⁰ In doing so, the Commonwealth Court correctly decided that there are no "consequences" to the Commission's jurisdiction from the mere docketing of a municipal lien. This means that (1) the Commission can review the unpaid amounts on a utility bill (arrearage or indebtedness) and (2) PGW can apply late payment charges, as set forth in PGW's Commission-approved tariff, to unpaid amounts on a utility bill — even when those unpaid amounts are subject to a docketed municipal lien.

On January 8, 2020, SBG, Colonial Garden Realty Co., L.P., and Simon Garden Realty Co., L.P., filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court¹¹ seeking judicial review of the Commonwealth Court's (Published) Opinion and Order at Docket No. 1291 CD 2018.¹² PGW filed an answer in opposition to that Petition on January 22, 2020. At this time, the Supreme Court has not acted on SBG's Petition.

⁸ See December 2016 Order at 62, 70, 71, 73, 81, 88; May 2018 Order at 17.

⁹ See December 2016 Order at 73, 80, 90.

¹⁰ *PGW v. PUC*, Commonwealth Court Docket No. 1291 CD 2018, __ A.3d ___, 2019 Pa. Commw. LEXIS 1081, 2019 WL 6690588; *PGW v. PUC*, Commonwealth Court Docket No. 1405 CD 2018, 2019 Pa. Commw. Unpub. LEXIS 664, 2019 WL 6698105; *PGW v. PUC*, Commonwealth Court Docket No. 1404 CD 2018, 2019 Pa. Commw. Unpub. LEXIS 666, 2019 WL 6698103.

¹¹ Pennsylvania Supreme Court Docket No. 21 EAL 2020.

¹² *PGW v. PUC*, Commonwealth Court Docket No. 1291 CD 2018, __ A.3d ___, 2019 Pa. Commw. LEXIS 1081, 2019 WL 6690588;

B. The 2015 Complaints

On May 29 2015, the Complainants filed the subject formal complaints¹³ (“2015 Complaints”) against PGW. The 2015 Complaints were commenced as “protective filings” to prevent the running of the statute of limitations on the Complainants’ right to seek refunds/credits for the additional billing periods beyond those litigated in the 2012 Complaints.¹⁴

In July 2016, at the request of PGW and the Complainants, ALJ Vero stayed each of the 2015 Complaints.¹⁵

II. UPDATE ON FACTUAL AND LEGAL ISSUES

Pursuant to the Order entered dated February 7, 2020,¹⁶ PGW submits the following update on the factual and legal issues in the 2015 Complaints:

A. Incorrect charges on gas bills from PGW

At this time, these issues are not resolved. The 2015 Complaints make two allegations regarding alleged incorrect charges on gas bills from PGW. Each allegation is discussed below.

¹³ The 2015 Complaints are at the following docket numbers: C-2015-2486677 by Colonial Garden Realty Co., L.P. and SBG; C-2015-2486664 by Fairmont Manor Realty Co., L.P., and SBG; C-2015-2486642 by Simon Garden Realty Co., L.P., and SBG; C-2015-2486674 by Elrea Garden Realty Co., L.P., and SBG; C-2015-2486618 by Marshall Square Realty Co., L.P., and SBG; C-2015-2486648 by Marchwood Realty Co., L.P., and SBG; C-2015-2486655 by Oak Lane Court Realty Co., L.P., and SBG; and, C-2015-2486670 by Fern Rock Realty Co., L.P., and SBG.

¹⁴ On their face, the 2015 Complaints cover the time period from May 29, 2012 through May 29, 2015. (May 29, 2012 is three years before the date when the Complainants filed the 2015 Complaints. *See* 66 Pa.C.S. § 3314). However, the periods from May 2012 through December 2012 were covered in the 2012 Complaints. *See* footnote 4.

¹⁵ *See, e.g.,* <http://www.puc.pa.gov/pdocs/1455642.doc>.

¹⁶ <http://www.puc.pa.gov/pdocs/1653998.docx>

1. PGW's application of late payment charges under its Commission-approved tariff

In the 2015 Complaints, SBG is seeking to challenge PGW's application of late payment charges under its Commission-approved tariff.¹⁷ As noted above, this issue was decided against SBG by the Commonwealth Court but, as of this date, that Commonwealth Court opinion and order is the subject of a pending Petition for Allowance of Appeal to the Supreme Court.

2. PGW's application of partial payments

In the 2012 Complaints, the Complainants raised an issue regarding whether PGW was properly applying partial payments of arrearages to past due amounts and properly computing late payment charges on the remaining balances. The Commission directed limited refunds based on a different application of partial payments.¹⁸

PGW did not appeal the Commission's determination on that the partial payments issue. In addition, a compliance plan regarding PGW's application of partial payments was approved by the Commission in a separate proceeding and PGW has modified its billing system to apply partial payments in accordance with the PUC's Order.¹⁹ No timely appeal was taken from that approval in June 2019.²⁰

¹⁷ See Joint Motion for a Further Stay of Proceedings dated June 8, 2016, at ¶ 3.

¹⁸ In the first group of complaints, the Commission directed a "partial payment" refund of \$567.36. See December 2016 Order at Ordering Paragraphs 3 and 4. In the second group of complaints, the Commission directed a "partial payment" refund of \$2,582.49. See September 2018 Order at Ordering Paragraphs 4 to 18. In the third group of complaints, the Commission directed a recalculation. See October 2018 Order at Ordering Paragraphs 2 and 6.

¹⁹ The compliance plan is articulated in the Commission-approved Settlement (<http://www.puc.state.pa.us/pcdocs/1615821.pdf>) at PUC Docket Nos. R-2017-2586783; C-2017-2592092; C-2017-2593497; C-2017-2595147; C-2017-2593903.

²⁰ The order approving the Settlement in PUC Docket Nos. R-2017-2586783; C-2017-2592092; C-2017-2593497; C-2017-2595147; C-2017-2593903 can be found at: <http://www.puc.state.pa.us/pcdocs/1625692.docx>.

In the 2015 Complaints, the Complainants disputed PGW's application of partial payments to their accounts.²¹ PGW is examining the account history for the accounts in the 2015 Complaints according to the partial payments analysis articulated in the 2012 Complaints (and the compliance plan). That being said, there is no present agreement as to the amount(s) due to Complainants based on re-application of partial payments made by the Complainants. Accordingly, an issue that needs to be resolved is the amounts due to the Complainants as a result of the reapplication of partial payments and how and in what form these amounts should be credited to the Complainants.

B. Threats to Terminate Gas Service To The Complainants

The 2015 Complaints raise an issue concerning threats to terminate service to the Complainants. This issue is resolved, since service to the Complainants was not terminated by PGW in 2015. In April 2015, PGW served Notices for Termination of Service (37-day Notice for Landlords) for extended nonpayment of the Complainants' accounts.²² PGW did not suspend or terminate service in 2015 based on said Notices after the commencement of Complainant's 2015 Complaints.

C. Problem with Gas Service

The 2015 Complaints also raised a problem with the Complainants' gas service. This issue is resolved, since PGW's inspections and testing revealed that the meters and automatic meter reading devices ("AMRs") were functioning properly. In the 2015 Complaints, the Complainants dispute the validity of the meter readings (and/or estimates) used by PGW. In

²¹ See Joint Motion for a Further Stay of Proceedings dated June 8, 2016, at ¶ 3.

²² See PGW Answer at ¶ 4.

August 2015, the parties entered into an agreement regarding the inspection of the Complainant's apartment building(s).²³ The Complainants' apartment building(s) were visited, in 2015 and 2016, according to an agreed-upon schedule. Testing established that the gas meters were accurate. Upon inspection, nothing indicated any issues with the AMRs.

III. PROCEDURAL SCHEDULE

PGW submits that each of the 2015 Complaints should continue to be stayed pending the final disposition of the appeal by SBG to the Pennsylvania Supreme Court. Once the Supreme Court finally acts, a pre-hearing conference should be scheduled to determine how to resolve the remaining issues. PGW will keep the presiding officer informed of any relevant actions by the Pennsylvania Supreme Court.

IV. SETTLEMENT

PGW is willing to participate in settlement discussions with the Complainants.

[Signature appears on next page]

²³ Joint Motion for a Further Stay of Proceedings dated June 8, 2016, at ¶ 1-2.

Respectfully submitted,



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Date: March 6, 2020

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