

Carl R. Shultz  
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July 6, 2021

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
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;

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Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' Status Update Letter for 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: Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the foregoing **Letter** upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section.

**Via Email Only**

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Colonial Garden Realty Co., L.P., Simon Garden Realty Co., L.P., Elrea Garden Realty Co.,  
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](mailto:evero@pa.gov)



Date: July 6, 2021

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Carl R. Shultz, Esquire  
Attorney for Philadelphia Gas Works

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**Via Email**

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Dear Judge Vero:

This letter constitutes the status update by Philadelphia Gas Works (“PGW” or “Respondent”), as requested by your email dated June 22, 2021.

Due to the orders of the Pennsylvania Supreme Court<sup>1</sup> and for the reasons set forth below, PGW submits that the above Complaints should continue to be stayed pending the final disposition of the appellate proceedings before the Courts.

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<sup>1</sup> The Supreme Court issued an Opinion and Order on April 29, 2021. *PGW v. PUC*, 249 A.3d 963 (Pa. Apr. 29, 2021), 2021 Pa. LEXIS 1878, 2021 WL 1681311. Upon reconsideration, the Supreme Court modified that Order, as noted in the email (of June 22, 2021) from Laureto Farinas, to remand outstanding issues to the Commonwealth Court. That email also attached a copy of the Reconsideration Order of the Pennsylvania Supreme Court.

Rule 1701 of the Pennsylvania Appellate Rules of Practice<sup>2</sup> continues to divest the Commission of jurisdiction over the “2012 Complaints.”<sup>3</sup> That rule provides that the Commission may no longer proceed in the matter during the pendency of appellate proceedings.

The Pennsylvania Supreme Court in its Orders remanded the appellate proceeding regarding the 2012 Complaints to the Commonwealth Court to address “any outstanding issues.”<sup>4</sup> PGW believes that the outstanding issues to be addressed by the Commonwealth Court include PGW’s constitutional due process argument or PGW’s challenges to the refund, penalty, and corrective action portions of the PUC orders<sup>5</sup>, as well as other issues

No subsequent action has been taken to date by the Commonwealth Court. Jurisdiction, therefore, remains with the Commonwealth Court.

Certain issues in (and any related remedies requested by) the 2015 complaints, such as the remedies for inclusion of amounts subject to a docketed lien (i.e., deemed a judgment by the Supreme Court) on a jurisdictional bill,<sup>6</sup> are still subject to the appeal regarding the 2012 Complaints. That being said, PGW acknowledges that the amounts due to the Complainants as a result of the reapplication of partial payments, if any, and how and in what form these amounts should be credited to the Complainants were not subject to said appeal<sup>7</sup> and have not been resolved in 2015 Complaints.

The other issues raised by the 2015 Complaints (which are not discussed above) have been resolved, as discussed in PGW’s prior status report.<sup>8</sup>

Accordingly, as noted above, PGW submits that the 2012 and 2015 Complaints should continue to be stayed pending the final disposition of the appellate proceedings before the Courts. While the ALJ could move forward to resolve the allocation of partial payments issues in both appeals,

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<sup>2</sup> Pa.R.A.P. 1701(a).

<sup>3</sup> The description of the 2012 Complaints and the related appellate proceedings is set forth in PGW’s last status report, which is available at: <https://www.puc.pa.gov/pcdocs/1657366.pdf>.

<sup>4</sup> See footnote 1.

<sup>5</sup> 222 A.3d 1218, 1221 (Pa.Cmwth. 2019) (paraphrasing the five separate and distinct issue that PGW raised on appeal to the Commonwealth Court, which included that “[t]he Commission violated PGW’s constitutional due process rights by announcing, applying, and enforcing a new legal interpretation against PGW without prior notice,” and “[t]he Commission’s monetary civil penalty imposed against PGW was not supported by substantial evidence, and its imposition constituted arbitrary and capricious action and/or an abuse of discretion”).

<sup>6</sup> This issue does include credits or refunds on judgments for the reason stated in the above footnote.

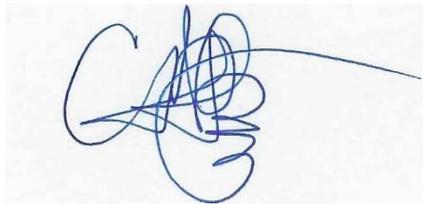
<sup>7</sup> See PGW’s 2020 Status Report at 6, which is available at: <https://www.puc.pa.gov/pcdocs/1657366.pdf>. The Commission is therefore not barred from proceeding to finally resolve said issues. It should be noted, however, that in January, 2020, PGW modified its billing system to change the way in which partial payments are applied. The modification to PGW’s billing system to modify partial payment application was implemented as of January 24, 2020. That date creates the end-date for the Complainants’ claims regarding the application of partial payments.

<sup>8</sup> <https://www.puc.pa.gov/pcdocs/1657366.pdf>

it would be more efficient to hold those issues in abeyance until the Commonwealth Court concludes its review and the Appeal is completed. Once the appellate proceedings are concluded, 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 Courts.

If you have any questions regarding this filing, please contact either Dan Clearfield (dclearfield@eckertseamans.com;717-237-7173) or me at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to be 'C. Shultz', with a long horizontal line extending to the right.

Carl R. Shultz  
CS/jls

cc: Michael Yanoff, Esquire (via email only)  
Donna S. Ross, Esquire (via email only)