

*Direct Testimony of Kathy Treadwell*

1 **Q: PLEASE STATE YOUR NAME AND POSITION WITH THE COMPANY AND**  
2 **YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND..**

3 A: My name is Kathy Treadwell. My position with SBG is that of Accountant. I have a  
4 Bachelor of Science degree in Business and Accounting from Chestnut Hill College. Prior to  
5 working for SBG Management Services, Inc, I worked as a Senior Tax Accountant and Auditor  
6 for PriceWaterhouseCoopers and as a Senior Tax Accountant for Johnson Matthey, Inc.

7  
8 **Q: HOW LONG HAVE YOU BEEN EMPLOYED AT SBG MANAGEMENT**  
9 **SERVICES, INC. AND HOW LONG HAVE YOU HELD THIS POSITION?**

10 A: I have been an Accountant with SBG Management Services, Inc. since 2011.

11  
12 **Q: HAVE YOU EVER PROVIDED TESTIMONY BEFORE THIS COMMISSION?**

13 A: Yes. I have testified on August 30, 2013 and again on January 29, 2015 in the matters  
14 SBG Management Services, Inc/Colonial Gardens v. PGW, Docket No. C-2012-2304183 and  
15 SBG Management Services, Inc./Simon Gardens v. PGW, Docket No. C-2012-2304324. In  
16 addition, on February 10, 2015, I gave testimony in the matters SBG Management Services,  
17 Inc/Fairmount, Docket No. C-2012-2304215, SBG Management Services, Inc/Elrae, Docket No.  
18 C-2012-2304167; and SBG Management Services, Inc/Marshall Square, Docket No. C-2012-  
19 2304103,

20 **Q: WHAT ARE YOUR VARIOUS JOB RESPONSIBILITIES?**

21 A: I am responsible for reviewing all accounts payable activities for the company including  
22 the payment of utility bills for the properties managed by SBG Management Services, Inc. I  
23 routinely review the PGW bills and issue payments accordingly, once they are reconciled. Since  
24 starting at SBG Management, I have devoted nearly 75% of my working hours to trying to  
25 understand the billing practices, underlying accounting methods and PGW's methodology of

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1 applying customer payments to reconcile the PGW gas accounts for the properties managed by  
2 SBG Management Services Inc. and for the subject properties for these consolidated cases.

3 I have also investigated the accounting practices and tried to ascertain the information  
4 and accounting methods imposed by PGW to determine the basis upon which PGW has imposed  
5 liens on the subject properties. PGW's accounting practices relative to its lien collection policies  
6 and practice have forced SBG Management's subject properties into default and has subjected  
7 SBG managed properties to foreclosure actions resulting from PGW's lien collection practices. I  
8 have other accounting duties at SBG Management Services, Inc., however, the majority of my  
9 time is spent trying to obtain information from PGW and understand the accounting, billing and  
10 collection practices of PGW as it relates to the SBG Management Services gas accounts for the  
11 properties that they manage and are the subject properties of these consolidated matters.

12 **Q. WHAT INFORMATION HAVE YOU RELIED UPON IN GIVING YOUR**  
13 **TESTIMONY TODAY?**

14 A. With respect to these consolidated matters and the cases for which I am giving testimony,  
15 I have reviewed all emails, correspondence, and written communications, from the early 2000's  
16 to the present, made between SBG Management Services, Inc. and its managed properties and  
17 PGW.<sup>1</sup> I also reviewed all PGW documents received through the discovery process, which  
18 included PGW documented contact screens, and other documented PGW information, such as  
19 statement of accounts and the late payment analysis provided with those statement of account,  
20 along with engaging directly with PGW personnel since 2011 in an effort to obtain an

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<sup>1</sup>See Appendix/Exhibit SBG FMO 1 - Correspondence attached hereto as SBG FMO 1 - Appendix/Exhibit 1

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1 explanation from PGW regarding the billing, nomenclature, collection and accounting practices  
2 PGW enlists to resolve Complainant's long-standing disputes with PGW.

3 **Q. BASED UPON YOUR REVIEW, CAN YOU DESCRIBE COMPLAINANTS'**  
4 **EFFORTS TO RESOLVE ITS GRIEVANCES WITH PGW AND PGW'S RESPONSES**  
5 **TO THOSE GRIEVANCES?**

6 A. Based upon my review and personal interaction, I conclude that for many years, as far  
7 back as 2001, SBG Management has been in consistent dialogue with PGW personnel requesting  
8 breakdowns of its accounts, including but not limited to, requesting the manner, methodology  
9 and mathematical calculations as to how PGW applies/posts payments and calculates finance  
10 charges to Complainants' managed properties' gas accounts.

11 SBG has repeatedly requested information on the manner and methodology PGW uses to  
12 verify and assess liens and lien interest to SBG accounts. Throughout the years, despite  
13 numerous interventions by PGW in the way of voluntarily suspending collection efforts or  
14 waiving late payment charges, while PGW promised to investigate Complainant's grievances,  
15 and interactions with PGW personnel, such as former Director of Commercial Resource Center,  
16 John Dunn and current Director of Commercial Resource Center, Ralph "Ted" Savage, along  
17 with dialogues with numerous PGW legal department personnel and attorneys, who engaged  
18 with Complainant's and took actions on SBG gas accounts, actions which appeared to  
19 Complainants to be good faith efforts to resolve Complainants' grievances. Often times, PGW  
20 personnel would respond with emails that "they[sic] were looking into [SBG's questions] it, and  
21 would get back to you".<sup>2</sup> Many PGW personnel indicated to SBG that they would look into  
22 grieved matters and supply Complainant's with the information regarding the application of

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<sup>2</sup>See Appendix SBG FMO 1 - Correspondence attached hereto, eg, Year 2009, All.correspondence\_binder 0019

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1 payments, which Complainants' sought to decipher PGW's accounting methodology and billing  
2 practices, nevertheless, despite many years of dialogue and feigned action, PGW failed to  
3 provide SBG with satisfactory responses and explanations to its' inquiries, grievances and  
4 disputes.<sup>3</sup>

5 **Q. HAVE THE COMPLAINANTS EVER RECEIVED A WRITTEN EXPLANATION**  
6 **OR PUBLIC UTILITY REPORT FROM PGW ON THE GRIEVANCES RAISED ON**  
7 **THE APPLICATION OF ITS PAYMENTS AND PGW'S METHODOLOGY OF**  
8 **ACCOUNTING FOR COMPLAINANTS' PAYMENTS ON ITS ACCOUNTS.**

9 A. No. PGW has not offered or sent any written explanations or public utility reports  
10 received by Complainants for these properties which are the subject of these Complaints.

11  
12 **Q: WHAT FORMAL COMPLAINTS WILL YOUR TESTIMONY ADDRESS?**

13 A: My testimony will address the allegations alleged the Complaints filed in SBG  
14 Management Services, Inc./Marchwood Realty v. Philadelphia Gas Works, Docket No. C-2012-  
15 2308454; SBG Management Services, Inc./Oaklane Realty Co., LP v. Philadelphia Gas Works,  
16 Docket No. C-2012-2308462; and SBG Management Services, Inc./Fernrock Realty v.  
17 Philadelphia Gas Works, Docket No. C-2012-2308465.

18 For all of the above-referenced consolidated matters the Disputed Transactions are  
19 limited to Categories F and K. Dispute category F relates to all late payment charges and the  
20 application of payments for the SBG Management accounts from their inception through  
21 December 10, 2012, the date that ALJ Vero has set as the cut off date for these Complaints.

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<sup>3</sup> See SBG FMO Appendix/ Exhibit 1 – example given: Correspondence year 2009 – All correspondence binder pages 00190 – 00194; Correspondence Year 2010 – All correspondence binder pages 002747 – 00250 and 00275 - 00280

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1     However, our complaint and review of the information obtained through the discovery process  
2     shows that PGW's scheme of re-ordering payments out of time and misapplying payments to its  
3     gas accounts is a long-standing cumulative practice that PGW has maintained since prior to the  
4     inception of Complainants' accounts and an accounting scheme that PGW continues to its  
5     cumulative practice to date; a practice that was not disclosed by PGW and was not known by  
6     Complainant until revealed through discovery in the summer of 2014.

7             Dispute category K relates to all other matters in which PGW has violated the tariff, laws,  
8     rules and regulations codified under the Public Utility Code and its related statutes.

9             My testimony will address the efforts SBG et al has made over the years to obtain a  
10     satisfactory explanation from PGW regarding the myriad of issues, including but not limited to,  
11     the manner, methodology, accounting practices, policies and verification processes on PGW's  
12     application of payments, imposition of finance charges and liens, and assessment of interests  
13     and penalties imposed on SBG gas accounts.

14             In addition, I will testify that only since the filing of these complaints and through the  
15     information derived from the discovery process, SBG has only recently discovered that PGW  
16     has a long-standing accounting practice of re-ordering/re-sequencing of payments out of time  
17     and posts payments to account balances in a manner that exacerbates principle balances by  
18     applying payments to eradicate late charges and other non-recurring fees first before retiring gas  
19     usage charges. This practice is unreasonable, unfavorable to the customer and effectually causes  
20     compounded interest to accrue on customer accounts in contravention of the Public Utility rules,

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1 regulations and the approved tariff, which by statute limit finance charges to 18% per annum  
2 simple interest.<sup>4</sup>

3 Moreover, I will testify to PGW's practice of charging 18% compounded interest on  
4 amounts determined by judgment in the form of liens filed with the Court of Common pleas  
5 which should not exceed more than 6% interest per annum.<sup>5</sup>

6 Furthermore, I will discuss that PGW has failed to provide reasonable service by failing  
7 to address the Customer's grievances in a timely manner and dragged out discussions, attempts  
8 at resolution and mislead the Customer into believing that PGW was acting in good faith to  
9 resolve disputes and failed to file a Public Utility report in accordance with 52 Pa.Code  
10 §56.151(5)(i), 56.152(4), 56.381(5)(i) and 56.382(d), whereby anything less than a Customer's  
11 indication of satisfaction of the grievance, the utility would file a public utility report which  
12 would contain a statement that an informal complaint shall be filed with the Commission to  
13 ensure the preservation of the Complainants' rights.

14 In addition, I document the fact that PGW has re-ordered (or re-sequenced) SBG charge  
15 balances before posting those payments against interest-bearing principal. I also illustrate how  
16 PGW has misappropriate lien interest by applying 18% interest per annum on post-judgment  
17 balances reduced to lien judgments, which is a contravention of 42 Pa.C.S. § 8101 which  
18 allows for only 6% interest per annum on judgments.

19

20 **Q: PLEASE SUMMARIZE YOUR DIRECT TESTIMONY.**

21 **A. My Direct Testimony is presented in the following parts:**

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<sup>4</sup> See 52. Pa.Code §56.22

<sup>5</sup> See 52 Pa.Code §56.22 and 42 Pa.C.S. § 8101 (relating to interest on judgments) limits post-judgment interest to 6% per year unless otherwise provided by another statute, it supersedes the regulation that provides for 18% interest per year on amounts owed to a public utility. *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002).

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- 1           ➤ In Part 1, I document the fact that PGW has re-ordered (or re-sequenced) SBG  
2           Management payments<sup>6</sup> to post those payments against non-interest-bearing late  
3           payment charge balances before posting those payments against interest-bearing  
4           principal;
- 5           ➤ In Part 2, I consider whether this re-ordering of payment posting is “just and  
6           reasonable” in light of fundamental public utility regulatory principles;
- 7           ➤ In Part 3, I consider whether this re-ordering of payments is “just and reasonable”  
8           when measured against the principle of “good faith and fair dealing”;
- 9           ➤ In Part 4, I consider the appropriate interest rate to be applied to a utility late  
10          payment once a lien has been placed on the customer’s account;
- 11          ➤ In Part 5, I consider the issue of when an “inquiry” becomes a “dispute” for  
12          purposes of tolling late payment charges;

13

14 **Q: PLEASE EXPLAIN SBG MANAGEMENT SERVICES, INC.’S POSITION ON**  
15 **THE PGW DISPUTE WITH THE ASSESSMENT O LATE PAYMENT CHARGE.**

16 A: In reviewing a PGW bill, there is no way to discern the hierarchy in which a payment is  
17 applied to an account. If the account has more than one SA, which stands for Service Agreement,  
18 the SA’s are broken down by commodity charges, distribution charges, taxes and late fees,  
19 however, when payments are made on each account, the payments are not reflected on how  
20 much of the payment is applied to each SA. Nor is the methodology evident as to the order in  
21 PGW posts payments to each account. Even in reviewing a Statement of Account which PGW  
22 may supply in response to a request, the manner and order in which payments are posted is not

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<sup>6</sup> My references to “SBG Management” should be construed collectively to incorporate all Complainants in this proceeding. Sometimes, the petitioners will collectively be referred to as “the Customer.”

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1 clearly explained or apparent upon review and inspection. It wasn't until Complainants' received  
2 a sample of a late payment analysis which was the subject of multiple Motions to Compel and  
3 Orders by the Commission for PGW to produce the late payment analysis did it become clear to  
4 Complainants the accounting methods PGW uses to post payments to gas accounts. We first  
5 received this information in response to discovery and an Order compelling PGW to respond in  
6 the summer of 2014, two years after the filing of these Complaints, and nearly 12 years after  
7 Complainants requested such information. Upon reviewing the late payment analysis for one of  
8 the accounts and SA's in question, I noticed that payments received by PGW were first applied  
9 to late payment charges before they were applied to gas usage charges.

10 When reading the tariff, Chapter 56 of the Public Utility Code, and the statutes pertaining  
11 to late payment charges, application of payments and application of partial payments, along with  
12 reading Chapter 62.74 and 62.75(c)(10) of the Public Utility Code pertaining to the billing  
13 format and customer disclosures, the regulations call for a hierarchy of charges on the bill, with  
14 Commodity charges and customer charges appearing before late payment charges.

15 **Part 1. Re-Ordering of the Posting of Customer Payments.**

16 **Q. PLEASE DESCRIBE THE PURPOSE OF THIS SECTION OF YOUR**  
17 **TESTIMONY.**

18 A. In this section of my testimony, I document the fact that PGW has re-ordered  
19 SBG Management payments to apply those payments against newer non-interest-bearing late  
20 charges before applying those payments against older interest-bearing principal. This re-  
21 sequencing<sup>7</sup> occurred within the context of PUC regulations which state that a utility may not

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<sup>7</sup> Throughout my testimony, "re-ordering" a payment and "re-sequencing" a payment are used interchangeably.

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1 charge a late fee exceeding 18% annual simple interest.<sup>8</sup> Being limited in the interest rate  
2 allowed, PGW's re-sequencing of the posting of payments maximizes the size of the unpaid bill  
3 against which that interest rate would be charged.

4 In undertaking my analysis, it is clear that SBG Management missed multiple months of  
5 payments. Each new missed payment meant that the cumulative unpaid bill, as well as the  
6 cumulative unpaid late fee, became bigger. Pursuant to PUC regulations, the cumulative unpaid  
7 bill balance was charged a late fee by PGW, while the cumulative unpaid late fee balance was  
8 not. SBG Management eventually made a large payment, albeit a payment that was still not  
9 sufficient to pay all outstanding balances.

10 Rather than applying the payment against the oldest bill first, let alone the oldest unpaid  
11 principal first, PGW instead applied the payment against the non-interest-bearing late fees,  
12 leaving the interest-bearing bills outstanding. Under this posting order, by way of example, the  
13 utility paid the May, June, July (etc.) late fees before paying the unpaid January, February,  
14 March (etc.) bills. Only when all of the non-interest-bearing late fees had been retired was the  
15 balance of the payment (if any) then applied to reduce the oldest interest-bearing unpaid  
16 principal balance. To understand the re-sequencing of payments to maximize fees, it is  
17 necessary to follow the flow of dollars through the Customer's account.

18 **Q. PLEASE EXPLAIN THE METHODOLOGY AND INFORMATION THAT YOU**  
19 **USED TO SUPPORT SBG'S THEORY THAT PGW'S MISAPPLICATION OF**  
20 **PAYMENTS HAS RESULTED IN OVERPAYMENTS BEING MADE TO PGW BY**  
21 **SBG.**

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<sup>8</sup> In saying "simple interest," what the PUC has said is that a utility may not charge a late fee on unpaid late fees (that would be "compound interest").

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1    **A.**           There are two parts to this analysis. The first part is determined by reviewing the  
2    statement of accounts for each of the gas accounts and the Late Payment Analysis we received  
3    from PGW through the discovery process. During my review I noticed that when a partial  
4    payment is applied to the account, that PGW's analysis shows that the cumulative late payment  
5    charges are wiped to \$0, after the payment was applied. That gave me reason to believe that  
6    PGW applies partial payments and any full payments made on each account to cumulative late  
7    payment charges first before applying payments to principle gas consumption. In reviewing the  
8    PGW tariff at 4.2 and the Public Utility Code and Regulations, specifically at 52 Pa. Code  
9    sections 56.23, 56.22 and 62.74 and 62.75(10), I denote that the billing format and the requisite  
10   disclosures state that the hierarchy of payments and methodology of application of payments  
11   should post payments in the order of applying sums to principle commodity charges and  
12   customer charges first. Late payments and finance charges are listed as number 7 in the  
13   hierarchy. When PGW re-orders payments to wipe out late payment charges first and then  
14   applies remaining sums to principle gas charges, the result is that PGW reduces non-interest  
15   bearing charges and overstates the cumulative interest bearing charges which become eligible  
16   for future finance charges. (ie. Late payment charges) PGW's accounting practice and  
17   methodology for application of payments to customer accounts artificially inflates the amounts  
18   due and demanded by PGW, and it also affects the balances subject to lien collection practices.

19           Secondly, taking the statement of accounts provided through discovery and obtained from  
20   PGW, I then performed data entry of the bills, payments, and late payment charges issued per  
21   each billing cycle. My goal was to replicate each historical billing cycle per PGW so I could  
22   recalculate the late payment charges assessed by reordering all historical payments issued to pay

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1 principal charges first. The data was entered into a Microsoft Excel spreadsheet and tied to the  
2 statement of accounts for accuracy.

3

4

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6 **COMPLAINANTS' METHODOLOGY, EXPLANATION AND ILLUSTRATIONS:**

7 **Components of SBG's Calculation:**

8 "Per PGW" Columns:

- 9 1- **Billing Cycle** – this column represents the date PGW issued a bill or made an  
10 adjustment on the statement of Account.
- 11 2- **Previous Balance**- this column represents the previous balance according to PGW  
12 before the current bill is issued. To the extent that SBG did not provide a complete  
13 historical statement of account (i.e. account statement from \$0) the first row was  
14 adjusted to reflect the balance of the account at the first date listed on the statement of  
15 account provided by PGW.
- 16 3- **Current Bill**- this column represents the amount of the current bill issued by PGW,  
17 each row under this column correlates with the dates PGW issued a bill per the  
18 statement of account.
- 19 4- **Payments**- this column represents a cumulative amount of any payments issued in the  
20 billing cycle. Payments are entered as a negative digit.
- 21 5- **Subtotal** – this column is a sum of columns 2 and 3.
- 22 6- **Current LPC (Late Payment Charge)**- this column represents the LPC assessed by  
23 PGW per the billing cycle according to the statement of account.

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- 1           7- **Subtotal** – this second subtotal column is a sum of columns 5 and 6.
- 2           8- **Payments**- this column is a duplicate of column 4
- 3           9- **Total Due**- this column is a sum of columns 7 and 8
- 4
- 5           “Per SBG” Columns:
- 6           1- **Cumulative Principal Before Bill**- this represents SBG’s estimated principal balance
- 7                 before the new PGW bill was generated. Each row represents the estimated principal
- 8                 balance per the billing cycle listed in column 1.
- 9           2- **New Charges** – this column contains a Microsoft formula that pulls the current bill
- 10                 charges from PGW’s column 3.
- 11           3- **Payments**- this column represents the payments made during the billing cycle. This
- 12                 column is equivalent to PGW column 4. The payment is applied to the principal
- 13                 charges in SBG’s column 1 to calculate the net effect of the reordering and
- 14                 sequencing of payments discussed in section 1 of this testimony.
- 15           4- **Cumulative Principal After Payment**- this column is a sum of column 1 and 3.
- 16           5- **LPC (Late Payment Charge)**- this column contains a conditional Microsoft excel
- 17                 formula. The formula applies a 1.5% finance charge, provided that PGW assessed a
- 18                 fee in PGW column 6.
- 19           6- **Total Bill**- this column is a sum of columns 2, 4 and 5.
- 20           7- **LPC (Late Payment Charge) Diff**- this column is PGW column 6 minus SBG
- 21                 column 5. This difference represents the net difference between the finance charges
- 22                 that PGW historically assessed on the statements of accounts versus the amount that

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1 SBG estimates should have been assessed based on the reordering of payments  
2 discussed in section 1 of this testimony.

3

4 **Oaklane Illustration**<sup>9</sup>

5 For example, see Appendix/Exhibit "SBG FMO 10" SBG's Oaklane Calculation for  
6 account number 981038702, SA number 8606551072. According to the billing cycle dated  
7 3/20/2012, the previous balance according to PGW was \$9,422.68; then PGW layered on new  
8 charges of \$2,498.69, applied a payment of \$3,188.42 and assessed a late payment charge of  
9 \$93.51, leaving an overall calculated balance of \$8,826.46 per PGW. Using SBG's theory of  
10 how payments should have been applied to this Oaklane account, Complainants' review and  
11 methodology starts with PGW's late payment analysis located in Appendix/Exhibit "SBG FMO  
12 16" page also marked as bate stamp number, PGWSOA01368. When reviewing the PGW late  
13 payment analysis, Complainants' call your attention to the transaction dated 2/29/2012, which  
14 shows a payment reflected and applied on the 3/20/2012 billing cycle. SBG's calculation  
15 illustrates that cumulative late payment charges as of 3/20/2012 were reduced to zero after the  
16 payment was applied.

17 This illustration confirms that PGW *applies all partial and full payments to*  
18 *cumulative late payment charges first (non-interest bearing charges) before reducing the*  
19 *unpaid principal charges (interest bearing charges). Emphasis added.* This reordering of the  
20 application of payments has a significant impact on the Complainants' accounts, as a whole, and  
21 as illustrated in SBG's calculation in Exhibit "SBG FMO 10" SBG's Oaklane Calculation for  
22 account number 981038702, SA number 8606551072. When reviewing PGW's billing statement

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<sup>9</sup> See APPENDIX/EXHIBIT - SBG FMO 10 – Oaklane Interest Calculation

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1 for demands for payment stated as “total due” column according to PGW’s calculations as shown  
2 on the transaction dated 3/20/2012, the balance due is \$8,826.46, in contrast, SBG’s calculated  
3 total balance due is \$948.87, which is labeled in the column entitled “total bill due”. The  
4 difference in the balance due in these two scenarios is significant at \$7,877.59, and it has a  
5 detrimental impact on the Complainants’ accounts, alleged arrearages and assessed finance  
6 charges imposed by PGW. The calculation also demonstrates that if PGW had not instituted its  
7 practice of reordering the payments and applying them to late payment charges but rather had  
8 applied payments more fairly to the unpaid principal (interest bearing charges) first,  
9 Complainants’ balance would have resulted in a zero late payment charge on  
10 3/20/2012. Therefore, a calculated difference of \$93.51 is indicated in the SBG column labeled  
11 “LPC diff”. However, the overall cumulative effect of this difference is \$4,500.93 on this SA.

12 **Fernrock Illustration**<sup>10</sup>

13 This second example can be found by reviewing Appendix/Exhibit “SBG FMO 8”  
14 SBG’s Fernrock Interest Calculation for account number 23444792, SA  
15 number 6679618097. According to the transaction dated 02/04/2011, on the billing cycle, the  
16 previous balance according to PGW was \$12,848.36. PGW then layered on new charges of  
17 \$ 2,040.25, applied a payment of \$ 1,517.37 and assessed a late payment charge of \$169.96  
18 leaving an overall calculated balance of \$13,541.21 per PGW’s method of re-ordering  
19 payments which apply funds received to late payment charges first, before applying payments  
20 to gas commodity, distribution and customer charges first.

21 SBG’s Fernrock examination starts with PGW’s late payment analysis located in  
22 Exhibit “SBG FMO 14” page also marked as bate stamp number PGWSOA00901. When

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<sup>10</sup> See APPENDIX/EXHIBIT - SBG FMO Fernrock Interest Calculation 8

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1 reviewing the PGW late payment analysis, Complainants made four payments on three  
2 different dates, 01/13/2011, 01/14,2011 and 01/18,2011, which PGW applied posted to the  
3 02/04/2011 billing cycle. Looking to the right side of the spreadsheet, SBG's calculation  
4 illustrates that cumulative late payment charges as of 02/04/2011 were reduced to zero after the  
5 four payments were applied to the this SA. This illustration confirms that PGW's accounting  
6 practice *applies all partial and full payments to cumulative late payment charges first (non-*  
7 *interest bearing charges) before reducing the unpaid principal charges (interest bearing*  
8 *charges). Emphasis added.* PGW's accounting practice of reordering of the application of  
9 payments has a significant impact on the Complainants' accounts as illustrated in SBG's  
10 calculation in Exhibit "SBG FMO 8" SBG's Fernrock Interest Calculation for account number  
11 23444792, SA number 6679618097. When reviewing the "total due" column according to  
12 PGW's calculations found on the left of the spreadsheet relating to the transaction dated  
13 02/04/2011, PGW's balance due is reflected as \$13,541.2. PGW's balance is in stark contrast  
14 to SBG's calculated balance due of \$3,441.11, which is depicted and labeled in the column to  
15 the right entitled "total bill".

16 The calculation also demonstrates that if PGW had not instituted its practice of  
17 reordering the payments and had in fact, applied payments to the unpaid principal (interest  
18 bearing charges) first, Complainants' would have incurred a modest \$20.70 late payment  
19 charge on 02/04/2011 rather than incurring the significantly higher amount of \$169.96 in late  
20 payment charges assessed by PGW on that transaction date. Therefore, a calculated difference  
21 of \$149.26 is indicated in the SBG column labeled "LPC diff". The cumulative effect of this  
22 difference is \$7,138.74 on this SA.

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**Marchwood Illustration**<sup>11</sup>

This third example can be found by reviewing Appendix/Exhibit “SBG FMO 9” SBG’s Marchwood’s Calculation for account number 5128000237, SA number 64300667219. According to the transaction dated 12/06/2012 billing cycle, the previous balance according to PGW was \$5,776.00, then PGW layered on new charges of \$ 237.16, applied Complainants’ payment of \$ 5,456.25 and assessed a late payment charge of \$4.79 leaving an overall calculated balance of \$561.70 per PGW’s calculations..

SBG’s Marchwood examination starts with reviewing PGW’s late payment analysis located in Exhibit “SBG FMO 15” page also marked as bate stamp number PGWSOA01108. When reviewing the late payment analysis, Complainants’ made a payment of \$5,456.25 posted on 11/13/2012, which appeared on the 12/06/2012 billing cycle. SBG’s calculation on the right of the Appendix/Exhibit spreadsheet for the date of this transaction, illustrates that cumulative late payment charges as of 12/06/2012 were reduced to zero after the \$5,456.25 payment was applied. Once again, this illustration confirms that ***PGW applies all partial and full payments to cumulative late payment charges first (non-interest bearing charges), before reducing the unpaid principal charges (interest bearing charges).*** PGW’s practice of reordering of the application of payments has a significantly detrimental impact on the Complainants accounts, which is further illustrated in Complainant’s calculation in Appendix/Exhibit “SBG FMO 9” SBG’s for Marchwood for account number 5128000237, SA number 64300667219. Reviewing the “total due” column per PGW on the transaction dated 12/06/2012, PGW’s balance due is \$6,017.95, whereas, SBG’s calculated balance due, based

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<sup>11</sup> See APPENDIX/EXHIBIT - SBG FMO Marchwood Interest Calculation 9

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1 upon its theory and methodology for applying customer payments, shows that as of 12/06/2012,  
2 the balance due is \$237.16, which is identified on the right side of the spreadsheet showing  
3 SBG's calculations in the column entitled "total bill".

4 In contrast to PGW's practice of re-ordering payments to maximize collections of  
5 finance charges first before applying payments to principle, by instituting the more reasonable  
6 accounting practice which is not punitive to the customer, but still recoups late payment  
7 charges, if PGW would apply payments to unpaid principal (interest bearing charges) first,  
8 Complainants' account would have resulted in a zero late payment charge on 12/06/2012, rather  
9 than the \$4.79 late payment charge assessed by PGW. Therefore, a calculated difference of  
10 \$4.79 as indicated in the SBG column labeled "LPC diff". The cumulative effect of this  
11 difference is \$474.52 on this SA.

12 These three examples illustrate how the reordering of payments has detrimentally  
13 financially impacted the Complainants' accounts. SBG performed an analysis of each account  
14 and SA for the properties under these consolidated PUC complaints for Fernrock, Marchwood  
15 and Oaklane. SBG's calculations are attached hereto as "APPENDIX/Exhibits SBG FMO 8, 9  
16 and 10" respectively.

**Q. Q. IS THERE ANY BASIS FOR ASSESSING WHETHER REGULATIONS  
18 CONSIDER A PRIORITIZING FOR PURPOSES OF CUSTOMER BILLING AND  
19 PAYMENT?**

20 A. Yes. Section 62.74 of the PUC's regulations establish the billing components that a  
21 utility must disclose to a customer on a bill. Those billing components include (in the order  
22 prescribed by the regulation): (1) commodity charges ; (2) distribution charges; (3) customer  
23 charge or basic charge; (4) gas cost adjustment charges; (5) interstate transition cost surcharges;

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1 (6) taxes; (7) late payment charges; (8) security deposit; (9) reconnection fees; and (10) an  
2 itemization of all “non-basic” charges.

3 This list is similar to, though not identical to, the information referenced in Section 56.15,  
4 which identifies the information to be presented on a bill. Section 56.15 distinguishes between  
5 “the amount due for service rendered during the current billing period” (§56.15(4)) on the one  
6 hand, and reconnection charges, security deposits and late payment charges (§56.15(5), (6) &  
7 (8)) on the other hand.

8 As can be seen, in both instances, the Commission clearly distinguishes between the bill  
9 for services during the current billing period (including, basic service, distributions service, and  
10 commodity services) and non-recurring charges (such as late fees, deposits, reconnection  
11 charges). The non-recurring fees are placed lower in the disclosure list than the billing items for  
12 monthly services.

13 **Q. WHY IS THIS LISTING ORDER IMPORTANT?**

14 A. The listing order is important in order to fulfill the purpose of the disclosures required by  
15 the PUC regulations. As the PUC’s regulations specifically provide, “the purpose of this  
16 subchapter is to require that all natural gas providers *enable customers to make informed*  
17 *choices* regarding the purchase of all natural gas services offered by providing adequate and  
18 accurate customer information. *Information shall be provided to customers in an*  
19 *understandable format that enables customers to compare prices and services on a uniform*  
20 *basis.*” (emphasis added).<sup>12</sup> Given a utility may charge late payment fees on the bills for  
21 current service, but may not impose a late payment charge on an unpaid late payment charge, if  
22 a natural gas utility were allowed to re-order payments to apply payments against more recent

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<sup>12</sup> 52 PA Code § 62.71(a) (2014).

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1 non-interest-bearing late payment charges before applying those payments against older  
2 interest-bearing principal (i.e., bills for current service), both stated purposes of the  
3 Commission's regulations are frustrated:

4 ➤ The bill would not provide adequate information to enable the customer to make  
5 informed choices; and

6 ➤ The bill would not enable the customer to compare prices and services on a uniform  
7 basis.

8 If a utility were allow carte blanche authority not only to decide which bill components would be  
9 paid, but to decide also to pay the billing components for more recent months before paying the  
10 billing components for older months, all in an effort to maximize revenue, use of the billing  
11 format dictated by the PUC as a means to further the Commission's stated purposes would be  
12 thwarted. Clearly, the billing format set forth in Section 62.74 and Section 52.15 establish a  
13 payment priority between billing components for current service and late payment charges. It  
14 certainly does not allow a utility to move late payment charges, which are seventh on the list of  
15 disclosures, to be moved to payment priority #1 in order to maximize revenue.

16 Allowing PGW to re-order the posting of payments to apply those payments against more  
17 recent non-interest-bearing late charges before applying them to older interest-bearing principal,  
18 in effect, allows PGW to surreptitiously increase its bills without disclosing the cause of, or  
19 reason for, the increase to its customers. This effect is directly contrary to the bill formatting  
20 regulations established by the PUC. The sample bills attached hereto as Appendix SBG FMO  
21 2, pages 1 through 16, Appendix SBG FMO 3, pages 1 through 8, and Appendix SBG FMO 4,

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1 pages 1 through 12<sup>13</sup> illustrate the point that there is no disclosure or explanation of the  
2 methodology PGW imposes and practices on applying payments to Customer bills or the order  
3 in which it extinguishes late payment charges and finance charges before it applies payments to  
4 current commodity charges.

5 Moreover, Section 62.75(c)(10) states that Customers' disclosure statements shall include  
6 an explanation of penalties and fees and that penalties shall be disclosed in actual dollars or a  
7 specific method for determining the actual dollars shall be disclosed. Complainants' have  
8 repeatedly requested that PGW provide its methodology and explanation of the manner in  
9 which PGW applies payments and assesses penalties to Customer bills.<sup>14</sup>

10 Complainant submits that PGW's bills do not illustrate or inform the customer of how  
11 PGW applies a customer payment to an account, nor does it inform the customer how payments  
12 are distributed and applied to multiple SA's on an account. This does allow the customer to  
13 have pertinent information to decipher whether payments made to customer accounts are  
14 accurate and/or justified.

15 **Q. DO YOU HAVE ANY OTHER CONCERNS ABOUT INTEREST PENALTIES**  
16 **AND FINANCE CHARGES IMPOSED ON THE COMPLAINANTS' ACCOUNTS?**

17 A. Yes, Complainants contend that PGW is overcharging interest penalties derived from  
18 post-judgment liens on each of its statements of account. This is in addition to the excessive  
19 interest charges resulting from the reordering and sequencing of payments. SBG believes PGW  
20 is improperly charging 1.5% interest per month on balances PGW has filed a judgment as a  
21 municipal lien through the Court of Common Pleas of Philadelphia County. It is our position

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<sup>13</sup> See Customer Sample Bills: Appendix SBG FMO 2, pages 1 through 16, Appendix SBG FMO 3, pages 1 through 8, and Appendix SBG FMO 4, pages 1 through 12

<sup>14</sup> 52 PA Code § 62.75 and Customer Sample Bills: Appendix SBG FMO 2, pages 1 through 16, Appendix SBG FMO 3, pages 1 through 8, and Appendix SBG FMO 4, pages 1 through 12

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1 that once a municipal lien has been imposed, it is a judgment. Post judgment interest is  
2 determined by the statutory rate should be reduced to .5 % per state statute, not to exceed 6% per  
3 annum. PGW states that it does not charge the statutory rate of 6% on amounts liened through  
4 the municipal liens statute. However, the ruling in Equitable Gas v. Wade, 812 A.2d 715 (Pa.  
5 Super. 2002), along with the statute codified at 42 Pa.C.S.A. § 8101 (relating to interest on  
6 judgments) limits post-judgment interest to 6% per year unless otherwise provided by another  
7 statute, it supersedes the regulation that provides for 18% interest per year on amounts owed to a  
8 public utility, found at 52 Pa.Code §56.22. Therefore, Complainants assert that PGW's practice  
9 of not assessing the post judgment interest of .5% afforded under the statute is in contravention  
10 to the law and results in an over-charge of penalties and late charges to customer accounts.  
11 Especially since, PGW admits that it assesses the 1.5% interest per month to amounts that have  
12 been filed as liens and remain unpaid. Complainants have completed an analysis on its accounts  
13 and have evaluated the impact of PGW's practice of over-charging interest on the amounts that  
14 are subject to post-judgment interest.

15       Upon my review of the sample bills in APPENDIX/EXHIBITS SBG FMO 2, 3 and 4  
16 there is no section on any bill where PGW describes, explains or distinguishes the difference in  
17 calculated penalty interest on post judgment balances. This disclosure is required under 52 Pa.  
18 Code §62.75 (c)(10), whereby the public utility has a duty to disclose the methodology and  
19 specific details of the assessed penalty fees and how they are calculated.

20       Furthermore, I performed a calculation to determine the effect PGW's accounting  
21 practice of ignoring the statute, and imposing the 1.5% interest penalty rather than impose the  
22 statutory .5% interest has had on the accounting of Complainants accounts. The analysis can be  
23 found in APPENDIX/Exhibits "SBG FMO 11-13" of this testimony, however, for purposes of

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1 this testimony, I describe below the deleterious effect PGW's practice has had on the underlying  
2 accounting SBG's customer accounts.

3 The Fernrock lien interest calculation is presented in APPENDIX/Exhibit SBG FMO  
4 11. This calculation was created to estimate the monetary difference between interest on  
5 balances accruing at 1.5% when compared to .5% for the same number of periods. This  
6 calculation considers using the compound interest formula. For Fernrock, the estimated amount  
7 of interest on historical liens imposed thru 12/2012 is \$113,406.11 at 1.5%. If the same amount  
8 subject to lien penalties of .5% interest is \$31,789.98, resulting in a unfavorable overcharge of  
9 lien interest in the amount of \$81,616.73 for the customer.

10 The Marchwood lien interest calculation is presented in APPENDIX/Exhibit: SBG FMO  
11 12. This calculation was created to estimate the monetary difference between interest on  
12 balances accruing at 1.5% compared to .5% for the same number of periods. This calculation is  
13 estimated using the compound interest formula. For Marchwood the estimated amount of  
14 interest on historical liens imposed thru 12/2012 is \$35,915.42 at 1.5%. The amount at .5% is  
15 \$11,135.19, resulting in a unfavorable difference of \$24,780.23.

16 The Oaklane lien interest calculation is presented in APPENDIX/Exhibit SBG FMO  
17 13. This calculation was created to estimate the monetary difference between intereston balances  
18 accruing at 1.5% when compared to .5% for the same number of periods. This calculation is  
19 estimated using the compound interest formula. For Oaklane the estimated amount of interest on  
20 historical liens imposed thru 12/2012 is \$8,379.72 at 1.5%. The amount at .5% is \$3,960.37  
21 resulting in a unfavorable difference of \$4,419.35.

22 The methodology I used considered the number of monthly periods that the liened  
23 judgment amount was on file with the courts and open for which PGW charged accruing interest

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1 at 1.5%. I then did the same analysis but used the statutory rate of .5% interest applied to the  
2 judgment for the same periods. To do this analysis, I relied upon the information received from  
3 PGW and provided in APPENDIX/Exhibit SBG FMO 18 – PGW Property Lien Status List.<sup>15</sup>

4 **A. Managing Accounts to Reduce Arrearages.**

5 **Q. PLEASE DESCRIBE THE PURPOSE OF THIS SECTION OF YOUR**  
6 **TESTIMONY.**

7 A. In this section of my testimony, I consider whether PGW’s re-ordering of payments to  
8 apply those payments against newer non-interest-bearing late charges before applying them  
9 against older interest-bearing principal is just and reasonable when reviewed in light of the  
10 impact of that re-sequencing on reducing or increasing arrearages.

11

12 **Q. WHY IS THIS CONSIDERATION OF THE IMPACT ON ARREARS**  
13 **IMPORTANT?**

14 A. In Pennsylvania, the state PUC seeks to administer the utility bill payment process to  
15 minimize late payments by customers. One explicitly stated intent of the PUC’s regulations is  
16 that “[p]ublic utilities shall utilize the procedures in this chapter to effectively manage customer  
17 accounts to prevent the accumulation of large, unmanageable arrearages.”<sup>16</sup>

18 **Q. DOES PGW HAVE AN AFFIRMATIVE DUTY TO MANAGE CUSTOMER**  
19 **ACCOUNTS TO PREVENT THE ACCUMULATION OF ARREARAGES INTO**  
20 **REGULATIONS REGARDING PAYMENT PROCESSING?**

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<sup>15</sup> See APPENDIX/Exhibit SBG FMO 18 PGW Property Lien Status List

<sup>16</sup> 52 PA Code §56.1 (2014).

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1 A. Yes. When given alternative choices on how to treat customer payments, the PUC has  
2 consistently chosen the alternative that would minimize the need to impose late charges. The  
3 PUC's regulations, for example, provide that for remittances by mail, "payment shall be deemed  
4 to have been made on the date of the postmark."<sup>17</sup> The PUC, in other words, does not allow the  
5 utility to maximize fees by assigning the payment date to the date a payment was received (let  
6 alone to the date when a customer payment was both received and processed).

7 Similarly, the PUC regulations provide that, in the absence of payment by mail, "the  
8 effective date of payment to a branch office or authorized payment agent. . . is the date of actual  
9 receipt of payment at that location."<sup>18</sup> Again, the regulations are designed to apply money  
10 against an account in as expeditious manner as possible to meet the objective, quoted above, of  
11 "prevent[ing] the accumulation of large, unmanageable arrearages." The regulations do not  
12 allow a holding period by the branch office (or payment agent) before payments are applied  
13 against a customer's balance. Nor does the PUC allow for a delay between when payments are  
14 "actually received" and when those payments are applied against customer accounts.

15 These principles are applied across-the-board. If a utility payment is made by check, the  
16 payments must be credited on the day the check is delivered, not when it is cashed. If a check is  
17 delivered "after hours" to the utility, the payment is as of the date of delivery. Checks received  
18 on one day may not be dated on the following day for purposes of administrative convenience.  
19 For purposes of payment processing, in other words, the "day" may not end at noon (or mid-  
20 afternoon).

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<sup>17</sup> 52 PA Code § 56.21(2)(i) (2014).

<sup>18</sup> 52 PA Code § 56.21(3) (2014).

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1 PGW's practices and accounting methods regarding imposing late payment charges and  
2 interest penalties on customer accounts is in contravention to the rules promulgated by the  
3 legislature, PUC rules and regulations, because the practical effect is that PGW's accounting  
4 practices, methodology and policies are designed to maximize finance charge collections on  
5 customer accounts, which ultimately adds to PGW's bottom-line revenues and violates the tariff  
6 because the real rate of interest imposed upon the customer is higher than what is proscribed by  
7 the Tariff.

8

9 **Q. DOES PGW COMPLY WITH THE REQUIREMENT TO MANAGE CUSTOMER**  
10 **ACCOUNTS IN SUCH A WAY TO MINIMIZE THE ACCUMULATION OF LARGE**  
11 **BALANCES AND ARREARS BASED UPON YOUR REVIEW OF THE**  
12 **COMPLAINANTS' STATEMENT OF ACCOUNTS.**

13 A. No. In addition to PGW failing to address the Complainants' disputes in a timely manner  
14 and re-ordering payments such that PGW systematically encourages the accumulation of large  
15 arrearages and balances by not posting payments in a manner that would reduce the principle on  
16 PGW gas charges first as per the Tariff<sup>19</sup> and PUC regulations. PGW's practice extinguishes  
17 non-interest bearing charges such as late fees ahead of PGW gas charges, PGW also imposed late  
18 fees before the due date of the bill or on the due date of the bill, which is evident in the statement  
19 of accounts.<sup>20</sup> An example of the PGW's pattern and practice of imposing late fees on an  
20 account on or before the due date of a bill is evident in the SBG FMO 14(c) Fernrock Statement  
21 of Account, account number 719354604, SA number 5109682157. There was a bill issued

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<sup>19</sup> See PGW Tariff 4.2 -

<sup>20</sup> See SBG FMO Appendix/Exhibits 14 A – D; SBG FMO 15 A-C; and SBG FMO 16 A – B.

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1 2/9/2004 in the amount of \$836.67 which was due on 3/04/2004. The total account balance as  
2 2/09/2004, inclusive of the new charge of \$836.67 was \$1,086.15. On 3/01/2004, prior to the due  
3 date that the bill issued on 2/09/2004 was due, PGW assessed a late payment charge for \$16.23.  
4 Complainants' payment of \$1,477.62 was posted on 3/04/2004, the due date of the bill. This  
5 example shows PGW's reckless disregard for general accounting practices and maintenance of  
6 customer payments on its accounts. Based on this illustration, not only should SBG not have  
7 been charged a late payment charge of \$16.23, their \$1,477.62 payment actually put them in a  
8 credit balance on this SA. PGW never removed the late payment charge and in fact, applied the  
9 first \$16.23 of the \$1,477.62 payment received and applied it to the erroneously imposed late  
10 payment charge before applying the remainder to the principal gas charges due.

11 **Q. ASIDE FROM YOUR OTHER DISCUSSION OF UTILITY PRINCIPLES IN THIS**  
12 **TESTIMONY, DO YOU HAVE ANY OTHER BASIS FOR CONCLUDING THAT THE**  
13 **RE-SEQUENCING OF PAYMENTS TO APPLY THOSE PAYMENTS AGAINST**  
14 **MORE RECENT NON-INTEREST-BEARING LATE FEES BEFORE APPLYING**  
15 **THEM AGAINST OLDER INTERST-BEARING PRINCIPAL IS NOT JUST AND**  
16 **REASONABLE?**

17 A. Yes. One of the fundamental tenets --not the exclusive tenet but one of the most basic  
18 tenets-- of utility pricing is that rates are to be cost-based. There is no cost basis for allowing  
19 PGW to re-sequence payment posting to apply payments against more recent non-interest-  
20 bearing late charges before applying them against older interest-bearing principal.

21 ➤ The time it takes to engage in collection efforts does not differ based upon the  
22 composition of an unpaid balance as betwixt unpaid principal and unpaid late charges.

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1 ➤ The type of collection effort invoked does not differ based on the composition of an  
2 unpaid balance between unpaid principal and unpaid late charges.

3 ➤ Different staff persons are not used for collections based upon the composition of an  
4 unpaid balance (between late charges and principal).

5 ➤ The cost of money does not differ based upon the composition of an unpaid balance  
6 (between late charges and principal).

7 In short, from a cost and revenue perspective, the only difference between one unpaid balance  
8 comprised of a higher amount of unpaid principal and another unpaid balance comprised of a  
9 higher amount of unpaid late charges, all other things equal, is that the balance with the higher  
10 amount of unpaid principal will generate higher fees for the Company

11 In sum, no cost basis exists to justify re-sequencing customer payments so as to apply  
12 customer payments to utility bills out-of-time. The lack of a cost basis is one more element  
13 demonstrating that the PGW practice of re-sequencing payments fails the just and reasonable  
14 test.

15 In this section of my testimony, I describe a second way in which the PGW re-ordering of  
16 payments fails the just and reasonable test. Once a standard of “just and reasonable” has been  
17 determined, a public utility must abide by both the letter and the spirit of that standard. In  
18 statutory language, Pennsylvania has declared that:

19  
20 no public utility shall, directly *or indirectly, by any device whatsoever*, or in anywise,  
21 demand or receive from any person, corporation, or municipal corporation a greater or  
22 less rate for any service rendered or to be rendered by such public utility than that  
23 specified in the tariffs of such public utility applicable thereto.<sup>21</sup>  
24

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<sup>21</sup> 66 Pa. C.S. § 1303 (2014) (emphasis added).

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1 This statute articulates a principle that is common to the law. One may not do indirectly what  
2 one is barred from doing directly. The Pennsylvania statute, however, could hardly have  
3 imposed a more stringent requirement. A public utility is barred, by statute, from imposing a  
4 greater rate for any service rendered “by any device whatsoever.”

5

6 **Q. HOW IS THIS PRINCIPLE APPLICABLE TO THE PRESENT PROCEEDING?**

7 A. In Pennsylvania, a utility is authorized to impose a late payment charge on bills not paid  
8 by the due date. By regulation, however, late payment charges are limited to 18% annual  
9 simple interest.<sup>22</sup> The Commission, in other words, has determined the limit of a late payment  
10 charge to be not merely 1.5% per month, but 18% per year simple interest.<sup>23</sup>

11 PGW has incorporated that limitation into its tariff as well. According to Section 4.2 of  
12 PGW’s tariff, “PGW will assess a late penalty for any overdue bill, in an amount which does  
13 not exceed 1.5% interest per month on the full unpaid and overdue balance of the bill. . . The  
14 interest rate, when annualized, may not exceed 18% simple interest per annum.” As can be  
15 seen, this tariff language merely reflects and reiterates the limitations imposed by Commission  
16 regulation.

17 **Q. HOW IS THE LIMITATION ON CHARGING HIGHER OR LOWER RATES**  
18 **APPLICABLE TO THE CALCULATION OF LATE CHARGES?**

19 A. Having set the limitation by statute at 66 Pa.C.S.A. §1303, PGW is further bound by the  
20 statutory directive which prohibits it from “directly or indirectly, by any device whatsoever”  
21 charging a late payment charge that compounds the 1.5% monthly interest rather than applying

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<sup>22</sup> 52 PA Code § 56.22 (2014).

<sup>23</sup> *Id.*

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1 18% simple interest per annum. Looked at another way, the statutory language would bar PGW  
2 from charging, “directly or indirectly, by any device whatsoever,” a rate higher than 18% simple  
3 interest.

4

5 **Q. DOES PGW “DIRECTLY OR INDIRECTLY, BY ANY DEVICE**  
6 **WHATSOEVER” IMPOSE LATE PAYMENT CHARGES ON UNPAID LATE**  
7 **PAYMENT CHARGES, THUS RESULTING IN AN INTEREST RATE GREATER**  
8 **THAN 18% ANNUAL SIMPLE INTEREST?**

9 A. Yes. The reordering of customer payments to apply those payments against more recent  
10 non-interest-bearing late charges before reducing older interest-bearing principal is precisely the  
11 type of action prohibited by the statute. Being barred from directly imposing a late fee on  
12 unpaid late fees, PGW may not accomplish the same objective simply by re-ordering customer  
13 payments through a process that retires unpaid non-interest bearing late fees, irrespective of  
14 their age, before retiring unpaid interest-bearing principal.

15 While PGW states that it does not charge late fees upon late fees, its’ practice is  
16 subterfuge because the practical effect is that by paying late payment charges first, principle  
17 balances are not extinguished in full subjecting them PGW’s imposing new finance charges on a  
18 higher principal balance. The method imposed by PGW is described below and illustrated by the  
19 Appendix/Exhibits referenced herein.

20 Furthermore, PGW’s practice of not charging the statutory amount of .5% interest on  
21 post-judgment penalties on monies filed as liens, and instead continues to assess 1.5% on the  
22 balance for which there is a judgment is in contravention to the law and principles of good faith  
23 and fair dealing. It is an unreasonable practice and against public policy because the accounting

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1 practice PGW exercises regarding finance charges on sums reduced to judgment become  
2 punitive. And the same can be said about PGW's practice of re-ordering payments to maximize  
3 finance charges on customer accounts. Where public policy considers the allowance of a public  
4 utility to collect late payment charges and incentivize customer's timely payments, the public  
5 policy is not to make the collection practice punitive.

6 **B. Most Advantageous Rate.**

7 **Q. PLEASE DESCRIBE THE PURPOSE OF THIS SECTION OF YOUR**  
8 **TESTIMONY.**

9 A. In this section of my testimony, I consider whether the PGW practice of re-sequencing  
10 payments to post them against more recent non-interest-bearing late charges before applying  
11 payments against older interest-bearing principal is just and reasonable in that the practice  
12 results in the most advantageous rate to consumers.

13

14 **Q. DID PGW APPLY THE MOST ADVANTAGEOUS RATE TO THE CUSTOMER**  
15 **IN ITS RE-ORDERING OF THE CUSTOMER'S PAYMENT?**

16 A. No. A basic principal of utility regulation dictates that when a utility has more than one  
17 alternative rate that might be applied to a customer, the utility has an obligation to apply the rate  
18 most advantageous to the customer. In Pennsylvania, this principle has been incorporated into  
19 law. PUC regulations state quite explicitly that "any public utility, having more than one rate  
20 applicable to service rendered to a patron, shall, after notice of service conditions, compute bills  
21 under the rate most advantageous to the patron."<sup>24</sup>

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<sup>24</sup> 66 Pa. C.S. § 1303 (2014).

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1           Given that there is “more than one rate applicable” to unpaid bills to consumers (to pay  
2 all unpaid late charges first, before paying any unpaid principal;<sup>25</sup> to pay all unpaid principal  
3 first, before paying any unpaid late charges;<sup>26</sup> or to pay the oldest balance first, irrespective of  
4 whether that balance is principal or late charge), PGW is under a regulatory obligation,  
5 pursuant to the PUC’s regulations, to “computer bills under the rate most advantageous to the  
6 patron.” Rather than doing that, PGW’s process of reordering payments posts payments in a  
7 manner that is *least* favorable to the customer.

8

9   **Q.    HOW AND WHY ARE THESE DECISIONS RELEVANT TO A REVIEW OF**  
10       **THE RE-SEQUENCING OF CUSTOMER PAYMENTS TO MAXIMIZE LATE**  
11       **PAYMENT FEES?**

12   A.    It would be inconsistent, at best, for the PUC to address the day of payment receipt by a  
13 public utility, and then to allow that utility to reorder the payment by months to apply that  
14 payment out-of-time. It would be inconsistent to require a utility to post a mailed payment upon  
15 mailing rather than upon receipt and then to allow that utility to re-order payments to maximize  
16 late fees by applying the payment to bills out-of-time. It would be just as inconsistent to require  
17 a utility to deem a payment received upon receipt by a third-party payment agent, but then to  
18 allow that utility to maximize late fees by applying the payment to more recent non-interest  
19 bearing late fees before posting those payments against older interest-bearing principal. It  
20 would be inconsistent for the PUC to require that payments be deemed received “today” rather

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<sup>25</sup> This is what PGW does.

<sup>26</sup> This is the practice common in the mortgage industry.

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1 than “tomorrow” when received late in the day, but then to allow the utility to re-order the  
2 payment posting to pay bills months out-of-time.

3

4 **Q. WHAT DO YOU CONCLUDE?**

5 A. I conclude that the PGW practice of re-ordering customer payments to apply those  
6 payments against more recent non-interest-bearing late payment charges prior to applying them  
7 against older interest-bearing principal is neither just nor reasonable. The PGW practice, is  
8 designed to maximize bills rather than designed to “effectively manage customer accounts to  
9 prevent the accumulation of large, unmanageable arrearages.”

10

**C. Payment Priority.**

11 **Q. PLEASE DESCRIBE THE PURPOSE OF THIS SECTION OF YOUR**  
12 **TESTIMONY.**

13 A. In this section of my testimony, I consider whether the PGW practice of re-sequencing  
14 the Customer’s payments to apply it against non-interest-bearing late charges prior to applying  
15 them against interest-bearing principle is “just and reasonable” as a choice of the priority of  
16 payment.

17

18 **Q. IS THERE A REGULATORY PREFERENCE IN THE PRIORITY OF HOW**  
19 **CUSTOMER PAYMENTS ARE TO BE APPLIED TO AN ACCOUNT?**

20 A. Yes. PUC regulations specifically state that “Payments received by a public utility  
21 without written instructions that they be applied to merchandise, appliances, special services,  
22 meter testing fees or other non-basic charges and which are insufficient to pay the balance due

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1 for the items plus amounts billed for basic utility service shall first be applied to the basic  
2 charges for residential public utility service.”<sup>27</sup>

3

4 **Q. COULD EVEN A SOPHISTICATED CONSUMER BE ABLE TO DERIVE THE**  
5 **PAYMENT POSTING PROCESS FROM THEIR MONTHLY BILL?**

6 A. No. I have reviewed bills rendered by PGW to the Customer over the course of several  
7 years. For example, reviewing bills such as those found in APPENDIX/Exhibit SBG FMO 2  
8 pages 1 - 16, Fernrock Sample Bills, the bill listed a total “Past Due Amount,” the total  
9 “Adjustments” (late payment charge), and the “Current Charges.” It does not indicate and  
10 differentiate between the late payment charges and “current basic charges” in the Past Due  
11 Amount .” The bills do not indicate and differentiate between the late payment charges and  
12 “current basic charges” in the Past Due Amount. Nor do they indicate the balance on which  
13 Late Payment Charges were rendered. Nor does it differentiate the payments amongst the  
14 various SA’s. No information is provided on the bill that would allow for a determination of  
15 the balance on which late payment charges were imposed. The bills does *not* indicate how the  
16 payment was allocated between interest-bearing principal and non-interest-bearing late  
17 payment charges. The bill does not indicate the balance on which Late Payment Charges were  
18 imposed. No information is provided on the bills that would allow for a determination of how  
19 the payment was allocated or to allow for a determination of the balance on which late  
20 payment charges were imposed.

21 To the contrary, the bills that I reviewed would seem to indicate that no distinction is  
22 made between late payment charges and principal in the total amount due. The bills tell the

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<sup>27</sup> 52 PA Code §56.23 (2014).

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1 customer that “to avoid Finance Charges please pay the total amount due by the due date.”  
2 (emphasis added). This message conveys the information that no distinction is made between  
3 differing components of the “Total Amount Due.” The message conveys the information that  
4 the payment is applied against the “Total Amount Due,” rather than being re-ordered to pay  
5 more current non-interest-bearing late payment charges before paying older interest-bearing  
6 principal.

7

8 **Q. IS THE FAILURE TO DISCLOSE THE ONLY PROBLEM WITH THE**  
9 **PRESENTATION OF THE BILL?**

10 A. No. The bills affirmatively misleads consumers about the application of the finance  
11 charge. As I discuss immediately above, the bills do not tell the customer that the Finance  
12 Charge is imposed on only one part of the Total Amount Due (i.e., the unpaid principal). The  
13 bill, however, affirmatively states that “to avoid Finance Charges please pay the total amount  
14 due by the due date. Finance Charge is calculated at 1.5% monthly (18% yearly).” This  
15 message is deceptive in that it informs the Customer that no distinction is made between various  
16 components of the Total Amount Due, some of which incurs a Finance Charge and some of  
17 which does not. This bill message specifically (erroneously and deceptively) relates the finance  
18 charge to the “Total Amount Due” rather than to that portion of the Total Amount Due on  
19 which a Finance Charge may be imposed. The message certainly does nothing to inform the  
20 Customer that PGW will re-sequence the customer’s payment in order to pay newer non-  
21 interest-bearing balances before paying older interest-bearing balances so as to maximize the  
22 charges PGW will seek to collect from the customer.

23

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1 **Q. WHAT DO YOU CONCLUDE?**

2 A. Based on my review of PGW bills rendered to the Customer, I conclude that PGW's re-  
3 ordering practice, under which it re-sequenced the Customer's payments to pay more recent  
4 non-interest-bearing late payment charges before paying older interest-bearing principal, is  
5 concealed and undetectable on the Customer's bill. Based on the way PGW presents its bills to  
6 customers, an average consumer (nor even a sophisticated consumer) would ever be able to see  
7 the re-order scheme.

8 **Q. DO YOU HAVE ANY ADDITIONAL BASIS TO CONCLUDE THAT PGW'S RE-**  
9 **SEQUENCING OF PAYMENTS VIOLATES THE PRINCIPLE OF JUST AND**  
10 **REASONABLE RATES ALONG WITH THE PRINCIPLES OF GOOD FAITH AND**  
11 **FAIR DEALING?**

12 A. Yes. Re-ordering customer payments to pay more recent non-interest bearing late fees  
13 while leaving older interest-bearing principal outstanding would be an unfair trade practice  
14 when measured by the three-pronged Federal Trade Commission ("FTC") test. A utility  
15 practice that would be "unfair" under the FTC Act can hardly be found to be "just and  
16 reasonable" under Pennsylvania statutes. Nor could such a practice be found to meet the  
17 regulatory requirement of "good faith and fair dealing."

18 Second, the injury is not reasonably avoidable by the consumer. Utility customers have  
19 no control over the order in which a utility posts their payments against newer late fees rather  
20 than against older principal. Paying their bills sooner might, of course, reduce their late fees, but  
21 that impact has no effect on the posting order of the customer payment. Indeed, customers  
22 would reasonably expect a utility to post customer payments to minimize fees, and thus to  
23 minimize the likelihood of incurring substantial arrearages.

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1 **Q. HAVE YOU HAD OCCASION TO REVIEW COMMUNICATIONS BETWEEN**  
2 **THE COMPANY AND THE CUSTOMER TO DETERMINE WHETHER THE**  
3 **CUSTOMER DISPUTED ANY BILL?**

4 A. Yes. I have, for example, examined a letter addressed to PGW's John Dunn, dated June  
5 27, 2005, that referred to the Customer's bill as a "ridiculous bill." The letter referred to  
6 "another error by the Philadelphia Gas Works meter reading division." The letter referenced  
7 "the outstanding balance that is in dispute." That letter was followed-up by a letter dated  
8 August 19, 2005, again addressed to PGW's John Dunn, stating, amongst other things, that  
9 "these bills do not make any sense and moreover based on the CCF consumption rates that have  
10 been previously reviewed with Tom Murphy, these are exorbitant, the CCFs are out of whack."  
11 For years following, there was a series of correspondence indicating the ongoing dispute. In  
12 2008, for example, PGW acknowledged receiving correspondence from the Customer, wherein  
13 the Customer indicated "we have got gotten the break down we requested." In January 2009,  
14 John Dunn wrote "sorry it has been so long getting back to you. I want to start working next  
15 week on all of SBG Management accounts. . .Hopefully we can address & handle the easy ones  
16 first so we can get them out of the way and then move forward to the harder issues we face." In  
17 July 2010, PGW (R. Theodore Savage) acknowledged the ongoing dispute, saying "if you feel  
18 that the PGW bills are wrong on a host of your buildings send me the list of the buildings, the  
19 account numbers and the disputed issues that you have uncovered." In 2011, correspondence  
20 from the Customer to PGW referred to a "\$44,352 error." In addition, the Customer asked  
21 "where did the \$21500 charges come from? Doesn't add up." The Customer stated "Dunn

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1 acknowledged that this can't be right and was going to check on it." Ultimately, SBG (on  
2 behalf of all complainants) filed a complaint with the PUC.<sup>29</sup>

3 **Q. IS THERE A DISTINCTION BETWEEN A CUSTOMER "INQUIRY" AND A**  
4 **CUSTOMER "DISPUTE"?**

5 A. Yes. Both PUC regulations and PGW's tariff describe when an inquiry becomes a  
6 dispute. Pursuant to PGW's own tariff, a "dispute" exists under the following circumstances:  
7 "An unresolved grievance raised by a Customer with PGW about PGW's application of a  
8 provision covered by 52 PA. Code Chapter 56, as amended or supplemented. If, at the  
9 conclusion of an initial contact, or when applicable, a follow-up response, the Customer . . .  
10 indicates satisfaction with the resulting resolution or explanation, the contact will not be  
11 considered a dispute." (emphasis added). As can be seen from this tariff language, only if "the  
12 Customer indicates satisfaction" will "the contact not be considered a dispute." The language  
13 of correspondence beginning as early as 2005 and moving forward until the present involves  
14 anything but "the Customer indicating satisfaction."

15 The PGW tariff mirrors, albeit not exactly, the PUC regulations. The PUC regulations  
16 (§56.151) provide that within 30 days of the initiative of a dispute, shall issue a "report" to the  
17 customer. The actions of the utility then depend on whether the customer is "satisfied" with  
18 that report (§56.1512(5)9i)) or whether the customer is not satisfied with that report  
19 (§56.151(5)(ii)). Given that the utility's mandated action depends on whether the customer is  
20 satisfied or not, the regulations appear to impose an obligation to inquire.

21 Irrespective of the regulations, however, the PGW tariff, itself, does not require the  
22 Customer to express "dissatisfaction." Rather, only "if, at the conclusion of an initial contact,

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<sup>29</sup> See SBG FMO 1 Correspondence

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1 or when applicable, a follow-up response, the Customer. . . indicates satisfaction with the  
2 resulting resolution or explanation, the contact will not be considered a dispute.” Under the  
3 PUC regulations and the PGW tariff, in other words, silence does not represent acquiescence.  
4 Instead, for the “grievance” (in the words of the PGW tariff) to avoid being considered a  
5 dispute, the customer must affirmatively “indicate satisfaction with the resulting resolution or  
6 explanation.”

7 **Q. WHAT DO YOU CONCLUDE?**

8 A. Based on my review of correspondence between the Customer and PGW in this  
9 proceeding, I conclude:

- 10 ➤ The Customer filed a “grievance” with PGW;
- 11 ➤ The Customer engaged in a continuing effort, over multiple years, to gain  
12 redress for that grievance;
- 13 ➤ At no time, did PGW inquire whether the Customer was “satisfied” with  
14 PGW’s resolution or explanation in response to that grievance; and
- 15 ➤ At no time, did the Customer indicate “satisfaction” with the resulting  
16 resolution of explanation. Indeed, the Customer continually indicated an  
17 affirmative dissatisfaction with PGW’s explanations.

18 I further find that despite the disputed bills, PGW continued to bill the Customer for the  
19 disputed amount and continued to impose late payment charges for nonpayment of the  
20 disputed billing amounts.

21 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

22 A: Yes.

23