

Daniel Clearfield  
717.237.7173  
dclearfield@eckertseamans.com

October 14, 2022

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

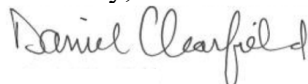
RE: *SBG Management Services, Inc./Simon Garden Realty Co., L.P. v. PGW*; Docket Nos. C-2012-2304324; C-2015-2486642; *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. PGW*; Docket Nos. C-2012-2304183; C-2015-2486677; *SBG Management Services, Inc./Elrea Garden Realty Co., L.P. v. PGW*; Docket Nos. C-2012-2304167; C-2015-2486674; *SBG Management Services, Inc./Fern Rock Gardens Realty Co., L.P. v. PGW*; Docket Nos. C-2012-2308465; C-2015-2486670; *SBG Management Services, Inc./Fairmont Manor Realty Co., L.P. v. PGW*; Docket Nos. C-2012-2304215; C-2015-2486664; *SBG Management Services, Inc./Oak Lane Realty Co., L.P. v. PGW*; Docket Nos. C-2012-2308462; C-2015-2486655; *SBG Management Services, Inc./Marchwood Realty Co., L.P. v. PGW*; Docket Nos. C-2012-2308454; C-2015-2486648; and ; *SBG Management Services, Inc./Marshall Square Realty Co., L.P. v. PGW*; Docket Nos. C-2012-2304303; C-2015-2486618;

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Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Partial Motion to Dismiss with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Daniel Clearfield, Esq.

DC/lww  
Enclosure

cc: Hon. Eranda Vero w/enc.  
Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this date I served a copy of PGW's Partial Motion to Dismiss upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

### VIA EMAIL

Shawn M. Rodgers, Esquire  
Patricia M. Starner, Esquire  
Michael Yanoff, Esquire  
Goldstein Law Partners, LLC  
11 Church Road  
Hatfield, PA 19440  
[Srodgers@goldsteinlp.com](mailto:Srodgers@goldsteinlp.com)  
[Pstarner@goldsteinlp.com](mailto:Pstarner@goldsteinlp.com)  
[Myanoff@goldsteinlp.com](mailto:Myanoff@goldsteinlp.com)

Dated: October 14, 2022



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Daniel Clearfield, Esq.

*Counsel for Philadelphia Gas Works*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc. / Simon Garden Realty Co., L.P.	:	Docket No.	C-2012-2304324
	:		C-2015-2486642
v.	:		
	:		
Philadelphia Gas Works	:		
SBG Management Services, Inc. / Colonial Garden Realty Co., L.P.	:	Docket No.	C-2012-2304183
	:		C-2015-2486677
v.	:		
	:		
Philadelphia Gas Works	:		
SBG Management Services, Inc. / Elrea Garden Realty Co., L.P.	:	Docket No.	C-2012-2304167
	:		C-2015-2486674
v.	:		
	:		
Philadelphia Gas Works	:		
SBG Management Services, Inc. / Fern Rock Realty Co., L.P.	:	Docket No.	C-2012-2308465
	:		C-2015-2486670
v.	:		
	:		
Philadelphia Gas Works	:		
SBG Management Services, Inc. / Fairmount Manor Realty Co., L.P.	:	Docket No.	C-2012-2304215
	:		C-2015-2486664
v.	:		
	:		
Philadelphia Gas Works	:		
SBG Management Services, Inc. / Oak Lane Realty Co., L.P.	:	Docket No.	C-2012-2308462
	:		C-2015-2486655
v.	:		
	:		
Philadelphia Gas Works	:		
SBG Management Services, Inc. / Marchwood Realty Co., L.P.	:	Docket No.	C-2012-2308454
	:		C-2015-2486648

	v.	:	
		:	
Philadelphia Gas Works		:	
		:	
SBG Management Services, Inc. /		:	
Marshall Square Realty Co., L.P.		:	Docket No. C-2012-2304303
		:	C-2015-2486618
		:	
	v.	:	
		:	
Philadelphia Gas Works		:	

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**NOTICE TO PLEAD**

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**To:** Each of the Complainants  
**c/o** *Counsel for Complainants*

Patricia M. Starner, Esquire  
Michael Yanoff, Esquire  
Shawn M. Rodgers, Esquire  
GOLDSTEIN LAW PARTNERS, LLC  
11 Church Road  
Hatfield, PA 19440  
[pstarner@goldsteinlp.com](mailto:pstarner@goldsteinlp.com),  
[myanoff@goldsteinlp.com](mailto:myanoff@goldsteinlp.com),  
[srodgers@goldsteinlp.com](mailto:srodgers@goldsteinlp.com)

You are hereby notified that a written response to the enclosed Partial Motion to Dismiss by Philadelphia Gas Works must be filed within twenty days from service hereof, pursuant to 52 Pa. Code § 5.103. A written response must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served on the Administrative Law Judge and undersigned counsel.




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Daniel Clearfield, Esquire  
Carl R. Shultz, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8th Fl.  
Harrisburg, PA 17101  
Phone: (717) 237-7173  
Fax: (717) 237-6019  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)

Date: October 14, 2022

*Attorneys for Philadelphia Gas Works*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc. / Simon Garden Realty Co., L.P.	:	Docket No.	C-2012-2304324
	:		C-2015-2486642
v.	:		
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Philadelphia Gas Works	:		
SBG Management Services, Inc. / Colonial Garden Realty Co., L.P.	:	Docket No.	C-2012-2304183
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SBG Management Services, Inc. / Elrea Garden Realty Co., L.P.	:	Docket No.	C-2012-2304167
	:		C-2015-2486674
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Philadelphia Gas Works	:		
SBG Management Services, Inc. / Fern Rock Realty Co., L.P.	:	Docket No.	C-2012-2308465
	:		C-2015-2486670
v.	:		
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Philadelphia Gas Works	:		
SBG Management Services, Inc. / Fairmount Manor Realty Co., L.P.	:	Docket No.	C-2012-2304215
	:		C-2015-2486664
v.	:		
	:		
Philadelphia Gas Works	:		
SBG Management Services, Inc. / Oak Lane Realty Co., L.P.	:	Docket No.	C-2012-2308462
	:		C-2015-2486655
v.	:		
	:		
Philadelphia Gas Works	:		
SBG Management Services, Inc. / Marchwood Realty Co., L.P.	:	Docket No.	C-2012-2308454
	:		C-2015-2486648

v.	:		
	:		
Philadelphia Gas Works	:		
	:		
SBG Management Services, Inc. /	:	Docket No.	C-2012-2304303
Marshall Square Realty Co., L.P.	:		C-2015-2486618
	:		
v.	:		
	:		
Philadelphia Gas Works	:		

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**PARTIAL MOTION TO DISMISS BY  
PHILADELPHIA GAS WORKS**

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Pursuant to 52 Pa. Code § 5.103, Philadelphia Gas Works (“PGW” or “Respondent”) hereby files this Partial Motion to Dismiss (“Motion”). In support of this Motion, PGW avers as follows:

**I. INTRODUCTION AND SUMMARY**

There are two issues remaining in this proceeding: 1) determining the amount Complainants are entitled to because of the application of partial payments in a manner that the Commission subsequently determined to be inconsistent with the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) partial payment application rules; and 2) the amount Complainants are entitled to as a result of the Supreme Court’s decision in *PGW II*<sup>1</sup> holding – for the first time – that docketed municipal liens are “the equivalent of a final resolution of a claim between parties” and are “treated in the same manner as a judgment that has been rendered following an adjudicative process.”<sup>2</sup>

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<sup>1</sup> *PGW v. PUC*, 249 A.3d 963 (Pa. 2021) (“*PGW I*”), rehearing granted by, in part, and remanded, 256 A.3d 1092 (Table), 2021 Pa. LEXIS 2905, 2021 WL 2697432 (Pa., June 15, 2021), on remand, 2022 Pa. Commw. Unpub. LEXIS 92, 2022 WL 793332 (Pa.Cmwlt., Mar. 16, 2022) (“*PGW III*”).

<sup>2</sup> *PGW II*, 249 A.3d 963. Therefore, the term “judgment” used throughout this motion includes “docketed municipal liens” pursuant to the Supreme Court’s explicit holding, and vice-versa. Docketed municipal liens may also be referred to as “filed liens” or “perfected liens.”

**As the first issue was not subject to PGW’s appeal, PGW is not contesting that this proceeding must determine the amount of credit or refund that Complainants are entitled to receive because the Commission found that PGW had been applying the partial payment application regulation incorrectly. This Motion deals only with the second issue.** With respect to the second issue, Complainants’ claim is that PGW improperly charged them interest at 18% rather than the 6% interest on judgments set forth in the statutory “Post-Judgment Interest” provisions.<sup>3</sup> This claim cannot be adjudicated by the Commission for the following reasons:

**First**, the Commission lacks subject matter jurisdiction to adjudicate the claims of Complainants having to do with interest charged on docketed municipal liens/judgments. Adjudicating whether an amount of a judgment created by the filing of lien is accurate and correct is an issue of post-judgment relief under the Pennsylvania Municipal Claim and Tax Lien Law<sup>4</sup> (“Lien Law”). It is not within the subject matter jurisdiction of the Commission. Therefore, those claims should be dismissed.

It is without doubt that the Commission has jurisdiction over PGW’s rates,<sup>5</sup> billing, service, and facilities<sup>6</sup> subject to the Public Utility Code.<sup>7</sup> The Commission, for example, would have the authority to direct PGW to remove any amounts from the bills for late payment charges

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<sup>3</sup> See 42 Pa.C.S. § 8101 and 41 P.S. § 202.

<sup>4</sup> 53 P.S. §§ 7101, *et. seq.*

<sup>5</sup> See, *e.g.*, 66 Pa.C.S. § 1301 (Rates to be just and reasonable), 1302 (Tariffs; filing and inspection), 1303 (Adherence to tariffs).

<sup>6</sup> See, *e.g.*, 66 Pa.C.S. § 1501 (Character of service and facilities).

<sup>7</sup> 66 Pa. C.S. §§ 101, *et seq.*

on arrearages that are the subject of a docketed municipal lien (upon information and belief, there are no such amounts on the current bills of the Complainants).

However, with the recent pronouncement of the Pennsylvania Supreme Court, the complaints raise no such issues under the Public Utility Code. What remains in these complaints are not issues of what services were provided, or what amounts appeared on the bills. What remains in this portion of the remand proceeding is whether the amount set forth in judgments – docketed municipal liens which have been declared to be judgments – is correct. But this is an issue over which the Commission has no jurisdiction and is not empowered to hear. With no tangible dispute existing under the Public Utility Code, the Commission is without jurisdiction to proceed, and the portions of the complaints having to do with docketed municipal lien/judgment interest should be dismissed.

**Second**, even if it is determined that the Commission has jurisdiction to adjudicate the claims of Complainants having to do with docketed municipal lien/judgment interest, several of the Complainants have waived their right to such consideration for the 2009-2012 period because the retroactivity of the Supreme Court’s Opinion in *PGW II* is limited only (1) to parties that appealed to that court and (2) to proceedings pending at the time the Opinion was issued on April 28, 2021. Several of the Complainants – namely, the other 2012 PUC Complaints by Elrea Garden, Fairmount Manor, and Marshall Square and the 2012 PUC Complaints by Marchwood, Oak Lane, and Fern Rock – were not appealed to the Pennsylvania Supreme Court. Therefore, their claims under their 2012 Complaints for the 2009-2012 time period were not “pending” at the time of the issuance of the *PGW II* decision (although their 2012-2015 claims under their 2015 Complaints were “pending” since the Commission had stayed those complaints pending the outcome of the 2012 Complaints).



**Finally**, the Complainants have filed a 2021 Civil Action in Philadelphia Court of Common Pleas (“Trial Court”) *raising the identical issues*. As this administrative proceeding is duplicative, and as the Commission lacks the authority to award monetary damages in any event, the Commission should dismiss this action as an improper and unnecessary collateral attack on the pending decision of the Trial Court or, at the very least, put this proceeding on hold until the Common Pleas court action is completed.

**A. The existence of a judgment (docketed municipal lien) has a preemptive effect on the Commission’s jurisdiction, and the claims and issues raised in the complaints must be dismissed.**

1. The issue to be decided in this remand proceeding is what portion, if any, of the payments made by Complainants to PGW for natural gas service for the period 2009-2015 included Late Payment Charges (LPCs) at 18% when, because those amounts were the subject of docketed municipal liens at the time that the LPCs were paid, should have been subject to post-judgment interest at 6%. Under the Lien Law, if a customer does not pay for natural gas services provided by PGW, an (undocketed) municipal lien arises automatically, by operation of law.<sup>8</sup> Any (undocketed) municipal lien may be perfected by publicly docketing the municipal lien with the Philadelphia Office of Judicial Records.<sup>9</sup> PGW perfected the various municipal liens at issue in these complaints by publicly docketing them under the required procedures.

2. The Supreme Court, for the first time in *PGW II*, made clear that by docketing or filing a municipal lien, that lien had the same force and effect as a judgment that was obtained

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<sup>8</sup> See 53 P.S. § 7106(a)(1); *Borough of Ambler v. Regenbogen*, 713 A.2d 145 (Pa.Cmwlth. 1998).

<sup>9</sup> See 53 P.S. §§ 7106(b), 7143.

following a trial before a civil court.<sup>10</sup> Under settled law, and as the *PGW II* Court recognized,<sup>11</sup> the existence of any judgment on unpaid utility service balances ends the Commission’s jurisdiction, as any issues and claims related to the amounts owed by the customer are merged into the judgement.<sup>12</sup> “The claim or demand in its original form is at an end, and cannot again be the subject of litigation.”<sup>13</sup> In its merged form as a judgment, it may be enforced by judicial process, and it can be pleaded only in its merged form.<sup>14</sup> The original form – here a dispute on rates paid by the utility customer – is at an end, and with a lack of enforcement or adjudicatory power over judgments and post-judgment relief, the Commission’s subject matter jurisdiction is at an end as well.

3. The seminal case explaining the Commission’s lack of jurisdiction over amounts subject to judgments is *Gasparro*.<sup>15</sup> In *Gasparro*, PECO obtained a money judgment for an unpaid gas bill in civil court. Subsequently, Gasparro filed a complaint with the Commission<sup>16</sup> disputing the legitimacy of the amount of the judgment, claiming that he was overbilled due to alleged metering errors. The Commission refused to review the merits of Gasparro’s utility bills

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<sup>10</sup> *PGW II*, 249 A.3d at 974 (footnotes added). See also *PGW II*, 249 A.3d at 973 (judgments (docketed municipal liens) are “the equivalent of a final resolution of a claim between parties.”); *PGW II*, 249 A.3d 963, 970 (Pa. 2021) (“By expressly stating that the docketed lien is to be treated like a judgment with regard to the underlying claim, the General Assembly has expressed its intent that docketing the lien have the same effect as a final determination of a dispute between parties without further proceedings that would generally be required to effectuate the result.”).

<sup>11</sup> *PGW II*, 249 A.3d at 967

<sup>12</sup> *Lance v. Mann*, 360 Pa. 26, 60 A.2d 35 (1948).

<sup>13</sup> 28 PENNSYLVANIA LEGAL ENCYCLOPEDIA, JUDGMENT § 228, citing *Miller v. Rohrer*, 127 Pa. 384, 18 A. 2 (1889); *Brenner, Trucks & Co. v. Moyer*, 98 Pa. 274 (1881); *Bell v. Allegheny County*, 184 Pa. 296, 39 A. 227 (1898); and *Nelson v. Nelson*, 117 Pa. 278, 11 A. 61 (1887).

<sup>14</sup> See, e.g., *Wilmington Tr. v. Unknown Heirs*, 219 A.3d 1173 (Pa.Super. 2019); *EMC Mortg., LLC v. Biddle*, 114 A.3d 1057 (Pa.Super. 2015).

<sup>15</sup> *Gasparro v. PUC*, 814 A.2d 1282 (Pa.Cmwlth. 2003).

<sup>16</sup> *Gasparro*, 814 A.2d at 1284. See also *Robert P. Gasparro v. PECO Energy Company*, C-00015482, Opinion and Order entered April 22, 2002. <https://www.puc.pa.gov/PcDocs/315750.doc>.

that were subject to the judgment. The Commonwealth Court affirmed, finding that if Gasparro had raised his billing disputes **before** the entry of the judgment, then the Commission could have reviewed the underlying facts to determine whether overcharges occurred.<sup>17</sup> However, since Gasparro raised his billing disputes **after** the entry of the judgment, the Commonwealth Court concluded that the Commission could not review the merits of Gasparro’s utility bill overcharge claims.

4. In addition, the Commission stated, in 2019,<sup>18</sup> that it is not empowered to consider a challenge to billing practices reflected in an outstanding balance that is subject to a docketed municipal lien. In doing so, the Commission reasoned that the challenges to the billing practices were an “indirect attack” on the amount due under the docketed municipal lien.<sup>19</sup> This is consistent with the Commission’s 2012 acknowledgement that it is not empowered to reduce or otherwise alter the amount of a docketed municipal lien which, under *PGW II*, now must be considered a judgment.<sup>20</sup>

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<sup>17</sup> *Gasparro*, 814 A.2d at 1285. See also *Ronald Ford v. Duquesne Light Company*, Z-00245911, 1995 WL 944910 (discussed above); and, *Theresa Kelsey v. Philadelphia Gas Works*, C-20054279; Opinion and Order entered February 23, 2006, 2006 WL 6611388. In her exceptions, Ms. Kelsey indicated that a “municipal lien had not yet been filed against the property and that there may still be time for her to attend a hearing and arrange to pay the gas bills in question.” Id at 4. The Commission, “in view of the Complainant’s efforts to pay current bills and her difficulties encountered in running a small family business,” granted the Complainant’s Exception and allowed her another opportunity for a hearing. Id. at 5. She failed to attend the remand hearing, and the Complaint was dismissed. Opinion and Order entered July 24, 2006, <https://www.puc.pa.gov/PcDocs/621858.doc>, adopting the Initial Decision dated May 30, 2006, <https://www.puc.pa.gov/PcDocs/612566.doc>.

<sup>18</sup> *Margaret Collins v. Pennsylvania-American Water Company*, F-2017-2628770, Opinion and Order entered August 29, 2019, 2019 PA. PUC LEXIS 265, 2019 WL 4247025 (“*Collins*”). In that case, Ms. Collins filed a Complaint with the Commission, alleging the existence of incorrect charges on her bill. The Complainant made various allegations about charges and liens imposed by the Scranton Sewer Authority (SSA) with respect to Ms. Collins’ property in Scranton, Pennsylvania. The Commission did not review amounts subject to the liens docketed by the SSA.

<sup>19</sup> *Collins*, *supra*.

<sup>20</sup> See *Payne*, *supra*, wherein the Commission stated, in the absence of subject matter jurisdiction, we do not have the authority to order the City to remove or reduce the lien on the Complainant’s property.

5. Clearly, the Commission’s review of billing disputes, after a judgment has been obtained, would be an impermissible collateral attack upon the judgment. Under *PGW II*, the judgment is obtained for PGW “**automatically** upon the docketing of the lien”<sup>21</sup> and is the ultimate determination of the rights and obligations of the parties.<sup>22</sup> The judgment (docketed municipal lien) is based on unpaid amounts on bills. Challenging the amount due under those bills (via a billing dispute) is an indirect challenging to the judgment itself. The amount subject to the judgment cannot be collaterally attacked (or challenged) before the Commission, since (a) the judgments (docketed municipal liens) are “the equivalent of a final resolution of a claim between parties”<sup>23</sup> and are “treated in the same manner as a judgment that has been rendered following an adjudicative process”<sup>24</sup> and (b) the Commission is not empowered to review the merits of judgments, according to *PGW II* and *Gasparro*. The proper forum to challenge the legitimacy of a judgment is civil court.

6. In the past, the Commission has ruled that, while the filing of a municipal lien ended PGW’s ability to continue to apply LPCs, the PUC continued to have jurisdiction over billing and service questions.<sup>25</sup> But those pronouncements were based on the PUC’s view at the time that a docketed municipal lien is a “charge ... for the payment or discharge of a particular

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<sup>21</sup> *PGW II*, 249 A.3d at 973, fn.8 (emphasis original).

<sup>22</sup> *PGW II*, 249 A.3d at 970 (citation omitted).

<sup>23</sup> *PGW II*, 249 A.3d 963, 970 (Pa. 2021) (“By expressly stating that the docketed lien is to be treated like a judgment with regard to the underlying claim, the General Assembly has expressed its intent that docketing the lien have the same effect as a final determination of a dispute between parties without further proceedings that would generally be required to effectuate the result.”).

<sup>24</sup> *PGW II*, 249 A.3d at 974.

<sup>25</sup> See, e.g., *Dennis Vicario v. PGW*, Docket No. C-2010-2213955, Order entered November 16, 2011, 2011 Pa. PUC LEXIS 417 (“*Vicario*”) (the portion of a complaint disputing the placement of a municipal lien should be dismissed, while the portion of the complaint disputing a billing matter should not be dismissed); *Larry and Gail Newman v. PGW*, Docket No. C-2011-2273565, Opinion and Order issued March 29, 2012, 2011 Pa. PUC LEXIS 663, 2012 WL 1453923 (“*Newman*”).

debt or ... general debts or duties of the owner.... [that] encumbers property to secure payment or performance of a debt, duty or other obligation.”<sup>26</sup> The Supreme Court’s decision in *PGW II*, however, clarifies that a docketed municipal lien is not merely a “charge or encumbrance” but is a judgment. Just as in *Gasparro*, therefore, any continuing PUC jurisdiction does not extend to altering or modifying the amount of the judgment itself. The Complainants’ demands here are plainly an attempt to have the Commission alter or modify the amount of existing judgments.

7. The Commission may not exceed its jurisdiction and must act within it.<sup>27</sup> Jurisdiction may not be conferred by the parties where none exists.<sup>28</sup> As a creation of the legislature, the Commission possesses only the authority that the legislature has specifically granted to it in the Public Utility Code. Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom.<sup>29</sup> Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy.<sup>30</sup> Questions of subject matter jurisdiction may never be waived and may be raised at any time by the parties or *sua sponte* by a court.<sup>31</sup>

8. The proper forum in which to determine the propriety of the amount of a judgment entered for past-due utility bills lies with the courts of common pleas and, in this

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<sup>26</sup> *Vicario*, Opinion and Order of November 16, 2011 at 2, fn.1, *citing*, *London Towne Homeowners Association v. Karr*, 866 A.2d 447, 451 (Pa.Cmwlth. 2004) (citations and internal footnotes omitted); *Newman*, Opinion and Order of March 29, 2012 at 2, fn.1, *citing*, *London Towne Homeowners Association* (citations and internal footnotes omitted).

<sup>27</sup> *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945).

<sup>28</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>29</sup> *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977).

<sup>30</sup> *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992).

<sup>31</sup> *Domus, Inc. v. Signature Bldg. Sys. of PA, LLC*, 252 A.3d 628, 636 (Pa. 2021); *Pennhurst Medical Group, P.C. v. Department of Public Welfare*, 796 A.2d 423, 425 n.2 (Pa. Cmwlth. 2002).

instance, such an action is currently pending for trial and disposition.<sup>32</sup> The Commission should not overstep this jurisdictional line. Indeed, as judgments have been entered against the Complainants, the only statutory remedy going forward lies under the Lien Law<sup>33</sup> – not the Public Utility Code. Accordingly, and the Commission does not retain jurisdiction by virtue of the remand language employed by the Commonwealth Court.

9. Because the amounts that Complainants are disputing are payments they made on judgments (docketed municipal liens) subject to the Lien Law, the Commission lacks subject matter jurisdiction to modify the judgments<sup>34</sup> (by substituting a 6% interest rate for the 18% LPCs that PGW believed was legal and appropriate to charge) or to determine any other post-judgment relief and, therefore, should dismiss the Complainants.

**B. To the extent the Commission finds it has subject matter jurisdiction over judgments and post-judgment relief, which it does not, *PGW III* foreclosed certain claims and issues which must be dismissed.**

10. Whether or not the Commission lacks subject matter jurisdiction over judgments and post-judgment relief (*supra*), certain claims by the Complainants have, in any event, been foreclosed.

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<sup>32</sup> *SBG Management Services, Inc, et al. v. Philadelphia Gas Works*, Philadelphia Court of Common Pleas April Term 2021, No. 02801), Case ID: 210402801.

<sup>33</sup> The Lien Law provides the statutory procedures for resolving disputes arising thereunder. In *PGW II*, the Pennsylvania Supreme Court explained that there are statutory procedures by which property owners can challenge a judgment after its entry under the Lien Law. *PGW II*, 249 A.3d at 971. Other causes of action (and/or remedies) may be available in actions before the courts.

<sup>34</sup> The amount of appropriate post-judgment charges and appropriate post-judgment interest (or both) are not “rates” within the jurisdiction of the Commission. See *PGW II* and *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002) (“*Equitable Gas*”), which both hold that Commission-sanctioned tariffs (as well as the rates contained therein) are no longer applicable once there is a judgment.

11. As the Commonwealth Court expressly held in *PGW III*, the Supreme Court’s decision in *PGW II* applies retroactively only to *the parties* of *PGW II* as well as other proceedings pending at the time *PGW II* was decided on April 28, 2021.<sup>35</sup>

12. Thus, the Supreme Court’s decision in *PGW II* retroactivity extends only to the 2012 PUC Complaints by Colonial Garden and Simon Garden.<sup>36</sup> Those parties, and only those parties, filed an appeal of *PGW I* and were *the parties* to *PGW II*. The other 2012 PUC Complaints by Elrea Garden, Fairmount Manor, and Marshall Square<sup>37</sup> as well as the 2012 PUC Complaints by Marchwood, Oak Lane, and Fern Rock<sup>38</sup> were not appealed or did not join the appeal with Colonial Garden and Simon Garden, and thus the Commonwealth Court’s clear statement that *PGW II* applies only to parties of *PGW II* forecloses any further consideration or retroactive application of *PGW II* with respect to those Complaints.<sup>39</sup> Those parties who did not appeal, therefore, are not entitled to any relief based on docketed municipal liens (which have become judgements per *PGW II*) for the period of time covered by their 2012 complaints.

13. Consequently, should the Commission assert jurisdiction over the judgments and post-judgment relief sought here, which it should not, the Commission, under the Order of the Commonwealth Court, cannot retroactively apply the holding of *PGW II* to the 2012 PUC Complaints by Elrea Garden, Fairmount Manor, and Marshall Square<sup>40</sup> or to the 2012 PUC

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<sup>35</sup> *PGW III*, 2022 Pa. Commw. Unpub. LEXIS 92, 2022 WL 793332, \*1

<sup>36</sup> *Colonial Garden/Simon Garden v. PGW*, C-2012-2304183; C-2012-2304324.

<sup>37</sup> Commonwealth Court Docket No. 1405 CD 2018.

<sup>38</sup> Commonwealth Court Docket No. 1404 CD 2018.

<sup>39</sup> Because *PGW II* only applies retroactively to complainants whose complaints were pending as of the time of the Supreme Court’s decision, there is no basis on which the Commission could award them the relief they are seeking – a determination that *PGW* did not have authority to bill them LPCs on arrearages.

<sup>40</sup> Commonwealth Court Docket No. 1405 CD 2018.

Complaints by Marchwood, Oak Lane, and Fern Rock<sup>41</sup> as their claims are foreclosed from decision and must be dismissed.

14. Precluding these claims does not exclude Elrea Garden, Fairmount Manor, Marshall Square, Marchwood, Oak Lane and Fern Rock entirely from the docketed municipal lien/judgment interest portion of these proceedings. Since their 2015 complaints were “pending” at the time that the Supreme Court issued *PGW II* they are still entitled to pursue their claims set forth in the 2015 complaints.

**C. This action should be dismissed because it is duplicative of the 2021 Civil Action filed by Complainants in the Philadelphia Court of Common Pleas currently pending disposition.**

15. The complaints should be dismissed and action should be deferred on the issues and claims involving judgments and post-judgment relief because: (a) they are the same inquiry that is subject of a pending 2021 Civil Action before the Philadelphia Court of Common Pleas; (b) the Commission cannot award monetary damages or review the judgments at issue; and, (c) any Commission action on the issues would be an improper collateral attack on the pending decision of the Trial Court in the 2021 Civil Action.

16. PGW should not be forced to defend against the same claims in different forums at the same time. In this matter, PGW is being called upon to defend against the judgments and post-judgment relief in 2012 PUC Complainants and the 2015 PUC Complaints.<sup>42</sup> At the same time, PGW is being called upon to defend against the same judgments in the 2021 Civil Action before the Trial Court.

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<sup>41</sup> Commonwealth Court Docket No. 1404 CD 2018.

<sup>42</sup> *Colonial Garden/Simon Garden v. PGW*, C-2012-2304183; C-2012-2304324, *et al.*, Evidentiary Hearing Notice (On Remand) dated September 7, 2022, <https://www.puc.pa.gov/pcdocs/1757893.docx>.



17. In short, the issues and claims in the 2021 Civil Action is that the Complainants paid too much on judgments (docketed municipal liens) and are therefore seeking monetary, post-judgment relief. Those same claims are described in Ordering Paragraph 2 of *PGW III* as being remanded to the Commission, and in the 2012 PUC Complaints and 2015 PUC Complaints themselves.

18. There is no indication that the Trial Court, under the doctrine of primary jurisdiction, sought the Commission's expertise regarding the judgments. Indeed, it need not as the Trial Court is the proper forum for these issues under the Lien Law. Continuing this matter in a parallel race to disposition with the Trial Court does not serve judicial efficiency and is a waste of the parties' resources, especially where only one forum, the Trial Court, is properly vested with the authority to rule on claims under the Lien Law and award any post-judgment, monetary relief to the extent it is or is not warranted. The Commission should defer any further action to the Trial Court.

19. Therefore, to avoid a duplication of effort on the part of the parties as well as a superfluous use of the Commission's and Your Honor's resources, Your Honor should defer to the Trial Court on issues and claims involving judgments and post-judgement relief and dismiss the Complaints.

## II. REQUEST FOR RELIEF

PGW respectfully requests that (a) this Motion be granted so as to dismiss or deny any and all issues and claims in the above-captioned complaints regarding payments on judgments (docketed municipal liens) and post-judgment relief; and (b) any other relief in favor of PGW that is deemed to be reasonable and appropriate also be granted.

Respectfully submitted,



Graciela Christlieb, Esquire  
(PA Atty. I.D. No. 200760)  
Senior Attorney  
Legal Department  
Philadelphia Gas Works  
800 W. Montgomery Ave.  
Philadelphia, PA 19122  
[graciela.christlieb@pgworks.com](mailto:graciela.christlieb@pgworks.com)

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Daniel Clearfield, Esquire (PA Atty. I.D. No. 26183)  
Carl R. Shultz, Esquire (PA Atty. I.D. No. 70328)  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
(717) 237-6000 (phone)  
(717) 237-6019 (fax)  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)

October 14, 2022

*Attorneys for Philadelphia Gas Works*

**VERIFICATION**

I, Bernard Cummings, hereby state that I am the Vice President, Customer Service and Collection of Philadelphia Gas Works. I hereby verify that the facts set forth in the attached Partial Motion to Dismiss are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

October 14, 2022

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Dated

*Bernard L. Cummings*