

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc, : Docket No. C-2012-2304324
Simon Garden Realty Co., L.P. : C-2015-2486642

v. :

Philadelphia Gas Works :

SBG Management Services, Inc, : Docket No. C-2012-2304183
Colonial Garden Realty Co., L.P. : C-2015-2486677

v. :

Philadelphia Gas Works :

SBG Management Services, Inc, : Docket No. C-2012-2304167
Elrea Garden Realty Co., L.P. : C-2015-2486674

v. :

Philadelphia Gas Works :

C-2012-2308465-AEL-11/29/22

SBG Management Services, Inc, : Docket No. ~~C-2012-2304165~~
Fern Rock Realty Co., L.P. : C-2015-2486670

v. :

Philadelphia Gas Works :

SBG Management Services, Inc, : Docket No. C-2012-2304215
Fairmount Manor Realty Co., L.P. : C-2015-2486664

v. :

Philadelphia Gas Works :

SBG Management Services, Inc, : Docket No. C-2012-2308462
Oak Lane Realty Co., L.P. : C-2015-2486655

v. :

Philadelphia Gas Works :

SBG Management Services, Inc, : Docket No. C-2012-2308454
Marchwood Realty Co., L.P. : 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 :

BRIEF OF SBG MANAGEMENT SERVICES, INC.

SBG Management Services, Inc., et al. (SBG or SBG parties), through the undersigned counsel, files this brief in compliance with the schedule set by the Honorable Eranda Vero in a pre-hearing conference on November 8, 2022.

I. INTRODUCTION

At the pre-hearing conference before the Public Utility Commission (PUC or Commission), Judge Vero offered the parties the opportunity to brief, in addition to the issues raised in PGW's motion, several questions that arose at the conference, including: (1) does the PUC have jurisdiction over the matters on remand – it is undisputed that the Commission has jurisdiction over the partial payment issue; (2) which of the captioned matters are still pending before the PUC, bringing them within the ambit of the Commonwealth Court's decision on retroactivity; (3) will the Commission's decision potentially affect the statute of limitations in SBG's Common Pleas Court action; and (4) what is the practical application of the Supreme Court's decision in terms

of the PUC's consideration of the refund due to SBG as a result of PGW's years-long overcharges. SBG incorporates by reference its response to Philadelphia Gas Works' (PGW) partial motion to dismiss in addition to augmenting the arguments advanced in that response, particularly as to issues argued by in PGW's motion but not addressed at the pre-hearing conference.

As a preliminary note, PGW stridently challenged this Commission's authority and jurisdiction to address (i) the amount of overcharges that SBG parties suffered from PGW's unlawful application of its 18% tariff rate, and accordingly (ii) the refund amounts to which SBG parties are entitled. PGW maintained that, to the extent this Commission has jurisdiction regarding this question, the Supreme Court's holding *only* applies to the SBG entities that were directly involved in the appeal – Simon Garden Realty Co., L.P., and Colonial Garden Realty Co., L.P.

This argument not only contradicts the Commonwealth Court's decision, but it also contravenes PGW's *direct* statements contained in its Status Reports to this Commission submitted on March 6, 2020 and on July 6, 2021. *See* Ex. A, PGW Status Report, 3/6/2020; Ex. B., PGW Status Report, 7/6/2021. In those Status Reports, "PGW submit[ted] that the 2012 and 2015 Complaints should continue to be stayed pending the final disposition of the appellate proceedings before the Courts." PGW Status Report, 7/6/2021, at 2. At that time, PGW recognized the decisions of these appellate courts as to "the remedies for inclusion of amounts subject to a docketed lien (i.e., deemed a judgment by the Supreme Court) on a jurisdictional bill" applied to **ALL** the docket numbers involved – all those for the "2012 Complaints" and all those for the

“2015 Complaints.” Given that PGW requested that **ALL** such matters should be stayed pending resolution of the appellate process, PGW also acknowledge that **each case remained pending at the time of the Supreme Court’s decision** in April 2021. PGW now tries to adopt a new position that the remaining 2012 and 2015 Complaints, captioned above, were not pending and awaiting the outcome of the appellate proceedings. This is contrary to the record before this Commission and PGW’s own position.

II. ARGUMENT

A. **PUC has Jurisdiction over Questions Concerning Rates under its Regulatory Control Pursuant to the Public Utility Code, 66 Pa.C.S. § 101 *et seq.***

PGW argued in its motion and at the pre-hearing conference that the PUC lacks jurisdiction over this matter because the Pennsylvania Supreme Court held that PGW’s docketed liens in the City of Philadelphia constitute judgments against the SBG parties. *See PGW v. PUC*, 249 A.3d 963 (Pa. 2021) (PGW II). Specifically, PGW claims that the PUC lacks authority to alter a judgment, thus ending its jurisdiction here. This argument misunderstands the Supreme Court’s holding and how it applies to the matters before this Commission. SBG is not asking the PUC to alter a judgment or take any action with regard to any lien, which had encumbered the Claimants’ properties *at one time*.¹

¹ PGW has noted that the liens, which it attached to Claimants’ properties, have since been satisfied or discharged. Thus, the issue before the Commission is simply about the payment of overcharged rates – amounts which PGW billed SBG and which have been overpaid. Despite PGW’s best efforts to confound this Commission, these matters are not attempts to alter the amount of any lien currently encumbering the SBG properties.

For purposes of SBG's claims involving the overcharged amounts, the Supreme Court's decision is salient for two reasons. First, because docketed liens constitute judgments, "only the statutory post-judgment interest rate of 6% per annum applies, not the tariff rate." *Id.* at 974. Second, PGW overcharged SBG for interest and late fees when it billed SBG at the tariff rate of eighteen percent (18%) on the amounts docketed as liens. PGW did, in fact, bill SBG parties these overcharged rates at 18% interest. PGW did not merely allow the unlawful 18% interest charges to accrue passively on the lien amounts. Although the overcharges concern the docketed liens, the overcharged amounts solely relate to the unlawful interest PGW added to the underlying balances (not the liens/judgments) and included on customer invoices. The Supreme Court's holding does not alter the Commission's jurisdiction, as PGW insinuates. The unlawful interest, which PGW charged SBG for years, is a rate that falls squarely within the PUC's jurisdiction.

PGW's reading of the Supreme Court's opinion essentially nullifies the decision in that it would deprive the PUC of its statutory authority to determine the reasonable and just amount of all rates. This argument also implicates the tangential issue of how, as a practical matter, the PUC should handle its consideration of the refund issue in the wake of *PGW II*.

1. The issue presented is within the PUC's jurisdiction.

As SBG argued in its response to PGW's partial motion to dismiss and at the pre-hearing conference, the Commission indisputably has jurisdiction to decide questions concerning the rates under its regulatory control. *See Bell Tel. Co. v. Philadelphia Warwick*

Co., 50 A.2d 684, 688 (Pa. 1947) (recognizing Commission's authority "to determine the reasonable and just amount" of all rates, as a condition precedent to any recovery on outstanding balances); 66 Pa.C.S. § 102 (defining the term "rate" under the Public Utility Code).² *Bell Tel.* and the statutory provisions under the Public Utility Code clearly recognize that the PUC is uniquely qualified to render rate determinations, as that is one of the Commission's prime functions. Indeed, the PUC itself has recognized that it is the Commission's responsibility to make this determination. See PUC Order, 12/8/2016, at 71 (noting the Commission has regulatory authority to determine the adequacy and reasonableness of all rates charged by public utilities).

At the conference, PGW repeatedly cited to *Gasparro v. PUC*, 814 A.2d 1282 (Pa. Cmwlth. 2003), which, SBG explained in its response to PGW's motion, is completely inapposite. *Gasparro* involved a challenge to the foundation of a default judgment, a question of whether the judgment was based on estimated or actual usage. The claimant argued that the underlying amount of the judgment was factually incorrect. The PUC determined that it lacked jurisdiction, not because of the existence of the judgment, but rather because the claimant had failed to raise the estimated versus actual usage claim with the Commission prior to the entry of default. The Commonwealth Court held that, where the claimant's claim revolves around the correct amount of usage, the Public Utilities Code "does not grant the PUC the authority to review the merits of judgment entered on a contract claim." *Id.* at 1285.

² "[The Commission] has subject matter jurisdiction over a service or billing issue raised in a lien-related complaint[.]" which allowed it "[to] find[] that PGW improperly imposed late payment charges on past due amounts subject to a municipal lien[.]" See PUC Order, 8/23/2018.

In this remand proceeding, SBG is not asking the PUC to review the merits of PGW's judgments against the SBG parties. In fact, the amounts of the docketed liens/judgments are not in dispute. The question before this tribunal relates to charges assessed against the judgments. After docketing the liens, PGW continued to assess late fees on the outstanding balances, which included the amounts docketed as liens, at its tariff rate of 18%. The past due amounts, however, became judgments when PGW docketed those amounts as liens. *See PGW v. PUC*, 249 A.3d at 973-4. The Supreme Court's decision explains that PGW acted unlawfully in applying the 18% tariff rate to these amounts, rather than the post-judgment interest rate of 6%. *Id.* Those additional assessed fees are not part of the judgments. They were assessed **ON** the judgments and continued to accrue on the judgments as late charges without changing the amounts of the judgments. Interest applied to these judgments is not part of the underlying amounts docketed as liens; it is a separate amount not included in the judgment as originally docketed. It is a discrete charge – a rate, as defined in the Public Utility Code – assessed as a late fee at an incorrect rate of interest against the judgments. PGW wrongly added these amounts to the outstanding balances owed and billed the assessed late fees to the SBG parties. The PUC's jurisdiction, without doubt, extends to determining the proper rate and calculating overcharges utilizing the correct rate.

PGW, according to *PGW II*, applied an incorrect rate to those judgment amounts. The correct rate, and the calculations flowing therefrom, are within the rate-determining authority of the PUC to decide. The sole issue for the PUC to decide is how much PGW overcharged SBG by applying its 18% tariff rate to the outstanding

balances reduced to docketed liens, which the PUC, the Commonwealth Court and the Supreme Court have consistently recognized lies directly within the PUC's authority. This determination is wholly unrelated to the merits of PGW's judgments against the SBG Parties; thus, *Gasparro* does not apply.

The Commission's calculations likely cannot provide SBG with full relief. As SBG conceded at the conference and in its response to PGW's motion, only the Common Pleas Court has authority to enforce an order specifying a refund amount and compel PGW to pay the SBG parties for the overcharges. But, it is the PUC's responsibility to resolve rate issues. This is purely and simply a rate issue.

2. The PUC has authority to order refunds.

Since the inception of these matters, SBG has been requesting that the Commission order refunds for PUC's overcharges based on the utility's use of its 18% tariff rate rather than the 6% post-judgment interest rate. That has not changed - SBG continues to seek those refunds. The PUC, pursuant to 66 Pa.C.S. § 1312(a), possesses the authority to order a refund when a utility overcharges a customer:

(a) General rule.--If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the commission need not find that the rate complained of was extortionate or oppressive. Any order of the commission awarding a refund shall be made for and on behalf of all patrons subject to the same rate of the public utility. The commission shall

state in any refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact.

66 Pa.C.S. § 1312(a) (emphasis supplied). Since the Supreme Court issued its decision, SBG has requested that the Commission specify “the exact amount to be paid[for the overcharges], the reasonable time within which payment shall be made, and ... findings upon pertinent questions of fact.” *Id.*

The PUC is statutorily empowered to make the necessary calculations and order the refunds SBG seeks and are due to SBG pursuant to *PGW II* and Section 1312(a) from 2008 (four years before the filing of the first complaints in the PUC) to the present. In addition, the Commission can and should order PGW to pay interest at the legal rate from the dates PGW collected the overcharges from the SBG Parties to compensate them for the many years that PGW has overcharged them. *Id.*

SBG has always acknowledged that the PUC has no ability to enforce payment of the amounts calculated as overcharges, and has therefore anticipated the need to pursue remedies in the Common Pleas Court in order to enforce this Commission’s calculation of the overcharged amounts and the refund owed. Section 1312 provides guidance in that regard as well, stating that, if a utility fails to pay refunds calculated by the PUC within the time period specified by the Commission, the claimant may file suit to recover the refunds. 66 Pa.C.S. §1312(b). In terms of recovery in a such a civil action, “[a]ny patron entitled to any refund shall be entitled to recover, in addition to the amount of refund, a penalty of 50% of the amount of such refund, together with all court costs and reasonable attorney fees.” *Id.*

PGW has cited the current suit pending in the Court of Common Pleas as a reason for dismissing SBG's claims before this Commission. Based upon this Commission's statutory authority to calculate and order refunds for "unjust or unreasonable" rates, PGW has no basis to conclude that the Court of Common Pleas is a more appropriate forum to decide the rate question presented. The SBG parties filed the lawsuit to preserve their claims against PGW - and the statute of limitations - anticipating that PGW would argue that this Commission lacks jurisdiction. PGW has presented every argument imaginable in order to avoid repaying amounts, which it overcharged SBG parties dating back to 2008. SBG parties filed their lawsuit in the Court of Common Pleas as a precaution to protect their interests from PGW's various challenges. SBG parties have consistently maintained that this Commission ought to determine the amount of overcharges and refund owed by PGW. Section 1312 of the Public Utility Code supports SBG's position.

3. The doctrine of merger does not prevent the Commission's consideration of PGW's overcharged rate amounts.

PGW's merger argument was not discussed at the pre-hearing conference. As a result, SBG need not augment its argument to address additional arguments advanced by PGW at the conference. SBG, therefore, incorporates in full its argument on this issue from its response to PGW's partial motion to dismiss.

B. The SBG Parties' Claims have not been Foreclosed.

The Commonwealth Court's decision does not, as PGW posits, limit the application of its retroactivity holding to SBG, Simon Garden Realty and Colonial Garden Realty. The exact language of that Court's opinion states: "we conclude that

our Supreme Court’s decision in *PGW II* applies retroactively only as to parties to this litigation **and to other proceedings pending at the time the *PGW II* decision was issued in April 2021.**” *PGW v. PUC*, 1291 C.D. 2018 at *29 (Pa. Cmwlth. March 16, 2022) (emphasis added. 2018 at *). The question, as fleshed out at the pre-hearing conference, has become precisely which parties had pending proceedings in April of 2021. The answer is simple, straightforward, and one to which PGW has already conceded. All Complaints filed by SBG parties in 2012 and in 2015 remain pending and had been stayed awaiting the outcome from the appellate courts.

As Judge Vero noted in the November 8, 2022 pre-hearing conference, PGW had previously agreed that all of the 2012 and 2015 claims remained pending. In fact, in a status report filed on July 6, 2021, PGW indicated to this Commission that ALL Complaints filed by SBG parties – including both the 2012 Complaints and the 2015 Complaints – were stayed and “should continue to be stayed pending the final disposition of the appellate proceedings before the Courts.” *See* PGW Status Report, 7/6/21, at 2. This included SBG’s appeal to the Supreme Court, resulting in the April 2021 opinion, and the subsequent remand to the Commonwealth Court to address “any outstanding issues.” *Id.* According to PGW’s status report, “Rule 1701 of the Pennsylvania Appellate Rules of Practice continue[d] to divest the Commission of jurisdiction over the ‘2012 Complaints[.]’ ” *Id.* PGW defined the 2012 Complaints as follows:

The 2012 Complaints are at the following docket numbers: C-2012-2304183 by Colonial Garden Realty Co., L.P. and SBG; C-2012-2304215 by Fairmont Manor Realty Co., L.P., and SBG; C-2012-2304324 by Simon Garden Realty Co., L.P., and SBG; C-2012-2304167 by Elrea Garden Realty Co., L.P., and

SBG; C-2012-2304303 by Marshall Square Realty Co., L.P., and SBG; C-2012-2308454 by Marchwood Realty Co., L.P., and SBG; C-2012-2308462 by Oak Lane Court Realty Co., L.P., and SBG; and, C-2012-2308465 by Fern Rock Realty Co., L.P. and SBG.

PGW Status Report, 3/6/2020, at 2 n.2. Thus, all of the 2012 Complaints remained pending and stayed through the Commonwealth Court's decision early this year. PGW's Status Report on July 6, 2021, requested that *each* of the above docket sheets remain stayed until the Commonwealth Court issued its decision on remand. PGW wanted these matters stayed because, on remand, the Commonwealth Court would decide the retroactive application of the Supreme Court's holding and issues related to PGW's refund obligations. It recognized that such a decision would directly impact the 2012 and 2015 Complaints pending before the Commission.

"In July 2016, at the request of PGW and the Complainants, ALJ Vero stayed each of the 2015 Complaints." PGW Status Report, 3/6/2020, at 5. PGW described the 2015 Complaints "as 'protective filings' to prevent the running of the statute of limitations on Complainants' right to seek refunds/credits for the additional billing periods beyond those litigated in the 2012 Complaints." *Id.* When PGW asked for the 2015 Complaints to remain stayed as of July 6, 2021, it acknowledged that the appeal proceedings in the Supreme Court and in the Commonwealth Court pertained to the claims by SBG parties of overcharged amounts and entitlement to refunds set forth in these filings:

Certain issues in (and any related remedies requested by) the 2015 complaints, such as the remedies for inclusion of amounts subject to a docketed lien (i.e., deemed a judgment by the Supreme Court) on a jurisdictional bill, are still subject to the appeal regarding the 2012 Complaints.

PGW Status Report, 7/6/21, at 2 (footnotes omitted; emphasis added). Despite its evolving position at the conference before this Commission in October 2022, PGW explicitly stated that the decision of the Supreme Court – as refined and clarified by the Commonwealth Court on remand – applies to **BOTH** the 2012 and 2015 Complaints *pending* before this Commission.

Yet, at the November 8 pre-hearing conference, PGW, for the first time, argued that the 2012 and 2015 complaints that were not part of the appeal to the Supreme Court were not included in the remand currently before the Commission. This change of position by PGW is shocking, contrary to the record, and contrary to PGW's counsel's own statements.

The Commonwealth Court's language is broad. It encompasses parties other than SBG entities who were pursuing challenges to PGW's use of the 18% tariff rate before the PUC or the Court of Common Pleas, where those claims remained pending in April of 2021. No such parties took part in the Supreme Court appeal, yet the plain language of the Commonwealth Court's directive would include them among the parties to whom *PGW II* should apply.

Regarding the SBG entities who pursued this precise claim before the PUC but were not parties to the Supreme Court appeal – notably *all* the 2015 Complaints, given those claims were not part of any appeal and have been stayed since 2016 – the Commonwealth Court's broad language also applies to them. PGW curiously insinuated at the pre-hearing conference that the 2012 and 2015 Complaints, which were not directly part of the Supreme Court appeal, were not pending in April 2021. Not

only is this suggestion patently false, it contradicts PGW's own statements when *it* asked this Commission to stay those Complaints pending the full resolution of the appeal process. **ALL** 2012 and 2015 Complaints were pending when the Supreme Court issued its decision in April 2021. PGW has explained this very fact to the Commission since March 2020.

Each of the 2012 and 2015 Complaints remain active matters before the PUC. For the 2012 Complaints, the Commonwealth Court remitted each docket number to the PUC following its disposition, and the PUC has not entered final decisions. Each of the 2015 Complaints has been stayed since 2016, and remains pending without final resolution as evidenced by the Commission's docket. In each of these cases, there remain outstanding issues like partial payments, an issue that Judge Vero noted at the pre-hearing conference is still pending in all of the SBG matters. PGW explicitly recognizes that the issue of "remedies for inclusion of amounts subject to a docketed lien (i.e., deemed a judgment by the Supreme Court) on a jurisdictional bill" remain pending in **BOTH** the 2012 and 2015 Complaints. *See* PGW Status Report, 7/6/21, at 2. At the request of PGW, the PUC did not take any action to resolve the outstanding issues in these cases while the Supreme Court appeal was pending, and while the Commonwealth Court addressed "any outstanding issues" on remand. Both PGW and the Commission recognized that the resolution of those matters would be dependent upon the Supreme Court's decision and how that holding applies. As none of these cases have been closed and final determinations have not been made, they are, by definition, pending.

The plain language of the Commonwealth Court's decision can lead to only one conclusion - that all of the 2012 and 2015 Complaints are included in the Court's decision on retroactivity. Each of these Complaints was pending in April 2021, and remains pending now before the PUC. "[Ca]ses pending at the time of [the Supreme Court's *PGW II*] decision in which the issue[s] of [§ 7106(b)'s proper construction and the applicability of PGW's tariff rate to docketed municipal liens] w[ere] timely raised and preserved." *Blackwell v. Com., State Ethics Comm'n*, 589 A.2d 1094, 1099 (Pa. 1991) (relied upon by the Commonwealth Court). The PUC proceedings in the captioned cases presented identical issues to those raised by the Intervenors before the Supreme Court. PGW explained that the 2012 and 2015 Complaints raise the same issues when it asked the Commission for each Complaint to remain stayed until the appellate process came to an end.

C. The PUC's Dismissal of SBG's Claims Could Result in Those Claims Being Barred by the Statute of Limitations.

PGW's counsel stated unequivocally at the November 8 pre-hearing conference that PGW will be raising a statute of limitations defense in the Common Pleas Court. SBG has been litigating the issue of the correct rate of interest PGW may charge on docketed liens/judgments since at least 2012. And, SBG's decade-long litigation has been successful - the Supreme Court agreed with SBG (and the PUC, which initially reached the same conclusion) and held that PGW cannot charge its 18% tariff rate against docketed liens/judgments, but must instead assess interest at the 6% post-judgment interest rate. The relief SBG worked so hard to attain could be completely

lost if the Commission declines (i) to calculate how much PGW overcharged SBG over more than a decade and (ii) to direct that PGW pay the necessary refunds.

The PUC is unambiguously empowered by 66 Pa.C.S. § 1312(a) to make the necessary calculations and order PGW to refund those amounts. As a general rule, in a proceeding where a utility has been found to have charged an incorrect rate, “the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment.”

Id. SBG parties would suffer substantial prejudice if the Commission declined to perform the refund calculation and instead dismissed their claims. If this occurred, SBG parties could be precluded from recovering PGW’s overcharges for a ten-year period from 2008 to 2018 were PGW to prevail on a statute of limitations defense in the Common Pleas Court.

If SBG were left with only its Common Pleas action as an avenue of recovery, there will likely be no recovery. As PGW has made clear, it will argue that the statute of limitations as to the 2012 and 2015 claims has expired. Neither the Supreme Court nor the Commonwealth Court envisioned that the SBG Parties would be denied recovery of the overcharges.³ That is clearly not the intent of the Supreme Court’s holding in *PGW*

³ If the PUC determines that it will not perform the refund calculations, it will essentially render moot the existing controversy of PGW’s overcharges. The Supreme Court does not issue advisory opinions. “An advisory opinion is one issued despite the lack of a justiciable case or controversy between the parties to an appeal. See *Pennsylvania Public Utility Commission v. County of Allegheny*, 415 Pa. 313, 203 A.2d 544, 546 (1964). Where the issues in a case are moot, any opinion issued would be merely advisory and, therefore, inappropriate. *Department of Environmental Resources v. Jubelirer*, 531 Pa. 472, 614 A.2d 204, 212–13 (1992) (citations omitted).” *Stuckley v. Zoning Hearing Bd. of Newtown Twp.*, 79 A.3d 510, 516 (Pa. 2013).

II or the Commonwealth Court's decision finding that *PGW II* applied retroactively and remanding to the Commission. In fact, if the PUC were to dismiss SBG's claims, the result could be the complete nullification of the *PGW II* and the Commonwealth Court's subsequent decision.

Further, Section 1312(b) sets forth a procedure whereby a utility customer may file suit to recover an overpayment after the PUC has calculated and ordered a refund:

If the public utility fails to make refunds within the time for payment fixed by any final order of the commission or court, any patron entitled to any refund may sue therefor and the findings and order made by the commission shall be prima facie evidence of the facts therein stated, and that the amount awarded is justly due the plaintiff in such suit, and the defendant public utility shall not be permitted to avail itself of the defense that the service was, in fact, rendered to the plaintiff at the rate contained in its tariffs in force at the time payment was made and received, nor shall the defendant public utility be permitted to avail itself of the defense that the rate was reasonable.

Id.

A court, however, cannot order the payment of a refund unless the PUC has first calculated the amount of the refund:

No action shall be brought in any court for a refund, unless and until the commission shall have determined that the rate in question was unjust or unreasonable, or in violation of any regulation or order of the commission, or in excess of the applicable rate contained in an existing and effective tariff, and then only to recover such refunds as may have been awarded and directed to be paid by the commission in such order.

66 Pa.C.S. § 1312(c). At the pre-hearing conference on November 8, 2022, PGW suggested that SBG parties should simply pursue their remedies on the overcharged amounts in the Court of Common Pleas. PGW relies upon the fact that the docketed lien is a judgment, and therefore the Commission has no jurisdiction over judgments. As explained above, this argument

disregards the fact that the overcharged amounts – the 18% interest charged unlawfully to SBG parties for years – are rates for PGW *billed* SBG parties, separate and apart from the docketed amounts. The Court of Common Pleas may ultimately be required to provide SBG parties with full relief *by enforcing* the refund amount that this Commission must calculate. But, based upon the statutory structure of the Public Utility Code, the Court of Common Pleas may not have the opportunity to enforce a refund award if the Commission dismisses the claims of SBG Parties seeking compensation for PGW's overcharges.

The Commission, therefore, plays an integral part in seeing that a utility customer who has been overcharged can recoup the overpayments. The PUC calculates the amount of the overcharges in the first instance and orders the utility to refund the customer. The PUC, however, has no enforcement power. The amount of the ordered refund serves, instead, as the basis for an award in the Common Pleas Court if the utility fails to pay the ordered refund. Absent the PUC performing its calculation role, there can be no recovery by an aggrieved customer. The SBG Parties are aggrieved customers as demonstrated by the Supreme Court's decision in *PGW II* and the Commonwealth Court's retroactivity holding. The PUC is statutorily bound to calculate the amounts by which they have been overcharged

D. The Supreme Court's Decision Does Not Divest the PUC of Jurisdiction.

1. The Application of *PGW II* by the Commission.

The discussion between Judge Vero and counsel at the pre-hearing conference pointed to an interesting question involving the practical application at the agency level of the Supreme Court's decision in *PGW II*. It is important to note that the Court did

not decide a novel issue of law; rather the statute the Court interpreted was amended in 1990 to include the language that docketed municipal liens in cities of the first class constitute judgments. This amendment was in existence for more than 20 years at the time of the Supreme Court's decision interpreting that law. Since 1990, the relevant statute, 53 P.S. § 7106, has stated:

(b) With the exception of those claims which have been assigned, any municipal claim, municipal lien, tax, tax claim or tax lien, including interest, penalty and costs, imposed by a city of the first class, shall be a judgment only against the said property when the lien has been docketed by the prothonotary. The docketing of the lien shall be given the effect of a judgment against the said property only with respect to which the claim is filed as a lien. The prothonotary shall maintain an in rem index, the form and location of which shall be within the prothonotary's discretion. All tax claims, water rents or rates, lighting rates, power rates and sewer rates heretofore filed are hereby ratified, confirmed and made valid subsisting liens as of the date of their original filing.

53 P.S. § 7106(b) (emphasis supplied). The meaning of the language, “[t]he docketing of the lien shall be given the effect of a judgment against the said property,” is crystal clear, as the Supreme Court held in *PGW II*.

The Supreme Court has specifically held that its first interpretation of a statutory provision does not constitute the announcement of a new rule or principle of law. *Fiore v. White*, 757 A.2d 842, 848 (Pa. 2000). The Court explained:

There can be no change to statutory law when there has been no amendment by the legislature and no prior decision by this Court. Only the legislature has the authority to promulgate legislation. Our role is to interpret statutes as enacted by the Assembly. We affect legislation when we affirm, alter, or overrule our prior decisions concerning a statute or when we declare it null and void, as unconstitutional. Therefore, when we have not yet answered a specific question about the meaning of a statute, our initial interpretation does not announce a new rule of law. Our first

pronouncement on the substance of a statutory provision is purely a clarification of an existing law.

Id. See also *Kendrick v. District Attorney of Philadelphia County*, 916 A.2d 529, 538 (Pa. 2007) (interpretation of a word in a statute does not announce a new rule of law, “but must be deemed to have merely explicated the meaning and scope of the term”).

While the decision in *PGW II* did not decide a novel issue of law, Judge Vero expressed a concern that *PGW II* may present an issue of novel application by the PUC. Specifically, does the Supreme Court’s decision affect how the Commission will resolve claims involving amounts docketed as liens in a first class city? The simple answer is that existing precedent demonstrates that *PGW II* does not alter the Commission’s authority or the result.

Two Commonwealth Court cases directly address the issue of the Commission’s jurisdiction over judgments and liens, neither of which apply to this matter because they involve direct challenges to the merits of judgments and liens. See *Gasparro* (judgments); *Collins v. Pennsylvania Pub. Util. Comm’n*, 2020 WL 5552585 (Pa. Cmwlth. September 17, 2020) (liens). It is important to keep in mind that SBG is not seeking review of the merits of PGW’s judgments and does not dispute their validity. Rather, SBG challenges the rate of the late fees assessed against PGW’s judgments against the SBG Parties.

The court in *Gasparro* noted that the PUC’s jurisdiction arises from statutory law and does not include authority to review the merits of a judgment:

The PUC is a creature of statute and may exercise only those powers that are expressly conferred upon it by the legislature. *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1978). The PUC has exclusive

jurisdiction over matters involving the reasonableness, adequacy and sufficiency of services rendered. *Bell Telephone Company of Pennsylvania v. Sanner*, 248 Pa.Super. 273, 375 A.2d 93 (1977); *Behrend v. Bell Telephone Co. of Pennsylvania*, 431 Pa. 63, 243 A.2d 346 (1968). However, the Public Utilities Code, 66 Pa.C.S. §§ 101–3316, does not grant the PUC the authority to review the merits of judgment entered on a contract claim.

Gasparro, 814 A.2d at 1285. There, the utility customer had failed to challenge the merits of the utility's billings in the PUC proceedings, and the utility obtained a default judgment. The court reasoned that, when the customer attempted to challenge the merits after the entry of the default judgment, and at the point where the utility was moving to collect on its judgment, the Commission faced "an issue over which the PUC does not have jurisdiction." *Id.*

Similarly, in *Collins*, the Commonwealth Court recognized the general principle that "the Commission has regularly recognized that it does not have subject matter jurisdiction to address municipal liens." *Collins*, at *6 (citing *Jacqueline Stevens v. Philadelphia Gas Works*, (Pa. P.U.C. Dkt. No. C-2015-2472728, filed July 30, 2015). In any event, the court determined that the claimant was challenging a lien that was not owned by the utility involved in the matter.

The PUC has never had the authority to alter the amount of a judgment or to order the removal of a lien. Those functions have always been the province of the Common Pleas Courts. The decision in *PGW II* does not change that. The only effect of the decision is to interpret a 20-year-old statute providing that a municipal lien docketed in a city of the first class constitutes a judgment. *See* 53 P.S. § 7106(b). The PUC never had jurisdiction over the removal or alteration of a lien. In the limited circumstances of a municipal lien docketed in a first class city, any such lien is a

judgment, where the Commission has never had jurisdiction to review the merits. Therefore, the manner in which the PUC functions in the wake of *PGW II* remains unchanged.

As SBG has continuously made clear, the SBG Parties are not challenging the merits of the liens or the resulting judgments. SBG had delinquencies that PGW was within its rights to docket as liens. And, by operation of Section 7106(b), once docketed, those liens became judgments against the SBG Parties. This is completely undisputed and the resulting judgments are valid. The issue is PGW's billing practices **after** docketing a lien and thereby creating a judgment. PGW does not dispute that it continued to charge its 18% tariff rate as a late fee on the judgments. The late fees assessed did not alter, change or add to the amounts of the judgments. They are not the subject of new judgments or liens. The fees constitute new charges PGW imposed on SBG. The sole dispute was the rate of the late fee PGW applied to the amounts subject to the judgments. The Supreme Court ended that dispute, unequivocally holding that the post-judgment interest rate of 6%, rather than the 18% tariff, was the correct rate. Now, post-*PGW II*, SBG is not asking the Commission to do anything but to calculate the overcharges PGW assessed against the SBG Parties by applying its 18% tariff instead of the 6% post-judgment interest rate to amounts that were the subject of judgments. The PUC has explicit statutory authority to make this calculation and to order refunds. Indeed, such calculations are one of the Commission's core functions.

D. This Matter and the Common Pleas Action are not Duplicative.

PGW's duplicative action argument was not discussed at the pre-hearing conference. As a result, SBG need not augment its argument to address additional arguments advanced by PGW at the conference. SBG, therefore, incorporates in full its argument on this issue from its response to PGW's partial motion to dismiss.

II. CONCLUSION

For the foregoing reasons, SBG respectfully requests that the Commission deny PGW's partial motion to dismiss.

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EXHIBIT A

Carl R. Shultz
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March 6, 2020

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta:

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

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

Sincerely,



Carl R. Shultz

CS/jls
Enclosure

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

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing **Status Update Memorandum** upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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

Date: March 6, 2020



Carl R. Shultz, Esquire
Attorney for Philadelphia Gas Works

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc. /
Simon Garden Realty Co., L.P. : Docket No. C-2015-2486642

v.

Philadelphia Gas Works

SBG Management Services, Inc. /
Colonial Garden Realty Co., L.P. : Docket No. C-2015-2486677

v.

Philadelphia Gas Works

SBG Management Services, Inc. /
Elrea Garden Realty Co., L.P. : Docket No. C-2015-2486674

v.

Philadelphia Gas Works

SBG Management Services, Inc. /
Fern Rock Gardens Realty Co., L.P. : Docket No. C-2015-2486670

v.

Philadelphia Gas Works

SBG Management Services, Inc. /
Fairmount Manor Realty Co., L.P. : Docket No. C-2015-2486664

v.

Philadelphia Gas Works

SBG Management Services, Inc. /
Oak Lane Realty Co., L.P. : Docket No. C-2015-2486655

v.

Philadelphia Gas Works

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

v. :

Philadelphia Gas Works :

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

v. :

Philadelphia Gas Works :

**STATUS UPDATE MEMORANDUM BY
PHILADELPHIA GAS WORKS**

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

I. BACKGROUND

A. The Prior Complaints

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

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

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

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

The “second group” of complaints involves the following landlords and PUC Docket Numbers: Elrea Garden Realty Co., L.P., C-2012-2304167; Fairmount Manor Realty Co., L.P., C-2012-2304215; and Marshall Square Realty Co., L.P., C-2012-2304303.

The “third group” of complaints involves the following landlords and PUC Docket Numbers: Marchwood Realty Co., L.P., C-2012-2308454; Oak Lane Court Realty Co., L.P., C-2012-2308462; and Fern Rock Realty Co., L.P., C-2012-2308465.

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

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

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

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

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

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

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

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

⁷ "[T]he legal effect of the municipal lien is to remove the indebtedness for the unpaid utility bill from Commission purview." December 2016 Order at 65. The Commission characterizes "the effect of the municipal lien on the same debt as accrued pursuant to a Commission-approved tariff, as 'removed.'" December 2016 Order at 73. *See also* December 2016 Order at 65, 75-80, 109; May 2018 Order at 14, 19-24; August 2018 Order at 16.

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

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

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

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

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

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

¹¹ Pennsylvania Supreme Court Docket No. 21 EAL 2020.

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

B. The 2015 Complaints

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

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

II. UPDATE ON FACTUAL AND LEGAL ISSUES

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

A. Incorrect charges on gas bills from PGW

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

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

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

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

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

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

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

2. PGW's application of partial payments

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

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

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

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

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

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

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

B. Threats to Terminate Gas Service To The Complainants

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

C. Problem with Gas Service

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

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

²² See PGW Answer at ¶ 4.

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

III. PROCEDURAL SCHEDULE

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

IV. SETTLEMENT

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

[Signature appears on next page]

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

Respectfully submitted,



Daniel Clearfield, Esquire
Carl R. Shultz, Esquire

Laureto A. Farinas, Esquire
Senior Attorney

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Date: March 6, 2020

Attorneys for Philadelphia Gas Works

EXHIBIT B

Carl R. Shultz
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July 6, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

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

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

Sincerely,



Carl R. Shultz
CS/jls
Enclosure

cc: Certificate of Service

CERTIFICATE OF SERVICE

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

Via Email Only

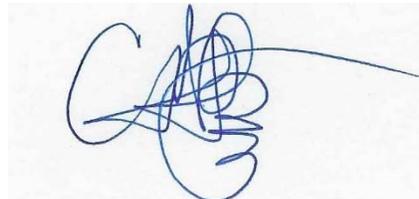
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Co., L.P., Oak Lane Court Realty Co., L.P., and Fern Rock Realty Co., L.P.*

Honorable Eranda Vero
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Date: July 6, 2021

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July 6, 2021

Via Email

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

Dear Judge Vero:

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

Due to the orders of the Pennsylvania Supreme Court¹ and for the reasons set forth below, PGW submits that the above Complaints should continue to be stayed pending the final disposition of the appellate proceedings before the Courts.

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

Rule 1701 of the Pennsylvania Appellate Rules of Practice² continues to divest the Commission of jurisdiction over the “2012 Complaints.”³ That rule provides that the Commission may no longer proceed in the matter during the pendency of appellate proceedings.

The Pennsylvania Supreme Court in its Orders remanded the appellate proceeding regarding the 2012 Complaints to the Commonwealth Court to address “any outstanding issues.”⁴ PGW believes that the outstanding issues to be addressed by the Commonwealth Court include PGW’s constitutional due process argument or PGW’s challenges to the refund, penalty, and corrective action portions of the PUC orders⁵, as well as other issues

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

Certain issues in (and any related remedies requested by) the 2015 complaints, such as the remedies for inclusion of amounts subject to a docketed lien (i.e., deemed a judgment by the Supreme Court) on a jurisdictional bill,⁶ are still subject to the appeal regarding the 2012 Complaints. That being said, PGW acknowledges that the amounts due to the Complainants as a result of the reapplication of partial payments, if any, and how and in what form these amounts should be credited to the Complainants were not subject to said appeal⁷ and have not been resolved in 2015 Complaints.

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

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

² Pa.R.A.P. 1701(a).

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

⁴ See footnote 1.

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

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

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

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

it would be more efficient to hold those issues in abeyance until the Commonwealth Court concludes its review and the Appeal is completed. Once the appellate proceedings are concluded, a pre-hearing conference should be scheduled to determine how to resolve the remaining issues. PGW will keep the presiding officer informed of any relevant actions by the Pennsylvania Courts.

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

Sincerely,

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

Carl R. Shultz
CS/jls

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

CERTIFICATE OF SERVICE

I, Shawn M. Rodgers, Esquire, do hereby certify that on November 29, 2022, I caused a true and correct copy of Complainants' Supplemental Brief in Opposition to PGW's Partial Motion to Dismiss to be served upon the following by e-filing and/or email:

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/s/ Shawn M. Rodgers

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