



GOLDSTEIN
LAW
PARTNERS

May 27, 2023

Hon. Eranda Vero, ALJ
Pennsylvania Public Utility Commission
801 Market Street, Suite 4603
Philadelphia, PA 19107

BY E-FILE and E-MAIL (evero@pa.gov)

RE: *SBG Management Services, Inc. et al v PGW; Docket Nos. C-2012-2304183; C-2012-2304324; C-2015-2486618; C-2015-2486677; C-2015-2486674; C-2015-2486670; C-2015-2486664; C-2015-2486655; C-2015-2486648; C-2015-2486674*

Dear Judge Vero:

On behalf of Complainants, SBG Management Services, Inc. and the various other entities involved in the above docketed matters (collectively, "SBG"), enclosed please find SBG's Post-Hearing Brief addressing the issues set forth in the Briefing Order dated May 10, 2023, with regard to the above-referenced matter.

Electronic copies will be served in accordance with the attached Certificate of Service.

Respectfully submitted,

/s/ Shawn M. Rodgers
Shawn M. Rodgers

cc: All Counsel of Record
Pamela McNeal (<pmcneal@pa.gov>)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SBG Management Services, Inc. <i>et al.</i>	:	C-2012-2304183
	:	C-2012-2304324
	:	C-2015-2486618
	:	C-2015-2486677
	:	C-2015-2486674
	:	C-2015-2486670
v.	:	C-2015-2486664
	:	C-2015-2486655
	:	C-2015-2486648
Philadelphia Gas Works	:	C-2015-2486674

SBG’S POST-EVIDENTIARY HEARING BRIEF

Complainants, 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 (Judge Vero) subsequent to the April 25, 2023 evidentiary hearing.

I. STATEMENT OF THE CASE

This protracted litigation has been before the Public Utilities Commission (Commission or PUC) since 2012, when the SBG Parties filed their first petitions with the PUC claiming, *inter alia*, that Philadelphia Gas Works (PGW) was overcharging them by applying their tariff rate of 18% against delinquent balances that had been docketed as liens. Judge Vero agreed with SBG and recommended that PGW refund the interest overcharges, which the PUC accepted and entered an order requiring PGW to issue refunds. On appeal, the Commonwealth Court reversed the PUC’s order.

The Supreme Court granted discretionary review and held that PGW was statutorily precluded from charging the 18% tariff rate on amounts docketed as liens. The Court determined

that, in the City of Philadelphia, Pennsylvania's only first class city, a docketed lien constitutes a judgment, such that the post-judgment interest rate of 6% applies to those docketed liens/judgments. *See* 53 P.S. § 7106 (municipal lien docketed in a city of the first class constitutes a judgment).

Subsequent to the Supreme Court's decision, the Commonwealth Court, on remand, held that the Supreme Court's ruling applies retroactively to the parties in the instant matter. Judge Vero has determined which matters fall under the Commonwealth Court's retroactivity order, and the caption reflects her ruling. *See* Order, 12/19/2022; Order, 1/20/2023. SBG is seeking an order from the PUC awarding refunds from PGW for the years during which PGW applied an unlawful interest rate to past due balances.

II. STATEMENT OF QUESTIONS INVOLVED

The legal issues for argument are set forth in the PUC's Briefing Order of May 10, 2023, as follows:

- A. Is the Commission empowered to apply the statute of limitations under 66 Pa. C.S. § 1312 in calculating refunds based upon PGW's improper assessment of a tariff-based interest rate on Complainants' outstanding balances that were the subject of municipal liens (which are considered judgments under the Supreme Court's decision)?
- B. Pursuant to 66 Pa.C.S. § 1312, should interest be assessed against PGW on any refunds ordered based upon PGW charging an erroneous interest rate against delinquent accounts?
- C. What is the legal effect of a lien that has been vacated?

III. SUMMARY OF THE ARGUMENT

The PUC has the express authority to calculate and order PGW to pay refunds to SBG utilizing the four-year statute of limitations provided in 66 Pa. C.S. §1312. PGW overcharged SBG by applying an improper rate of interest to outstanding balances that had been docketed as

liens. Judge Vero previously ruled that the four-year statute of limitation applies because this matter implicates billing and rates. *See* Initial Decision issued on August 21, 2015, at 55-56 and Order on Respondent’s Motion in Limine, dated January 20, 2023.

Judge Vero is empowered to assess interest at the legal rate against any refunds she orders. PGW docketed liens in amounts that reflected and included its interest overcharges, with the result that SBG had no access to funds unlawfully assessed against the SBG properties. Given the protracted nature of this litigation and that the docketed liens acted as encumbrances on the properties, an award of interest on the refunds is warranted.

The legal effect of the vacated liens is identical to the legal effect of the satisfied liens. Both operated as encumbrances, and, in a substantial case, both satisfied and vacated liens were released in close time proximity to SBG’s payment of the outstanding balance giving rise to the liens.

IV. ARGUMENT

A. **The Public Utilities Commission has Authority to Apply the Four-Year Statute of Limitations Set Forth in 66 Pa.C.S. § 1312(a) in Calculating Refunds Owed by Philadelphia Gas Works to the SBG Parties.**

1. **Section 1312(a) four-year statute of limitations applies.**

The Public Utilities Code (Code), at 66 Pa.C.S. § 1312(a), sets forth the statute of limitations applicable whenever the PUC determines that a rate paid to a public utility is in excess of the rate allowed by law:

(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).

SBG has always contended that this is a matter involving rates such as would bring all claims and overcharges within the purview of Section 1312(a). PGW has argued that this matter does not implicate rates, but rather is what PGW characterizes as a challenge to the amounts of the docketed liens, not sums charged for services. This argument fundamentally misstates the core issue in this case. SBG has never challenged the amounts of the liens PGW docketed. Instead, SBG has limited the redress sought to PGW's overcharges of interest on the amounts billed to SBG for gas service that gave rise to the liens.

Since early in this litigation, Judge Vero has recognized that, while the Commission lacks jurisdiction over the docketing of municipal liens, it retains jurisdiction over the billing issues related to the liens:

It is well-settled that the Commission does not have jurisdiction over the placement of municipal liens. *See, Josephine Pitt v. Philadelphia Gas Works*, Docket No. C-2009-2140025 (Order entered April 29, 2010). *See Dennis J. Vicario v. Philadelphia Gas Works*, C-2010-2213955 (Opinion and Order entered November 16, 2011), the Commission recognized its lack of subject matter jurisdiction over the placement of municipal liens but explained that it retains jurisdiction over the utility's service and billing practices reflected in the outstanding balance on which the municipal lien was filed. *See Vicario*, Opinion and Order at 5.

The interest rate at which late payment charges are accrued on an outstanding balance is a billing issue, which lies squarely within the jurisdiction of this Commission, even if the outstanding balance in question is the subject of a municipal lien filed against the Complainants' property for unpaid gas service.

Initial Decision issued on August 21, 2015, at 55-56. Judge Vero understood and drew a distinction between (1) the erroneous interest rate that PGW assessed on delinquent balances docketed as liens,

and (2) the underlying balance itself. SBG's challenge concerns only PGW's misapplication of the 18% tariff rate. PGW attempts to confuse the nature of the claims before the Commission.

Further, in her January 20, 2023 Order granting in part and denying in part PGW's Motion in Limine to preclude evidence of consequential damages, Judge Vero agreed with SBG that this matter falls within the language of Section 1312(a), thereby authorizing her to order PGW to refund overcharges to SBG:

I agree with SBG that the provisions of 66 Pa. C.S.A. § 1312 grant the Commission 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. Therefore, any discussion and testimony pertaining to overcharges alleged in the Complaints are relevant and admissible under § 1312(a) of the Code.

Order on Respondent's Motion in Limine, dated January 20, 2023, at 5.¹

Judge Vero's holdings, which have determined that the excess interest PGW charged the SBG Parties constitute billing rates subject to Section 1312(a), are well-grounded in the law. The word "rate" is broadly defined in the Code to include virtually any charge whatsoever that a public utility assesses against a ratepayer:

Every individual, or joint fare, toll, charge, rental, or other compensation whatsoever of any public utility, or contract carrier by motor vehicle, made, demanded, or received for any service within this part, offered, rendered, or furnished by such public utility, or contract carrier by motor vehicle, whether in currency, legal tender, or evidence thereof, in kind, in services or in any other medium or manner whatsoever, and whether received directly or indirectly, and any rules, regulations, practices, classifications or contracts affecting any such compensation, charge, fare, toll, or rental.

¹ This conclusion in Judge Vero's January 20, 2023 Order answers the question of whether Section 1312 authorizes the Commission to apply the four-year statute of limitations in calculating refunds owed by PGW to the SBG Parties. SBG believes that Judge Vero's January 20, 2023 decision constitutes the law of the case on this issue.

66 Pa. C.S. § 102.

SBG anticipates that PGW may argue that, even if the interest charges constitute a rate for purposes of PUC jurisdiction, the charges are not “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 of such public utility.” 66 Pa.C.S. § 1312(a). This argument is contrary to Commonwealth Court precedent.

In *Duquesne Light Co. v. PUC*, 543 A.2d 196 (Pa. Cmwlth. 1988), the Commonwealth Court, following a remand, was tasked with determining if a PUC order awarding a refund comported with the Supreme Court decision in *Joseph Horne Co. v. PUC*, 485 A.2d 1105 (Pa. 1984), where the Court held that temporary rate increases were unlawful. Duquesne Light, with PUC approval, had charged a higher temporary rate for a period of approximately 6 months while its rate increase request was pending. The PUC ordered Duquesne Light to issue refunds to its customers.

On appeal to the Commonwealth Court, Duquesne Light argued that the refunds were not authorized by Section 1312(a) because the temporary rate was not unjust or unreasonable, in violation of any regulation or order of the commission, or in excess of the applicable rate contained in an existing and effective tariff. The Commonwealth Court disagreed and affirmed the PUC’s refund order, holding that the refunds were authorized because the Supreme Court had characterized the temporary rate as unlawful:

We have no difficulty in determining that the Supreme Court found the implementation of Supplement 52 to be *unlawful*. While it is true that the word “unlawful” does not appear in Section 1312, **we are convinced that rates which are unlawful are, of a certainty, unreasonable and unjust**. Any other interpretation of that language would cause us to reach an absurd result which would be contrary to the statutory presumption regarding legislative intent. Section 1922(1) of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1922(1).

Duquesne Light at 199 (emphasis added). See also *Springfield Twp. v. PUC*, 676 A.2d 304, 307 (Pa. Cmwlth. 1996) (“Section 1312 of the Code, 66 Pa.C.S. § 1312, authorizes PUC to order a public utility to refund the rates which were (1) unlawful, (2) unjust or unreasonable, or (3) in excess of the rates contained in the public utility's tariff”); *National Fuel Gas Distribution Corp. v. PUC*, 473 A.2d 1109 (Pa, Cmwlth. 1984) (affirming PUC order requiring a gas service utility to refund gas cost rate revenues determined by PUC to have been unlawfully collected).

PGW operated contrary to the law when it applied the 18% tariff rate to assess late fees against SBG parties on docketed liens. The Supreme Court determined in *Philadelphia Gas Works v. PUC*, 249 A.3d 963 (Pa 2021) (*PGW II*), that, pursuant to 53 P.S. § 7106, the liens PGW docketed constituted judgments. The Court reasoned that PGW’s practice of charging its 18% tariff rate on outstanding balances that were the subject of municipal liens was contrary to the law. Because the docketed liens are judgments under Section 7106, the Court ruled that PGW must apply the 6% post-judgment interest. Thus, the Court necessarily found that PGW charging 18% was unlawful.

The Commonwealth Court in both *Duquesne Lighting* and *National Fuel Gas Distribution* concluded that Section 1312(a) applies where a utility’s charge is unlawful. The Supreme Court determined that charging 18% interest on a delinquent balance was unlawful. Consistent with the reasoning in *Duquesne Lighting* and *National Fuel Gas*, an unlawful charge is, by its very nature, unreasonable and unjust, bringing it within the purview of Section 1312(a). Thus, Section 1312(a) gives the Commission “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.” 66 Pa.C.S. § 1312(a).

Section 1312(a) unambiguously applies to the refunds sought in this matter, as previously noted by Judge Vero. *See* Order on Respondent's Motion in Limine, dated January 20, 2023, at 5. The four-year statute of limitations set forth in Section 1312(a) is inextricably linked with the language of the statute authorizing refunds:

[T]he 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.**

66 Pa.C.S. § 1312(a) (emphasis supplied). A reading of the plain language of the statute can lead to no other conclusion than that the four-year statute of limitation applies to the calculation of refunds due to SBG. Therefore, the PUC may, order PGW to issue refunds to SBG Parties for all overcharges for the period beginning four years before the filing of the complaints. Indeed, while the award of refunds is permissible, the PUC should order PGW to make SBG whole by refunding to SBG, with interest, the amounts PGW overcharged SBG over a substantial period of time.

2 Section 3314(a)'s three-year statute of limitations does not apply.

Despite the clear application of Section 1312(a) to this refund case, PGW argues that the three-year statute of limitation in 66 Pa.C.S. §3314(a)² should apply instead of Section 1312(a)'s four-year statute. This argument is mistaken at best, disingenuous at worst. In *LP Water & Sewer Co. v. Pennsylvania Pub. Util. Comm'n*, 722 A.2d 733 (Pa. Cmwlth. 1998), the

² Section 3314(a) provides:

No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

Commonwealth Court rejected this precise argument in litigation involving refunds under Section 1312(a):

LP argues that the PUC committed legal error in failing to find that Sanderman's complaint was barred by the three-year statute of limitations set forth in Section 3314 of the Code, 66 Pa.C.S. §3314 and instead applying the four-year statute of limitation of Section 1312 of the Code. We do not agree.

LP's reference to Section 3314 of the Code is misplaced. **Section 1312, not Section 3314, specifically addresses the statute of limitations in a refund proceeding.**³ Section 1312(a) states, in pertinent part:

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 the 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 such excessive payment*

66 Pa.C.S. §1312(a). LP's assertion that Section 3314(a) of the Code is applicable is rejected because Section 3314(a) states, in pertinent part, that “no action for recovery of any *penalties* or *forfeitures* ... shall be maintained unless brought within three years from the date in which the liability therefore arose....” (Emphasis added.) This is not a case for penalties or forfeitures but concerns a refund.

Id. at 738 (emphasis added).

Like *LP Water and Sewer*, this is not a case involving penalties or forfeitures. It is, and has always been, a matter seeking refunds of PGW's overcharges based on its application of the 18% tariff rate to balances that had been docketed as liens. It is abundantly apparent that Section

³ The obvious distinction between Section 1312 and Section 3314 is that Section 1312 appears under the section titled "Rates and Distribution Systems" subsection "Rates," while Section 3314 is part of the the section titled "Violations and Penalties." This is not a violations or penalties case. It is and has always been a case challenging the interest rate PGW assessed on delinquent charges that had been docketed as liens.

1312(a), not Section 3314(a) applies. Accordingly, Section 1312(a)'s four-year statement of limitations is the correct statute for the PUC to apply in calculating refunds PGW owes to SBG.

B. In Accordance with 66 Pa.C.S. § 1312(a), the PUC Should Assess Interest against Philadelphia Gas Works on any Ordered Refunds.

Section 1312(a) explicitly authorizes the Commission to award interest on any refunds ordered pursuant to the section:

[T]he 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.**

66 Pa.C.S. § 1312(a) (emphasis supplied). The plain statutory language provides that, when the PUC determines that a refund is appropriate, the refund can be ordered “together with interest at the legal rate from the date of each such excessive payment.” *Id.*

The Commonwealth Court has routinely approved PUC orders of refunds with accompanying interest. *See Peoples Nat. Gas Co., LLC v. PUC*, 278 A.3d 407 (Pa. Cmwlth. 2022) (PUC did not err in requiring the Company to refund \$1,497,675, plus applicable interest); *Emporium Water Co. v. PUC*, 859 A.2d 20, 24 (Pa. Cmwlth. 2004) (PUC “had 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”); *Duquesne Light*, 543 A.2d 196 (Section 1312(a) interest imposed where PUC ordered refund based upon finding that one of conditions exists for entry of refund order).

Given the tortured history of this matter, coupled with the clear statutory language and precedent, this case cries out for the assessment of interest against PGW. Over the course of more than a decade, SBG has been litigating this matter with the hope of recovering the substantial

overcharges caused by PGW's long-standing practice of charging 18% interest on delinquent balances that had been docketed as liens, despite that, since 1990, 53 P.S. § 7106 provided that those docketed liens constituted judgments. Unlike PGW, the Philadelphia Water Department, which is the only other entity affected by Section 7106's judgment provision, began charging the 6% post-judgment interest rate on docketed liens without the necessity of protracted litigation.

In 2012, the SBG Parties filed their first complaints with the PUC, alleging, *inter alia*, that PGW routinely applied an incorrect interest rate to overdue balances reduced to docketed liens and improperly applied partial payments, leading to further interest overcharges. In 2015, SBG filed complaints related to the same properties and making the same allegations. In 2016 and 2018, the PUC determined that PGW owed \$3,149.85 to SBG Parties for improperly credited partial payments. To date, PGW has failed to pay the ordered credits to SBG, despite PGW's assertion to the contrary in PGW Post-Hearing Exhibit 1. In fact, that exhibit demonstrates that PGW cannot produce any documentation that it paid any of the ordered credits, or, presumably, it would have done so. Instead, PGW asserts in Post-Hearing Exhibit 1, without any accompanying documents as proof, that \$3,149.85 had been "comprehensively applied" as credits "to the partial payment calculations" for five of the SBG properties. PGW has never notified any of the SBG Parties that PGW was adding the unpaid credits for partial payments to other sums PGW owes to SBG Parties. Nor has PGW ever provided an accounting to any of the SBG Parties informing them that PGW had added the unpaid refunds to amounts PGW owes SBG Parties from improperly applied partial payments.

The PUC also ordered substantial refunds for interest overcharges in the amount of \$876,429.75, none of which have been paid:

1. By PUC Order dated December 8, 2016:

- a. \$94,626.23 to Colonial Garden Realty Co, L.P.;
 - b. \$471,351.38 to Simon Garden Realty Co., L.P.
2. By PUC Order dated September 20, 2018:
- a. \$58,655.68 to Elrea Garden Realty Co., L.P.;
 - b. \$157,238.79 to Fairmount Manor Realty Co., L.P.;
 - c. \$94,557.67 to Marshall Square Realty Co., L.P.

For more than a decade, PGW has retained these substantial overpayments of interest made by SBG. Judge Vero is currently in the process of calculating the total PGW owes to SBG in addition to the 2016 and 2018 refunds, based upon the evidence adduced at the Evidentiary Hearing on April 25, 2023. The funds that PGW overcharged and SBG paid were not available for the SBG Parties to utilize in the normal course of their businesses. Given the considerable dollar amount of unpaid refunds and PGW's decision to continue overcharging on interest at least through the *PGW II* decision in April of 2021,⁴ PGW's failure to pay the amounts ordered worked a substantial hardship on SBG Parties.

The PUC should assess interest against the unpaid refunds because Section 1312 expressly authorizes interest at the legal rate (6%), and SBG has been forced to litigate this matter for more than a decade, during which SBG had no access to substantial funds that PGW improperly charged and collected.

C. The Legal Effect of the Vacated Liens is Exactly the Same as the Legal Effect of the Liens that PGW Marked Satisfied.

Except for PGW's characterization of a lien as either vacated or satisfied, there is no difference between the way that PGW handled the liens while they were pending. Whether a

⁴ It is unclear when PGW ceased charging 18% interest on docketed liens. At oral argument before the Commonwealth Court, on February 7, 2022, counsel for PGW could not assure the court that PGW had adjusted the interest rate on balances docketed as liens.

lien was ultimately vacated or satisfied, when a property was refinanced, SBG paid to PGW the outstanding balance that gave rise to both the satisfied and vacated liens as required by the lender. If SBG sold a property, it also paid any outstanding balance as required by the seller, whether the lien was marked satisfied or vacated. At the April 25, 2023 Evidentiary Hearing, at Judge Vero's request, the parties stipulated that the liens marked as vacated accrued interest at 18% during their pendency:

JUDGE: Let me propose something. Can we stipulate to the fact that those vacated liens that appear on the exhibit, those vacated liens, while they were with the Common Pleas Court of Philadelphia, they were sitting there and accumulating, at the same time an 18 percent interest rate with Commission until the date they were vacated.

ATTORNEY CLEARFIELD: As a general statement, I think we could. I mean, obviously, there could be an instance in which -.

JUDGE: But – okay.

So we can stipulate to them? They were filed with Common Pleas Court in Philadelphia as liens. They, for whatever reason, were vacated, some of them four months later, some of them even more. I don't have them, all of them in front of me. But they were vacated. While they were sitting with a Common Pleas Court as a lien, they were simultaneously accruing 18 percent interest rate under PGW's tariff.

ATTORNEY YANOFF: The answer is yes, we can agree to that.

Transcript of Evidentiary Hearing, April 25, 2023 (Tr.) at 213-14.

This stipulation erases any uncertainty that, during their pendency, PGW treated the liens ultimately marked as “vacated” the same as those liens ultimately marked “satisfied.” PGW charged its 18% tariff rate against the overdue balances that those liens represented until the date the liens were marked either satisfied or vacated.

The Municipal Claims and Tax Liens Act (MCTLA) permits PGW to file liens against the properties of ratepayers whose balances are delinquent: “Section 3(a)(1) authorizes municipalities to file liens on properties that will have priority over all other encumbrances,

except taxes, tax liens or tax claims. 53 P.S. § 7106(a)(1).” *City of Philadelphia v. Perfetti*, 119 A.3d 396, 399 (Pa. Cmwlth. 2015); *see also Shapiro v. Center Twp., Butler Cnty.*, 632 A.2d 994, 997 (Pa. Cmwlth. 1993). A municipal lien is a charge, claim or encumbrance on the property placed to secure payment of a debt and does not affect the owner's right to possess or control the property. *North Coventry Twp. v. Tripoli*, 64 A.3d 1128, 1132 (Pa. Cmwlth. 2013); *see also Borough of Ambler v. Regenbogen*, 713 A.2d 145 (Pa.Cmwlth.1998); *Unity Sav. Ass'n v. Am. Urban Sciences Found. Inc.*, 487 A.2d 356 (Pa. Super. 1984). A lien, does, however, affect the property owner in non-possessory ways. It is hornbook law that “a lien encumbers property and impairs an owner’s ability to mortgage or alienate it.” *Perfetti*, 119 A.3d at 403; *see also Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80 (1988). Thus, for the period of time that PGW’s liens were docketed, regardless of whether later marked “satisfied” or “vacated,” SBG’s ability to sell or refinance the liened properties was impaired. More importantly, PGW never removed the overcharged interest that had accrued due to the “vacated” liens while these liens encumbered the various SBG properties. Thus, even after PGW marked these liens as “vacated,” SBG Parties were forced to pay the assessed interest from the “vacated” liens during a sale, refinance or other occasion when SBG Parties paid on the overall delinquent balance.

Christopher Hanson testified extensively that the liens that were later vacated were indistinguishable while pending from the liens later deemed satisfied: (1) “it was a lien in place on the property, so that the property owner had to deal with that lien while it was there;” Tr. At 122; (2) “the liens were in place between the time they were [docketed] and then vacated;” Tr. at 123; (3) “the lien was simply in place during the pendency of the lien, which could range from days to years;” Tr. At 124. Because PGW continued to assess its 18% tariff rate against these later-vacated liens, Mr. Hanson stated that the vacated liens constitute “another group of liens to

which to apply the difference in interest calculation.” *Id.* at 124. Mr. Hanson’s testimony, in addition to the parties’ stipulation, clearly demonstrates that PGW treated satisfied and vacated liens identically.

Mr. Hanson’s testimony elucidates, to the extent that the Commission can fashion a remedy, the effect of the vacated liens on SBG. PGW assessed interest against SBG Parties on the vacated liens at the same rate as satisfied liens – 18 percent. When a property was either refinanced or sold, SBG paid to PGW the outstanding balance that gave rise to both the satisfied and vacated liens as required by the lender. PGW simply added to the overall delinquent balance for each property the interest accrued from late payment charges assessed on “vacated” liens.

SBG’s properties could not be refinanced or sold without SBG paying the outstanding balances underlying the liens. Contrary to PGW’s assertions, SBG Parties offered evidence that they satisfied many of the liens PGW marked as “vacated.” Specifically, some refinances or sales resulted in SBG paying the balances and PGW subsequently marking the lien “vacated.” Mr. Hanson testified that, given the proximity in time between a payment from SBG and a lien being marked vacated, it appeared that those liens had actually been satisfied:

But, you know, [we] did examine what could we see about the vacated liens and that we understood that the liens were frequently dealt with when the property was refinanced. So we did look for that. Could we see that vacated liens were being status updating, however you would like to call it, satisfied or vacated. At or around the time of refinance, evidence that they were in place up until they were taken – consideration was paid or some kind of agreement was reached to them deal with the lien.

We did find instances for that. I found evidence that payments were actually sent specifically for vacated [liens].

Tr. at 121-22.

In light of Mr. Hanson’s testimony, Bernard L. Cummings (Mr. Cummings) testimony regarding the vacated liens appears misinformed, possibly due to his admitted lack of

investigation or knowledge regarding those vacated liens. He stated that a lien was only marked “vacated” when it was the result of administrative error or oversight: “Under our business practices, if there was some type of administrative error or there was some type of oversight, we would actually vacate the lien in recognition of that administrative error. That would be the sole reason we would vacate a lien.” Tr. at 210. In response to PGW’s counsel’s query whether PGW would ever vacate a lien if there was a payment, Mr. Cummings responded “No. ... You would satisfy the lien.” *Id.* Mr. Cummings’ answers, however, were false and misleading.

On cross-examination, SBG’s counsel asked about Mr. Hanson’s testimony that liens were marked either satisfied or vacated at around the same time that SBG made payments. Mr. Cummings responded: “If the lien was vacated, that’s not because a payment received. It was vacated for what I said earlier, for some type of administrative issue while we would have vacated the lien.” Tr. at 221. Upon further examination, however, Mr. Cummings admitted that his testimony referred only to “vacated” liens in the abstract, not to the specific 128 liens marked “vacated” that remain at issue in the instant case. Mr. Cummings conceded that he lacked specific knowledge of *why* the 128 vacated liens at issue were, in fact, marked “vacated.”

Q. Thank you very much for that testimony about what should or might have happened. With respect to these specific 128 liens, did you investigate as to whether any of those liens were vacated because of reasons other than payment, discussions between PGW and the customer to rectify mistakes or administrative errors or for other unspecified reasons? Did you conduct that investigation or ask anybody to conduct that investigation?

A. **Did I conduct the investigation? I personally, no.**

Q. Did you ask anybody to conduct that specific investigation with respect to those or these specific liens?

A. That were vacated?

Q. Yes.

A. What I would say is that they were vacated at a point in time where the action that caused it to happen led to them to be vacated.

Q. So is your answer no, that you didn't direct anybody on your staff to investigate these specific liens, to see the reasons why they were vacated?

A. I would say no, I did not.

N.T., 4/25/2023, at 229: 20-25 – 230: 1-19 (emphasis added). Mr. Cummings' testimony, therefore, offers nothing as it relates to the 128 "vacated" liens. He has no knowledge of the reasons PGW marked these liens as "vacated." Nor did Mr. Cummings review any documents or analysis prepared by his staff, which would provide the specific basis for PGW's decision to "vacate" the 128 liens at the center of the parties' dispute. Mr. Cummings testified that PGW did not "vacate" liens in response to payments made by SBG parties, but he lacks the knowledge to make this statement.

Based upon Mr. Hanson's testimony and other evidence proffered by SBG parties, it appears that PGW marked liens as "vacated" after SBG Parties made a payment on the underlying balance. The evidence suggests, consequently, that PGW may have used the terms "satisfied" and "vacated" interchangeably. There is no other logical explanation for the fact that SBG paid underlying balances on both "satisfied" and "vacated" liens.⁵ Accordingly, the answer to Judge Vero's question is that the legal effect of the vacated liens is exactly the same as the legal effect of the satisfied liens – they served as an encumbrance on the properties during the

⁵ This is buttressed by the fact that Samantha Pulley's Sur-rebuttal Testimony of May 2, 2023, outlining her finding of that she has discovered to date that, for at least 25% of the vacated liens, SBG's paid the outstanding balance at or around the time the lien was vacated.

In fact, PGW marked a lien vacated on April 27, 2023, two days after the evidentiary hearing, where the HUD-1 reflected that SBG paid the outstanding balance at the time of the sale of the property.

time they were docketed; PGW assessed its 18% tariff rate against the outstanding balances; and, in a large number of cases, SBG paid the underlying balance in close temporal proximity to when PGW marked the liens as either “vacated” or “satisfied.”

V. CONCLUSION

WHEREFORE, Complainants respectfully requests that Your Honor and this Commission grant the following relief:

- (a) Direct PGW to pay Complainants the amount of \$1,041,084.00 for refunds and partial payments owed. *See* Ex. CEH-2 and Ex. CEH-3;
- (b) Direct PGW to pay Complainants the amount of \$385,313 in interest, calculated at the legal rate (6%) pursuant to 66 Pa.C.S. § 1312(a);
- (c) Declare PGW’s conduct to be in violation of Public Utility Code and the established law of this Commonwealth, and direct PGW to pay appropriate penalties;
- (d) Direct PGW to pay Complainants’ attorneys’ fees and costs; and
- (e) Grant such other relief as Judge Vero and the Commission may deem just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this date I served a copy of SBG’s Post-Hearing Brief, 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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