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May 30, 2023

Via Electronic Filing

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

RE: *SBG Management Services, Inc./Simon Garden Realty Co., L.P. et al., v. Philadelphia Gas Works* 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 Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Brief Pursuant to the May 10, 2023 Order with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,


Daniel Clearfield, Esq.

DC/lww

Enclosure

cc: Hon. Eranda Vero w/enc.
pmcneal@pa.gov
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this date I served a copy of Philadelphia Gas Works' Brief Pursuant to the May 10, 2023 Order, 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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Dated: May 30, 2023



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SBG Management Services, Inc. <i>et al.</i>	:	C-2012-2304183
	:	C-2012-2304324
	:	C-2015-2486618
	:	C-2015-2486642
	:	C-2015-2486648
	:	C-2015-2486655
v.	:	C-2015-2486664
	:	C-2015-2486670
	:	C-2015-2486674
Philadelphia Gas Works	:	C-2015-2486677

**PHILADELPHIA GAS WORKS' BRIEF
PURSUANT TO THE MAY 10, 2023 ORDER**

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Philadelphia Gas Works (“PGW”) submits this Brief pursuant to the Briefing Order dated May 10, 2023¹ issued by Administrative Law Judge (“ALJ”) Eranda Vero following the Evidentiary Hearing on Tuesday, April 25, 2023.²

I. STATEMENT OF THE CASE³

There is no dispute that PGW docketed a total of 439 municipal liens⁴ against the Complainants⁵ between December 7, 2007 and April 19, 2016.⁶ Each perfected or docketed lien was assigned a docket number before the Philadelphia Courts.⁷ The status of each docketed municipal lien (satisfied, vacated, or other) was noted in the exhibits filed by each side.⁸

Of the total 439 municipal liens, PGW calculated the amount of overpayments of interest made by Complainants on the 297 docketed municipal lines (or judgments⁹) that were marked

¹ <https://www.puc.pa.gov/pcdocs/1784646.docx>

² <https://www.puc.pa.gov/pcdocs/1780336.docx>

³ PGW’s Statement of the Case is limited to the legal issue to be brief on docketed municipal liens, since the identified issue in the Briefing Order are explicitly related to docketed municipal liens. No express or implied waivers should be imputed upon the limited nature of this Brief. The context of the identified issues per the Briefing Order does not require that the Brief consider expressly or at great length each and every contention that was or could be raised by a party to the above-captioned proceedings.

⁴ Exhibit CEH-3; Exhibit BLC-5. Colonial Gardens (22); Elrae Gardens (95); Fairmount (162); Fern Rock (42); Marchwood (33); Marshall Square (16); Oak Lane (29); Simon Gardens (40). *Id.*

⁵ The terms “Complainants” or “SBG” collectively refers to the Landlords together with the Management Company. The term “Landlords” collectively refers to Colonial Garden (“Colonial Garden”), Simon Garden Realty Co., L.P. (“Simon Garden”), Elrea Garden Realty Co., L.P. (“Elrea Garden”), Fairmont Manor Realty Co., L.P. (“Fairmont”), Marshall Square Realty Co., L.P. (“Marshall Square”), Marchwood Realty Co., L.P. (“Marchwood”), Oak Lane Realty Co., L.P. (“Oak Lane”), and Fern Rock Realty Co., L.P. (“Fern Rock”). The term “Management Company” refers to SBG Management Services, Inc. (“Management Company”), which is the property management company that manages the day-to-day operations of the residential apartment complexes owned by the Landlords. PGW notes that the Management Company changed its name in 2016 to SBG Management Services, PA, Inc. *See* Exhibit BLC-1.

⁶ PGW St. 1-R at 10. The lack of dispute was not contested by Mr. Hanson, *see* SBG St. 1-R at 3-4. *See* also Exhibit BLC-5, identifying the most recent Lien Date of April 19, 2016 for Fairmount.

⁷ PGW St. 1 at 15.

⁸ Exhibit CEH-3 for SBG; Exhibit BLC-5 for PGW.

⁹ The Pennsylvania Supreme Court found that **a judgment is created automatically** by the docketing of the municipal lien. *PGW v. PUC*, 249 A.3d 963, 973 fn. 8 (Pa. 2021) (“*PGW II*”), rehearing granted by, in part, and remanded, 256 A.3d 1092, 2021 Pa. LEXIS 2905, 2021 WL 2697432 (Pa., June 15, 2021), on remand, 2022 Pa.

satisfied.¹⁰ For the 128 liens that were vacated at the Philadelphia Courts, PGW did not calculate the (alleged) amount of overpayments of interest as the law is clear that a lien vacated before a court is treated as if it never existed, and the unpaid gas service bills secured by those liens simply return to the unpaid gas account balance subject to the consistently charged tariff rate of 18% per annum.¹¹ For the remaining 14 liens, PGW did not calculate any amount of overpayments of interests due to the existence of specific issues with those liens.¹²

In contrast, SBG calculated the amount of overpayments of interest made by the Complainants for 425 docketed municipal liens.¹³ Those calculations included the same 297 docketed municipal liens that were marked satisfied, but additionally include all 128 docketed municipal liens that were vacated.¹⁴ Like PGW, the Complainants did not make any calculations on the remaining 14 docketed municipal liens.¹⁵ According to SBG witness Hanson, the overpayments of interest by the Complainants on the 425 satisfied and vacated docketed

Commw. Unpub. LEXIS 92, 2022 WL 793332 (Pa.Cmwlt., Mar. 16, 2022) (“*PGW III*”). Such judgments are “the equivalent of a final resolution of a claim between parties” and must be “treated in the same manner as a judgment that has been rendered following an adjudicative process.” *PGW II*, 249 A.3d at 974.

¹⁰ Exhibit BLC-5; PGW St. 1 at 20-21.

¹¹ PGW St. 1 at 18.

¹² PGW St. 1 at 18-20.

¹³ Exhibit CEH-3; SBG St. 1 at 6-8.

¹⁴ Exhibit CEH-3; SBG St. 1 at 6-8. Colonial Gardens (6); Elrae Gardens (23); Fairmount (57); Fern Rock (28); Marchwood (0); Marshall Square (3); Oak Lane (5); Simon Gardens (7). *Id.* Vacated liens are docketed municipal liens that were withdrawn or negated for reasons other than full payment. PGW St. 1 at 18. See also N.T. 210.

¹⁵ No calculations were made by SBG witness Hanson regarding the 14 remaining liens. See Exhibit CEH-3; SBG St. 1 at 6-8. Colonial Gardens (0); Elrae Gardens (1, filed before May 11, 2008); Fairmount (1, filed before May 11, 2008; 6, closed accounts; 3, unknown data); Fern Rock (1, closed account); Marchwood (0); Marshall Square (0); Oak Lane (2, unknown data); Simon Gardens (0). *Id.* The “other” reasons include (a) “closed,” which refers to an unsatisfied/unvacated municipal lien that is associated with an account that has since been closed, and the debt associated with that lien has been removed from the PUC-regulated monthly bill; (b) “N/A,” which refers to liens that are beyond the applicable statute of limitation period; and (c) “Unknown,” which refer to municipal liens that were shown on SBG’s hearing exhibits from the 2012 PUC complaints where PGW was unable to locate any information related to these (alleged) liens in the Court Dockets or in PGW’s systems. PGW St. 1 at 18-20.

municipal liens was based on the Complainants' payments of the interest that accrued on the amounts subject to the docketed municipal liens/judgments.¹⁶

In 2021, the Pennsylvania Supreme Court held that the amounts subject to PGW's docketed municipal liens are not subject to PGW's Commission-approved late payment charge¹⁷ of 18%. Rather, docketed municipal liens are subject to post-judgment interest as authorized by the Judicial Code — since the docketed municipal liens must be “treated in the same manner as a judgment that has been rendered following an adjudicative process.”¹⁸ Therefore, any overpayments of interest by SBG were the result of PGW's prior application of the 18% per annum to the amounts subject to the docketed municipal lien, as opposed to the application of statutory post-judgment interest¹⁹ at 6% per annum to those amounts actually paid.

As it relates to docketed municipal liens, SBG is seeking refunds from PGW of the *difference* of 12%, over time, between the previously applied late payment charge under PGW's tariff and the statutory post-judgment interest rate that accrued and was allegedly paid on satisfied docketed municipal liens.²⁰ SBG is also seeking the same *difference* of 12% that temporarily encumbered a property prior to PGW vacating (nullifying/removing) a docketed

¹⁶ Exhibit CEH-3; SBG St. 1 at 6-8.

¹⁷ PGW Gas Service Tariff at 12 (definition), 26 (finance charge on late payments).

¹⁸ *PGW II*, 249 A.3d at 974.

¹⁹ 42 Pa.C.S. § 8101 (“[A] judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment, if the judgment is not entered upon a verdict or award[.]” unless otherwise provided by another statute.); 41 P.S. § 202 (The “lawful rate” of post-judgment interest is 6% per annum).

²⁰ Exhibit CEH-3; SBG St. 1 at 6-8. In 2015, your Honor found the same, citing *Equitable Gas v. Wade*, 812 A.2d 715, 718-719 (Pa.Super. 2002), explaining that a “... judgment extinguishes any claims with respect to the overdue bill ...” Group 1: Initial Decision (dated August 21, 2015) at 62, available at <https://www.puc.pa.gov/pcdocs/1382333.docx>. Rather than use the word “extinguished,” the Commission characterized “the effect of the municipal lien on the same debt as accrued pursuant to a Commission-approved tariff, as ‘removed’ [from the Commission’s jurisdiction].” Opinion and Order of the Commission issued December 8, 2016 (“December 2016 Order”) at 73, available at <https://www.puc.pa.gov/pcdocs/1491938.docx>.

municipal liens at the Philadelphia Court.²¹ On top of the refund of the 12% interest difference, SBG is also seeking an award of compensatory interest, pursuant to 66 Pa.C.S. § 1312, on that difference in (or overpayment of) the interest paid on the docketed municipal liens.²² The above-described relief is being sought by SBG from both the Commission and the courts.²³

II. SUMMARY OF ARGUMENT

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 [docketed] municipal liens (which are considered judgments under the Supreme Court's decision)?*

Suggested Answer: No. While the Commission was tasked with *calculating* the correct amounts of refunds owed for overpayments of interest, the actual refund of the difference of interest paid by the Complainants on docketed municipal liens/judgments is not PUC-jurisdictional, and therefore not within the scope of 66 Pa.C.S. § 1312. 66 Pa. C.S. § 1312 and its statute of limitations applies only if there is a “rate” that falls under the Commission’s jurisdiction and the interest applicable to docketed municipal liens/judgments under 42 Pa. C.S. § 8101 and 41 P.S. § 202 is not a “rate” subject to the Commission’s jurisdiction.

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?*

Suggested Answer: No. Awarding compensatory interest on overpayments of interest paid on docketed municipal liens/judgments is beyond the Commission’s jurisdiction. The

²¹ *Id.*

²² Exhibit CEH-3; SBG St. 1 at 6-8.

²³ *SBG Management Services Inc., et. al. v. City of Philadelphia c/o Philadelphia Gas Works*, April Term 2021 No. 02801.

interest provision 66 Pa. C.S. § 1312 is not applicable to SBG's claims for refunds of the amount of interest on docketed municipal liens. Neither the amounts subject to docketed municipal liens/judgments nor the interest that accrues on said amounts are within the Commission's jurisdiction. PGW's prior use of interest (of 18% in the form of a late payment charge) upon the amounts subject to docketed municipal liens/judgments does not confer jurisdiction upon the Commission over those amounts or the accrual of interest subject to 42 Pa. C.S. § 8101 and 41 P.S. § 202.

C. *What is the legal effect of a lien that has been vacated?*

Suggested Answer: When a judgment is vacated, the effect is to nullify or cancel, make void, or invalidate the judgment. Treating the docketed municipal liens/judgments as having never existed means that PGW's Commission-approved late payment charge of 18% per annum rightfully accrues on the unpaid gas balances no longer subject to a lien, as opposed to statutory post-judgment interest where the lien still exists or was satisfied.²⁴ It also means that no 12% difference was in-fact overpaid by the Complainants and there is no refund due of interest allegedly paid on vacated liens simply because a lien temporarily encumbered a property – any money in-fact paid would apply directly to unpaid gas balance which properly accrues interest at a rate of 18%. The Commission also lacks jurisdiction to collaterally attack the status of a lien as recorded on the Philadelphia Court dockets, and such challenges must be made at the Court.

²⁴ 42 Pa.C.S. § 8101 and 41 P.S. § 202.

III. ARGUMENT²⁵

A. **66 Pa. C.S. § 1312 is not applicable to SBG’s claims for refunds of the amount of interest on docketed municipal liens and the four year statute of limitations does not apply.**

66 Pa. C.S. § 1312 applies only if there is a “rate” under the Commission’s jurisdiction.²⁶ Refunds of unreasonable “rates”²⁷ paid²⁸ by a customer are subject to Section 1312’s four-year statute of limitations,²⁹ rather than the Section 3314 three-year statute of limitations.³⁰ The context of Section 1312 clearly requires that both the unreasonable (old) “rate” and the reasonable (new) “rate” be within the Commission’s jurisdiction.

1. **The four-year statute of limitations does not apply as the Commission lacks jurisdiction over interest paid on judgments as that interest paid is not a “rate” under 66 Pa. C.S. § 1312.**

Neither the amounts subject to docketed municipal liens/judgments nor the interest that accrues on said amounts are rates within the Commission’s jurisdiction. The Commission must

²⁵ As noted previously, PGW’s Brief is limited to the three issues identified in the Briefing Order and is not to be construed as the extent of the legal issues raised or that may be raised in this proceeding.

²⁶ See 66 Pa.C.S. § 1312(a) (requiring a “proceeding involving rates.”).

²⁷ 66 Pa.C.S. § 1312(a) (requiring that refunds be based on rates that are “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.”).

²⁸ See 66 Pa.C.S. § 1312(a) (requiring that the “rate [be] received by” the public utility and for refund to return “the amount of any excess paid by any patron”) (emphasis added).

²⁹ See 66 Pa.C.S. § 1312(a), (once the conditions of Section 1312 are satisfied, “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.”).

³⁰ 66 Pa.C.S. § 3314(a) (“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.”).

act within, and cannot exceed, its jurisdiction.³¹ Jurisdiction may not be conferred by the parties where none exists.³²

The amounts subject to docketed municipal liens/judgments are not rates³³ within the Commission's jurisdiction and thus the four-year statute of limitations in 66 Pa. C.S. § 1312 cannot apply. As background, the amounts subject to docketed municipal liens are removed from the Commission's jurisdiction and are merged³⁴ into the judgment – created when a lien is filed. A judgment – created by the filing of a lien – is subject to the Lien Law³⁵ and the Judicial Code,³⁶ which is not within the Commission's jurisdiction. In fact, in December 2016 the Commission explicitly directed PGW to remove all lien amounts from its bills³⁷ because the Commission lacked jurisdiction over liens and ordered that any refund of lien amounts proceed through the courts.³⁸ The Supreme Court's direction in *PGW II* that docketed municipal

³¹ *City of Pittsburgh v. PUC*, 43 A.2d 348 (Pa.Super. 1945).

³² *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

³³ 66 Pa. C.S. § 102 (“**Rate.**” 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.”)

³⁴ Under the doctrine of merger, the amounts due in the underlying utility bills are merged into the judgments and can no longer provide an independent basis for determining the obligations of the parties before the Commission. *See, e.g., In re Stendardo*, 991 F.2d 1089, 1094-1095 (3d Cir. 1993). The Supreme Court in *PGW II* further explains that doctrine of merger applies, since docketed municipal liens are judgments. *PGW II*, 249 A. 3d at 974.

³⁵ The Municipal Claims and Tax Lien Act, 53 P.S. § 7101, *et seq.* (“Lien Law”).

³⁶ 42 Pa.C.S. § 8101, *et seq.*

³⁷ This direction was based on 66 Pa.C.S. § 501. The Commission did not direct a refund under 66 Pa.C.S. § 1312. The Commission's refund power, 66 Pa.C.S. § 1312, is limited to tariff rates. *PGW II* makes it clear that tariffed-based late payment charges on unpaid bills (undocketed lien amounts) are different than the interest due on a judgment (on docketed municipal liens). *See PGW II*, 249 A.3d at 974. Thus, the Commission cannot rely upon Section 1312 to direct refunds of amounts “charged on” docketed municipal liens/judgments.

³⁸ *SBG et al. v. Philadelphia Gas Works*, Docket Nos. C-2012-2304183, C-2012-2304184, Opinion and Order at 89, 93, 109 (Order entered December 8, 2016) (“December 2016 Order”)

liens be treated like judgments results in the end of the Commission’s jurisdiction over the amounts subject to docketed municipal liens. A visual depiction of the relationship between the Commission’s jurisdiction under Title 66 and the Court’s jurisdiction under Title 41 and 42 is shown below in Figure 1.

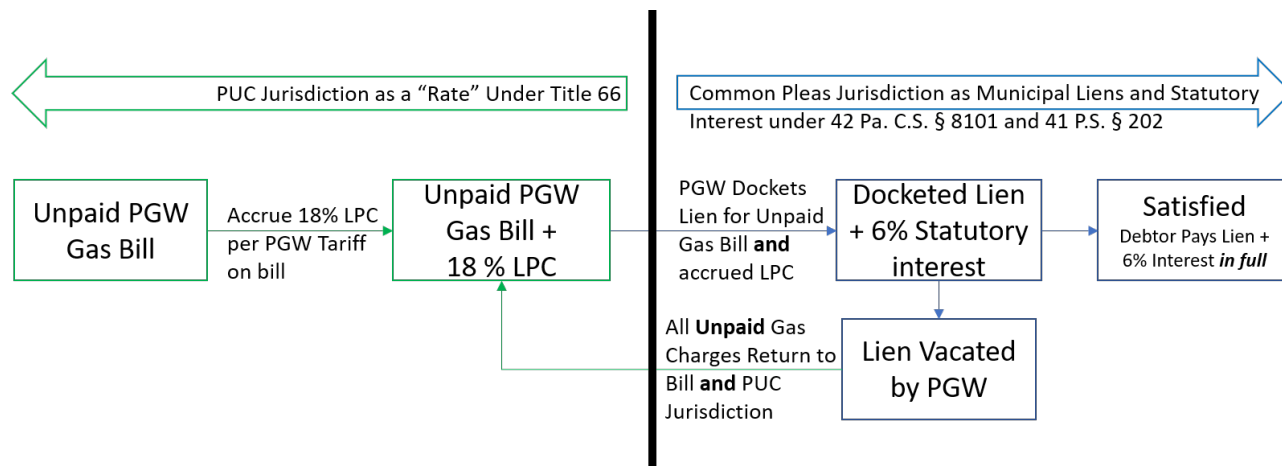


Figure 1: Visual Depiction of the Rates and Docketed Lien jurisdiction

It can only follow that the interest that accrues on amounts subject to docketed municipal liens/judgments are not “rates” within the Commission’s jurisdiction under 66 Pa. C.S. § 1312 and thus the four year statute of limitations does not apply. Nothing in the Public Utility Code grants the Commission jurisdiction over disputes on the interest applied to docketed municipal liens and that interest is not a “rate” subject to the Commission’s jurisdiction.³⁹ Interest as previously applied by PGW in the form of a Commission-approved late payment charge accrues on outstanding balances (unpaid gas bills) at 18% per annum⁴⁰ which is a “rate” subject to the Commission’s jurisdiction.⁴¹ However, as the Supreme Court held, the late payment charge no

³⁹ The entry of judgment divests the Commission of jurisdiction to impose its tariff. *See PGW II; Gasparro v. PUC*, 814 A.2d 1282, 1285 (Pa. Cmwlth. 2003) (“*Gasparro*”) (Public Utility Code does not grant the Commission the authority to review the merits of judgment); *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002) (“*Equitable Gas*”).

⁴⁰ PGW Gas Service Tariff at 12 (definition), 26 (finance charge on late payments).

⁴¹ *Id.*; 52 Pa. Code § 56.22 (accrual of late payment charges).

longer applies when there is a docketed municipal lien (which thereby becomes a judgment), and interest accrues on PGW's docketed municipal liens/judgments at 6% per annum pursuant to 42 Pa. C.S. § 8101 and 41 P.S. § 202.⁴² That interest rate (statutory post-judgment interest) is statutory and is not subject to the Commission's jurisdiction or review under 66 Pa. C.S. § 1312.⁴³

Therefore, because the Commission does not have jurisdiction over the interest applied to a judgment as it is not a "rate," Section 1312's four-year statute of limitation cannot apply. It follows then that any *calculation* of the difference of overpayments of interest between PGW's prior application of its 18% late payment charge and the statutory interest applicable to liens of 6% also cannot fall within the scope of Section 1312, and thus where Section 1312 does not apply, neither does the four-year statute of limitations contained therein.

2. SBG's application of 66 Pa. C.S. § 1312 statute of limitations is not supported by the law

SBG is seeking a refund from the Commission (and the courts separately) of the amount of interest on docketed municipal liens/judgments.⁴⁴ Following *PGW II* and *PGW III*,⁴⁵ SBG disputes the amount of interest that accrued on the docketed municipal liens which led to overpayments of interest by SBG. This is shown in SBG's calculations, wherein SBG witness Hanson calculates the difference, 12% over time, of interest on docketed municipal liens accruing

⁴² *PGW II*, 249 A.3d at 974.

⁴³ *PGW II*, 249 A.3d at 974; 42 Pa.C.S. § 8101 and 41 P.S. § 202. The Commission is not empowered to undertake to act upon a docketed municipal lien/judgment. "The commission has no power to render a money judgment, no power to enforce a judgment by issuance of a writ of execution, and no power to award damages." *See, e.g., Jerold Kintzel v. Pa. Power and Light Co.*, Docket No. Z-00319269, Order entered September 18, 1980, 1980 Pa. PUC LEXIS 27 ("*Kintzel*").

⁴⁴ SBG Answer to PGW Motion to Dismiss at 4 ("SBG's challenge relates to the 18% interest and late fees that PGW charged against arrearages after those outstanding balances were docketed as liens.") (emphasis added). <https://www.puc.pa.gov/pdocs/1763406.pdf>

⁴⁵ As explained in Ordering Paragraph 2 of PGW III, the claims relate to "fees charged on docketed municipal liens."

at 18% interest vs at 6% interest. While tasked with the calculations, ordering actual refunds of amounts interest paid on docketed municipal liens is not an issue for the Commission.⁴⁶ It is an issue for the courts.⁴⁷

In multiple pleadings and motions in this matter prior to submitting testimony, SBG made clear it only seeks *calculations* of the 12% difference in the accrued interest on docketed municipal liens/judgments from this Commission.⁴⁸ Performing *only calculations* is consistent with the Ordering Paragraph in *PGW III*, which indicated that the Commission should determine the correct amount of any refunds for Colonial Garden and Simon Garden.⁴⁹ To do this, the Commission was only tasked with making *findings of fact* regarding the 12% difference in the accrued interest on docketed municipal liens and should not make conclusions of law or ordering paragraphs directing billing adjustments, credits or refunds regarding the interest paid on docketed municipal liens where those matters are subject to a court of general jurisdiction. However, *PGW III*'s order for

⁴⁶ *Faye Payne v. Philadelphia Gas Works*, C-2011-2247124; 2012 Pa. PUC LEXIS 271, 2012 WL 1066610 (PUC does not authority to order the City to remove or reduce the lien on the Complainant's property).

⁴⁷ In *PGW II*, the Pennsylvania Supreme Court explained that there are statutory procedures by which property owners can challenge a judgment after its entry under the Lien Law: "With respect to liens filed under Section 7106(b), pursuant to Section 7184, a property owner may challenge a recorded municipal lien, including the amount thereof, by serving the municipality with a notice to issue a writ of scire facias, thereby forcing a hearing on the *lien* and allowing the property owner to assert defenses thereto. 53 P.S. § 7184; *N. Coventry Twp. v. Tripodi*, 64 A.3d 1128, 1133 (Pa.Cmwh. 2013). Alternatively, a property owner may pay the amount of the lien into court and then obtain a hearing on the validity of the amount of the lien. 53 P.S. § 7182." *PGW II*, 249 A.3d at 971. Therefore, the only available avenue for obtaining relief after the creation of the judgments (under the Lien Law) is within the context of statutory remedies (under the Lien Law). 53 P.S. § 7112; *PGW II*, 249 A.3d at 971; *see, e.g., City of Phila. v. Manu*, 76 A.3d 601, 604 (Pa.Cmwlth. 2013).

⁴⁸ *See* SBG Answer to PGW Motion to Dismiss at 11 ("The PUC is tasked with determining the rate issue and calculating how much PGW overcharged SBG."); SBG Answer to PGW Motion to Dismiss at 7 ("SBG is simply seeking a calculation of the amounts PGW liened using the incorrect rate of 18%, which rests squarely in the PUC's authority.").

⁴⁹ *PGW III*, 276 A.3d 1219 ("2. As agreed by the parties, this matter is REMANDED to the Pennsylvania Public Utility Commission (Commission) in part, solely for the presentation of evidence by the parties and a determination by the Commission concerning the correct amounts of any refunds owed by PGW to SBG Management Services, Inc., Colonial Garden Realty Company and Simon Garden Realty Company (collectively, Intervenors) relating to late fees charged on docketed municipal liens against Intervenors for unpaid natural gas charges prior to April 29, 2021.") The Ordering Paragraph is not applicable to the other six Landlords (Elrae Gardens; Fairmount; Fern Rock; Marchwood; Marshall Square; Oak Lane).

the Commission to make the *calculation* of the 12% difference does not transform that *calculation* into a “rate” (as defined in 66 Pa. C.S. § 102) subject to 66 Pa. C.S. § 1312 and its four-year statute of limitations.

In SBG witness Hanson’s testimony, SBG changed this position and now seeks more than just a *calculation* of the difference of interest overpaid.⁵⁰ SBG is now seeking a “refund” *from the Commission* of interest paid on docketed municipal liens/judgments claiming that *calculation* falls under 66 Pa. C.S. § 1312. This position is diametrically opposed to the Commonwealth Court’s order to this Commission and holds no merit under the law.

66 Pa. C.S. § 1312 does not give the Commission the authority to order a refund of interest paid on docketed municipal liens/judgments and thus the four year statute of limitations does not apply. First, as noted above, the interest paid on docketed municipal liens/judgments is not a “rate” subject to the Commission’s jurisdiction under 66 Pa. C.S. § 1312. The Commission clearly acknowledged this point in its December 2016 Order where the Commission clearly stated that the “statutory, civil collection process ... invokes the jurisdiction of the courts concerning the debt. **This is to the exclusion of this Commission.**”⁵¹ SBG previously conceded that same point by indicating the recovery of the “the overcharged amount is an effort that will require enforcement in the Court of Common Pleas.”⁵²

Second, there is no “rate dispute,” “rate decision” or “rate determination” to be made by the Commission in this matter regarding the overpayment of interest paid on docketed municipal liens/judgments. On its face, 66 Pa.C.S. § 1312 refunds relate to the difference between two

⁵⁰ Exhibit CEH-3; SBG St. 1 at 6-8.

⁵¹ December 2016 Order at 69. (emphasis added).

⁵² SBG Answer to PGW Motion to Dismiss at 7. <https://www.puc.pa.gov/pdocs/1763406.pdf>

Commission jurisdictional rates: 1) a reasonable (new) rate paid⁵³ by a customer (within the Commission’s jurisdiction); and 2) an unreasonable (old) rate⁵⁴ paid by a customer (also within the Commission’s jurisdiction). This means that both parts of the comparison (unreasonable (old) rate and reasonable (new) rate) must actually be “rates” subject to the Commission’s jurisdiction to fall under Section 1312. That is not the case with SBG’s claims regarding docketed municipal liens where the Commission’s jurisdiction is “removed” over the unreasonable (old) interest rates (the late payment charge of 18%), due to the existence of the docketed municipal lien/judgment.

Additionally, the Commission never had jurisdiction over the reasonable (new) interest rate as raised by SBG, since that interest legally accrues on PGW’s docketed municipal liens at the statutory post-judgment interest rate of 6% per annum under 42 Pa. C.S. § 8101 and 41 P.S. § 202.⁵⁵ Such reasoning explains why — in its December 2016 Order — the Commission expressly stated that its actions regarding docketed municipal liens were pursuant to the Commission’s authority in *Section 501*, **and not** pursuant to Section 1312.⁵⁶

Third, the Commission does not retain jurisdiction to decide “billing issues” on amounts subject to docketed municipal liens. The Pennsylvania Supreme Court held that docketed liens have the force and effect of judgments.⁵⁷ Nothing indicates that the Commission has jurisdiction to amend or modify amounts subject to judgments,⁵⁸ since (as discussed above) the amounts

⁵³ See 66 Pa.C.S. § 1312(a) (requiring that the “rate [be] received by” the public utility and for refund to return “the amount of any excess paid by any patron”) (emphasis added).

⁵⁴ 66 Pa.C.S. § 1312(a) (requiring that refunds be based on rates that are “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.”).

⁵⁵ *PGW II*, 249 A.3d at 974.

⁵⁶ December 2016 Order at 89 (“We shall modify the recommendation in the Initial Decision only to the extent that our directive for PGW to issue a billing adjustment credit/refund to Complainants is made pursuant to our authority found at Section 501 of the Code, and not pursuant to Section 1312.”)

⁵⁷ See footnote 10.

⁵⁸ See footnote 34.

subject to judgments are removed from the Commission’s jurisdiction and are merged into the judgments. While there exists older cases decided by the Commission before *PGW II* that found that the Commission retains jurisdiction over “billing disputes” - even if the Commission lacks jurisdiction over challenges to the docketed municipal lien⁵⁹ – those cases are based on the view that docketed municipal liens are a mere charge (or encumbrance) and that Commission action was no longer appropriate because of a choice of remedies.⁶⁰ After *PGW II*, that view is no longer valid. Regardless, there is no record testimony or evidence of any “billing disputes” on the docketed municipal liens/judgments. SBG is not disputing the gas usage by their properties.⁶¹ This means that there are no billing issues underlying the amounts subject to the docketed municipal liens/judgments.⁶² Nor is there a “billing” dispute on the amount of interest that accrued on the docketed municipal liens. The refund claims being made are predicated on the existence of valid docketed municipal liens that are subject to the statutory post-judgment interest rate.⁶³ Those liens and statutory interest rates are not within the Commission’s

⁵⁹ See, e.g., *Dennis Vicario v. PGW*, Docket No. C-2010-2213955, Order entered November 16, 2011, 2011 Pa. PUC LEXIS 417 (“*Vicario*”) (Commission held that a portion of a complaint disputing the placement of a municipal lien should be dismissed, while the portion of the complaint disputing a billing matter should not be dismissed.); *Larry and Gail Newman v. PGW*, Docket No. C-2011-2273565, Opinion and Order issued March 29, 2012, 2011 Pa. PUC LEXIS 663, 2012 WL 1453923 (“*Newman*”).

⁶⁰ That older Commission precedent describes docketed municipal liens not as a judgment, but as a mere charge (or encumbrance) against the real property. Specifically, they state that docketed municipal liens are a “charge ... for the payment or discharge of a particular debt or ... general debts or duties of the owner. It encumbers property to secure payment or performance of a debt, duty or other obligation.” *Vicario*, Opinion and Order of November 16, 2011 at 2, fn.1, citing, *London Towne Homeowners Association v. Karr*, 866 A.2d 447, 451 (Pa.Cmwlth. 2004) (citations and internal footnotes omitted); *Newman*, Opinion and Order of March 29, 2012 at 2, fn.1, citing, *London Towne Homeowners Association* (citations and internal footnotes omitted).

⁶¹ SBG Answer to PGW Motion to Dismiss at 4.

⁶² In its prior Orders, the Commission held that the filing of a lien divested it of all jurisdiction over the unpaid charges, adding that it “lacks jurisdiction to determine what, if any, is the appropriate rate of interest that PGW may charge for past due amounts that the Company has placed in the municipal lien category according to the [Lien Law].” December 2016 Order at 71. The Commission concluded by stating: “[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; see also December 2016 Order at 72 n.34 & 109.

⁶³ *PGW II*, 249 A.3d at 974; 42 Pa.C.S. § 8101 and 41 P.S. § 202.

jurisdiction. It would be absurd to declare that the refund claims of SBG are predicated PUC-jurisdictional bills, since the amounts subject to liens (and statutory post-judgment interest thereon) should not appear on PUC-jurisdictional bills.⁶⁴ Appearance of said non-jurisdictional amounts on PUC-jurisdictional bills would be an error (as previously held by the Commission), but their prior appearance on bills⁶⁵ simply cannot confer PUC jurisdiction over the amounts once a lien is filed⁶⁶ and would not satisfy the refund conditions of 66 Pa.C.S. § 1312. Therefore the four year statute of limitations cannot apply.

Conclusion

The statute of limitations in 66 Pa. C.S. § 1312 is not applicable to SBG's claims for refunds of the overpayments of interest on docketed municipal liens under 42 Pa. C.S. § 8101 and 41 P.S. § 202, since neither the amounts subject to docketed municipal liens/judgments nor the interest that accrues on said amounts are "rates" within the Commission's jurisdiction.

B. The interest provision 66 Pa. C.S. § 1312 is not applicable to SBG's claims for refunds of the overpayment of interest on docketed municipal liens.

An award of pre-judgment (compensatory) interest is for the loss of the use of the money. The Commission may not award interest where an explicit statutory provision does not permit it

⁶⁴ PGW notes that, in the prior orders, the Commission directed PGW to take various actions, including ending the charging of late payment charges once a lien is filed and removing any arrearages subject to a filed lien from its regulated bill. Those directives are not relevant to SBG's claim of a refund, which is based on overpayment of a rate.

⁶⁵ SBG witnesses did not present bills as part of their case-in-chief or their rebuttal.

⁶⁶ Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *appeal denied*, 637 A.2d 293 (Pa. 1993). Subject matter jurisdiction cannot be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Neither silence nor agreement of the parties will confer subject matter jurisdiction where it otherwise would not exist. *Commonwealth v. VanBuskirk*, 449 A.2d 621 (Pa. Super. 1982). Nor can subject matter jurisdiction be obtained by waiver or estoppel. *Scott v. Bristol Twp. Police Dep't*, 669 A.2d 457 (Pa. Cmwlth. 1995).

to do so,⁶⁷ since the Commission’s statutory authority does not include the power to award monetary damages.⁶⁸ 66 Pa. C.S. § 1312 provides for the award of interest (at the statutory rate of 6%⁶⁹) on the difference between unreasonable rates⁷⁰ paid⁷¹ by a customer and the reasonable rates. The PUC does not have any independent authority to award interest on the determination that an overpayment of interest on a docketed municipal lien/judgment occurred particularly where awards of interest are requested on a judgment that has been discharged entirely and cannot be stricken or reopened in any forum due to payment of the judgment. Therefore, awarding interest on overpayments of interest paid on docketed municipal liens/judgments is beyond the Commission’s jurisdiction.

C. Vacated liens are void and must be treated as having never existed, and the Commission cannot collaterally attack the legal status of a lien as recorded at the Philadelphia Court.

When a judgment is vacated, well settled law declares that the effect is to nullify or cancel, make void, or invalidate the judgment. For example, in a seminal case, the Supreme Court held that “Where a judgment is vacated, it is entirely destroyed and the rights of the parties are left as though no such judgment had ever been entered. Where a judgment is properly vacated, it has no more future effect than if it had never existed.”⁷² This means that docketed

⁶⁷ *Barasch v. PUC*, 532 A.2d 325 (Pa. 1987).

⁶⁸ See, e.g., *Elkin v. Bell Telephone of Pennsylvania*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1978).

⁶⁹ 41 P.S. § 202.

⁷⁰ 66 Pa.C.S. § 1312(a) (requiring that refunds be based on rates that are “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.”).

⁷¹ See 66 Pa.C.S. § 1312(a) (requiring that the “rate [be] received by” the public utility and for refund to return “the amount of any excess paid by any patron”) (emphasis added).

⁷² *Higbee Estate*, 93 A.2d 467, 469 (Pa. 1953); *Commonwealth v. Wilson*, 934 A.2d 1191 (Pa. 2007) (The term “vacate” means to nullify or cancel; make void; invalidate); *Mitchell v. Milburn*, 199 A.3d 501 (Pa.Cmwlth. 2018) (same); *First Seneca Bank v. Greenville Distributing Co.*, 533 A.2d 157 (Pa.Super. 1987)(Void judgment was to be treated as having never existed).

municipal liens that are vacated by PGW at the Philadelphia Court would be void and treated as having never existed. Treating vacated liens as having never existed demands that they would not be valid docketed municipal liens subject to the statutory post-judgment interest rate. This means that the statutory post-judgment interest rate of 6% (which is applicable to valid docketed liens) would not be applied to the vacated liens of the associated unpaid gas balance. Rather, interest (in the form of a Commission-approved late payment charge) would accrue on the vacated liens at 18% per annum.⁷³ This distinction is clearly shown above in Figure 1, which depicts the legal effect of PGW vacating a lien and returning the unpaid gas balance to the Commission’s jurisdiction and subject to PGW’s late payment charge. Stated otherwise, for vacated liens, the 12% difference was not overpaid (if it even was paid) by the Complainants and there is no refund due as 18% was the proper interest rate for PGW to apply.

The Supreme Court’s decision provides that a docketed municipal lien is “given the effect of a judgment.”⁷⁴ The Supreme Court’s decision clearly signaled that the provisions of the Lien Law would continue to apply to these liens which must be given the effect of a judgment, due to their interpretation of Section 7106(b) of the Lien Law.⁷⁵ The Lien Law allows for the discontinuance/vacation of liens⁷⁶ prior the lien being fully paid and satisfied⁷⁷ or challenged by the property owner.⁷⁸ The well-established rule is that a lien that is vacated has no force and

⁷³ PGW Gas Service Tariff at 12 (definition), 26 (finance charge on late payments).

⁷⁴ *PGW II*, 249 A.3d at 973.

⁷⁵ *PGW II*, 249 A.3d at 974.

⁷⁶ 53 P.S. § 7184

⁷⁷ 53 P.S. § 7183

⁷⁸ *PGW II*, 249 A.3d at 971.

effect either going forward or previously.⁷⁹ Therefore, when SBG made a payment, partial or full, on an arrearage that was at some point the subject of a lien but which lien was either previously or subsequently vacated, its payment was on the gas arrearage and not the lien. Therefore, the payment of interest at 18% (pursuant to PGW's PUC Tariff) was legal and reasonable.

In testimony, SBG claims that in some cases, payments "were" made for certain vacated liens around the time that a lien was vacated.⁸⁰ While PGW has accepted some limited instances to narrow the scope of this proceeding, SBG failed to provide sufficient evidence that any significant number of the 128 vacated liens were actually paid in full including the 18% interest assessed when the amounts were still liened.⁸¹ Despite the lack of evidence, SBG equivocates that, if paid, vacated liens should be treated the same as satisfied liens (in that SBG should receive the 12% difference).⁸² But making a payment on an amount no longer liened is just paying on a gas bill, as to which the 18% interest rate was appropriately charged (and paid). There is no overpayment if 18% per annum was charged on a non-liened amount and 18% per annum was paid. There is only an overpayment when the arrearage was subject to a valid docketed municipal lien/judgment when a payment was made. SBG has completely failed to

⁷⁹ *Higbee Estate*, 93 A.2d 467, 469 (Pa. 1953); *Commonwealth v. Wilson*, 934 A.2d 1191 (Pa. 2007) (The term "vacate" means to nullify or cancel; make void; invalidate); *Mitchell v. Milburn*, 199 A.3d 501 (Pa.Cmwlth. 2018) (same); *First Seneca Bank v. Greenville Distributing Co.*, 533 A.2d 157 (Pa.Super. 1987)(Void judgment was to be treated as having never existed).

⁸⁰ SBG St. No. 1 at 7.

⁸¹ PGW St. No. 1-SR at 2-6.

⁸² SBG ST. No. 1-SR at 3-6.

show that this happened to any significant portion of the vacated liens at issue in this proceeding.⁸³

Additionally, to the extent that SBG is seeking the *difference* of 12% simply because a lien temporarily encumbered a property prior to PGW vacating (nullifying/removing) a docketed municipal lien, that is not relief for which the PUC is empowered to order as that is clearly a request for damages outside the PUC's statutory authority.⁸⁴ For vacated liens, 18% was charged by PGW before, temporarily during the lien prior to it being vacated, and again after the lien was vacated, and the Commission cannot grant SBG monetary relief simply because a lien temporarily encumbered SBG's property rights where PGW appropriately and correctly charged 18% interest on the unpaid gas balance subject to PGW's PUC approved tariff.

Lastly, SBG's arguments inherently ignore and dispute the legal status of the liens as reflected in the Philadelphia Court records. The Commission is not empowered under the Public Utility Code to make determinations on or adjudicate disputes regarding the status of liens as filed by PGW at the Philadelphia Court. To the extent that SBG is arguing that they fully paid a lien and it was incorrectly marked as vacated (rather than being marked as satisfied), SBG must seek relief before the Philadelphia Court to change the court records as the Commission is not empowered to oversee or order alterations of those court records to modify the legal status and designation by PGW of when a lien is vacated.

⁸³ As explained by PGW, SBG identified limited circumstances where payment was received and liens were marked as satisfied, and to narrow the issues, PGW gave SBG the benefit of the doubt disregarding the legal status of the lien recorded at the Philadelphia Court. PGW St. No. 1-SR at 2-6.

⁸⁴ *Byer v. Peoples Natural Gas Co.*, 380 A.2d 383 (Pa. Super. 1977); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977); *DeFrancesco v. Western Pennsylvania Water Company*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980)

Conclusion

Vacated Liens are void and must be treated as having never existed. Treating the docketed municipal liens/judgments as having never existed means that interest (in the form of a Commission-approved late payment charge at 18% per annum) accrues on the vacated liens, as opposed to statutory post-judgment interest⁸⁵ (6% per annum). It also means that the 12% difference was not overpaid by the Complainants and there is no refund due of interest paid on vacated liens. To the extent that SBG is seeking the Commission determine that the Philadelphia Court records are incorrect, the Commission is not empowered to order such relief and the Philadelphia Court marking a lien as vacated is controlling on this Commission.

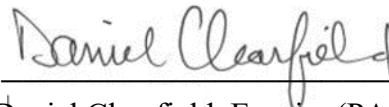
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⁸⁵ 42 Pa.C.S. § 8101 and 41 P.S. § 202.

IV. CONCLUSION

PGW respectfully requests that (a) PGW's positions on the legal issues discussed above be accepted and adopted; (b) SBG's positions on the legal issues discussed above be dismissed and rejected; and (c) any relief in favor of PGW that is deemed to be reasonable and appropriate be granted.

Respectfully submitted,



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