

**BEFORE THE  
PUBLIC UTILITY COMMISSION**

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

**INITIAL DECISION ON REMAND**

Before  
Eranda Vero  
Administrative Law Judge

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## I. INTRODUCTION

This Decision grants the Formal Complaints on Remand of SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works at Docket No. C-2012-2304183 and SBG Management Services, Inc./Simon Garden Realty Co., L.P. at Docket No. C-2012-2304183, which were consolidated with the Formal Complaints of SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works at Docket No. C-2015-2486618 and SBG Management Services, Inc./Simon Garden Realty Co., L.P. at Docket No. C-2015-2486642, SBG Management Services, Inc./Elrea Garden Realty Co., L.P. v. PGW, C-2015-2486674; SBG Management Services, Inc./Fern Rock Gardens Realty Co., L.P. v. PGW, C-2015-2486670; SBG Management Services, Inc./Fairmont Manor Realty Co., L.P. v. PGW, C-2015-2486664; SBG Management Services, Inc./Oak Lane Realty Co., L.P. v. PGW, C-2015-2486655; SBG Management Services, Inc./Marchwood Realty Co., L.P. v. PGW, C-2015-2486648; SBG Management Services, Inc./Marshall Square Realty Co., L.P. v. PGW, C-2015-2486618.

## II. HISTORY OF THE PROCEEDING

### **2012 Complaints – SBG on behalf of Colonial Garden and Simon Garden Docket Nos. C-2012-2304183 and C-2012-2304324**

On May 11, 2012, Phillip Pulley filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) as Director of Operations for SBG Management Services, Inc. on behalf of Colonial Garden Realty Co., L.P. (Colonial or Colonial Garden). The Complaint was filed against Philadelphia Gas Works (PGW or Respondent) and was docketed at Docket No. C-2012-2304183. Also on May 11, 2012, Mr. Pulley filed a Formal Complaint with the Commission as Director of Operations for SBG Management Services, Inc. on behalf of Simon Garden Realty Co., L.P. (Simon or Simon Garden). This Complaint was also filed against PGW and was docketed at Docket No. C-2012-2304324. Both Complaints alleged improper billing on the part of PGW and raised quality of service issues.

On June 4, 2012, PGW filed timely Answers and New Matters to each of these Complaints, along with Preliminary Objections challenging the Commission's jurisdiction over municipal liens and requesting that impertinent matter be stricken in both Complaints.

An Order dated July 6, 2012, consolidated the two Complaints at Docket Nos. C-2012-2304183 and C-2012-2304324.

By Order issued July 16, 2012, PGW's Amended Preliminary Objections were sustained, in part, with regard to the Commission's lack of subject matter jurisdiction over municipal liens, and were denied, in part, with regard to the billing disputes and the quality-of-service issues.

On December 10, 2012, then counsel for the Complainants filed Amended Complaints at Docket Nos. C-2012-2304183, and C-2012-2304324, where, *inter alia*, counsel explained the relationship between SBG Management Services, Inc., Colonial Garden Realty Co., L.P., and Simon Garden Realty Co., L.P. (jointly referred to as SBG or Complainants).

On January 2, 2013, PGW filed Answers to each of SBG's Amended Complaints denying the material allegations of each Complaint.

Prehearing Conferences were held on December 6, 2012, and on August 13, 2013. The evidentiary hearings were held on August 29-30, 2013, followed by three prehearing conferences held on November 7, 2013, July 11, 2014, and November 24, 2014. Further hearings were held on January 29-30, 2015.

On September 9, 2015, I issued an Initial Decision (dated August 21, 2015) which: 1) dismissed the high billing disputes raised in these consolidated Complaints due to the running of the statute of limitations on the claims that predated May 11, 2009, and the Complainants' failure to carry the burden of proof on the remainder; 2) sustained the consolidated Complaints regarding their challenge of Respondent's application of partial payments as it pertains to late payment charges; and 3) sustained the consolidated Complaints

regarding their challenge of Respondent's application of tariff sanctioned late payment charges to outstanding balances which have been the subject of municipal liens. The Initial Decision also imposed a civil penalty in the amount of \$27,000 against PGW for the violation of 66 Pa.C.S. § 1501 and 52 Pa. Code § 56.22 (\$2,000 regarding PGW's application of partial payments out of order so that the most recent late payment charges are paid before the gas charges due for prior service, and \$25,000 in connection with PGW's application of its tariff and rates to lien-ed indebted amounts).

On October 7, 2015, PGW filed Exceptions to the Initial Decision. In its Exceptions, PGW challenged the Commission's jurisdiction to review and rule upon the tariffed interest rate applied as late payment charges to an outstanding balance which is the subject of a municipal lien (*see* Exception 1 and 2); challenged the calculations of credit or refund of late payment charges for each Complainant (Exception 3); challenged the ruling on the order of the application of partial payments (Exception 4); and challenged the assessment of the civil penalties (Exception 5).

On December 8, 2016, the Commission issued an Opinion and Order<sup>1</sup> adopting, in substantial part the Initial Decision, while modifying the reasoning for holding that "PGW's inclusion of amounts which are the subject of a municipal lien are improperly incorporated as billing determinants in the calculation of just and reasonable late payment charges (rates) under PGW's tariff." *December 8, 2016, Order* at 72, 85.

On December 23, 2016, PGW filed a Petition for Reconsideration, Clarification and/or Rehearing. On January 3, 2017, SBG filed an Answer to the Petition. By Opinion and Order entered May 18, 2018, the Commission denied PGW's Petition.

On June 4, 2018, PGW filed a Petition for Reconsideration, Clarification and/or Rehearing, this time of the Commission's May 18, 2018, Final Opinion and Order. By Opinion

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<sup>1</sup> The December 8, 2016, Order was entered pursuant to the conduct of a notational vote that was ratified at Public Meeting held January 19, 2017.

and Order entered August 23, 2018, the Commission denied PGW's Petition and ordered that the proceedings be marked closed.

On September 25, 2018, PGW filed a Petition to Stay the Proceedings pending the Commonwealth Court's consideration of PGW's Petition for Review filed in response to the Commission's December 8, 2016, May 18, 2018, and August 23, 2018 Orders.<sup>2</sup> On March 28, 2019, the Commission issued an Opinion and Order denying PGW's Petition to Stay the Proceedings and ordered PGW to comply with the Opinions and Orders entered on December 8, 2016, May 18, 2018, and August 23, 2018, at the consolidated Docket Nos. C-2012-2304183, and C-2012-2304324. *See* I.D., Ordering Paragraph # 2.

On April 12, 2019, PGW filed a Petition for Reconsideration of the Commission's March 28, 2019, Opinion and Order. On May 1, 2019, Respondent filed a Response to the Petition. On May 3, 2019, the Respondent filed another Response to the Petition noting that this was PGW's fifth filing of a Petition for Reconsideration of the Commission's Orders. The Respondent claimed that PGW was using the Commission's procedural rules to affect a Stay of the Commission's December 8, 2016, Order pending judicial review pursuant to Pa.R.A.P. 1781(a) and 52 Pa. Code § 5.572. The Respondent further opined that the multiple petitions were part of PGW's plan to use the Commission's procedural rules and regulations at 66 Pa.C.S. § 703 and 52 Pa. Code § 5.572 and the appellate review process as a means to circumvent compliance under the code for many years, thereby denying justice for the SBG Complainants and all other PGW ratepayers. By Opinion and Order entered on May 9, 2019, the Commission denied PGW's Petition.

PGW successfully challenged the Commission's determination in the Commonwealth Court. In *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 222 A.3d 1218 (Pa. Cmwlth. 2019) (*PGW I*), the Commonwealth Court reversed the Commission's December 8, 2016, May 18, 2018, and August 23, 2018, Orders upon concluding

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<sup>2</sup> *See, Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 222 A.3d 1218 (Pa. Cmwlth 2019). In its Petition for Review by Commonwealth Court, PGW requested review of the December 8, 2016 Order, May 18, 2018 Order and August 23, 2018 Order (collectively, the *Commission Orders*).

that the Commission erred in directing that PGW cannot continue to add late fees to delinquent gas bills that are subject to docketed municipal liens. Additionally, the Commonwealth Court concluded that the Commission erred in ordering refunds of late fees, imposing financial penalties, and directing PGW to revise its billing system in relation to the late fees and docketed liens.

In turn, SBG Management Services, Colonial Garden Realty Company, L.P. and Simon Garden Realty Company, L.P. successfully appealed the ruling of the Commonwealth Court in *PGW I*. In *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 249 A.3d 963 (Pa 2021) (*PGW II*), the Supreme Court of Pennsylvania ruled that, pursuant to Section 7106(b) of the Municipal Claims and Tax Lien Law, 53 P.S. § 7106(b), once the lien is recorded, the tariff rate no longer applies. Accordingly, the Supreme Court reversed the order of the Commonwealth Court. *PGW II* at 965.

On June 15, 2021, the Supreme Court granted, in part, PGW's Application for Reargument to the extent it sought that the case be remanded to the Commonwealth Court for consideration of any outstanding issues. *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 256 A.3d 1092 (Pa. 2021).

In its unpublished Opinion dated March 26, 2022, in *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 276 A.3d 1219 (Pa. Cmwlth. 2022) (*PGW III*), the Commonwealth Court concluded that (1) the 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; (2) as agreed by the parties, a remand is necessary for presentation of evidence and a determination by the Commission concerning the correct amounts of any refunds owed by PGW; (3) based on due process principles, the Commission acted arbitrarily and capriciously and abused its discretion by imposing a \$25,000 monetary sanction against PGW for past violations of the statute governing municipal liens, where the Commission's decision applying the statute fundamentally altered longstanding practice regarding PGW's docketing of municipal liens arising from unpaid gas bills; (4) the Commission's mandated changes to PGW's payment crediting system were not arbitrary or

capricious and did not constitute an abuse of discretion; (5) PGW's challenge to the timetable for compliance with the Commission's order regarding billing changes has become moot due to the passage of time, and PGW is not entitled to a further extension of time to comply with the Commission's order; and (6) the Commission did not err in imposing a \$2,000 penalty against PGW for violating the Commission's regulation governing the application of partial payments. *PGW III* at \*13.

The Commonwealth Court remanded the matter to the 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 relating to late fees charged on docketed municipal liens against Intervenors for unpaid natural gas charges prior to April 29, 2021.<sup>3</sup> *Id.*

**2012 Complaints – SBG on behalf of Elrea, Fairmount and Marshall Square  
Docket Nos. C-2012-2304167, C-2012-2304215, and C-2012-2304303**

On May 11, 2012, Phil Pulley filed three Formal Complaints with the Commission as Director of Operations for SBG on behalf of Elrea Garden Realty Co., L.P. (Elrea), Fairmount Manor Realty Co., L.P. (Fairmount), and Marshall Square Realty Co., L.P. (Marshall). All three Complaints were filed against PGW and were docketed at Docket Nos. C-2012-2304167, C-2012-2304215, and C-2012-2304303, respectively.

On December 10, 2012, counsel for Complainants filed Amended Complaints at Docket Nos. C-2012-2304167, C-2012-2304215 and C-2012-2304303, where, *inter alia*, counsel explained the relationship between SBG Management Services, Inc., and Elrea Garden Realty Co., L.P., Fairmount Manor Realty Co., L.P., and Marshall Square Realty Co., L.P.

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<sup>3</sup> Moreover, this Court is unable to determine from the record the basis of the Commission's calculation of the refunds it ordered. Accordingly, we will grant **PGW's request** to remand this matter for the purpose of allowing the parties to present additional evidence concerning the correct calculation of any refunds PGW owes to [SBG/Simon /Colonial]. *PGW III* at \*8 (Emphasis added).

In particular, the Amended Complaint in *SBG Management Services, Inc. / Elrea Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304167 specified that it concerns the real estate property of Elrea Garden Realty Co., L.P., and four of its accounts with PGW.

On January 2, 2013, PGW filed Answers to each of SBG's Amended Complaints denying the material allegations of each Complaint.<sup>4</sup>

Initial hearings took place on August 26-28, 2013. Following extensive discovery proceedings, further hearings convened on February 10-12, 2015. At the further hearings, counsel for the Complainants withdrew some of the issues raised in the Amended Complaints and reframed one of the existing issues. Tr. 932, 1028, 1031-32.

On October 21, 2015, I issued a 106-page Initial Decision which sustained the consolidated Complaints with regard to their challenge of Respondent's application of partial payments as it pertained to late payment charges, and directed PGW to credit the Complainants' various accounts in the total amount of \$2,705.69.<sup>5</sup> This decision also sustained the consolidated Complaints with regard to their challenge of Respondent's application of tariff-sanctioned late payment charges to outstanding balances which have been the subject of municipal liens. The Initial Decision directed PGW to refund the Complainants Fairmount, Elrea, and Marshall the amounts \$58,655.68, \$157,238.79, and \$94,557.67, respectively, plus interest at the legal rate from the date of each excessive payment. I.D., Ordering Paragraphs ## 18-20.

Lastly, the Initial Decision also imposed a civil penalty in the amount of \$27,000 against PGW for the violation of 66 Pa.C.S. § 1501 and 52 Pa. Code § 56.22 (\$2,000 regarding PGW's application of partial payments out of order so that the most recent late payment charges are paid before the gas charges due for prior service, and \$25,000 in connection with PGW's

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<sup>4</sup> Like the original three consolidated Complaints, each of the Amended Complaints alleged improper billing on the part of PGW and raised quality of service issues.

<sup>5</sup> This amount represents the total amount stated in Ordering Paragraph ## 2-17, in the Initial Decision.

application of its tariff and rates to lien-ed indebted amounts). I.D., Ordering Paragraphs ## 21-22.

On December 14, 2015, PGW filed Exceptions to the Initial Decision.

On January 8, 2016, Complainants filed Reply Exceptions.

On September 20, 2018, the Commission issued an Opinion and Order denying PGW's Exceptions and adopting the October 21, 2015, Initial Decision. *September 20, 2018, Order*

The *September 20, 2018, Order* was appealed by PGW to the Commonwealth Court at *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 2019 WL 6698105 (Pa. Cmwlth. 2019).

On October 19, 2018, PGW filed a Petition to Stay the proceedings at Docket Nos. C-2012-2308454, C-2012-2302308462, and C-2012-2308465, pending the resolution of the appellate case. By Opinion and Order entered May 9, 2019, the Commission denied PGW's Petition to Stay the proceedings, noting that PGW has taken no affirmative steps of any kind to comply with the Commission's *December 8, 2016, Order, September 20, 2018, Order, and October 4, 2018, Order*. May 9, 2019, Opinion and Order at 24-25.<sup>6</sup>

In an unpublished Opinion, dated December 9, 2019, the Commonwealth Court reversed the Commission's *September 20, 2018, Order* for the reasons set forth in its legal analysis in *PGW I*. See *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 2019 WL 6698105 (Pa. Cmwlth. 2019). Complainants did not appeal the Commonwealth Court's ruling.

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<sup>6</sup> Because the Commission ordered PGW to address its application of partial payments in its billing system, the issue became part of PGW's base rate case in 2017 at Docket No. R-2017-2586783. The Office of Consumer Advocate (OCA) was the party that introduced the issue in the rate case. Ultimately, OCA and PGW reached a settlement agreement on this issue. The Commission approved the Settlement by Opinion and Order entered on June 28, 2019 (*2019 Settlement*). PGW agreed to make the changes to its billing system and committed to providing biweekly updates of its progress. The last update was filed on February 5, 2020, reporting that the changes were completed on January 24, 2020.

**2012 Complaints – SBG on behalf of Marchwood, Fern Rock and Oak Lane  
Docket Nos. C-2012-2308454, C-2012-2302308462, and C-2012-2308465**

On June 6, 2012, Phil Pulley filed three Formal Complaints with the Pennsylvania Public Utility Commission (Commission) as Director of Operations for SBG Management Services, Inc. on behalf of Marchwood Realty Co., L.P. (Marchwood), Oak Lane Court Realty Co., L.P. (Oak Lane), and Fern Rock Realty Co., L.P. (Fern Rock). All three Complaints were filed against PGW and were docketed at Docket Nos. C-2012-2308454, C-2012-2302308462, and C-2012-2308465, respectively.

Although the disputed amounts and their respective accounts differed, the allegations contained in all three Complaints were identical. In particular, the Complaints disputed the accuracy of the billing, the validity of the meter readings and or estimates, and the calculation of interest and penalties assessed against it by PGW. The Complaints alleged that PGW had refused to address the customers' concerns about the accuracy of the billings, had failed to mitigate its damages by allowing large unpaid gas debt by tenants to accrue in lieu of gas termination, and had incorrectly collected payments for the accounts in dispute. In addition, the Complaints alleged that PGW refused to address requests for information, acted in bad faith, and wrongfully encumbered the customers' property with liens causing the customer irreparable harm. The Complaints requested relief in the form of refunds and/or credits for all overpayments made to PGW and adjustments for excessive penalties and interest assessed on the disputed accounts.

On December 10, 2012, counsel for Complainants filed Amended Complaints at Docket Nos. C-2012-2308454, C-2012-2308462 and C-2012-2308465, where, *inter alia*, counsel explained the relationship between SBG Management Services, Inc., and Marchwood Realty Co., L.P., Oak Lane Court Realty Co., L.P., and Fern Rock Realty Co., L.P.

On January 2, 2013, PGW filed Answers to each of SBG's Amended Complaints denying the material allegations of each Complaint.

A Hearing Notice dated December 31, 2014, notified the parties that initial hearings were scheduled for March 23-27, 2015, at 10:00 a.m.

The initial hearing convened on March 25, 2015, after the parties indicated that they needed only one of the five days scheduled for hearings. The Complainants withdrew all of their disputes except the disputed transactions relating to late payment charges. Tr. 20-21.

On February 2, 2016, I issued an Initial Decision granting in part, and denying, in part, the consolidated Complaints with regard to their challenge of Respondent's application of partial payments as it pertains to late payment charges. PGW was directed to recalculate the Complainants' outstanding balance for the four years June 2008 - June 2012 in accordance with the provisions of 52 Pa. Code § 56.24 and provide it to the Commission's Bureau of Technical Utility Services (TUS) for verification. Once TUS had verified the calculation, then PGW was to bill the Complainants appropriately. I.D. at 27.

The Decision also granted the consolidated Complaints with regard to their challenge of Respondent's application of tariff-sanctioned late payment charges to outstanding balances which have been the subject of municipal liens. In this regard, PGW was ordered to refund \$113,403.71 to Fern Rock Realty Co., L.P., \$35,915.42 to Marchwood Realty Co. L.P., and \$8,379.72 to Oak Lane Court Realty Co., L.P., plus interest at the legal rate from the date of each excessive payment. I.D. Ordering Paragraphs ## 4-6.

Lastly, the Initial Decision also imposed a civil penalty in the amount of \$27,000 against PGW for the violation of 66 Pa.C.S. § 1501 and 52 Pa. Code § 56.22 (\$2,000 regarding PGW's application of partial payments out of order so that the most recent late payment charges are paid before the gas charges due for prior service, and \$25,000 in connection with PGW's application of its tariff and rates to liened indebted amounts). I.D. Ordering Paragraphs ## 7-9.

On February 24, 2016, PGW filed Exceptions to the Initial Decision. On March 7, 2016, SBG filed Reply Exceptions.

On October 4, 2018, the Commission entered an Opinion and Order in which it granted in part and denied in part, PGW's Exceptions (*October 4, 2018, Order*). In particular, the *October 4, 2018, Order* ordered PGW not only to recalculate the Complainants' outstanding balance for the four years June 2008 - June 2012 in accordance with the provisions of 52 Pa. Code § 56.24 and provide it to TUS for verification, but to do so within 60 days from the entry of the Order. *October 4, 2018, Order*, Ordering Paragraph # 5. In addition, PGW was ordered to bill the Complainants appropriately within 30 days of the issuance of the approval of the calculations. *October 4, 2018, Order*, Ordering Paragraph # 6.

Lastly, the *October 4, 2018 Order* adopted Ordering Paragraphs ## 4-6 of the Initial Decision regarding the refund of the tariff-sanctioned late payment charges to outstanding balances which have been the subject of municipal liens. *See* I.D. Ordering Paragraphs ## 7-9. While no civil penalty was imposed, PGW was instructed to cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. §§ 101–3316, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa. Code §§ 1.1–1065.1. *See October 4, 2018, Order*, Ordering Paragraph # 10.

The *October 4, 2018, Order* was appealed by PGW to the Commonwealth Court at *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 2019 WL 6698105 (Pa. Cmwlth. 2019).

On November 28, 2018, PGW filed a Petition to Stay the proceedings at Docket Nos. C-2012-2308454, C-2012-2302308462, and C-2012-2308465, pending the resolution of the appellate case. By Opinion and Order entered May 9, 2019, the Commission denied PGW's Petition to Stay the proceedings, noting that PGW has taken *no affirmative steps of any kind* to comply with the Commission's *December 8, 2016, Order, September 20, 2018, Order, and October 4, 2018, Order*. May 9, 2019, Opinion and Order at 24-25.

In an unreported Opinion dated December 9, 2019, the Commonwealth Court reversed the Commission's *October 4, 2018, Order* for the reasons set forth in its legal analysis

in *PGWI. See Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 2019 WL 6698105 (Pa. Cmwlth. 2019). Complainants did not appeal the Commonwealth Court's ruling.

### **2015 Complaints**

On May 29, 2015, SBG Management Services Inc. (SBG), through its counsel filed eight separate Formal Complaints on behalf of Marshall Square Realty Co., LP (Marshall), Simon Gardens Realty Co., LP (Simon); Marchwood Realty Co., LP (Marchwood), Oak Lane Realty Co., LP (Oak Lane), Fairmount Mannor Realty C., LP (Fairmount); Fern Rock Gardens Realty Co., LP (Fern Rock), Elrea Gardens Realty Co., LP (Elrea) and Colonial Garden Realty Co., LP (Colonial) at Docket Nos. C-2015-2486618, C-2015-2486642, C-2015-2486648, C-2015-2486655, C-2015-2486664, C-2015-2486674, and C-2015-2486677, respectively (collectively, 2015 Complainants). The 2015 Complaints were filed against PGW and alleged that the Respondent is threatening to shut off its gas service, that there are incorrect charges in its gas bills from PGW, and that the Complainant is experiencing a reliability, safety or quality problem with its gas service.

On June 29, 2015, PGW filed Answers to each of the eight 2015 Complaints denying the material allegations of the Complaints and a New Matter alleging that the Complainant has failed to pay the undisputed portion of its gas bills.

By Hearing Notice dated July 7, 2015, the Commission notified the parties that an initial hearing was scheduled for the 2015 Complaints for September 1, 2015.

On July 15, 2015, the Complainants filed their Replies to PGW's New Matter.

On August 13, 2015, the parties submitted Joint Agreements concerning discovery and litigation issues in each of the 2015 Complaints. Additionally, the Joint Agreements requested a continuance of the hearing scheduled for September 1, 2015. As basis for requesting the continuance the parties cited their desire to conduct informal discovery and inspections of the Complainants' properties. More importantly, the parties acknowledged that

some of the issues raised in the present Complaint are similar, if not identical, to the issues raised in other proceedings pending before the Commission at Docket Nos. C-2012-2304183, C-2012-2304215, C-2012-2304324, C-2012-2304167, C-2012-2304303, C-2012-2308454, C-2012-2308462, and C-2012-2308465. The parties requested that the 2015 Complaints be stayed pending the Commission's final determination in the eight 2012 Complaints listed above.

The September 1, 2015, hearing was cancelled, and on June 8, 2016, the parties submitted a Joint Motion for a Further Stay of Proceedings. By Orders dated July 5, 2016, the proceedings in the 2015 Complaints were stayed pending the Commission's final determination in the eight complaints docketed at Docket Nos. C-2012-2304183, C-2012-2304215, C-2012-2304324, C-2012-2304167, C-2012-2304303, C-2012-2308454, C-2012-2308462, and C-2012-2308465.

### **2012 Complaints on Remand and 2015 Complaints**

By a Call-in Telephonic Prehearing Conference Notice dated July 7, 2022, the parties were notified that a call-in telephonic prehearing conference was scheduled for August 25, 2022, at 10:00 a.m. During the prehearing conference the parties agreed to consolidate the 2012 Complaints on Remand with the stayed 2015 Complaints in order to avoid unnecessary costs and expenses. Tr. 947-948.

An Evidentiary (on Remand) Hearing Notice dated September 7, 2022, notified the parties that a call-in telephone hearing was scheduled for November 8, 2022, at 10:00 a.m.

On October 14, 2022, PGW filed a Partial Motion to Dismiss, in which the utility argued that: 1) the Commission lacks subject matter jurisdiction to adjudicate the claims of the Complainants having to do with interest charged on docketed municipal liens/judgments; 2) even if it is determined that the Commission has jurisdiction to adjudicate the claims of the Complainants having to do with docketed municipal lien/judgment interest, several of the Complainants have waived their right to such consideration for the 2009-2012 period because the retroactivity of the Supreme Court's Opinion in *PGW II* is limited only to parties that appealed to

that Court and to proceedings pending at the time the Opinion was issued on April 28, 2021; and 3) the Complainants have filed a 2021 civil action in Philadelphia Court of Common Pleas<sup>7</sup> raising issues identical to those before this Commission (Motion).

SBG Management Services, Inc., *et al* (SBG or Complainants) filed its Response to the Motion on November 2, 2022. In its Response to the Motion, SBG argued that: 1) PUC not only has jurisdiction to determine the amounts that PGW overcharged complainants by improperly using the PUC's 18% tariff rate, but it is also the Commission's responsibility to make this determination pursuant to the Public Utility Code, 66 Pa.C.S. § 101–3316; 2) the SBG parties' claims have not been foreclosed because all eight the SBG's 2012 Complaints were pending before the Commission in April of 2021; and 3) this matter and its 2021 civil action in front of the Court of Common Pleas<sup>8</sup> are not duplicative but complementary of each other.

The Call-in Telephonic Evidentiary Hearing on Remand scheduled for November 8, 2022, was converted to a prehearing conference, wherein the parties discussed the arguments contained in PGW's Motion and SBG's response to them. At the conclusion of the prehearing conference, I instructed the parties to file legal briefs in support of their respective positions regarding the Motion by no later than November 29, 2022. SBG and PGW filed timely briefs.

On December 19, 2022, I issued a 23-page Order approving, in part, and denying, in part, PGW's Motion for Partial Dismissal of the Complaints. In particular, PGW's Motion was approved only to the extent that the Commonwealth Court's ruling in *PGW III* foreclosed claims related to the 18% tariff rate in the 2012 Complaints filed by Fairmont Manor (Docket No. C-2012-2304215), Elrea Garden (Docket No. C-2012-2304167), Marshall Square (Docket No. C-2012-2304303) Marchwood (Docket No. C-2012-2308454), Oak Lane (Docket No. C-2012-2308462), and Fern Rock (Docket No. C-2012-2308465).<sup>9</sup>

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<sup>7</sup> *SBG Mgmt. Servs., Inc. v. City of Phila. C/O Phila. Gas Works*, Case ID: 210402801.

<sup>8</sup> *SBG Mgmt. Servs., Inc. v. City of Phila. C/O Phila. Gas Works*, Case ID: 210402801.

<sup>9</sup> For a more detailed analysis and disposition of the various grounds raised in PGW's Partial Motion to Dismiss, see the December 19, 2022 Order.

On December 28, 2022, PGW filed a Motion in Limine and Request for Expedited Response and Treatment. On January 11, 2023, SBG filed its Answer to the Motion in Limine.

On January 12, 2023, the Commission issued a Further In-Person Hearing on Remand Notice, notifying the parties that further in-person hearings on remand were scheduled for February 21 and 22, 2023, starting each day at 10:00 a.m.

On January 18, 2023, I issued a Prehearing Order.

On January 20, 2023, I issued an Order which granted, in part, PGW's Motion in Limine with regard to any relief requested by the Complainants in the form of monetary damages, and denied it, in part, with regard to evidence related to overcharges or submitted on the record for the purpose of assessment of civil penalties (January 20, 2023 Order). In addition, the January 20, 2023 Order clarified that the 2015 Complaints at Docket Nos. C-2015-2486642, C-2015-2486677, C-2015-2486674; C-2015-2486670, C-2015-2486664, C-2015-2486655, C-2015-2486648, and C-2015-2486618 would proceed to an evidentiary hearing on all pending issues; and that the 2012 Complaints at Docket Nos. C-2012-2304324 and C-2012-2304183 would proceed to an evidentiary hearing only for the calculation of refunds due because of PGW's improper assessment of 18% tariffed interest rate as late payment charge on outstanding balances that had already been filed as municipal liens.

On February 13, 2023, the parties filed a Joint Motion seeking a 60-day continuance of the evidentiary hearings on remand scheduled on February 21 and 22, 2023. In the Joint Motion, the parties explained that the continuance was necessary to allow the parties to further pursue global settlement discussions which the parties had initiated in order to resolve the instant matter and the active matter before the Court of Common Pleas.<sup>10</sup>

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<sup>10</sup> *SBG Mgmt. Servs., Inc. v. City of Phila. C/O Phila. Gas Works* (Case ID: 210402801).

The Joint Motion for continuance was granted and a Cancellation Notice was issued on February 21, 2023.

On March 1, 2023, the Commission issued a Further Call-in Telephone on Remand Hearing Notice, notifying the parties that further evidentiary hearings on remand were scheduled for April 25 and 26, 2023. On April 6, 2023, the Commission issued a Corrected In-Person Evidentiary Hearing Notice on Remand, notifying the parties that the further evidentiary hearings on remand, scheduled for April 25 and 26, 2023, would be conducted in-person.

On April 14, 2023, PGW filed a Motion to Compel Responses to PGW's Set II Interrogatories and Expedited Treatment.

On April 18, 2023, I issued an Order instructing the Complainants to provide full and complete response to PGW's Set II interrogatories by no later than 4:30 PM on Friday, April 21, 2023.

The Further In-Person Evidentiary Hearing on Remand was held as scheduled on April 25, 2023.<sup>11</sup> During the hearing, the parties stipulated that all the "vacated" liens were collecting an interest rate of 18% per year (in accordance with PGW's Commission approved tariff rate for late-payment charges) between the date they were filed with the Municipal Court of Philadelphia and the date they were marked as "vacated." *See* Tr. 1192-94.

In addition, counsel for PGW requested permission to file legal briefs. Tr. 1246. Counsel for the Complainants did not object to the request. I invited the parties to submit a list of proposed legal issues to be included in the brief. Also, counsel for SBG requested permission to submit written surrebuttal testimony by May 2, 2023, in response to PGW's supplemental rebuttal testimony. PGW did not object to this request.<sup>12</sup>

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<sup>11</sup> The April 26, 2023, hearing was cancelled. Tr. 1255.

<sup>12</sup> Following receipt of SBG's response to PGW's Set II interrogatories, on Monday, April 24, 2023, PGW submitted the Supplemental Remand Rebuttal Testimony of Bernard L. Cummings which consists of six pages of testimony and a one-page exhibit, in which Mr. Cummings updates the outstanding balances for all the

At the April 25, 2023, hearing on remand, I made an on-the record inquiry about PGW's compliance with Commission's Orders entered December 8, 2016, September 20, 2018, and October 4, 2018. Specifically, I asked PGW whether it had credited the Complainant's accounts for the improper application of partial payments. Counsel for PGW requested time to respond to my inquiry. The request was granted.<sup>13</sup>

On May 2, 2023, both parties submitted, via email, their respective statements of legal issues.

On May 2, 2023, PGW submitted a Post-Hearing Exhibit containing its response to my April 25, 2023, on-the-record inquiry regarding PGW's compliance with the Commission's *December 8, 2016, Order*, Ordering Paragraphs ## 4 and 5. PGW's Post-Hearing Exhibit 1 indicated that it had not issued the credit ordered by the Commission.

Also on May 2, 2023, SBG submitted the Remand Surrebuttal Testimony of Christopher E. Hanson, as well as the 25-page Remand Surrebuttal Testimony of Samantha Pulley, Esq., which is accompanied by 13 exhibits consisting of approximately 600 pages.

On May 10, 2023, I issued a Briefing Order in which I directed the parties to file legal briefs analyzing relevant legal issues.

On May 15, 2023, PGW filed a Motion in Limine and Formal Objection to Preclude from Consideration the May 2, 2023, Remand Testimony of Samantha Pulley, Esq. On May 26, SBG filed its Answer and Corrected Answer to PGW's May 15, 2023, Motion in Limine.

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Complainants and agreed to accept two of the vacated liens as paid. *See* October 10, 2023, Order; *see also* Tr. 1172-76.

<sup>13</sup> *See* Tr. 1229-31, 1234-35.

SBG and PGW filed their Legal Briefs on May 29, 2023, and May 30, 2023, respectively.

On October 10, 2023, I issued an Order on PGW's May 15, 2023, Motion in Limine. The Order extended the litigation and procedural schedule in these matters and informed the parties that a new Prehearing Conference would be scheduled on October 20, 2023, at 10:00 a.m. In addition, the Order reiterated my previous ruling that the 2012 Complaints at Docket Nos. C-2012-2304324 and C-2012-2304183 have been remanded **only** for the purpose calculating the refunds due to the Complainants because of Philadelphia Gas Works' improper assessment of 18% tariffed interest rate as late payment charge on outstanding balances that had already been filed as municipal liens. The Order specified the review period for the 2012 Complaints at Docket Nos. C-2012-2304324 and C-2012-2304183 (Simon Garden and Colonial Garden) and for the 2015 Complaints at Docket Nos. C-2015-2486618; C-2015-2486642; C-2015-2486648; C-2015-2486655; C-2015-2486664; C-2015-2486670; C-2015-2486674; and C-2015-2486677.

The Prehearing Conference took place as scheduled, via telephone, on October 20, 2023, wherein the parties discussed *inter alia*: 1) the scope of Complainants' claims; 2) the extension to the litigation and procedural schedule; and 3) whether the 2012 Complaints should be separated from the 2015 Complaints.

By email dated November 1, 2023, PGW counsel proposed a litigation schedule leading to a further hearing.

By email dated November 3, 2023, counsel for PGW indicated that Respondent did not object to the separation of the 2012 Complaints from the 2015 Complaints.

By email dated November 3, 2023, counsel for SBG objected to the separation of the consolidated matters.

On November 15, 2023, I issued an Order extending the litigation schedule and leaving the two 2012 Complaints on remand consolidated with the 2015 Complaints.

On January 9, 2024, a Further In-Person Evidentiary Hearing on Remand Notice informed the parties that further in-person evidentiary hearings were scheduled on March 26 and 27, 2024, starting each day at 10:00 a.m.

By letter dated February 6, 2024, counsel for the Complainants requested a 60-day extension of the deadline for submitting sur-surrebutal testimony. As reason for the request, counsel cited the volume of PGW's written Surrebutal Testimony submitted on January 22, 2024.

By letter dated February 7, 2024, counsel for the Respondent objected to the request for extension on the grounds that Complainants have failed to show good cause to further delay the schedule which was agreed to by all parties during the October 20, 2023, Prehearing Conference and memorialized by the Order dated November 15, 2023.

By Order dated February 8, 2024, I denied Complainants' request for a 60-day continuance of the scheduled hearing.

The further in-person evidentiary hearing on remand was held as scheduled on March 26, 2024.<sup>14</sup> At the further evidentiary hearing on remand, counsel for SBG was asked to define, one last time, the scope of and relief sought in the 2015 Complaints. Tr. 1338. After conferring with SBG's witnesses, Mr. Yanoff, lead counsel for SBG in these matters, narrowed down the issues raised in the 2015 Complaints to essentially a dispute of the application of partial payments and a dispute of the application of the tariffed 18% interest rate as late payment charges to outstanding debt that was the subject of a municipal lien. Tr. 1347-49. Later, counsel for SBG and PGW entered on the record a joint stipulation explaining that the Remand Surrebutal Testimony of Samantha Pulley, Esq., on behalf of SBG, and Mr. Cumming's

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<sup>14</sup> The March 27, 2024, hearing was cancelled. Tr. 1255.

response to it in his Remand Sur-surrebuttal Testimony be admitted into the record for the limited purpose of responding to Mr. Cumming's earlier testimony on SBG's outstanding balance with PGW. Tr. 1350-52. Counsel for the parties clarified that they are not asking the Commission to determine the correct outstanding balance of SBG with PGW, only the credits and or refunds due with regard to the two issues identified above. *Id.*

Due to an oversight, PGW Post-Hearing Exhibit 1 submitted on May 2, 2023, was not admitted into the record during the March 26, 2024, Hearing. PGW Post-Hearing Exhibit 1 will be admitted into the record in accordance with the Ordering Paragraphs below.

The record in these matters was closed upon receipt of the further hearing transcript on April 26, 2024.<sup>15</sup>

The record consists of the following:

- **Remand Direct Testimony** of Christopher E. Hanson filed on 1/20/2023 (SBG Exhibits CEH-1 to CEH -3)
- **Remand Rebuttal Testimony** of Christopher Hanson filed on 2/16/2023 (no exhibits)
- **Remand Surrebuttal Testimony** of Christopher Hanson filed on 5/2/2023 (no exhibits)
- **Remand Surrebuttal Testimony** of Samantha Pulley Esq. filed on 5/2/2023 (SBG Exhibits SAP-1 to SAP-13)
- **Remand Sur-surrebuttal Testimony** of Christopher Hanson filed on 2/29/2024 (no exhibits)
- **Remand Direct Testimony** of Bernard Cummings filed on 10/31/2022 (PGW Exhibits BLC-1 to BLC-5)
- **Remand Rebuttal Testimony** of Bernard Cummings filed on 2/7/2023 (PGW Exhibits BLC-6 to BLC-11)
- **Remand Supplemental Rebuttal Testimony** of Bernard Cummings filed on 4/24/2023 (PGW Exhibit BLC-12)
- **Remand Surrebuttal Testimony** of Bernard Cummings filed on 1/22/2024 (Appendix A and PGW Exhibits BLC-13 to BLC-36)

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<sup>15</sup> Any submittal by the parties made after April 26, 2024, is not part of the official record in these matters and shall not be considered or addressed in this Initial Decision.

- **PGW's Post-Hearing Exhibit 1** of Bernard Cummings filed on 5/2/2023.
- **Transcript** from prehearing conferences and evidentiary hearings.

### III. FINDINGS OF FACT

1. The Complainants in these consolidated proceedings on remand are SBG/Simon Garden, SBG/Colonial Garden, SBG/Elrea Garden, SBG/ Fairmount Manor and Fairmount Court, SBG/Marshall Square, SBG/ Marchwood, SBG/Fern Rock, and SBG/Oak Lane.

2. The Respondent is Philadelphia Gas Works.

#### **2012 Complaints – SBG on behalf of Colonial Garden and Simon Garden Docket Nos. C-2012-2304183 and C-2012-2304324**

3. On May 11, 2012, Phillip Pulley filed two Formal Complaints as Director of Operations for SBG Management Services, Inc. against PGW on behalf of Colonial Garden Realty Co., L.P. (Colonial Garden) at Docket No. C-2012-2304183, and behalf of Simon Garden Realty Co., L.P. (Simon Garden) at Docket No. C-2012-2304324.

4. On December 10, 2012, counsel for the Complainants filed Amended Complaints at Docket Nos. C-2012-2304183, and C-2012-2304324, where, *inter alia*, counsel explained the relationship between SBG Management Services, Inc., Colonial Garden Realty Co., L.P., and Simon Garden Realty Co., L.P.

5. The Initial Decision issued on September 17, 2015, reviewed transactions between PGW and the Complainants ending on December 10, 2012.

6. The Initial Decision issued on September 17, 2015, dismissed the high billing disputes raised in these consolidated Complaints due to the running of the statute of limitations on the claims that predated May 11, 2009, and the Complainants' failure to carry the burden of proof on the remainder of the claims; 2) sustained the consolidated Complaints

regarding their challenge of Respondent's application of partial payments as it pertains to late payment charges; and 3) sustained the consolidated Complaints regarding their challenge of Respondent's application of tariff sanctioned late payment charges to outstanding balances which have been the subject of municipal liens.

7. The September 17, 2015 Initial Decision imposed a civil penalty in the amount of \$27,000 against PGW for the violation of 66 Pa.C.S. § 1501 and 52 Pa. Code § 56.22 (\$2,000 regarding PGW's application of partial payments out of order so that the most recent late payment charges are paid before the gas charges due for prior service, and \$25,000 in connection with PGW's application of its tariff and rates to lien-ed indebted amounts).

8. On December 8, 2016, the Commission issued an Opinion and Order adopting, in substantial part the Initial Decision. *December 8, 2016, Order* at 72, 85.

9. PGW appealed the Commission's *December 8, 2016, Order* in the Commonwealth Court, with the exception of the Commission's ruling on the partial application of payments. *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 222 A.3d 1218 (Pa. Cmwlth. 2019).

10. Complainants SBG/Colonial Garden and SBG/Simon Garden intervened in *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 222 A.3d 1218 (Pa. Cmwlth. 2019).

11. In *Phila. Gas Works v. Pa. PUC*, 222 A.3d 1218 (Pa. Cmwlth. 2019) (*PGW I*), the Commonwealth Court reversed the Commission's *December 8, 2016, Order* upon concluding that the Commission erred in directing that PGW cannot continue to add late fees to delinquent gas bills that are subject to docketed municipal liens.

12. In *PGW I*, the Commonwealth Court concluded that the Commission erred in ordering refunds of late fees, imposing financial penalties, and directing PGW to revise its billing system in relation to the late fees and docketed liens.

13. SBG/Colonial Garden and SBG/Simon Garden appealed the ruling of the Commonwealth Court in *PGW I* to the Supreme Court of Pennsylvania.

14. In *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 249 A.3d 963 (Pa 2021) (*PGW II*), the Supreme Court of Pennsylvania ruled that, pursuant to Section 7106(b) of the Municipal Claims and Tax Lien Law, 53 P.S. § 7106(b), once the lien is recorded, the tariff rate no longer applies. Accordingly, the Supreme Court reversed the Commonwealth Court. *PGW II* at 965.

15. On June 15, 2021, the Supreme Court granted, in part, PGW's Application for Reargument to the extent it sought that the case be remanded to the Commonwealth Court for consideration of any outstanding issues. *Phila. Gas Works v. Pa. PUC*, 256 A.3d 1092 (Pa. 2021).

16. In its unpublished Opinion dated March 26, 2022, in *Phila. Gas Works v. Pa. PUC*, 276 A.3d 1219 (Pa. Cmwlth. 2022) (*PGW III*), the Commonwealth Court concluded: that (1) the 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; (2) as agreed by the parties, a remand is necessary for presentation of evidence and a determination by the Public Utility Commission (Commission) concerning the correct amounts of any refunds owed by PGW; (3) based on due process principles, the Commission acted arbitrarily and capriciously and abused its discretion by imposing a \$25,000 monetary sanction against PGW for past violations of the statute governing municipal liens, where the Commission's decision applying the statute fundamentally altered longstanding practice regarding PGW's docketing of municipal liens arising from unpaid gas bills; (4) the Commission's mandated changes to PGW's payment crediting system were not arbitrary or capricious and did not constitute an abuse of discretion; (5) PGW's challenge to the timetable for compliance with the Commission's order regarding billing changes has become moot due to the passage of time, and PGW is not entitled to a further extension of time to comply with the Commission's order; and (6) the Commission did not err in imposing a \$2,000 penalty against PGW for violating the Commission's regulation governing the application of partial payments.

*Phila. Gas Works v. Pa. PUC*, 2022 Pa. Commw. Unpub. LEXIS 92, \*1-2, 276 A.3d 1219, 2022 WL 793332.

17. The Commonwealth Court remanded the matter to the 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/Colonial Garden and SBG/Simon Garden relating to late fees charged on docketed municipal liens against Intervenor for unpaid natural gas charges prior to April 29, 2021. *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 276 A.3d 1219 (Pa. Cmwlth. 2022).

**2012 Complaints – SBG on behalf of Elrea Garden, Fairmount and Marshall Square  
Docket Nos. C-2012-2304167, C-2012-2304215, and C-2012-2304303**

18. On May 11, 2012, Phil Pulley filed three Formal Complaints with the Commission as Director of Operations for SBG on behalf of Elrea Garden Realty Co., L.P. (Elrea Garden), Fairmount Manor Realty Co., L.P. (Fairmount), and Marshall Square Realty Co., L.P. (Marshall Square). All three Complaints were filed against PGW and were docketed at Docket Nos. C-2012-2304167, C-2012-2304215, and C-2012-2304303, respectively.

19. On December 10, 2012, counsel for Complainants filed Amended Complaints at Docket Nos. C-2012-2304167, C-2012-2304215 and C-2012-2304303, where, *inter alia*, counsel explained the relationship between SBG and Elrea Garden, Fairmount and Marshall Square.

20. In the 2012 Complaints proceedings, SBG maintained that Fairmount Manor Realty Co., L.P. was the owner of the apartment complex located at 650 Fairmount Avenue, Philadelphia, PA 19123, 601-643 N. Marshall Street, Philadelphia, PA 19123, and 700-708 Marshall Street, Philadelphia, PA 19123 and proceeded to dispute gas charges on PGW accounts connected to those properties. *See SBG Management Services, Inc./Elrea Garden Realty Co., L.P., SBG Management Services, Inc./Fairmount Manor Realty Co., L.P., and SBG Management Services, Inc./Marshall Square Realty Co., L.P.*, Docket Nos. C-2012-2304167, C-2012-2304215 & C-2012-2304303, Initial Decision dated October 21, 2015, at Finding of Fact

No. 3.

21. SBG did not disclose that in 2011, Fairmont Manor had transferred the properties at 700-08 N. Marshall St. and 711-19 N. 7<sup>th</sup> St. to a separate legal entity, Fairmont Court Realty Co. L.P. (Fairmont Court). See SBG Surrebuttal Testimony of Samantha Pulley, Esq., at 4, 10.

22. Fairmont Mannor continues to own the properties known as 650 Fairmount Ave., and 601-43 N. Marshall St. See SBG Surrebuttal Testimony of Samantha Pulley, Esq., at 4, 10.

23. The Initial Decision issued on October 21, 2015, sustained the consolidated Complaints with regard to their challenge of Respondent's application of partial payments as it pertained to late payment charges, and directed PGW to credit the Complainants' various account in the total amount of \$2,705.69.<sup>16</sup>

24. The October 21, 2015, Initial Decision sustained the consolidated Complaints with regard to their challenge of Respondent's application of Commission-approved late payment charges to outstanding balances which have been the subject of municipal liens.

25. The October 21, 2015, Initial Decision directed PGW to refund to refund the Complainants SBG/Fairmount, SBG/Elrea Garden, and SBG/Marshall Square the amounts \$58,655.68, \$157,238.79, and \$94,557.67, respectively, plus interest at the legal rate from the date of each excessive payment. I.D., Ordering Paragraphs ## 18-20.

26. The October 21, 2015 Initial Decision imposed a civil penalty in the amount of \$27,000 against PGW for the violation of 66 Pa.C.S. § 1501 and 52 Pa. Code § 56.22 (\$2,000 regarding PGW's application of partial payments out of order so that the most recent late payment charges are paid before the gas charges due for prior service, and \$25,000 in connection

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<sup>16</sup> This amount represents the total amount stated in Ordering Paragraph ## 2-17, in the October 21, 2015, Initial Decision.

with PGW's application of its tariff and rates to liened indebted amounts). October 21, 2015 I.D., Ordering Paragraphs ## 21-22.

27. Regarding the misapplication of partial payments, the Initial Decision issued on October 21, 2015, reviewed transactions between PGW and the Complainants until December 10, 2012. October 21, 2015, I.D.

28. Regarding the misapplication of the Commission-approved late-payment charges on outstanding balances that had become municipal liens and judgements, the Initial Decision issued on October 21, 2015, reviewed transactions between PGW and the Complainants to the following end dates: Elrea Garden – October 23, 2012; Fairmount – October 22, 2012; and Marshall Square – October 22, 2012. October 21, 2015, I.D., Findings of Fact ## 110, 112, 114.

29. On September 20, 2018, the Commission issued an Opinion and Order denying PGW's Exceptions and adopting my Initial Decision. *September 20, 2018, Order*.

30. PGW appealed the Commission's *September 20, 2018, Order* to the Commonwealth Court, with the exception of the Commission's ruling on the partial application of payments. See *Phila. Gas Works v. Pa. PUC*, Pa. Cmwlth., No. 1405 C.D. 2018, 2019 Pa. Commw. Unpub. LEXIS 664, 2019 WL 6698105, 2019 WL 6698105.

31. Complainants SBG/Fairmount, SBG/Elrea Garden, and SBG/Marshall Square intervened in that matter. See *Phila. Gas Works v. Pa. PUC*, at Docket No. 1405 C.D. 2018, 2019 Pa. Commw. Unpub. LEXIS 664, 2019 WL 6698105, 2019 WL 6698105.

32. In an unpublished Opinion, dated December 9, 2019, the Commonwealth Court reversed the Commission's *September 20, 2018, Order* for the reasons set forth in its legal analysis in *PGWI*. See *Phila. Gas Works v. Pa. PUC*, Pa. Cmwlth., No. 1405 C.D. 2018, 2019 Pa. Commw. Unpub. LEXIS 664, 2019 WL 6698105, 2019 WL 6698105.

33. Complainants did not appeal the Commonwealth Court's ruling.

**2012 Complaints – SBG on behalf of Marchwood, Fern Rock and Oak Lane  
Docket Nos. C-2012-2308454, C-2012-2302308462, and C-2012-2308465**

34. On May 11, 2012, Phil Pulley filed three Formal Complaints with the Commission as Director of Operations for SBG on behalf of Marchwood Realty Co., L.P. (Marchwood), Oak Lane Court Realty Co., L.P. (Oak Lane), and Fern Rock Realty Co., L.P. (Fern Rock). All three Complaints were filed against PGW and were docketed at Docket Nos. C-2012-2308454, C-2012-2302308462, and C-2012-2308465, respectively.

35. On December 10, 2012, counsel for Complainants filed Amended Complaints at Docket Nos. C-2012-2308454, C-2012-2308462 and C-2012-2308465, where, *inter alia*, counsel explained the relationship between SBG Management Services, Inc., and Marchwood Realty Co., L.P., Oak Lane Court Realty Co., L.P., and Fern Rock Realty Co., L.P.

36. An Initial Decision issued on February 2, 2016, granted in part, and denied, in part, the consolidated Complaints with regard to their challenge of Respondent's application of partial payments as it pertains to late payment charges.

37. The February 2, 2016, Initial Decision directed PGW to recalculate the Complainants' outstanding balance for the four years June 2008 - June 2012 in accordance with the provisions of 52 Pa. Code § 56.24 and provide it to TUS for verification. February 2, 2016, I.D. at 27.

38. Once TUS had verified the calculation, then PGW was to bill the Complainants appropriately. February 2, 2016, I.D. at 27.

39. Regarding the misapplication of the Commission-approved late-payment charges on outstanding balances that had become municipal liens and judgements, the February 2016 Initial Decision reviewed transactions between PGW and the Complainants to the following end dates: Fern Rock – July 21, 2012; Oak Lane – August 19, 2012; and Marchwood – November 2, 2012. February 2, 2016, I.D., Findings of Fact ## 12, 16, 14.

40. The February 2, 2016, Initial Decision granted the consolidated Complaints with regard to their challenge of Respondent's application of tariff-sanctioned late payment charges to outstanding balances which have been the subject of municipal liens. February 2, 2016, I.D., Ordering Paragraphs ## 4-6.

41. With regard to the municipal liens, PGW was ordered to refund \$113,403.71 to Fern Rock, \$35,915.42 to Marchwood, and \$8,379.72 to Oak Lane, plus interest at the legal rate from the date of each excessive payment. February 2, 2016, I.D., Ordering Paragraphs ## 4-6.

42. The February 2, 2016 Initial Decision imposed a civil penalty in the amount of \$27,000 against PGW for the violation of 66 Pa.C.S. § 1501 and 52 Pa. Code § 56.22 (\$2,000 regarding PGW's application of partial payments out of order so that the most recent late payment charges are paid before the gas charges due for prior service, and \$25,000 in connection with PGW's application of its tariff and rates to lien-ed indebted amounts). February 2, 2016, I.D., Ordering Paragraphs ## 7-9.

43 On October 4, 2018, the Commission entered an Opinion and Order in which it ordered PGW not only to recalculate the Complainants' outstanding balance for the four years June 2008 - June 2012 in accordance with the provisions of 52 Pa. Code § 56.24 and provide it to TUS for verification, but to do so within 60 days from the entry of the Order. *October 4, 2018, Order*, Ordering Paragraph # 5.

44. PGW was ordered to bill the Complaints appropriately within 30 days of the issuance of the approval of the calculations. *October 4, 2018, Order*, Ordering Paragraph # 6.

45. The Commission's *October 4, 2018 Order* adopted Ordering Paragraphs ## 4-6 of the Initial Decision regarding the refund of the tariff-sanctioned late payment charges

to outstanding balances which have been the subject of municipal liens. See *October 4, 2018, Order*, Ordering Paragraphs ## 7-9.

46. The *October 4, 2018, Order* imposed no civil penalty on PGW but instead instructed the utility to cease and desist from further violations of the Public Utility Code, 66 Pa. C.S. §§ 101–3316, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa. Code §§ 1.1–1065.1. See *October 4, 2018, Order*, Ordering Paragraph # 10.

47. PGW appealed the Commission's *October 4, 2018, Order* to the Commonwealth Court, with the exception of the Commission's ruling on the partial application of payments. See *Phila. Gas Works v. Pa. PUC*, (Pa. Cmwlth., No. 1404 C.D. 2018), 2019 Pa. Commw. Unpub. LEXIS 666, 2019 WL 6698105, 2019 WL 6698103.

48. Complainants SBG/Marchwood, SBG/Oak Lane, and SBG/Fern Rock intervened in that matter. *Phila. Gas Works v. Pa. PUC*, (Pa. Cmwlth., No. 1404 C.D. 2018), 2019 Pa. Commw. Unpub. LEXIS 666, 2019 WL 6698105, 2019 WL 6698103.

49. In an unreported Opinion, dated December 9, 2019, the Commonwealth Court reversed the Commission's *October 4, 2018, Order* for the reasons set forth in its legal analysis in *PGWI*. See *Phila. Gas Works v. Pa. PUC*, (Pa. Cmwlth., No. 1404 C.D. 2018), 2019 Pa. Commw. Unpub. LEXIS 666, 2019 WL 6698105, 2019 WL 6698103.

50. The Complainants did not appeal the Commonwealth Court's ruling in *Phila. Gas Works v. Pa. PUC*, (Pa. Cmwlth., No. 1404 C.D. 2018), 2019 Pa. Commw. Unpub. LEXIS 666, 2019 WL 6698105, 2019 WL 6698103.

## **2015 Complaints**

51. On May 29, 2015, SBG Management Services Inc. (SBG), through its counsel filed eight separate Formal Complaints against PGW on behalf of Marshall Square Realty Co., LP (Marshall), Simon Gardens Realty Co., LP (Simon Garden); Marchwood Realty

Co., LP (Marchwood), Oak Lane Realty Co., LP (Oak Lane), Fairmount Mannor Realty C., LP (Fairmount); Fern Rock Gardens Realty Co., LP (Fern Rock), Elrea Gardens Realty Co., LP (Elrea) and Colonial Garden Realty Co., LP (Colonial Garden) at Docket Nos. C-2015-2486618, C-2015-2486642, C-2015-2486648, C-2015-2486655, C-2015-2486664, C-2015-2486674, and C-2015-2486677, respectively (collectively, 2015 Complainants).

52. By Orders dated July 5, 2016, the proceedings in the 2015 Complaints were stayed pending the Commission's final determination in the eight complaints docketed at Docket Nos. C-2012-2304183, C-2012-2304215, C-2012-2304324, C-2012-2304167, C-2012-2304303, C-2012-2308454, C-2012-2308462, and C-2012-2308465.

53. PGW's improper application of partial payments became a part of PGW's base rate case in 2017 at Docket No. R-2017-2586783.

54. By Opinion and Order entered on June 28, 2019, at Docket No. R-2017-2586783, the Commission approved a settlement agreement reached between OCA and PGW on this issue, with PGW agreeing to make the changes to its billing system in accordance with the Commission's Opinion and Orders entered on the 2012 Complaints. (*2019 Settlement*).

55. The changes to PGW's billing system were completed on January 24, 2020. See Tr. 971; PGW Remand St. 1, at 5-6.

56. PGW's changes to its billing system comply with the Commission's Orders entered on the 2012 Complaints, as well as the *2019 Settlement*. See Tr. 971; PGW Remand St. 1, at 5-6.

### **Municipal Liens**

57. All the "vacated" liens collected an interest rate of 18% per year (in accordance with PGW's Commission approved tariff rate for late-payment charges) between the date they were filed with the Municipal Court of Philadelphia and the date they were marked as

“vacated.” See Tr. 1192-94.

58. PGW filed 22 municipal liens against Colonial Garden between May 11, 2009, and July 23, 2014. PGW Exhibit BLC-5 at 5; SBG Exhibit CEH-3 at 11.

59. No municipal liens were filed by PGW against Colonial Garden after July 23, 2014. PGW Exhibit BLC-5 at 5.

60. Six of the twenty-two liens filed by PGW against Colonial Garden during the period May 11, 2012, and July 23, 2014, are marked as “Vacated.” PGW Exhibit BLC-5 at 5; SBG Exhibit CEH-3 at 11.

61. PGW filed 40 municipal liens against Simon Garden between May 11, 2009, and July 23, 2014. PGW Exhibit BLC-5 at 16; SBG Exhibit CEH-3 at 1.

62. No municipal liens were filed by PGW against Simon Garden after July 23, 2014. PGW Exhibit BLC-5 at 16.

63. Seven of the forty liens filed by PGW against Simon Garden during the period May 11, 2012, and July 23, 2014, are marked as “Vacated.” PGW Exhibit BLC-5 at 5; SBG Exhibit CEH-3 at 1.

64. The review of the municipal liens filed by PGW against Marchwood in the 2012 proceedings covered the period until November 2, 2012. See *SBG Management Services, Inc./Marchwood Realty Co., L.P., SBG Management Services, Inc./Oak Lane Court Realty Co., L.P., and SBG Management Services, Inc./Fern Rock Realty Co., L.P.*, Docket Nos. C-2012-2308454, C-2012-2308462 & C-2012-2308465, at Finding of Fact No. 14 (Initial Decision dated Jan. 13, 2016),.

65. No municipal liens were filed against Marchwood by PGW after July 23, 2014. PGW Exhibit BLC-5 at 13.

66. PGW filed eight municipal liens against Marchwood between November 3, 2012, and July 23, 2014. PGW Exhibit BLC-5 at 15; SBG Exhibit CEH-3 at 5.

67. All eight liens filed by PGW against Marchwood during the period July 22, 2012, and July 23, 2014, were paid off by the Complainant and are marked as “Satisfied.” PGW Exhibit BLC-5 at 15; SBG Exhibit CEH-3 at 5.

68. The review of the municipal liens filed by PGW against Oak Lane in the 2012 proceedings covered the period until August 19, 2012. *See SBG Management Services, Inc./Marchwood Realty Co., L.P., SBG Management Services, Inc./Oak Lane Court Realty Co., L.P., and SBG Management Services, Inc./Fern Rock Realty Co., L.P.*, Docket Nos. C-2012-2308454, C-2012-2308462 & C-2012-2308465, at Finding of Fact No. 16 (Initial Decision dated Jan. 13, 2016).

69. No municipal liens were filed against Oak Lane by PGW after March 22, 2014. PGW Exhibit BLC-5 at 15.

70. PGW filed nine municipal liens against Oak Lane between August 20, 2012, and March 23, 2014. PGW Exhibit BLC-5 at 15; SBG Exhibit CEH-3 at 2.

71. Five of the nine liens filed by PGW against Oak Lane during the period July 22, 2012, and July 23, 2014, are marked as “Vacated.” PGW Exhibit BLC-5 at 15; SBG Exhibit CEH-3 at 2.

72. The review of the municipal liens filed by PGW against Fern Rock in the 2012 proceedings covered the period until July 21, 2012. *See SBG Management Services, Inc./Marchwood Realty Co., L.P., SBG Management Services, Inc./Oak Lane Court Realty Co., L.P., and SBG Management Services, Inc./Fern Rock Realty Co., L.P.*, Docket Nos. C-2012-2308454, C-2012-2308462 & C-2012-2308465, at Finding of Fact No. 16 (Initial Decision dated Jan. 13, 2016).

73. No municipal liens were filed against Fern Rock by PGW after July 23, 2014. PGW Exhibit BLC-5 at 12.

74. PGW filed eight municipal liens against Fern Rock between July 22, 2012, and July 23, 2014. PGW Exhibit BLC-5 at 12; SBG Exhibit CEH-3 at 2.

75. Five of the eight liens filed by PGW against Fern Rock during the period July 22, 2012, and July 23, 2014, are marked as “Vacated” and one is marked as “Closed Account.” PGW Exhibit BLC-5 at 12; SBG Exhibit CEH-3 at 2.

76. The review of the municipal liens filed by PGW against Elrea Garden in the 2012 proceedings covered the period until October 23, 2012. *See SBG Management Services, Inc./Elrea Garden Realty Co., L.P., SBG Management Services, Inc./Fairmount Manor Realty Co., L.P., and SBG Management Services, Inc./Marshall Square Realty Co., L.P., Docket Nos. C-2012-2304167, C-2012-2304215 & C-2012-2304303, at Finding of Fact No. 114 (Initial Decision dated Oct. 21, 2015).*

77. PGW filed nine municipal liens against Elrea Garden between October 24, 2012, and April 23, 2014. PGW Exhibit BLC-5 at 7; SBG Exhibit CEH-3 at 11.

78. No municipal liens were filed against Elrea Garden by PGW after April 23, 2014. PGW Exhibit BLC-5 at 7.

79. Four of the nine liens filed by PGW against Elrea Garden during the period October 24, 2012, and April 23, 2014, are marked as “Vacated.” PGW Exhibit BLC-5 at 7; SBG Exhibit CEH-3 at 11.

80. The review of the municipal liens filed by PGW against Fairmount in the 2012 proceedings covered the period until October 22, 2012. *See SBG Management Services, Inc./Elrea Garden Realty Co., L.P., SBG Management Services, Inc./Fairmount Manor Realty*

*Co., L.P., and SBG Management Services, Inc./Marshall Square Realty Co., L.P.*, Docket Nos. C-2012-2304167, C-2012-2304215 & C-2012-2304303, at Finding of Fact No. 114 (Initial Decision dated Oct. 21, 2015).

81. PGW filed 30 municipal liens against Fairmount between October 23, 2012, and April 19, 2016. PGW Exhibit BLC-5 at 10-11; SBG Exhibit CEH-3 at 9-10.

82. No municipal liens were filed against Fairmount by PGW after April 19, 2016. PGW Exhibit BLC-5 at 14.

83. Thirteen of the 30 liens filed by PGW against Fairmount during the period October 23, 2012, and April 19, 2016, are marked as “Vacated;” five are marked as “Closed Account” and three are marked “unknown.” PGW Exhibit BLC-5 at 10-11; SBG Exhibit CEH-3 at 9-10.

84. The review of the municipal liens filed by PGW against Marshall Square in the 2012 proceedings covered the period until October 22, 2012. *See SBG Management Services, Inc./Elrea Garden Realty Co., L.P., SBG Management Services, Inc./Fairmount Manor Realty Co., L.P., and SBG Management Services, Inc./Marshall Square Realty Co., L.P.*, Docket Nos. C-2012-2304167, C-2012-2304215 & C-2012-2304303, at Finding of Fact No. 114 (Initial Decision dated Oct. 21, 2015).

85. PGW filed six municipal liens against Marshall Square between October 23, 2012, and July 23, 2014. PGW Exhibit BLC-5 at 14; SBG Exhibit CEH-3 at 3.

86. No municipal liens were filed against Marshall Square by PGW after July 23, 2014. PGW Exhibit BLC-5 at 14.

87. All six municipal liens filed by PGW against Marshall Square between October 23, 2012, and July 23, 2014, were paid off and satisfied by Marshall Square. PGW Exhibit BLC-5 at 14; SBG Exhibit CEH-3 at 3.

88. In its unpublished Opinion dated March 26, 2022, in *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 276 A.3d 1219 (Pa. Cmwlth. 2022), the Commonwealth Court concluded, *inter alia*, that the Commission did not err in imposing a \$2,000 penalty against PGW for violating the Commission's regulation governing the application of partial payments. *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 276 A.3d 1219 (Pa. Cmwlth. 2022).

89. To date, PGW has not paid the \$2,000.00 civil penalty to the Commission.

#### IV. DISCUSSION

##### A. **Legal Standard**

As the proponent of a rule or order, the Complainants have the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa.C.S. § 332(a). To satisfy this burden, they must demonstrate that the Respondent was responsible for the problems alleged in the Complaints through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainants of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainants shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight to the evidence presented by the Complainants, the Complainants have not

satisfied their burden of proof. The Complainants would then be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

As shown in the History of the Proceedings, these cases have had a long and complex history before this Commission, with the original Complaints filed in May of 2012. The years of litigation before this Commission, the appellate courts, and a civil action lawsuit in front of the Court of Common Pleas in Philadelphia<sup>17</sup> on one hand have helped the parties to zero in on the Complainants' main grievances against PGW, while on the other hand, have threatened to distort the legal frame of the issues through the myriad of legal arguments, or miss important details in the thousands of pages of record created. It is important, therefore, to clarify the scope of these consolidated proceedings.

The appellate process narrowed down the scope of the 2012 Complaints filed by SBG against PGW to two main issues: 1) the order of the application of partial payments; and 2) the assessment of the Commission-approved tariffed rate of 18% per year as a late payment charge on outstanding debt which was the subject of a municipal lien. The scope of the 2018 Complaints was also narrowed down to these two issues through the stipulations of the parties. *See* Tr. 1347-49, 1350-52.

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<sup>17</sup> See *SBG Mgmt. Servs., Inc. v. City of Phila. C/O Phila. Gas Works*, Case ID. 210402801.

## **B. The Order of the Application of Partial Payments**

### **1. Scope of Calculations**

2012 Complaints - SBG/Simon Garden and SBG/Colonial Garden  
Docket Nos. C-2012-2304183 and C-2012-2304324

In its *December 8, 2016, Order*, the Commission concluded that PGW had improperly processed the application of the partial payments in violation of the Commission Regulation at 52 Pa. Code § 56.22, and ordered PGW to credit the two Complainants' accounts as follows:

4. That the recommendation of Administrative Law Judge Vero is adopted, subject to corrections in the calculations, and Philadelphia Gas Works shall credit the Colonial Garden Realty Co., L.P.'s Account # 6128000245, SA # 1375369694, in the amount of \$348.40.

5. That the recommendation of Administrative Law Judge Vero is adopted, and Philadelphia Gas Works shall credit the Colonial Garden Realty Co., L.P.'s Account # 6128000245, SA # 4018739567, in the amount of \$218.96.

*December 8, 2016, Order*, at 110. PGW did not include the Commission's ruling on the application of partial payments in PGW's appeal of the Commission's *December 8, 2016, Order* to the Commonwealth Court in *Philadelphia Gas Works v. Pennsylvania Pub. Util. Comm'n*, 222 A.3d 1218 (Pa. Cmwlth. 2019) (*PGW I*). *See* Tr. 1229. Therefore, the Commission's ruling on this issue remains final. PGW had admitted that it has not complied with the Commission's *December 8, 2016, Order* and has not credited SBG/Simon and SBG/Colonial the stated amounts, together with the legal rate of interest. *See* PGW Post-Hearing Exhibit dated May 2, 2023.

2012 Complaints – SBG/Elrea, SBG/Fairmount and SBG/Marshall  
Docket Nos. C-2012-2304167, C-2012-2304215, and C-2012-2304303

On September 20, 2018, the Commission issued an Opinion and Order, in which it concluded, consistent with its *December 8, 2016, Order*, that PGW had improperly processed the application of the partial payments in violation of the Commission Regulation at 52 Pa. Code § 56.22, and ordered PGW to credit the two Complainants' accounts as follows:

4. That Philadelphia Gas Works shall credit the Elrea Garden Realty Co., L.P.'s Account Number ending in 5786, SA Number ending in 7841 in the amount of \$126.36.
5. That Philadelphia Gas Works shall credit the Elrea Garden Realty Co., L.P.'s Account Number ending in 7105, SA Number ending in 7993 in the amount of \$160.96.
6. That Philadelphia Gas Works shall credit the Elrea Garden Realty Co., L.P.'s Account Number ending in 7105, SA Number ending in 8905 in the amount of \$144.52.
7. That Philadelphia Gas Works shall credit the Fairmount Manor Realty Co., L.P.'s Account Number ending in 8422, SA Number ending in 3461 in the amount of \$123.20.
8. That Philadelphia Gas Works shall credit the Fairmount Manor Realty Co., L.P.'s Account Number ending in 0860, SA Number ending in 4270 in the amount of \$128.00.
9. That Philadelphia Gas Works shall credit the Fairmount Manor Realty Co., L.P.'s Account Number ending in 3358, SA Number ending in 6439 in the amount of \$174.48.
10. That Philadelphia Gas Works shall credit the Fairmount Manor Realty Co., L.P.'s Account Number ending in 0431, SA Number ending in 5701 in the amount of \$85.84.
11. That Philadelphia Gas Works shall credit the Fairmount Manor Realty Co., L.P.'s Account Number ending in 9832, SA Number ending in 8906 in the amount of \$152.32.

12. That Philadelphia Gas Works shall credit the Fairmount Manor Realty Co., L.P.'s Account Number ending in 7092, SA Number ending in 0888 in the amount of \$274.16.

13. That Philadelphia Gas Works shall credit the Fairmount Manor Realty Co., L.P.'s Account Number ending in 9425, SA Number ending in 7900 in the amount of \$145.12.

14. That Philadelphia Gas Works shall credit the Fairmount Manor Realty Co., L.P.'s Account Number ending in 6029, SA Number ending in 6958 in the amount of \$103.76.

15. That Philadelphia Gas Works shall credit the Fairmount Manor Realty Co., L.P.'s Account Number ending in 2001, SA Number ending in 4637 in the amount of \$99.28.

16. That Philadelphia Gas Works shall credit the Fairmount Manor Realty Co., L.P.'s Account Number ending in 0766, SA Number ending in 9359 in the amount of \$154.08.

17. That Philadelphia Gas Works shall credit the Marshall Square Realty Co., L.P.'s Account Number ending in 7503, SA Number ending in 6324 in the amount of \$633.20.

18. That Philadelphia Gas Works shall credit the Fairmount Manor Realty Co., L.P.'s Account Number ending in 0622, SA Number ending in 2208 in the amount of \$77.21.

*SBG Mgmt. Servs. Inc. v. Phila. Gas Works*, Docket No. C-2012-2304167 at 36-38 (Opinion and Order entered Sept. 20, 2018) (*September 20, 2018, Order*).

PGW did not include the Commission's ruling on the application of partial payments in PGW's appeal of the Commission's *September 20, 2018, Order* to the Commonwealth Court in *Philadelphia Gas Works v. Pennsylvania Pub. Util. Comm'n*, 2019 WL 6698105 (Pa. Cmwlth. 2019). Therefore, the Commission's ruling on this issue remains final. PGW has admitted that it has not complied with the Commission's Order and has not credited SBG/Elrea, SBG/Marshall and SBG/Fairmount the stated amounts. *See* PGW Post Hearing Exhibit dated May 2, 2023.

2012 Complaints – SBG/Marchwood, SBG/Fern Rock and SBG/Oak Lane  
Docket Nos. C-2012-2308454, C-2012-2302308462, and C-2012-2308465

In its *October 4, 2018, Order*, the Commission ordered PGW to recalculate the Complainants' outstanding balance for the four years June 2008 - June 2012 in accordance with the provisions of 52 Pa. Code § 56.24 and provide said calculation to TUS for verification. PGW was ordered to do so within 60 days from the entry of the Opinion and Order. Opinion and Order Ordering Paragraph # 5. In addition, PGW was ordered to bill the Complainants appropriately within 30 days of the issuance of the approval of the calculations. *October 4, 2018, Order*, Ordering Paragraph # 6.

PGW did not include the Commission's ruling on the application of partial payments in PGW's appeal of the Commission's *October 4, 2018, Order* to the Commonwealth Court in *Philadelphia Gas Works v. Pennsylvania Public Utility Comm'n*, 2019 WL 6698105 (Pa. Cmwlth. 2019). Therefore, the Commission's ruling on this issue remains final. PGW has admitted that it has not complied with the Commission's *October 4, 2018, Order*; has not performed the calculations; has not submitted them to TUS for verification, and has not credited SBG/Marchwood, SBG/Fern Rock and SBG/Oak Lane the stated amounts. *See* PGW Post Hearing Exhibit dated May 2, 2023.

SBG has argued that, because PGW never credited the amounts as ordered, the issue of partial payments from the eight 2012 Complaints was pending as of the time of the Commonwealth Court's ruling in *PGW III*. *See* SBG Remand Direct Testimony of Christopher E. Hanson, at 4; SBG Exhibit CEH-1; SBG's Response, dated November 2, 2022, to PGW's Partial Motion to Dismiss filed on October 14, 2022. For its part, PGW has included those amounts in its proposed calculations of credit due to the Complainants in the present consolidated matters in regard to the improper application of partial payments. *See PGW Post-Hearing Exhibit dated May 2, 2023*, (referring to PGW Statement No. 1-R at page 9; PGW Exhibits BLC 7-9). I disagree with both parties. Pursuant to Title 66 of the Pennsylvania Consolidated Statutes, Section 1312(b):

**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. Any 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. No suit may be maintained for a refund unless instituted within one year from the date of the order of the commission or court. Any number of patrons entitled to such refund may join as plaintiffs and recover their several claims in a single action, in which action the court shall render a judgment severally for each plaintiff as his interest may appear.

66 Pa.C.S. § 1312(b). (Emphasis added). PGW has done just that. It has failed to make the refunds ordered by the Commission in December 2016, September 2018, and October 2018. It is the Complainants' responsibility to take the matter up in a court of appropriate jurisdiction. However, the calculation and refund of money in connection with PGW's improper application of partial payments for the eight 2012 Complaints is outside the scope of the present matters.

2015 Complaints – SBG/Marshall, SBG/Simon, SBG/Marchwood, SBG/Oak Lane, SBG/Fairmount, SBG/Fern Rock, SBG/Elrea, and SBG/Colonial Docket Nos. C-2015-2486618, C-2015-2486642, C-2015-2486648, C-2015-2486655, C-2015-2486664, C-2015-2486674, and C-2015-2486677, respectively

On May 29, 2015, SBG filed eight separate Formal Complaints against PGW on behalf of Marshall Square Realty Co., LP (Marshall), Simon Gardens Realty Co., LP (Simon); Marchwood Realty Co., LP (Marchwood), Oak Lane Realty Co., LP (Oak Lane), Fairmount Mannor Realty C., LP (Fairmount); Fern Rock Gardens Realty Co., LP (Fern Rock), Elrea

Gardens Realty Co., LP (Elrea) and Colonial Garden Realty Co., LP (Colonial) at Docket Nos. C-2015-2486618, C-2015-2486642, C-2015-2486648, C-2015-2486655, C-2015-2486664, C-2015-2486674, and C-2015-2486677, respectively (collectively, 2015 Complainants). The eight 2015 Complaints involve not only the same parties and properties but also raise the same issues as the eight 2012 Complaints.<sup>18</sup>

On June 8, 2016, counsel for SBG and PGW filed a Joint Motion in each of the 2015 Complaints requesting that the proceedings under those Docket Numbers be stayed pending Commission determination on the eight 2012 Complaints (at Docket Nos. C-2012-2304183, C-20012-2304215, C-2012-2304324, C-2012-2304167, C-2012-23043003, C-2012-2308454, C-2012-2308462, and C-2012-2308465). By Orders dated July 5, 2016, the Joint Motion for Further Stay of proceedings in the 2015 Complaints were granted and the 2015 Complaints have remained stayed until, at least, March 26, 2022, when the Commonwealth Court heard *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 276 A.3d 1219 (Pa. Cmwlth. 2022), (*PGW III*) on remand and issued a ruling, in turn, remanding the two 2012 Complaints at Docket No. C-2012-2304183, C-2012-2304324 to the Commission. *See SPGW III*, at 1219, *see also* Order on Partial Motion to Dismiss, dated December 19, 2022, at 12-13.

At the further evidentiary hearing on remand, counsel for SBG narrowed down the issues raised in the 2015 Complaints to essentially two: 1) a dispute of the application of partial payments; and 2) a dispute of the application of the tariffed 18% interest rate as late payment charges to outstanding debt that was the subject of a municipal lien. Tr. 1347-49.

With regard to PGW's improper application of partial payments as it pertained to the eight 2015 Complaints, my Order issued October 10, 2023, informed the parties that the review of the 2015 Complaints at Docket Nos. C-2015-2486618; C-2015-2486642; C-2015-2486648; C-2015-2486655; C-2015-2486664; C-2015-2486670; C-2015-2486674; and C-2015-2486677 will begin on December 11, 2023. *See* October 10, 2023, Order, Ordering Paragraph #

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<sup>18</sup> In particular, in each of the 2015 Complainants, Complainants have checked the boxes next to the statements "Incorrect Charges are on my bill," "I am having a reliability, safety and quality of service problem with my utility service," and "Other," and submitted detailed explanations of their claims.

6. These instructions were reiterated in my Order dated November 15, 2023. *See* November 15, 2023, Order, Ordering Paragraph # 4. The reason for selecting the December 11, 2012, date as the beginning date for the review of the issues raised in the 2015 Complaints is the fact that each of the eight 2012 Complaints (which correspond to the 2015 Complaints) were amended on December 10, 2012, and that the proceedings in the 2012 Complaints had reviewed and ruled upon transactions up until that date.

Although the provisions of the Public Utility Code at 66 Pa.C.S. § 1312(a) would allow for a refund of the access amount charged to the Complainants in consequence of PGW's unlawful application of the partial payments, within four years prior to May 29, 2015, (which is the date of the filing of the 2015 Complaints), the review of the transactions that occurred between May 29, 2011 and December 10, 2012, would be duplicative of the review that took place during the proceedings on the 2012 Complaints before this Commission. Such a review and subsequent refund would represent an improper windfall or "double dipping" on the part of the Complainants.

As mentioned in the History of the Proceedings, PGW's improper application of partial payments became a part of PGW's base rate case in 2017 at Docket No. R-2017-2586783. By Opinion and Order entered on June 28, 2019, the Commission approved a settlement agreement reached between OCA and PGW on this issue, with PGW agreeing to make the changes to its billing system in accordance with the Commission's Orders entered on the 2012 Complaints (*2019 Settlement*). The changes to PGW's billing system were completed on January 24, 2020. *See* Tr. 971; PGW Remand St. 1, at 5-6. Mr. Cummings testified that the changes to its billing system comply with the Commission's Orders entered on the 2012 Complaints, as well as the *2019 Settlement*. PGW Remand St. No. 1 at 8; Tr. 1137, 1224-25. SBG did not present evidence to refute that statement. Therefore, it stands to reason that the end date of the partial payment review of the 2015 Complaints is January 24, 2020.

In summary, the calculation of refunds in connection with PGW's improper application of partial payments for the 2015 Complaints at Docket Nos. C-2015-2486618, C-

2015-2486642, C-2015-2486648, C-2015-2486655, C-2015-2486664, and C-2015-2486674 will cover the period December 11, 2012, to January 25, 2020.

## 2. Methodology of Calculations

There is a conceptual agreement between SBG and PGW on the use of the first-in-first-out (FIFO) method of accounting for recalculating the partial payments at issue. There also appears to be agreement on the fact that PGW implemented the revised payment application process on January 24, 2020, pursuant to the Commission's Opinion and Order at Docket No. R-2017-2586783 and *the 2019 Settlement*. See PGW Remand Rebuttal St. No. 1-R. However, the parties disagree on the specific methodology under FIFO principles used to compare the recalculated amounts. *Id.*

In his Direct Testimony dated January 20, 2023, SBG witness Christopher E. Hanson described the specific methodology under FIFO principles that he used to calculate the refund due to Complainants in connection with PGW's improper application of partial payments.

The first step in the recalculation process was to determine the account gas and LPC<sup>[19]</sup> balances and their aging as of the period immediately prior to the first payment after the start date. To make these determinations, I applied PGW's historical payment application method (prioritizing LPC balances) to historical billing activity prior to the start date. I began this calculation starting from the latest period where the combined account balance was zero (both gas and LPC). To determine the starting balances are made no changes to the LPC, using each LPC amount as originally determined by PGW at the time.

I applied the payment using the FIFO method, prioritizing aged balances from oldest to newest, either gas or LPC starting from the first payment made after the start date and running through the extent of the billing data for each account. I recalculated an updated LPC amount based on the immediate prior period's

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<sup>19</sup> Late payment charge (LPC).

recalculated outstanding gas balance for each period where PGW had assessed an LPC in a period.

SBG Direct Testimony, at 5.

In turn, PGW disagreed with Mr. Hanson’s “comparison method” and based its calculations on a “true-up method,” which PGW witness Bernard L. Cummings described at the April 25, 2023, further hearing on remand as follows:

THE WITNESS: Okay. So under this scenario, [a partial payment] would first exhaust the oldest debt...And if there was any money left over, it would then - let's assume that it exhausts all the gas - the oldest gas payment. ... Then the secondary payment that would be applied would be the oldest late payment charge before it moves to the next call it principal gas payment. ...So that methodology would be replicated over time because that is the payment application.

JUDGE: So it would go principal gas charge, late payment charge, principal gas charge, late payment charge by the order in which they are assessed.

THE WITNESS: Correct.

Tr. 1221-22 (Further Hearing on Remand, April 25, 2023). Mr. Cummings testified that PGW recalculated partial payments applications for this proceeding consistent with the payment application approach agreed to in the *2019 Settlement*. PGW Remand St. No. 1 at 8.

I find PGW’s “true-up method” follows closely the Commission’s *December 8, 2016, Order, September 20, 2018, Order, and October 4, 2018, Order*, as well as the terms of the *2019 Settlement*. In addition, I find that PGW’s calculation of refunds also covered the correct time period, starting on December 11, 2012, and ending on January 24, 2020. *See* PGW St. No.1-SR at 10; PGW Exhibit BLC-15 (reflecting calculations in compliance with the Ordering Paragraph # 6 of the October 10, 2023, Order). SBG calculations, on the other hand, use a different methodology and the incorrect review period, using start dates that begin four years

prior to the filing of the 2012 Complaints, and the end date of September 2021.<sup>20</sup> *See* SBG Remand Direct Testimony at 4 and 7.

### **3. Fairmount Manor Realty Co. L.P -- Fairmount Court Realty Co. L.P.**

In her Remand Surrebuttal Testimony on behalf of the Complainants, Samantha Pulley, Esq. testified that Fairmount Manor Realty Co. L.P. (Fairmount Manor) and Fairmount Court Realty Co. L.P. (Fairmount Court) are entirely separate legal entities. Ms. Pulley testified that, in 2011, Fairmont Manor transferred certain properties known as 700-08 N. Marshall St. and 711-19 N. 7<sup>th</sup> St. to a separate legal entity, Fairmont Court Realty Co. L.P. Fairmount Mannor continued to own the properties known as 650 Fairmount Ave., and 601-43 N. Marshall St. *See* SBG Surrebuttal Testimony of Samantha Pulley, Esq., at 4, 10. This decision was made before the 2012 Complaint by Fairmount Manor at Docket No. C-2012-2304215 was filed, and before the 2015 Complaint was filed by Fairmount Manor at Docket No. C-2015-2486664.

In response, PGW argued that Fairmont Court Realty Co. L.P. is not a party to the consolidated Complaints and has not at any time filed a separate complaint against PGW that is pending or consolidated with the Complaints of Simon Garden, Elrea Garden, Fairmont Manor, Fern Rock, Marchwood, Marshall Square, and Oak Lane. PGW maintains that Fairmount Court Realty Co. L.P.'s failure to file or join a complaint against PGW precludes the Commission from granting relief in favor of Fairmount Court Realty Co. L.P. *See* PGW St. No. 1-SR.

I disagree. From the earliest pleadings in 2012, and later in 2015, SBG Management Services, Inc. filed the consolidated Complaints as the managing company of the properties owned by the various realty companies involved in these Complaints: Simon Garden, Colonial Garden, Fern Rock, Marchwood, Marshall Square, Elea Garden, Oak Lane, and

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<sup>20</sup> In his Remand Surrebuttal Testimony, SBG witness, Mr. Hanson agreed that the method Mr. Cummings described in his testimony appeared very similar to his own methodology. Mr. Hanson also noted that, when using the same start dates and period, the results of SBG's and PGW's FIFO recalculations (excluding the legal interest rate) were very close. *See* SBG Remand Surrebuttal Testimony at 3, (referring to PGW Remand Rebuttal St. No. 1-R, at 8-11).

Fairmount Mannor. For each of these realty companies, SBG listed the address of the properties they owned as well as the gas accounts in dispute. In the 2012 Complaints proceedings, SBG maintained that Fairmount Manor Realty Co., L.P. is the owner of the apartment complex located at 650 Fairmount Avenue, Philadelphia, PA 19123, 601-643 N. Marshall Street, Philadelphia, PA 19123, and 700-708 Marshall Street, Philadelphia, PA 19123 and proceeded to dispute gas charges on PGW accounts connected to those properties. *See SBG Management Services, Inc./Elrea Garden Realty Co., L.P., SBG Management Services, Inc./Fairmount Manor Realty Co., L.P., and SBG Management Services, Inc./Marshall Square Realty Co., L.P.*, Docket Nos. C-2012-2304167, C-2012-2304215 & C-2012-2304303, at Finding of Fact No. 3 (Initial Decision dated Oct. 21, 2015). The 2015 Complaints and the present consolidated proceedings continued the review of the claims first presented in 2012 Complaints. It was not until May 2, 2023, that SBG made, for the first time, the distinction between Fairmount Mannor and Fairmount Court as part of Ms. Pulley’s analysis of Complainants’ present outstanding balances with PGW. Her analysis and related claim were later largely withdrawn by the Complainants. Tr. 1350-52. To claim at this latter date, as PGW does, that the gas accounts related to properties that were transferred to Fairmount Court (700-08 N. Marshall St. and 711-19 N. 7<sup>th</sup> St.) are not part of these consolidated proceedings because SBG failed to name the correct realty company in its pleadings is inequitable and confusing. I find that the appropriate action in this case is to join Fairmount Court as an indispensable party in the 2015 Complaint at Docket No. C-2015-2486664.

**4. Calculation of Refunds**

For the reasons stated above, I find that the PGW’s calculation of refunds due to the Complaints<sup>21</sup> for improper application of partial payments is correct, and is as follows:

<b>Complainant</b>	<b>Credit Due</b>
Colonial Garden	\$2,720.08

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<sup>21</sup> A more detailed breakdown of the refund due each Complainant by property address is found in PGW BLC-15.

<b>Complainant</b>	<b>Credit Due</b>
Elrea Garden	\$780.36
Fairmount Manor	\$11,520.28
Fern Rock	\$21,296.24
Marchwood	\$7,751.55
Marshall Square	\$7,403.98
Oak Lane	\$2,126.75
Simon Garden	\$5,645.97
<b>Total</b>	<b>\$59,245.21</b>

PGW Exhibit BLC-15. This calculation, however, excludes the credit due to Fairmount Court. In accordance with the discussion *supra* PGW shall calculate the refund due to Fairmount Court and credit its accounts.

## **5. Legal Rate**

Section 1312(a) of the Public Utility Code (the Code), provides in pertinent part as follows:

If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility 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 ... 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 added.) The legal rate of interest is fixed by law at 6 percent. 41 P.S. § 202; *Elec. Materials Co. v. N. E. Heat & Light Co.*, Docket No. C-00913544, (Opinion and Order entered June 28, 1994).

In PGW Exhibit BLC-15, PGW has attempted to recalculate the interest on the refunds due to the Complainants<sup>22</sup> as follows:

<b>Complainant</b>	<b>Interest on Credit</b>
Colonial Garden	\$659.17
Elrea Garden	\$189.89
Fairmount Manor	\$2,791.75 <sup>23</sup>
Fern Rock	\$5,157.24
Marchwood	\$1,877.17
Marshall Square	\$1,794.23
Oak Lane	\$510.07
Simon Garden	\$1,371.03
<b>Total</b>	<b>\$14,350.43</b>

PGW Exhibit BLC-15. PGW explains that the start date for the calculation of interest varies based on the PGW bills issued before January 14, 2020, whereas the end date for the calculation of interest is December 31, 2023 (date of preparation of PGW Exhibit BLC-15). Upon consideration, I find that the end date for the calculation of interest should be extended to the date of the entry of Commission Order in these matters.

### **C. Late Payment Charges on Balances That Were the Subject of Municipal Liens**

#### **1. Jurisdiction**

The Commission's jurisdiction over PGW's assessment of 18% interest rate as late payment charges on outstanding balances after they were docketed as municipal liens has been at the forefront of discussions and rulings on these cases from their original filing with the

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<sup>22</sup> A more detailed breakdown of the interest on the refunds due each Complainant by property address is found in PGW BLC-15.

<sup>23</sup> This calculation takes into account the distinction between Fairmount Manor and Fairmount Court.

Commission in 2012 and 2015. Beginning with my Order on PGW's Preliminary Objections issued on July 17, 2012, at Docket Nos. C-2012-2304215; C-2012-2304183; C-2012-2304167; C-2012-2304324; C-2012-2304303, the issue was addressed in a threshold analysis and ruled upon as follows:

Unlike the placement of municipal liens, [SBG's claims regarding the accuracy of billing related to the calculation of interest and penalties assessed] fall squarely within the purview of the Commission's jurisdiction and are rightfully brought before it for adjudication. *Dennis J. Vicario v. Philadelphia Gas Works*, C-2010-2213955 (Order entered November 16, 2011).

July 17, 2012 Order at 10. Next, in my Initial Decision issued on August 21, 2015, on *SBG Management Services, Inc. et al. v. Philadelphia Gas Works*, at Docket Nos. C-2012-2304183 and C-2012-2304324 (2012 Complaints of Simon Garden and Colonial Garden), I addressed this issue as follows:

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). In *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.

Aug. 21, 2015 Initial Decision at 55-56.<sup>24</sup> Finally, the issue was addressed with the Commission's Opinion and Order entered December 8, 2016, on *SBG Management Services, Inc. et al. v. Philadelphia Gas Works*, at Docket Nos. C-2012-2304183 and C-2012-2304324. The Commission's pertinent reasoning is reprinted below:

Notwithstanding our modifications to the ALJ's reasoning and our rejection of the ALJ's conclusions of law regarding the doctrine of merger, on consideration of the weight of authority, this Commission expressly decides that at such time as PGW's municipal claim becomes a municipal lien, this is a voluntary election by the City of Philadelphia that has legal consequences. **Transformation of the indebtedness resulting from the unpaid utility bill into a municipal lien, whether by operation of law, or by the volitional act of the City of Philadelphia as creditor of the utility patron, is an act that results in the preemption of this agency's ability to exercise any degree of authority or jurisdiction over its collection.** See, e.g., *Tina L. Francis-Young v. Philadelphia Gas Works*, Docket No. C-2008-2029672 (Initial Decision issued October 28, 2008) at 4 (*distinguishing Gasparro v. Pa. PUC*, 814 A.2d 1282 (Pa. Cmwlth. 2003) (*Gasparro*)). Here, the Respondent was a step ahead of the Commission's determining whether its over-billing occurred. It collected its charges on May 9, 2007 before the Complainant raised them with the Commission. Therefore, I conclude that the Commission does not have jurisdiction over a lien imposed by the Respondent.)

Based on the legal effect of a municipal lien on the debt resulting from a Commission-approved tariff, **we concomitantly find that such amounts that are removed from Commission authority and jurisdiction are improperly included in the derivation of late-payment tariff charges under a Commission-approved tariff.** Our conclusion is heavily reliant on *Equitable Gas v. Wade, supra*, as distinguished by the above discussed factors, also, *Gasparro* and those cases

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<sup>24</sup> Identical analysis was included in my Initial Decision in *SBG Management Services, Inc. et al. v. Philadelphia Gas Works*, Docket Nos. C-2012-2304167; C-2012-2304215; C-2012-230430 (2012 Complaints of Elrea Garden Realty Co., L.P. (Elrea Garden), Fairmount Manor Realty Co. L.P. (Fairmount Manor), and Marshall Square Realty Co., L.P. (Marshall Square)); as well as in my Initial Decision in *SBG Management Services, Inc. et al. v. Philadelphia Gas Works*, Docket Nos. C-2012-2308462; C-2012-2308454, and C-2012-2308465 (2012 Complaints of Fern Rock Realty Co., L.P. (Fern Rock), Marchwood Realty Co., L.P. (Marchwood), and Oak Lane Court Realty Co., L.P. (Oak Lane)).

discussing the doctrine of primary jurisdiction as between the Commission and the Courts.

*SBG Mgmt. Servs. Inc. v. Phila. Gas Works*, Docket Nos. C-2012-2304183, C-2012-2304324 at 73-74, 88-89 (Opinion and Order entered Dec. 8, 2016) (*December 8, 2016 Order*) (Emphasis added). The Commission's Opinion and Order entered October 4, 2018, in the consolidated Complaints of *SBG Management Services, Inc. / Marchwood Realty Co, L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2308454; *SBG Management Services, Inc. / Oak Lane Court Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2308462; and *SBG Management Services, Inc. / Fern Rock Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2308465, provided the Commission with the opportunity to elaborate its ruling on the issue further:

We find that PGW improperly applied its Commission-approved tariff, PGW Gas Service Tariff - Pa. PUC No. 2, Section 26 Page 4.2. Finance Charge on Late Payments. We also find that PGW ... has improperly included amounts for unpaid bills in the determination and derivation of its late payment charges on past due accounts that were the subject of municipal liens.

We shall affirm our determinations reached in *SBG/Colonial Garden, et al.*, that the legal effect of the City of Philadelphia's filing of municipal liens on a past due utility balance indebtedness is to remove the indebtedness for the unpaid utility bills from the Commission's jurisdiction and authority for application of Commission-authorized tariffs. The Commission lacks subject matter jurisdiction over any aspect of the customers' underlying debt once the City of Philadelphia converted (perfected) such debt into a municipal lien and, thereby, lacks jurisdiction to determine what, if any, is the appropriate rate of interest that PGW may charge for such delinquent accounts. **As non-Commission jurisdictional charges, we find the appropriate remedy here is to remove these late payment charges from the customers' bills.**

*SBG Mgmt. Servs. Inc. v. Phila. Gas Works*, Docket No. C-2012-2308454 at 19. (Opinion and Order entered Oct. 4, 2018) (*October 4, 2018, Order*); *see also September 20, 2018, Order* at 27-28.

PGW successfully challenged the Commission's determination in the Commonwealth Court. In *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 222 A.3d 1218, 1222 (Pa. Cmwlth. 2019) (*PGW I*), the Commonwealth Court reasoned that, “recording of a lien, like recording of a mortgage, ... does not even amount to commencement of a civil action, which the Commission has acknowledged does not divest it of jurisdiction.” The Court held that the Commission erred in holding that it lacked jurisdiction over gas charges subject to docketed liens because docketing a lien for charges on natural gas did not invoke judicial process. Thus, there was no legal basis to conclude that merely docketing an existing lien affected the Commission's jurisdiction. *Id.* at 1224; *see also* the Commonwealth Court’s unpublished Opinion in *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 2019 WL 6698105 (Pa. Cmwlth 2019).

In turn, SBG Management Services, Colonial Garden Realty Company, L.P. (Colonial Garden) and Simon Garden Realty Company, L.P. (Simon Garden) successfully appealed the rulings of the Commonwealth Court in *PGW I*. In *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 249 A.3d 963 (Pa 2021) (*PGW II*), the Supreme Court of Pennsylvania stated:

At issue in this appeal is whether a public utility operating in Philadelphia may continue to impose its regulatory tariff rate on municipal liens that arise from delinquent customer accounts when the utility elects to record the liens for its service. **We conclude that pursuant to Section 7106(b) of the Municipal Claims and Tax Lien Law, 53 P.S. § 7106(b), once the lien is recorded, the tariff rate no longer applies. Accordingly, we reverse the order of the Commonwealth Court.**

*PGW II* at 965. (Emphasis added). With regard to the issue of the Commission’s jurisdiction, the Supreme Court stated in footnote 4 of the Order:

Although the issue of the Commission's jurisdiction figured into the Commission's ruling and the Commonwealth Court's decision, and was addressed by the parties in their briefs, it is beyond the scope of the issue upon which this Court granted

discretionary review and is not encompassed in our resolution of this appeal.

*PGW II*, at 969, n. 4. On June 15, 2021, the Supreme Court granted, in part, PGW's Application for Reargument to the extent it sought that the case be remanded to the Commonwealth Court for consideration of any outstanding issues. *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 256 A.3d 1092 (Pa. 2021).

In its unpublished Opinion dated March 26, 2022, the Commonwealth Court provided an extensive history of the proceedings in which the issue of the Commission's jurisdiction (over the 18% tariff rate applied by PGW to docketed liens), as well as the Supreme Court's ruling in *PGW II* (that a lien docketed by a city of the first class constitutes a judgment pursuant to Section 3(b) of the Lien Law) featured prominently. Importantly, one of the outstanding issues that PGW had sought remand for was that of "Refund Calculations." On that issue, the Commonwealth court stated:

PGW asserts that, **in the event this Court determines *PGW II* applies to require refunds to Intervenors, a remand is needed for the presentation of evidence and a determination by the Commission of the correct refund amounts.** At oral argument, Intervenors agreed to a remand for this purpose. Moreover, this Court is unable to determine from the record the basis of the Commission's calculation of the refunds it ordered. Accordingly, we will grant PGW's request to remand this matter for the purpose of allowing the parties to present additional evidence concerning the correct calculation of any refunds PGW owes to Intervenors.

*PGW III*, at 1219 (citations omitted) (Emphasis added). Consequently, the Commonwealth Court ordered:

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.

*PGW III*, at 1219. (Emphasis added).

On October 14, 2022, PGW again challenged the Commission's jurisdiction in its Partial Motion to Dismiss the Complainants' case on remand. In its Motion, PGW averred, *inter alia*, that the existence of a judgment (docketed municipal lien) has a preemptive effect on the Commission's jurisdiction, and the claims and issues raised in the Complaints regarding the 18% interest rate that PGW improperly applied as a tariffed late-payment charge on the amounts that became municipal liens must be dismissed. October 14, 2022 Motion at 5-6. My Order on remand issued December 19, 2022, denied PGW's Motion to the extent it sought to dismiss claims of refunds relating to the 18% interest rate that PGW improperly applied as a tariffed late-payment charge on the amounts that became municipal liens.<sup>25</sup>

This Decision on remand reiterates the Commission's historical position in these matters, reinforced by the Commonwealth Court's ruling in *PGW III*, that while the Commission has no jurisdiction to decide the correct interest rate of late payment charges applied on municipal liens, it is well within its authority to order the removal of all non-Commission jurisdictional charges from the Complainants' bills.

In its *December 8, 2016, Order*, the Commission elaborated its holding as follows:

[O]ur conclusion that removing amounts represented by a municipal lien in applying a Commission-approved tariff based on their non-jurisdictional status before this agency accords with the long-standing policy of "recourse" pertaining to non-jurisdictional charges included in telephone utility billing statements. *See Bruce Kaczmarczyk v. Lakewood Telephone Company*, Docket No. F-00162260 (Initial Decision issued

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<sup>25</sup> For a summary of the parties' arguments and a more thorough discussion on the topic, see the Order on remand on PGW's Partial Motion to Dismiss, issued December 19, 2022, at 2-11.

December 9, 1992) citing, *M. Dan Jones v. The Bell Telephone Company of Pennsylvania*, 1991 Pa. PUC LEXIS 181 (Order entered October 7, 1991).

In *Bruce Kaczmarczyk v. Lakewood Telephone Company*, *supra*, the Commission held that because “900” service companies are not public utilities, the tariff and billing provisions of the Code, 66 Pa. C.S. §§ 1303, 1304, that apply to public utilities, do not apply to these services. **The appropriate remedy in disputes involving such non-jurisdictional charges that appeared on the bills administered by utilities was to remove the said charges from the complainant/patron’s bill.** After removing these charges, further collection efforts regarding the charges are beyond the Commission’s jurisdiction to regulate. In reciprocal fashion, the telephone utility is not authorized to use utility collection remedies such as suspension or termination of service to collect charges for “900” [non jurisdictional] services. *Id.*

\* \* \*

Under the factual circumstances of the present dispute and using the above-cited cases for guidance, the debt represented by the municipal lien, once perfected, cannot form the basis for just and reasonable rates pursuant to a Commission-approved tariff. Consequently, **we find that inclusion of that same indebtedness in the determination of a rate (late payment charge) authorized by a Commission-approved tariff is contrary to law.**

*December 8, 2016, Order*, at 80-81 (footnote omitted) (Emphasis added). In its *September 20, 2018, Order*, the Commission expressed its ruling more concisely:

We shall affirm our determinations reached in *Colonial Garden, et al.*, that the legal effect of the City of Philadelphia’s filing of municipal liens on a past due utility balance indebtedness is to remove the indebtedness for the unpaid utility bills from the Commission’s jurisdiction and authority for application of Commission-authorized tariffs. **The Commission lacks subject matter jurisdiction over any aspect of the customers’ underlying debt once the City of Philadelphia converted (perfected) such debt into a municipal lien and, thereby, lacks jurisdiction to determine what, if any, is the appropriate rate of interest that PGW may charge for such delinquent accounts. As non-Commission jurisdictional**

**charges, we find the appropriate remedy here is to remove these late payment charges from the customers' bills.**

*September 20, 2018, Order*, at 34-35 (emphasis added). The same ruling was reiterated in the Commission's *October 4, 2018, Order*:

The Commission lacks subject matter jurisdiction over any aspect of the customers' underlying debt once the City of Philadelphia converted (perfected) such debt into a municipal lien and, thereby, lacks jurisdiction to determine what, if any, is the appropriate rate of interest that PGW may charge for such delinquent accounts. As non-Commission jurisdictional charges, we find the appropriate remedy here is to remove these late payment charges from the customers' bills.

*October 4, 2018, Order*, at 19.

**2. The “correct” interest rate to be applied as late payment charge on municipal liens**

During the 2012 proceedings as well as during the proceedings on remand, both parties engaged in calculating the “correct” interest rate to be applied as a late payment charge on municipal liens. Those discussions revolved around calculating the difference between the Commission-approved late-payment tariff charges of 18% per year, and the 6% interest rate for late payments of municipal liens. *See* Tr. 1097, 1345, 1365, 1367; SBG Exhibit CEH-3; PGW Exhibit BLC-5. I believe that those discussions reflect either the reiteration of PGW's old argument that it is entitled to some amount of a late payment charge on the indebtedness (as PGW has not charged lien interest on any liens in this case),<sup>26</sup> or the parties' efforts to reach a global settlement on the present proceedings as well as civil action before the Common Pleas Court.<sup>27</sup> *See* Tr. 1038. Based on the discussion above, these calculations are irrelevant and improperly presented in these proceedings. To the extent that they appear in the record in these

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<sup>26</sup> *See September 20, 2018 Order* at 26, (referencing PGW Exception at 27).

<sup>27</sup> The sole document submitted from the 2021 Civil Action was the “Third Amended Complaint” filed with the Philadelphia Court of Common Pleas by SBG Management Services, Inc., et al. against City of Philadelphia C/O Philadelphia Gas Works (Case ID: 210402801).

remanded cases, they will be assigned no evidentiary value because the determination of the “correct” interest rate of late payment charges applied on municipal liens falls outside of this Commission’s jurisdiction. **“The Commission lacks subject matter jurisdiction over any aspect of the customers’ underlying debt once the City of Philadelphia converted (perfected) such debt into a municipal lien and, thereby, lacks jurisdiction to determine what, if any, is the appropriate rate of interest that PGW may charge for such delinquent accounts.”** *September 20, 2018, Order*, at 34-35 (emphasis added); *October 4, 2018, Order*, at 19. Consequently, the only calculation properly presented before this Commission is that of the removal of any and all late payment charges improperly assessed on municipal liens on the basis of PGW’s Commission-approved tariff. *See* discussion, *supra*.

### 3. Statute of Limitations – Period of Review

In these proceedings, SBG argued that the calculation of the refund owed to the Complainants because of PGW’s improper application of a Commission-approved tariff on a municipal lien should be based on the four-year period established by the provisions of 66 Pa. C.S. § 1312(a).

Section 1312(a) of the Public Utility Code (the Code), provides in pertinent part as follows:

If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility 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 ... 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 added.) According to SBG, section 1312(a) of the Code governs refunds and is applicable to the calculation of all the amounts owed to SBG.

PGW disagreed with SBG and argued that the calculation of the amounts to be refunded pursuant to *PGW III* (representing late payment charges improperly assessed on municipal liens on the basis of PGW’s Commission-approved tariff) should be based on the three-year statute of limitations established by 66 Pa.C.S. § 3314, and not 66 Pa.C.S. § 1312(a).

Pursuant to Section 3314 of the Public Utility Code (the Code), 66 Pa.C.S. § 3314,

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.

66 Pa.C.S. § 3314(a) (emphasis added). PGW challenged the applicability of Section 1312(a) to the calculation of the amount to be returned to the Complainants in connection with the municipal liens, arguing that they are not Commission jurisdictional charges. *See* Tr. 1231-32; PGW Remand Rebuttal St. No. 1-R, at 13.

I agree with PGW’s argument. In its *December 8, 2016, Order*, the Commission provided guidance with regard to this issue. When addressing its statutory authority over non-jurisdictional charges, the Commission looked not only at telecommunication cases but also to more recent cases involving electric generation supplier (EGS) companies under Sections 2809-2810 of the Code, 66 Pa. C.S. §§ 2809–2810:

In *Commonwealth of Pa., et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Order entered December 18, 2014) (*IDT Order*), **we concluded that we lacked authority to direct an EGS company to refund charges for electric generation supply service pursuant to 66 Pa. C.S. § 1312**, as this provision of the Code applied to “rates” charged by “public utilities” and EGS companies were not “public utilities” under the Code, except for the limited purposes of Sections 2809 and 2810, 66 Pa. C.S. §§ 2809 and 2810. **In the *IDT Order*, we expressly acknowledged our ability to exercise general authority over EGS companies**

**pursuant to Section 501 of the Code, 66 Pa. C.S. § 501, to direct an EGS company to adjust a bill to an EGS patron based on a finding of, *inter alia*, a violation of the Code, Commission Regulation, or other provision over which we have authority to administer.**

*December 8, 2016, Order*, at 81. (Emphasis added). The Commission continued:

**Based on the foregoing, we conclude that PGW has improperly applied its tariff to assess late payment charges on past due utility account balances accrued for service provided to Colonial Garden and Simon Garden which amounts were also subjected to a municipal lien. Consistent with this determination, we find that Colonial Garden shall be entitled to a billing adjustment credit in the amount of \$94,626.23 as recommended by the ALJ. Simon Garden shall be entitled to a billing adjustment credit in the amount of \$471,351.38 as found by the ALJ. 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. See 66 Pa. C.S. §§ 501, 1312.**

*December 8, 2016, Order*, at 89, (citing *Bruce Kaczmarczyk v. Lakewood Telephone Company*, Docket No. F-00162260 (Initial Decision issued December 9, 1992)) (emphasis added). Because the billing adjustment credit to the Complainants is made pursuant to the Commission's authority found at Section 501<sup>28</sup> of the Code, and not pursuant to Section 1312, the general three-year

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<sup>28</sup> (a) Enforcement of provisions of part. — In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.

(b) Administrative authority and regulations. — The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.

statute of limitations under 66 Pa.C.S. § 3314 applies to the period of review. Consequently, the calculation of the amount to be removed from the Complainants' accounts should begin three years prior to the filing of the Complaints.

#### 4. Vacated v. Satisfied Liens

In the present proceedings, SBG identified 439 municipal liens filed by PGW against the Complainants from as far back as December 2007. *See* SBG Exhibit CEH-3; PGW Exhibit BLC-5. SBG proceeded to calculate the number of billing periods each municipal lien remained in the dockets of the municipal court and was able to compute the amount it was improperly charged in late payment charges by PGW. *See* SBG Exhibit CEH-3.

For its part, PGW drew a strong distinction between satisfied and vacated municipal liens. *See* SBG Direct Testimony at 7; PGW Exhibit BLC-5. According to PGW, “satisfied” liens are liens which the customer has paid off, whereas “vacated” liens are liens which have been removed from the docket for reasons other than payment, like administrative error or duplication. PGW argued that because the vacated liens were not paid by the Complainants, the late payment charges assessed on them based on PGW’s Commission-approved tariff should not be removed from their accounts. *See* Tr. 1363-65. According to PGW, the vacated liens should be treated as if the judgement never existed. *See* PGW St. No. 1 at 18; PGW St. No. 1-SR at 15. Furthermore, PGW argued that in order to be entitled to a credit or refund of the interest that accrued on the docketed liens after said liens were filed on properties owned by the Complainants, that interest must have actually been **paid** by the Complainants. *See* PGW St. No. 1-SR at 13; Tr. 1363-65.

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(c) Compliance. — Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof.

SBG responded by challenging the veracity of PGW's claim that the vacated liens were not paid by the Complainants. In his Direct Testimony, SBG witness Christopher E. Hanson stated that he had identified several cases where the transaction documentation itemized amounts to be paid to PGW that were contemporaneous to the status date of liens listed as vacated. *See* SBG Direct Testimony of Christopher E. Hanson, at 7, n. 7. He explained that it was on the basis of this information, which supported the conclusion that vacated liens were possibly satisfied<sup>29</sup> as opposed to nullified, that he included all vacated liens in his calculations of the amount to be returned to the Complainants. *Id.*

Upon consideration, I disagree with both parties' positions. As explained extensively above, the removal of the late payment charges assessed on municipal liens based on PGW's Commission-approved tariff is grounded on their being non-jurisdictional charges improperly assessed on Complainants in violation of the provisions of 66 Pa.C.S. § 501 (and not of the provisions of 66 Pa.C.S. § 1312(a) which govern refunds). The status of the municipal liens as "satisfied" or "vacated," "paid" or "unpaid," is irrelevant to the relief sought by the Complainants. Whether "satisfied" or "vacated," the liens should not have been collecting a Commission-approved interest rate during the period they were judgements from/with the Municipal Court of Philadelphia, and it was PGW who made the choice to remove the debt from the Commission's jurisdiction and turn it into a municipal lien and a judgement.

At the April 24, 2023, hearing, the parties stipulated that all the "vacated" liens were collecting an interest rate of 18% per year (in accordance with PGW's Commission approved tariff rate for late-payment charges) between the dates they were filed with the Municipal Court of Philadelphia and the dates they were marked "vacated." *See* Tr. 1192-94. Consequently, the vacated municipal liens filed against the Complainants are included in the calculation of the bill adjustments credits due to the Complainants by PGW.

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<sup>29</sup> In his Surrebuttal Testimony, dated January 22, 2024, Mr. Cummings corrected the original classification of 38 liens filed against the Complainants, "In the course of verifying whether any payments were made on the vacated liens, PGW has determined or conceded that **38** liens that had originally been marked as "vacated" by PGW were, upon closer inspection, paid and therefore should have been listed as "satisfied." PGW St. No. 1-SR at 14, 17 (emphasis added).

## 5. Section 1312(a) and the Legal Rate of Interest for Excessive Payments

During these proceedings, SBG requested that the amounts to be refunded to the Complainants in connection with the illegal application of a Commission-approved tariff on municipal liens carry the 6% legal rate in accordance with the provisions of Section 1312(a) of the Code. *See* SBG Direct Testimony of Chrispher E. Hanson, at 8, n. 8.

In response, PGW argued that the municipal liens are not subject to the provisions of Section 1312(a) of the Code, therefore, Section 1312(a) does not apply to the amount owed to the Complainants. *See* PGW Remand Rebuttal St. No. 1-R at 17.

I agree with PGW's argument that the Section 1312(a) of the Code does not apply to the amounts to be removed from the Complainants' accounts. In the Initial Decision I issued on September 17, 2015, at Docket Nos. C-2012-2304183 and C-2012-2304324, I held the amounts representing late payment charges improperly assessed within the statute of limitations period were to be refunded to the Complainants in accordance with the provisions of Section 1312(a) of the Code, which governs refunds. *SBG Mgmt. Inc. v. Phila. Gas Works*, Docket No. C-2012-234183 at 64 (Initial Decision issued Sept. 17, 2015) (*September 17, 2015 Initial Decision*). The Initial Decision notes that:

Section 1312(a) provides in pertinent part as follows:

If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility 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 ... 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...**

The legal rate of interest is fixed by law at 6 percent. Act of January 30, 1974, P.L. 13, No. 6, § 202, 41 P.S. §

202.” *The Electric Materials Company v. North East Heat & Light Company*, Docket No. C-00913544, 1992 Pa. PUC LEXIS 175.

*See also September 17, 2015 Initial Decision* at 64 (emphasis added); *see also September 17, 2015 Initial Decision*, Ordering Paragraphs ## 5 and 6. However, in its *December 8, 2016, Order* the Commission specifically modified my recommendation:

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. *See* 66 Pa. C.S. §§ 501, 1312.

*December 8, 2016 Order*, at 89 (citing *Bruce Kaczmarczyk v. Lakewood Telephone Company*, Docket No. F-00162260 (Initial Decision issued December 9, 1992) (*Kaczmarczyk*). In *Kaczmarczyk*, Administrative Law Judge Michael C. Schnierle ordered the removal from Mr. Kaczmarczyk’s telephone bill of charges related to 900 numbers because they were non-jurisdictional charges. *See Kaczmarczyk* at 9, and Ordering Paragraph # 3. The Initial Decision in *Kaczmarczyk*, which became final by Order dated January 22, 1993, does not frame the removal of the 900 number charges as refunds under Section 1312(a), nor does it add an interest at the legal rate of 6% to the amount. Accordingly, in Ordering Paragraphs ## 6 and 7 of the *December 8, 2016, Order*, the Commission ordered the amounts to be credited without any mention of the legal rate under Section 1312(a).

Consequently, and in accordance with the discussion on the statute of limitations, *supra*, I conclude that interest at the legal rate of 6% will not be assessed upon the bill adjustment credits owed to SBG by PGW.

## **6. Scope of Proceedings – Foreclosed Claims**

The scope of these proceedings on remand has been the topic of several legal discussions and pleadings. In particular, in its October 14, 2022 Partial Motion to Dismiss, PGW argued that the Commonwealth Court expressly held in *PGW III* that the Supreme Court’s

decision in *PGW II* applies retroactively only to *the parties* of *PGW II*, as well as other proceedings pending at the time *PGW II* was decided on April 28, 2021. *PGW III*. Therefore, it was PGW's position that the Supreme Court's decision in *PGW II* retroactivity extends **only** to the 2012 Complaints by Colonial Garden and Simon Garden.<sup>30</sup> PGW argued that Colonial Garden and Simon Garden were the only parties that filed an appeal to *PGW I* and were *the parties* to *PGW II*. The other 2012 Complainants, Elrea Garden, Fairmount Manor, Marshall Square,<sup>31</sup> as well as Marchwood, Oak Lane, and Fern Rock,<sup>32</sup> did not appeal the Commonwealth Court's rulings in their respective cases, nor did they join the appeal of Colonial Garden and Simon Garden. Thus, according to PGW, the Commonwealth Court's clear statement that *PGW II* applies only to parties of *PGW II* forecloses any further consideration or retroactive application of *PGW II* with respect to the 2012 Complaints of these Complainants.<sup>33</sup> PGW Partial Motion to Dismiss at 10-11. PGW maintains that those parties who did not appeal are therefore not entitled to any relief based on docketed municipal liens (which have become judgements per *PGW II*) for the period of time covered by their 2012 Complaints. PGW Partial Motion to Dismiss at 11-12.

In its Response to the Motion, SBG did not claim that Elrea Garden, Fairmount Manor, and Marshall Square<sup>34</sup> as well as Marchwood, Oak Lane, and Fern Rock<sup>35</sup> had appealed the Commonwealth Court's ruling in their respective cases. Nor did SBG claim that these entities joined the appeal with Colonial Garden and Simon Garden that culminated in Supreme Court's ruling in *PGW II*. Instead, SBG claimed that *PGW II* should apply retroactively to the

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<sup>30</sup> *Colonial Garden/Simon Garden v. PGW*, C-2012-2304183; C-2012-2304324.

<sup>31</sup> *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 2019 WL 6698105 (Pa. Cmwlth. 2019).

<sup>32</sup> *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 2019 WL 6698105 (Pa. Cmwlth. 2019).

<sup>33</sup> Because *PGW II* only applies retroactively to complainants whose complaints were pending as of the time of the Supreme Court's decision, there is no basis on which the Commission could award them the relief they are seeking – a determination that PGW did not have authority to bill them LPCs on arrearages.

<sup>34</sup> Elrea Garden, Fairmount Manor, and Marshall Square were intervenors in *Philadelphia Gas Works v. Pennsylvania Pub. Util. Comm'n*, Pa. Cmwlth., 2019 Pa. Commw. Unpub. LEXIS 664, 2019 WL 6698105, 2019 WL 6698105 (Pa. Cmwlth. 2019).

<sup>35</sup> Marchwood, Oak Lane, and Fern Rock were intervenors in *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 2019 Pa. Commw. Unpub. LEXIS 666, 2019 WL 6698105, 2019 WL 6698103 (Pa. Cmwlth. 2019).

Complainants who did not intervene in the appeal culminating in *PGW II* (Elrea Garden, Fairmount Manor, and Marshall Square as well as Marchwood, Oak Lane, and Fern Rock) because they were parties to proceedings pending before the Commission. SBG Response at 10.

In my December 19, 2022, Order, I addressed the litigation and appellate history of each set of the 2012 consolidated Complaints. In particular I noted that, on December 8, 2016, the Commission issued a Final Opinion and Order on the 2012 Complaints of Simon Garden and Colonial Garden at Docket Nos. C-2012-2304183 and C-2012-2304324, addressing two issues: 1) PGW's methodology for applying partial payments; and 2) PGW's assessment of a tariff-based 18 % interest rate as a late payment charge on outstanding balances that had already been docketed as municipal liens. The Commission also issued an Opinion and Order on May 18, 2018 (denying PGW Petition for Reconsideration of the December 8, 2016, Order) and another Opinion and Order on August 23, 2018 (granting in part and denying in part PGW's Petition for Reconsideration of the May 18, 2018, Order). It was only the Commission's ruling on the 18% interest rate in these Orders that was appealed by PGW to the Commonwealth Court in *PGW I*, with the Court reversing the Commission's Orders in its ruling of December 9, 2019. In turn, Simon Garden and Colonial Garden successfully appealed the Commonwealth Court's ruling in *PGW I* in *PGW II*. The Supreme Court granted PGW's request for partial rehearing and remand in *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 256 A.3d 1092 (Pa. 2021), and lastly the Commonwealth Court heard *PGW III* on remand and issued a ruling. In its unpublished Opinion dated March 26, 2022, in *PGW III*, the Commonwealth Court concluded, *inter alia*, that **the 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.** See December 19, 2022, Order on remand, at 13.

On September 20, 2018, the Commission issued a Final Opinion and Order on the 2012 Complaints of Elrea Garden Realty Co., L.P. (Elrea Garden), Fairmount Manor Realty Co. L.P. (Fairmount Manor), and Marshall Square Realty Co., L.P. (Marshall Square), at Docket Nos. C-2012-2304167; C-2012-2304215; and C-2012-2304303. In its September 20, 2018, Order the Commission addressed two issues: 1) PGW's methodology for applying partial payments; and 2) PGW's assessment of the tariff-based 18% interest rate as a late payment

charge on outstanding balances that had already been docketed as municipal liens. It was only the Commission's ruling on the 18% interest rate in this Order that was appealed to the Commonwealth Court by PGW in *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 2019 WL 6698105 (Pa. Cmwlth. 2019). In its unpublished Opinion of December 9, 2019, the Commonwealth Court reversed the Commission's September 20, 2018, Order with regard to PGW's assessment of a tariff-based 18% interest rate on outstanding balances that had already been docketed as municipal liens. However, Elrea Garden, Fairmount Manor, and Marshall Square did not appeal the Commonwealth Court's ruling, like Simon Garden and Colonial Garden did in *PGW II*. Consequently, the issue of the tariff-based 18% interest rate in the 2012 Complaints of Elrea Garden, Fairmount Manor, and Marshall Square (Docket Nos. C-2012-2304167; C-2012-2304215; and C-2012-2304303) is neither pending nor stayed with the Commission. The Commonwealth Court's ruling in *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 2019 WL 6698105 (Pa. Cmwlth. 2019) on this issue stands. See December 19, 2022, Order on remand, at 13-14.

Similarly, on October 4, 2018, the Commission issued a Final Opinion and Order on the 2012 Complaints of Fern Rock Realty Co., L.P. (Fern Rock), Marchwood Realty Co., L.P. (Marchwood), and Oak Lane Court Realty Co., L.P. (Oak Lane) at Docket Nos. C-2012-2308462; C-2012-2308454, and C-2012-2308465. It was this Commission Order<sup>36</sup> that PGW appealed to the Commonwealth Court in *PGW I*. In its unpublished Opinion of December 9, 2019, the Commonwealth Court reversed the Commission's October 4, 2018, Order. However, Fern Rock, Marchwood and Oak Lane did not appeal the Commonwealth Court's ruling like Simon Garden and Colonial Garden did in *PGW II*. Consequently, the 2012 Complaints of Fern Rock, Marchwood and Oak Lane (Docket Nos. C-2012-2308462; C-2012-2308454, and C-2012-2308465) are neither pending nor stayed with the Commission, and the Commonwealth Court's ruling in *Philadelphia Gas Works v. Pennsylvania Public Utility Commission*, 2019 WL 6698105 (Pa. Cmwlth. 2019) stands.<sup>37</sup> See December 19, 2022 Order on remand, at 14.

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<sup>36</sup> Only the issue related to the 18% interest rate on outstanding balances that were docketed as municipal liens was appealed to the Commonwealth Court. See *PGW I*, at 765.

<sup>37</sup> For a summary of the parties' arguments and a more thorough discussion on the topic, see the Order on remand on PGW's Partial Motion to Dismiss, issued on December 19, 2022, at 11-17.

The December 19, 2022 Order on remand approved PGW's Partial Motion to Dismiss only to the extent that it held that the Commonwealth Court's ruling in *PGW III* foreclosed the claims related to the 18% tariff rate (for late payment charges on municipal liens) in the 2012 Complaints filed by Fairmont Manor (Docket No. C-2012-2304215), Elrea Garden (Docket No. C-2012-2304167), Marshall Square (Docket No. C-2012-2304303) Marchwood (Docket No. C-2012-2308454), Oak Lane (Docket No. C-2012-2308462), and Fern Rock (Docket No. C-2012-2308465). *See* December 19, 2022, Order on remand, Ordering Paragraph # 2. This ruling was reiterated in the January 20, 2023, Order on remand on Respondent's Motion in Limine, and again in the October 10, 2023, Order on remand on PGW's Motion in Limine and Objections to the Testimony of S. Pulley, Esq. The latter stated in pertinent part as follows:

5. That the 2012 Complaints at Docket Nos. C-2012-2304324 and C-2012-2304183 have been remanded **only** for the purpose calculating the refunds due to the Complainants because of Philadelphia Gas Works' improper assessment of 18% tariffed interest rate as late payment charge on outstanding balances that had already been filed as municipal liens....

6. That the review of the 2015 Complaints at Docket Nos. C-2015-2486618; C-2015-2486642; C-2015-2486648; C-2015-2486655; C-2015-2486664; C-2015-2486670; C-2015-2486674; and C-2015-2486677 will **begin on December 11, 2012.**

October 10, 2023, Order on remand on PGW's Motion in Limine and Objections to the Testimony of S. Pulley, Esq., Ordering Paragraphs ## 5, 6 (emphasis in the original).

## **7. Calculations**

In conclusion of the discussion above about Commission jurisdiction, "correct" interest rate, period of review, foreclosed claims, and vacated liens, I find that the calculation of the amounts to be removed from the Complainants' accounts should be as follows:

Colonial Garden – 2012 Complaint at Docket No. C-2012-2304183 and 2015  
Complaint at Docket No. C-2015-2486677

The 2012 Complaint for Colonial Garden was filed on May 11, 2012. The 2012 Complaint was amended on December 10, 2012. The 2015 Complaint for Colonial Garden was filed on May 29, 2015. In view of the discussion *supra*, the review should cover the period May 11, 2009, to the present.

In PGW Exhibit BLC-5 (page 5 of 16) PGW identified a total of 22 liens placed against Colonial Garden between May 11, 2009 and July 23, 2014.<sup>38</sup> Six of those 22 liens are marked as “vacated” and are not included in the calculation of the bill adjustment credits, in accordance with PGW’s position that the vacated liens were not paid and should be treated as if they never existed. See discussion *supra* at Section C.4. Sixteen of the 22 liens were filed between May 11, 2009, and May 23, 2012. PGW calculated the amount of late payment charges illegally assessed on them as **\$58,360.20**. Six of the 22 liens were filed during the period May 23, 2012, and July 23, 2014. PGW calculated the amount of late payment charges illegally assessed on these six liens as **\$7,869.10**.

In SBG Exhibit CEH-3 (page 11), SBG identified the same 22 liens placed against Colonial Garden between May 11, 2009, and July 23, 2014, but added the calculation of late payment charges improperly assessed on the six vacated liens:

Number	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50%
1	90635842	7/9/2009	\$131,983.18	Vacated	8/26/2009	1.60	\$3,168
2	91231033	12/17/2009	\$66,062.14	Vacated	8/4/2011	19.83	\$19,650
5	100531545	5/14/2010	\$74,368.76	Vacated	11/22/2010	6.40	\$7,139
6	101135001	11/22/2010	\$30,183.76	Vacated	11/22/2010	--	--
17	130632893	6/29/2013	\$12,771.74	Vacated	7/16/2013	0.57	\$109

<sup>38</sup> No municipal liens were filed against Colonial Garden by PGW after July 23, 2014. PGW Exhibit BLC-5.

Number	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50%
18	130632840	6/26/2013	\$10,508.68	Vacated	7/16/2013	0.57	\$90
<b>Total</b>							<b>\$30,156</b>

SBG Exhibit CEH-3, at 11; *see also* PGW BLC-11 at 2 of 10.

In view of these calculations, the total amount to be removed from the account of **Colonial Garden is \$96,385.3.**<sup>39</sup>

*Simon Garden – 2012 Complaint at Docket No. C-2012-2304324 and  
2015 Complaint at Docket No. C-2015-2486642*

The 2012 Complaint for Simon Garden was filed on May 11, 2012. The 2012 Complaint was amended on December 10, 2012. The 2015 Complaint for Simon Garden was filed on May 29, 2015. In view of the discussion *supra*, the review should cover the period May 11, 2009, to the present.

In PGW Exhibit BLC-5 (page 16 of 16) PGW identified a total of 40 liens placed against Simon Garden between May 11, 2009, and July 23, 2014.<sup>40</sup> Seven of those 40 liens are marked as “vacated” and are not included in the calculation of the bill adjustment credits, in accordance with PGW’s position that the vacated liens were not paid and should be treated as if they never existed. *See* discussion *supra* at Section C.4. Thirty-four of the 40 liens were filed between May 11, 2009, and July 10, 2012. PGW calculated the amount of late payment charges illegally assessed on them as **\$321,786.37**. Six of the 40 liens were filed during the period July 10, 2012, and July 23, 2014. PGW calculated the amount of late payment charges illegally assessed on these six liens as **\$2,677.21**.

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<sup>39</sup> \$58,360.20 + \$7,869.10 + \$30,156 = \$96,385.3.

<sup>40</sup> No municipal liens were filed against Colonial Garden by PGW after July 23, 2014. PGW Exhibit BLC-5.

In SBG Exhibit CEH-3 (page 1), SBG identified the same 40 liens placed against Simon Garden between January 22, 2010, and October 4, 2022, but added the calculation of late payment charges improperly assessed on the six vacated liens:

Number	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50%
1	100130873	1/22/2010	\$38,493.85	Vacated	10/7/2011	20.77	\$11,993
2	100130871	1/22/2010	\$38,493.86	Vacated	8/20/2010	7.00	\$4,042
3	100130875	1/22/2010	\$99,384.21	Vacated	10/7/2011	20.77	\$30,963
4	100130876	1/22/2010	\$99,384.21	Vacated	8/20/2010	7.00	\$10,435
5	100531541	5/14/2010	\$75,968.05	Vacated	8/4/2011	14.90	\$16,979
8	100632366	6/19/2010	\$75,968.05	Vacated	8/20/2010	2.07	\$2,359
9	100632367	6/19/2010	\$82,896.78	Vacated	8/20/2010	2.07	\$2,574
<b>Total</b>							<b>\$79,345</b>

SBG Exhibit CEH-3, at 11.

In view of these calculations, the total amount to be removed from the account of Simon Garden is **\$403,808.58**.<sup>41</sup>

#### 2015 Complaints

On May 29, 2015, Complainants filed the following Complaints:

SBG Management Services, Inc./Elrea Garden Realty Co., L.P. v. PGW, C-2015-2486674;  
 SBG Management Services, Inc./Fern Rock Gardens Realty Co., L.P. v. PGW, C-2015-2486670;  
 SBG Management Services, Inc./Fairmont Manor Realty Co., L.P. v. PGW, C-2015-2486664;  
 SBG Management Services, Inc./Oak Lane Realty Co., L.P. v. PGW, C-2015-2486655;  
 SBG Management Services, Inc./Marchwood Realty Co., L.P. v. PGW, C-2015-2486648;  
 SBG Management Services, Inc./Marshall Square Realty Co., L.P. v. PGW, C-2015-2486618.

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<sup>41</sup> \$321,786.37 + \$2,677.21 + \$79,345 = \$403,808.58.

These Complaints were pending before the Commission at the time the Commonwealth Court issued its ruling in *PGW III*. Therefore, the ruling of *PGW II*, which held that once a lien is recorded, the Commission-approved tariff rate no longer applies, is applicable to all these cases. *See PGW II* at 965.

*Elrea Garden – 2015 Complaint at Docket No. C-2015-2486674*

In accordance with the statute of limitations at Section 3314 of the Code, the calculation of the billing adjustment credit owed to Elrea Garden can cover the period May 29, 2012, to the present. However, in PGW’s Remand Rebuttal Testimony, Mr. Cummings argued that a few of the liens filed during this period were included in the hearing exhibits submitted by SBG in the 2012 Complaints. PGW Remand Rebuttal St. No. 1-R at 12-13. To avoid overlap and any double counting, PGW argues that any liens regarding Elrea Garden that were previously litigated and contained in the prior hearing exhibits must be excluded from the present calculation of the amount to be removed. *Id.* at 13. Upon close review of the record from the 2012 Complaints, I agree with PGW’s argument. The review of the municipal liens filed by PGW against Elrea Garden in the 2012 proceedings covered the period until October 23, 2012.<sup>42</sup> In the present proceedings, the calculation of the billing adjustment credit owed to Elrea Garden shall cover the period October 24, 2012, to the present.

In PGW Exhibit BLC-5 (page 7 of 16), PGW identified a total of nine liens filed against Elrea Garden between October 24, 2012, and April 23, 2014.<sup>43</sup> Four of those nine liens are marked as “vacated” and are not included in the calculation of the bill adjustment credits, in accordance with PGW’s position that the vacated liens were not paid and should be treated as if they never existed. *See discussion supra* at Section C.4. In SBG Exhibit CEH-3 (page 11), SBG

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<sup>42</sup> *See SBG Mgmt. Servs., Inc. v. Phila. Gas Works*, Docket Nos. C-2012-2304167, C-2012-2304215 & C-2012-2304303 (Initial Decision dated Oct. 21, 2015) at Finding of Fact No. 110 (Between January 1, 2010, and October 23, 2012, 94 separate municipal liens were docketed against the property owned by Elrea Garden Realty Co., L.P. for unpaid gas service. SBG FEM Exhibit 1.)

<sup>43</sup> No municipal liens were filed against Elrea Garden by PGW after April 23, 2014. PGW Exhibit BLC-5, at 1.

identified the same nine liens placed against Elrea Garden between October 24, 2012, and April 23, 2014, but added the calculation of late payment charges improperly assessed on the four vacated liens. The combination of PGW Exhibit BLC-5 and SBG Exhibit CEH-3 reveals the following:

Number	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50%
87	130630431	6/4/2013	\$905.82	Vacated	8/30/2013	2.90	\$39
88	130730632	7/11/2013	\$1,154.00	Satisfied	8/23/2013	1.43	\$24.81
89	130730633	7/11/2013	\$1,549.00	Satisfied	8/23/2013	1.43	\$33.30
90	131030114	10/8/2013	\$1,277.82	Satisfied	8/15/2014	10.37	\$198.70
91	131030115	10/8/2013	\$2,028.33	Satisfied	8/15/2014	10.37	\$315.41
92	140230146	2/4/2014	\$851.11	Satisfied	8/15/2014	6.40	\$81.71
93	140230145	2/4/2014	\$864.14	Satisfied	8/15/2014	6.40	\$82.96
94	140732929	4/23/2014	\$4,036.56	Satisfied	10/7/2015	17.73	\$1,073.72
95	140732999	4/23/2014	\$4,256.64	Satisfied	10/7/2015	17.73	\$1,132.27
<b>Total</b>							<b>\$2,982</b>

PGW Exhibit BLC-5, at 7 of 16, and SBG Exhibit CEH-3, at 7.

In view of these calculations, the total amount to be removed from the accounts of **Elrea Garden is \$2,982.**

*Fern Rock– 2015 Complaint at Docket No. C-2015-2486670*

In accordance with the statute of limitations at Section 3314 of the Code, the calculation of the billing adjustment credit owed to Fern Rock can cover the period May 29, 2012, to the present. However, in PGW’s Remand Rebuttal Testimony, Mr. Cummings argued that a few of the liens filed during this period were included in the hearing exhibits submitted by SBG in the 2012 Complaints. PGW Remand Rebuttal St. No. 1-R at 12-13. To avoid overlap

and any double counting, PGW argues that any liens regarding Fern Rock that were previously litigated and contained in the prior hearing exhibits must be excluded from the present calculation of the amount to be removed. *Id.* at 13. Upon close review of the record from the 2012 Complaints, I agree with PGW’s argument. The review of the municipal liens filed by PGW against Fern Rock in the 2012 proceedings covered the period until July 21, 2012.<sup>44</sup> In the present proceeding, the calculation of the billing adjustment credit owed to Fern Rock shall cover the period July 22, 2012, to the present.

In its PGW Exhibit BLC-5 (page 12 of 16), PGW identified a total of eight municipal liens filed against Fern Rock between July 22, 2012, and July 23, 2014.<sup>45</sup> Five of those eight liens are marked as “Vacated.” One of the remaining liens is marked as “Closed Account.” The five “Vacated” liens and the “Closed Account” lien are not included in the calculation of the bill adjustment credits, in accordance with PGW’s position that the vacated liens were not paid and should be treated as if they never existed. *See* discussion *supra* at Section C.4. In its SBG Exhibit CEH-3 (page 2), SBG identified the same eight liens placed against Fern Rock between July 22, 2012, and July 23, 2014, but added the calculation of late payment charges improperly assessed on the five vacated liens. Neither PGW nor SBG included calculations of late payments charges on the lien marked “Closed Account.”<sup>46</sup> The combination of PGW Exhibit BLC-5 and SBG Exhibit CEH-3 reveals the following:

Number	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50% per month
35	120731965	7/31/2012	\$2,896.95	Vacated	5/14/2014	22.07	\$959
36	130730622	7/11/2013	\$11,809.69	Satisfied	8/23/2014	1.43	\$253.91
37	130730623	7/11/2013	\$9,987.32	Satisfied	8/23/2014	1.43	\$214.73

<sup>44</sup> *See SBG Mgmt. Servs., Inc. v. Phila. Gas Works*, Docket Nos. C-2012-2308454, C-2012-2308462 & C-2012-2308465 (Initial Decision dated Jan. 13, 2016) at Finding of Fact No. 16 (“Between January 12, 2010, and August 19, 2012, 21 separate municipal liens were docketed against the property owned by Oak Lane Court Realty Co., L.P. for unpaid gas service. SBG FMO Exhibit 13.”)

<sup>45</sup> No municipal liens were filed against Fern Rock by PGW after July 23, 2014. PGW Exhibit BLC-5, at 1.

<sup>46</sup> *See* PGW Remand St. No. 1 at 18; SBG Remand Direct Testimony of Christopher E. Hanson at 7.

Number	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50% per month
38	130730631	7/11/2013	\$15,585.79	Satisfied	8/23/2014	1.43	\$335.09
39	140732940	7/23/2014	\$5,851.03	Satisfied	8/3/2019	61.23	\$5,374.17
40	140732941	7/23/2014	\$4,911.49	Satisfied	9/26/2014	2.17	\$159.62
41	140732997	7/23/2014	\$23,370.37	Vacated	9/23/2022	99.47	\$34,870
42	140732998	7/23/2014	\$11,080.94	Closed Acct	5/15/2020	--	--
<b>Total</b>							<b>\$42,167</b>

PGW Exhibit BLC-5, at 7 of 16, and SBG Exhibit CEH-3, at 7.

In view of these calculations, the total amount to be removed from the accounts of **Fern Rock is \$42,167.**

*Fairmont Manor and Fairmount Court – 2015 Complaint, Docket No. C-2015-2486664*

In accordance with the statute of limitations at Section 3314 of the Code, the calculation of the billing adjustment credit owed to Fairmount will cover the period May 29, 2012, to the present. However, in PGW’s Remand Rebuttal Testimony, Mr. Cummings argued that a few of the liens filed during this period were included in the hearing exhibits submitted by SBG in the 2012 Complaints. PGW Remand Rebuttal St. No. 1-R at 12-13. To avoid overlap and any double counting, PGW argues that any liens regarding Fairmount that were previously litigated and contained in the prior hearing exhibits must be excluded from the present calculation of the amount to be removed. *Id.* at 13. Upon close review of the record from the 2012 Complaints, I agree with PGW’s argument. The review of the municipal liens filed by PGW against Fairmount in the 2012 proceedings covered the period until October 22, 2012.<sup>47</sup> In

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<sup>47</sup> See *SBG Mgmt. Servs., Inc. v. Phila. Gas Works*, Docket Nos. C-2012-2304167, C-2012-2304215 & C-2012-2304303 (Initial Decision dated Oct. 21, 2015) at Finding of Fact No. 112 (Between January 1, 2010, and October 22, 2012, 130 separate municipal liens were docketed against the property owned by Fairmount Manor Realty Co., L.P. for unpaid gas service. SBG FEM Exhibit 2.”)

the present proceeding, the calculation of the billing adjustment credit owed to Fairmount shall cover the period October 23, 2012, to the present.

In its PGW Exhibit BLC-5 (pages 10-11 of 16), PGW identified a total of 30 municipal liens filed against Fairmount between October 23, 2012, and April 19, 2016.<sup>48</sup> Thirteen of those 30 liens are marked as “Vacated.” Five of the remaining liens are marked as “Closed Account.” Three others are marked “unknown.” The thirteen “Vacated” liens are not included in the calculation of the bill adjustment credits, in accordance with PGW’s position that the vacated liens were not paid. *See* discussion *supra* at Section C.4. In SBG Exhibit CEH-3 (pages 9-10), SBG identified the same 30 liens placed against Fairmount between October 23, 2012, and April 19, 2016, but added the calculation of late payment charges improperly assessed on the thirteen vacated liens. Neither PGW nor SBG included calculations of late payments charges on the liens marked “Closed Account” or “unknown.”<sup>49</sup> The combination of PGW Exhibit BLC-5 and SBG Exhibit CEH-3 reveals the following:

No.	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50%
133	130730657	7/11/2013	\$1,827.76	Satisfied	8/23/2013	1.43	\$39.30
134	130730658	7/11/2013	\$1,999.55	Satisfied	8/23/2013	1.43	\$42.99
135	130730662	7/11/2013	\$2,095.53	Satisfied	8/23/2013	1.43	\$45.05
136	130730649	7/11/2013	\$2,106.80	Vacated	8/22/2013	1.40	\$44.24
137	130730660	7/11/2013	\$2,134.45	Vacated	8/22/2013	1.40	\$44.82
138	130730650	7/11/2013	\$3,065.55	Vacated	8/23/2013	1.43	\$65.84
139	130730661	7/11/2013	\$3,906.26	Vacated	8/23/2013	1.43	\$83.98
140	130730659	7/11/2013	\$2,298.76	Satisfied	8/23/2013	1.43	\$49.42
141	130730651	7/11/2013	\$2,363.09	Satisfied	8/23/2013	1.43	\$50.81
142	1330731298	7/17/2013	\$2,664.69	Satisfied	8/22/2013	1.20	\$47.96

<sup>48</sup> No municipal liens were filed against Fairmount by PGW after April 19, 2016. PGW Exhibit BLC-5, at 11.

<sup>49</sup> *See* PGW Remand St. No. 1 at 18; SBG Remand Direct Testimony of Christopher E. Hanson at 7.

No.	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50%
143	130731297	7/17/2013	\$3,540.63	Satisfied	8/23/2013	1.23	\$65.50
144	131030112	10/8/2013	\$708.35	Satisfied	8/15/2014	10.37	\$110.15
145	140430342	4/5/2014	\$633.22	Satisfied	8/15/2014	4.40	\$41.79
146	140430343	4/7/2014	\$723.67	Satisfied	8/5/2014	4.00	\$43.42
147	Unknown	4/23/2014	\$3,246.76	--	--	--	--
148	Unknown	4/23/2014	\$3,526.91	--	--	--	--
149	140733008	7/23/2014	\$2,563.12	Closed Acct	9/22/2021	--	--
150	140733007	7/23/2014	\$2,729.90	Closed Acct	9/22/2021	--	--
151	140733016	7/23/2014	\$3,137.81	Vacated	1/1/2019	54.10	\$2,546
152	140733015	7/23/2014	\$3,683.34	Closed Acct	9/22/2021	--	--
153	140732953	7/23/2014	\$3,763.89	Closed Acct	9/22/2021	--	--
154	140732990	7/23/2014	\$4,866.36	Closed Acct	9/22/2021	--	--
155	Unknown	8/1/2014	\$355.93	--	--	--	--
156	14093605	9/9/2014	\$1,297.54	Vacated	9/23/2022	97.87	\$1,905
157	140930614	9/9/2014	\$1,503.19	Vacated	9/23/2022	97.87	\$2,207
158	140930613	9/9/2014	\$355.93	Vacated	9/23/2022	97.87	\$523
159	150630313	6/5/2015	\$623.30	Vacated	9/23/2022	88.90	\$831
160	150830021	8/4/2015	\$6,112.33	Vacated	8/3/2018	36.50	\$3,347
161	160331623	3/24/2016	\$965.30	Vacated	8/3/2018	28.73	\$416
162	160430856	4/19/2016	\$2,023.87	Vacated	6/1/2016	1.43	\$43
<b>Total</b>							<b>\$6,923</b>

In view of these calculations, the total amount to be removed from the accounts of **Fairmount Manor and Fairmount Court is \$6,923.**

Oak Lane – 2015 Complaint at Docket No. C-2015-2486655

In accordance with the statute of limitations at Section 3314 of the Code, the calculation of the billing adjustment credit owed to Oak Lane can cover the period May 29, 2012, to the present. However, in PGW’s Remand Rebuttal Testimony, Mr. Cummings argued that a few of the liens filed during this period were included in the hearing exhibits submitted by SBG in the 2012 Complaints. PGW Remand Rebuttal St. No. 1-R at 12-13. To avoid overlap and any double counting, PGW argues that any liens regarding Oak Lane that were previously litigated and contained in the prior hearing exhibits must be excluded from the present calculation of the amount to be removed. *Id.* at 13. Upon close review of the record from the 2012 Complaints, I agree with PGW’s argument. The review of the municipal liens filed by PGW against Oak Lane in the 2012 proceedings covered the period until August 19, 2012.<sup>50</sup> In the present proceeding, the calculation of the billing adjustment credit owed to Oak Lane shall cover the period August 20, 2012, to the present.

In PGW Exhibit BLC-5 (page 15 of 16), PGW identified a total of nine municipal liens filed against Oak Lane between August 20, 2012, and March 22, 2014.<sup>51</sup> Five of those nine liens are marked as “Vacated” and are not included in the calculation of the bill adjustment credits, in accordance with PGW’s position that the vacated liens were never paid off by the Complainants. *See* discussion *supra* at Section C.4. In SBG Exhibit CEH-3 (page 2), SBG identified the same nine liens placed against Oak Lane between August 20, 2012, and March 22, 2014, but added the calculation of late payment charges improperly assessed on the five vacated liens. The combination of PGW Exhibit BLC-5 and SBG Exhibit CEH-3 reveals the following:

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<sup>50</sup> *See SBG Mgmt. Servs., Inc. v. Phila. Gas Works*, Docket Nos. C-2012-2308454, C-2012-2308462 & C-2012-2308465 (Initial Decision dated Jan. 13, 2016) at Finding of Fact No. 16 (“Between January 12, 2010, and August 19, 2012, 21 separate municipal liens were docketed against the property owned by Oak Lane Court Realty Co., L.P. for unpaid gas service. SBG FMO Exhibit 13.”).

<sup>51</sup> No municipal liens were filed against Oak Lane by PGW after March 22, 2014. PGW Exhibit BLC-5, at 15.

Number	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50%
21	120832190	8/29/2012	\$1,264.70	Satisfied	8/22/2013	11.93	\$226.38
22	130231538	2/13/2013	\$2,984.00	Satisfied	8/23/2013	6.37	\$284.97
23	130431975	4/23/2013	\$6,240.40	Satisfied	6/10/2014	13.77	\$1,288.64
24	130631730	6/18/2013	\$5,625.49	Vacated	6/10/2014	11.90	\$1,004
25	130632841	6/29/2013	\$13,824.96	Satisfied	8/23/2013	1.83	\$380.19
26	130731293	7/17/2013	\$7,508.08	Satisfied	8/23/2013	1.23	\$138.90
27	131031098	10/19/2013	\$4,633.89	Vacated	6/11/2014/	7.83	\$544
28	131231368	12/30/2013	\$1,763.43	Vacated	6/11/2014	5.43	\$144
29	140331377	3/22/2014	\$7,497.07	Vacated	6/11/20014	2.70	\$304
<b>Total</b>							<b>\$4,315.08</b>

In view of these calculations, the total amount to be removed from the accounts of **Oak Lane is \$4,315.08.**

Marchwood – 2015 Complaint at Docket No. C-2015-2486648

In accordance with the statute of limitations at Section 3314 of the Code, the calculation of the billing adjustment credit owed to Marchwood can cover the period May 29, 2012, to the present. However, in PGW’s Remand Rebuttal Testimony, Mr. Cummings argued that a few of the liens filed during this period were included in the hearing exhibits submitted by SBG in the 2012 Complaints. PGW Remand Rebuttal St. No. 1-R at 12-13. To avoid overlap and any double counting, PGW argues that any liens regarding Marchwood that were previously litigated and contained in the prior hearing exhibits must be excluded from the present calculation of the amount to be removed. *Id.* at 13. Upon close review of the record from the 2012 Complaints, I agree with PGW’s argument. The review of the municipal liens filed by

PGW against Marchwood in the 2012 proceedings covered the period until November 2, 2012.<sup>52</sup> In the present proceeding, the calculation of the billing adjustment credit owed to Marchwood shall cover the period November 3, 2012, to the present.

In PGW Exhibit BLC-5 (page 13 of 16), PGW identified a total of eight municipal liens filed against Marchwood between November 3, 2012, and July 23, 2014.<sup>53</sup> In SBG Exhibit CEH-3 (page 5), SBG identified the same eight liens placed against Marchwood between November 3, 2012, and July 23, 2014, all marked “Satisfied.”

Number	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50%
26	130731294	6/17/2013	\$203.49	Satisfied	8/23/2013	2.23	\$6.82
27	130632842	6/29/2013	\$65,873.21	Satisfied	8/23/2013	1.83	\$1,811.51
28	130632843	6/29/2013	\$2,329.20	Satisfied	8/23/2013	1.83	\$64.05
29	130632844	6/29/2013	\$1,765.37	Satisfied	8/23/2013	1.83	\$48.55
30	130731384	7/19/2013	\$189.27	Satisfied	8/23/2013	1.17	\$3.31
31	140732964	7/23/2014	\$65,885.03	Satisfied	9/26/2014	2.17	\$2,141.26
32	140732965	7/23/2014	\$2,419.16	Satisfied	9/26/2014	2.17	\$78.62
33	140732966	7/23/2014	\$2,677.49	Satisfied	9/26/2014	2.17	\$87.02
<b>Total</b>							<b>\$4,241.14</b>

In view of these calculations, the total amount to be removed from the accounts of **Marchwood is \$4,241.14.**

<sup>52</sup> See *SBG Mgmt. Servs., Inc. v. Phila. Gas Works*, Docket Nos. C-2012-2308454, C-2012-2308462 & C-2012-2308465 (Initial Decision dated Jan. 13, 2016) at Finding of Fact No. 14 (“Between June 17, 2010, and November 2, 2012, 25 separate municipal liens were docketed against the property owned by Marchwood Realty Co., L.P. for unpaid gas service. SBG FMO Exhibit 12.”).

<sup>53</sup> No municipal liens were filed against Marchwood by PGW after July 23, 2014. PGW Exhibit BLC-5 at 13.

Marshall Square – 2015 Complaint at Docket No. C-2015-2486618

In accordance with the statute of limitations at Section 3314 of the Code, the calculation of the billing adjustment credit owed to Marshall Square can cover the period May 29, 2012, to the present. However, in PGW’s Remand Rebuttal Testimony, Mr. Cummings argued that a few of the liens filed during this period were included in the hearing exhibits submitted by SBG in the 2012 Complaints. PGW Remand Rebuttal St. No. 1-R at 12-13. To avoid overlap and any double counting, PGW argues that any liens regarding Marshall Square that were previously litigated and contained in the prior hearing exhibits must be excluded from the present calculation of the amount to be removed. *Id.* at 13. Upon close review of the record from the 2012 Complaints, I agree with PGW’s argument. The review of the municipal liens filed by PGW against Marshall Square in the 2012 proceedings covered the period until October 22, 2012.<sup>54</sup> In the present proceeding, the calculation of the billing adjustment credit owed to Marshall Square shall cover the period October 23, 2012, to the present.

In PGW Exhibit BLC-5 (page 14 of 16), PGW identified a total of six municipal liens filed against Marshall Square between October 23, 2012, and July 23, 2014.<sup>55</sup> In SBG Exhibit CEH-3 (page 3), SBG identified the same six liens placed against Marshall Square between October 23, 2012, and July 23, 2014, all marked “Satisfied.”

Number	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50%
11	130730656	7/11/2013	\$14,304.78	Satisfied	8/23/2013	1.43	\$307.55
12	130730655	7/11/2013	\$20,835.58	Satisfied	8/23/2013	1.43	\$447.96
13	131030113	10/7/2013	\$1,715.33	Satisfied	8/15/2014	10.40	\$267.59
14	140430344	4/7/2013	\$2,861.67	Satisfied	7/30/2014	3.80	\$163.12

<sup>54</sup> See *SBG Mgmt. Servs., Inc. v. Phila. Gas Works*, Docket Nos. C-2012-2304167, C-2012-2304215 & C-2012-2304303 (Initial Decision dated Oct. 21, 2015) at Finding of Fact No. 114 (“Between February 12, 2010, and October 22, 2012, nine separate municipal liens were docketed against the property owned by Marshall Square Realty Co., L.P. for unpaid gas service. SBG FEM Exhibit 3.”).

<sup>55</sup> No municipal liens were filed against Marshall Square by PGW after July 23, 2014. PGW Exhibit BLC-5 at 14.

Number	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50%
15	140732960	7/23/2014	\$17,828.92	Satisfied	9/26/2014	2.17	\$579.44
16	140733006	7/23/2014	\$17,976.92	Satisfied	8/7/2019	61.37	\$16,547.75
<b>Total</b>							<b>\$18,313.41</b>

In view of these calculations, the total amount to be removed from the account of **Marshall Square is \$18,313.41.**

In summary, PGW shall adjust the Complainants' accounts by removing the amounts as follows:

Colonial Garden	\$96,385.3
Simon Garden	\$403,808.58
Elrea Garden	\$2,982
Fern Rock	\$42,167
Fairmount Manor/ Fairmount Court	\$6,923
Oak Lane	\$4,315.08
Marchwood	\$4,241.14
Marshall Square	\$18,313.41
<b>Total</b>	<b>\$579,135.51</b>

#### **D. Civil Penalty**

In its unpublished Opinion dated March 26, 2022, in *PGW III*, the Commonwealth Court concluded, *inter alia*, that the Commission did not err in imposing a \$2,000 penalty against PGW for violating the Commission's regulation governing the application of partial payments. *PGW III*.

Although the Commonwealth Court’s decision on *PGW III* was issued on March 26, 2022, there is no indication that PGW ever paid the \$2,000.00 penalty to the Commission. Consequently, it is further ordered that the Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for collection of the total amount set forth above and appropriate action.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The Complainant seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which established material facts by a preponderance of the evidence. 66 Pa.C.S. § 332(a).

3. To satisfy the burden of proof, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

4. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

5. The Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere “trace of evidence or a suspicion of the existence of a fact” is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

6. 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. 66 Pa.C.S. § 3314(a).

7. In the absence of written instructions, a disputed bill or a payment agreement, payments received by a public utility which are insufficient to pay a balance due both for prior service and for service billed during the current billing period shall first be applied to the balance due for prior service. 52 Pa. Code § 56.24.

8. Late payment charges are defined and identified as basic charges, along with commodity charges, distribution charges, customer service charges, reconnection fees, gas cost adjustment charges, interstate transition cost surcharges, taxes and security deposits. 52 Pa. Code §§ 56.2, 62.74.

9. The Commission does not have jurisdiction over the placement of municipal liens. *See, Pitt v. Phila. Gas Works*, Docket No. C-2009-2140025 (Final Order entered Apr. 29, 2010).

10. The Commission does not have jurisdiction to decide the rate of interest on a municipal lien. *SBG Management Services, Inc. et al. v. Philadelphia Gas Works*, Docket Nos. C-2012-2304183 and C-2012-2304324 (Order entered December 8, 2016) at 69-70.

11. If, in any proceeding involving rates, the Commission shall determine that any rate received by a public utility 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 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).

12. The legal rate of interest is fixed by law at 6 percent. 41 P.S. § 202; *Elec. Materials Co. v. N. E. Heat & Light Co.*, Docket No. C-00913544, (Opinion and Order entered June 28, 1994).

13. Pursuant to Section 7106(b) of the Municipal Claims and Tax Lien Law, 53 P.S. § 7106(b), once the lien is recorded, the tariff rate no longer applies. *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 249 A.3d 963, 965 (Pa. 2021).

14. “The 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.” *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 276 A.3d 1219 (Pa. Cmwlth. 2022).

15. The Commission did not err in imposing a \$2,000 penalty against PGW for violating the Commission's regulation governing the application of partial payments. *Phila. Gas Works v. Pa. Pub. Util. Comm'n*, 276 A.3d 1219 (Pa. Cmwlth. 2022).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works Post-Hearing Exhibit is admitted into the record.

2. That Fairmount Court Realty Co. L.P. is joined as an indispensable party in *SBG Management Services, Inc./Fairmont Manor Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2015-2486664.

3. That the consolidated Complaints of *SBG Management Services, Inc. / Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183; and *SBG Management Services, Inc. / Simon Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304324, on remand, are granted.

4. That the consolidated Complaints of *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2015-2486677; *SBG Management Services, Inc./Simon Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2015-2486642; *SBG Management Services, Inc./Elrea Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2015-2486674; *SBG Management Services, Inc./Fern Rock Gardens Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2015-2486670; *SBG Management Services, Inc./Fairmont Manor Realty Co., L.P. and Fairmount Court Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2015-2486664; *SBG Management Services, Inc./Oak Lane Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2015-2486655; *SBG Management Services, Inc./Marchwood Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2015-2486648; and *SBG Management Services, Inc./Marshall Square Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2015-2486618, are granted on the remaining issues of improper application of partial payments and improper application of Commission-approved late payment charges on municipal liens.

5. That Philadelphia Gas Works shall credit the Colonial Garden Realty Co., L.P.'s accounts the amount of \$2,720.08, plus interest at the legal rate of 6% calculated from the date each improper bill was issued until January 14, 2020.

6. That Philadelphia Gas Works shall credit the Simon Garden Realty Co., L.P.'s accounts the amount of \$5,645.97, plus interest at the legal rate of 6% calculated from the date each improper bill was issued until January 14, 2020.

7. That Philadelphia Gas Works shall credit the Elrea Garden Realty Co., L.P.'s accounts the amount of \$780.36, plus interest at the legal rate of 6% calculated from the date each improper bill was issued until January 14, 2020.

8. That Philadelphia Gas Works shall credit the Fern Rock Garden Realty Co., L.P.'s accounts the amount of \$21,296.24, plus interest at the legal rate of 6% calculated from the date each improper bill was issued until January 14, 2020.

9. That Philadelphia Gas Works shall credit the Marchwood Realty Co., L.P.'s accounts the amount of \$7,751.55, plus interest at the legal rate of 6% calculated from the date each improper bill was issued until January 14, 2020.

10. That Philadelphia Gas Works shall credit the Marshall Square Realty Co., L.P.'s accounts the amount of \$7,403.98, plus interest at the legal rate of 6% calculated from the date each improper bill was issued until January 14, 2020.

11. That Philadelphia Gas Works shall credit the Oak Lane Realty Co., L.P.'s accounts the amount of \$2,126.75, plus interest at the legal rate of 6% calculated from the date each improper bill was issued until January 14, 2020.

12. That Philadelphia Gas Works shall credit the Fairmount Manor Realty Co., L.P.'s accounts the amount of \$11,520.28, plus interest at the legal rate of 6% calculated from the date each improper bill was issued until January 14, 2020.

13. That Philadelphia Gas Works shall calculate the credit owed to the accounts of Fairmount Court Realty Co., L.P. in connection with its improper application of partial payments and refund that amount, plus interest at the legal rate of 6% calculated from the date each improper bill was issued until January 14, 2020.

14. That Philadelphia Gas Works shall remove the amount of \$96,385.30 from the accounts of Colonial Garden Realty Co., L.P.

15. That Philadelphia Gas Works shall remove the amount of \$403,808.58 from the accounts of Simon Garden Realty Co., L.P.

