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August 15, 2024

**Via Electronic Filing**

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

RE: *SBG Management Services, Inc./Simon Garden Realty Co., L.P. et al., v. Philadelphia Gas Works* Docket Nos. C-2012-2304183; C-2012-2304324; C-2015-2486618; C-2015-2486677; C-2015-2486674; C-2015-2486670; C-2015-2486664; C-2015-2486655; C-2015-2486648; C-2015-2486674

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Dear Secretary Chiavetta:

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

Sincerely,

  
Daniel Clearfield, Esq.

DC/jls

Enclosure

cc: Hon. Eranda Vero w/enc.  
[pmcneal@pa.gov](mailto:pmcneal@pa.gov)  
Cert. of Service w/enc.

**CERTIFICATE OF SERVICE**

I hereby certify that this date I served a copy of Philadelphia Gas Works' Exceptions, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**VIA EMAIL ONLY**

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Dated: August 15, 2024

*/s/ Daniel Clearfield*  
Daniel Clearfield, Esq.

*Counsel for Philadelphia Gas Works*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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Philadelphia Gas Works (“PGW” or “Company”) files these Exceptions to the Initial Decision on Remand (“ID”)<sup>1</sup> of Administrative Law Judge (“ALJ”) Eranda Vero issued on July 26, 2024. By these Exceptions, PGW respectfully requests that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) modify the ID so as to correct the errors identified by PGW and described herein.

## I. INTRODUCTION

PGW and SBG<sup>2</sup> have been litigating for more than a decade. SBG filed eight complaints against PGW in 2012 alleging a host of billing errors and claims.<sup>3</sup> SBG filed eight more complaints in 2015 alleging the same and some additional claims.<sup>4</sup> The 2015 Complaints were

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<sup>1</sup> In these Exceptions, (1) Findings of Fact are referenced as “FOF”; (2) Conclusions of Law are referenced as “COL”; and, and (3) Ordering Paragraphs are referenced as “Ordering Paragraphs.”

<sup>2</sup> The terms “Complainants” or “SBG” are used to collectively refer to a property management company, SBG Management Services PA, Inc. (“Management Company”), and the landlord property owners all of whom are landlord ratepayers and customers of PGW. *See* Appendix to PGW St. No. 1-SR at 1; PGW Exhibit BLC-1. The landlord property owners are: Colonial Garden Realty Co., L.P. (“Colonial Garden”), Elrea Garden Realty Co., L.P. (“Elrea Garden”), Fairmont Manor Realty Co., L.P. (“Fairmont Manor”), Fern Rock Realty Co., L.P. (“Fern Rock”), Marchwood Realty Co., L.P. (“Marchwood”), Marshall Square Realty Co., L.P. (“Marshall Square”), Oak Lane Realty Co., L.P. (“Oak Lane”) and Simon Garden Realty Co., L.P. (“Simon Garden”) (collectively, the “Landlords” or “Property Owners”). *Id.* The Management Company and said landlord property owners are commonly owned. *See* ID at 25 (FOF 21); ID at 46-47; SBG St. 2 at 4, 10.

<sup>3</sup> The “2012 Complaints” have the following docket numbers before the Commission: SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. PGW, Docket No. C-2012-2304183; SBG Management Services, Inc./Simon Garden Realty Co., L.P. v. PGW, Docket No. C-2012-2304324; SBG Management Services, Inc./Elrea Garden Realty Co., L.P. v. PGW, Docket No. C-2012-2304167; SBG Management Services, Inc./Fairmont Manor Realty Co., L.P. v. PGW, Docket No. C-2012-2304215; SBG Management Services, Inc./Marshall Square Realty Co., L.P. v. PGW, Docket No. C-2012-2304303; SBG Management Services, Inc./Marchwood Realty Co., L.P. v. PGW, Docket No. C-2012-2308454; SBG Management Services, Inc./Oak Lane Realty Co., L.P. v. PGW, Docket No. C-2012-2308462; and, SBG Management Services, Inc./Fern Rock Realty Co., L.P. v. PGW, Docket No. C-2012-2308465.

<sup>4</sup> The “2015 Complaints” have the following docket numbers before the Commission: SBG Management Services, Inc./Simon Garden Realty Co., L.P. v. PGW, Docket No. C-2015-2486642; SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. PGW, Docket No. C-2015-2486677; SBG Management Services, Inc./Elrea Garden Realty Co., L.P. v. PGW, Docket No. C-2015-2486674; SBG Management Services, Inc./Fern Rock Garden Realty Co., L.P. v. PGW, Docket No. C-2015-2486670; SBG Management Services, Inc./Fairmont Manor Realty Co., L.P. v. PGW, Docket No. C-2015-2486664; SBG Management Services, Inc./Oak Lane Realty Co., L.P. v. PGW, Docket No. C-2015-2486655; SBG Management Services, Inc./Marchwood Realty Co., L.P. v. PGW, Docket No. C-2015-2486648; and ; SBG Management Services, Inc./Marshall Square Realty Co., L.P. v. PGW, Docket No. C-2015-2486618.

filed after the evidentiary hearings in the 2012 Complaints, but before the Commission's decision on the 2012 Complaints.<sup>5</sup>

Only two issues were eventually pursued by SBG in both the 2012 Complaints and the 2015 Complaints: (1) the refund or credit, if any, owed by PGW to SBG based on the correct rate of interest that accrues on amounts subject to docketed municipal liens versus the amount of interest actually paid by SBG on the docketed liens; and, (2) the amount of credits (plus interest) owed by PGW to SBG based on PGW's prior method of applying partial payments.

### **Interest on Docketed Municipal Liens**

PGW reasonably believed<sup>6</sup> that unpaid bills subject to docketed liens were, nonetheless, Commission jurisdictional and applied interest (in the form of a late payment charge) at 18% per annum to those bills.<sup>7</sup> That belief was litigated in the 2012 Complaints. The Commission

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<sup>5</sup> See Appendix B. Docket Nos. C-2012-2304183, et al., Opinion and Order of the Commission issued December 8, 2016 ("December 2016 Order"), reconsideration denied by Opinion and Order of the Commission issued May 18, 2018 and by Opinion and Order of the Commission issued August 23, 2018 ("August 2018 Order"); Docket Nos. C-2012-2304167, et al., Opinion and Order of the Commission issued September 20, 2018 ("September 2018 Order"); Docket Nos. C-2012-2308454, et al., Opinion and Order of the Commission issued October 4, 2018 ("October 2018 Order").

<sup>6</sup> The Pennsylvania Supreme Court found that PGW's belief was incorrect. *PGW v. PUC*, 249 A.3d 963 (Pa. 2021) ("*PGW I*"), rehearing granted by, in part, and remanded, 256 A.3d 1092 (Table), 2021 Pa. LEXIS 2905, 2021 WL 2697432 (Pa., June 15, 2021), on remand, 2022 Pa. Commw. Unpub. LEXIS 92, 2022 WL 793332 (Pa.Cmwlt., Mar. 16, 2022) ("*PGW III*"); see footnotes 10 and 11. The incorrect application of a tariff to non-jurisdictional activities does not confer jurisdiction upon the Commission over the non-jurisdictional activities. The holding of *PGW II* means that PGW applied its tariff out of context to non-jurisdictional activities. That is different than PGW applying the wrong provision in its tariff. That being said, PGW's belief does not confer jurisdiction upon the Commission. In Pennsylvania, an agency's jurisdiction is generally dependent on the legal statute reposing power. *Federal Deposit Ins. Corp. v. Board of Finance & Revenue*, 84 A.2d 495, 498-499, (Pa. 1951). Pennsylvania agencies generally cannot confer jurisdiction on themselves, nor can they enlarge jurisdiction by acquisition, change, enlargement by contract, consent or even by agreement or stipulation of the parties. *Id.* at 499; *Western Pennsylvania Water Co. v. PUC*, 370 A.2d 337, 339-340, (Pa. 1977); *Blackwell v. Commonwealth*, 567 A.2d 630, 636 (Pa. 1989), reh gr. 573 A.2d 536 (Pa 1990) (rehearing limited to retrospective application of prior decision); *Rosenberry v. Gillan Bros.*, 197 A. 523, 526, (Pa.Super. 1938). Pennsylvania's jurisdiction test was enunciated in *Rogoff v. Buncher Company*, 151 A.2d 83, 85 (Pa. 1959) wherein the court stated: "The test of jurisdiction is whether one has the power to enter upon the inquiry, not whether it may ultimately decide that it is unable to grant the relief sought in the particular case."

<sup>7</sup> ID at 49; PGW Gas Service Tariff at 12 (definition), 26 (finance charge on late payments).

disagreed with PGW,<sup>8</sup> and PGW appealed. In 2019, the Commonwealth Court agreed with PGW and reversed the Commission's decisions.<sup>9</sup> SBG appealed to the Pennsylvania Supreme Court and, in 2021, the Supreme Court held that liens docketed by PGW must be treated as judgments and given the same force and effect of a judgment.<sup>10</sup> As such the Court found that: 1) PGW was entitled to statutory interest (of 6% per annum) on the liens/judgments;<sup>11</sup> but, 2) it was not permitted to charge its Tariffed late payment charge interest of 18%; and, 3) SBG was entitled to the 12% difference between the 18% interest that was paid and the 6% interest that should have been paid.

The incorrect rate of interest accruing on docketed municipal liens (judgments) is not an ongoing problem. No liens have been filed against SBG's properties since 2014.<sup>12</sup> None of those liens/judgments are outstanding.<sup>13</sup> In response to the Supreme Court's decision, PGW changed the way it treats docketed municipal liens, effective as of April 29, 2021. The result is that

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<sup>8</sup> See Appendix B and footnote 5.

<sup>9</sup> *PGW v. PUC*, 222 A.3d 1218; 2019 Pa. Commw. LEXIS 1081; 2019 WL 6690588 (Pa.Cmwth. Dec 9 2019) ("PGW I"), reversing, *inter alia*, the PUC's August 2018 Order; *PGW v. PUC*, 221 A.3d 765 (Table), 2019 Pa. Commw. Unpub. LEXIS 664, 2019 WL 6698105 (Pa.Cmwth. Dec 9, 2019), reversing the PUC's September 2018 Order; *PGW v. PUC*, 221 A.3d 765 (Table), 2019 Pa. Commw. Unpub. LEXIS 666, 2019 WL 6698103 (Pa.Cmwth. Dec 9, 2019), reversing the PUC's October 2018 Order.

<sup>10</sup> The Pennsylvania Supreme Court held that municipal liens docketed on behalf of PGW are "the equivalent of a final resolution of a claim between parties," *PGW II*, 249 A.3d at 974, and are "treated in the same manner as a judgment that has been rendered following an adjudicative process," *PGW II*, 249 A.3d at 974. In doing so, the Supreme Court explained that 53 P.S. § 7106(b) gives PGW a judgment automatically upon the docketing of the lien. *PGW II*, 249 A.2d at 973, fn 8, citing 53 P.S. § 7106.

<sup>11</sup> *PGW II*, 249 A.2d at 974 ("... only the statutory post-judgment interest rate of 6% per annum applies, not the tariff rate"). The statutes governing interest on judgments are 42 Pa.C.S. § 8101 ("[A] judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment, if the judgment is not entered upon a verdict or award[,] unless otherwise provided by another statute.); and, 41 P.S. § 202 (The "lawful rate" of post-judgment interest is 6% per annum).

<sup>12</sup> There was agreement on the total number of liens. PGW St. 1-R at 10; SBG St. 1-R. The filing date and status of liens are listed in PGW Exhibit BLC-5 and SBG Exhibit CEH-3. PGW updated the status in PGW Exhibit BLC-16 (as of January 2024). Liens were filed against the complainants to the 2015 Complaints (which are listed in footnote 4) in July 2014. See SBG Exhibit CEH-3.

<sup>13</sup> Each of the relevant liens has been marked as satisfied (paid) or vacated (nullified). PGW St. 1-R at 10-11; SBG Exhibits CEH-2 and CEH-3. Relief related to vacated liens is the subject of PGW Exception No. 3. Any other liens are not relevant because SBG did not make calculations for them. PGW St. 1-R at 10-11; SBG Exhibits CEH-2 and CEH-3. The non-relevant liens were filed in 2007 or marked as unknown (existence not established). *Id.*

amounts subject to liens/judgments are removed from Commission-jurisdictional utility bills. Then, the liened amounts are subject to statutory interest rather than PGW's tariff governed late-payment charges.

In this remand proceeding, PGW and SBG were litigating the calculation of the 12% difference on the interest paid by SBG. PGW and SBG disagreed on: (a) the beginning date for consideration of liens to avoid re-litigation and duplication; (b) the inclusion of vacated liens, which are a legal nullity, as part of any calculations; and, (c) whether (or not) vacated liens were actually paid by SBG (thereby entitling them to a refund or credit).

While there are many aspects of the Initial Decision with which PGW agrees, the ID makes three material errors regarding liens to which PGW believes it must file exceptions. First, rather than calculating the 12% difference as the Supreme Court and the Commonwealth Court directed, the ID directs that *all* of the interest (18%) be removed from SBG's accounts. PGW submits that this is not consistent with the appellate court directives (PGW Exception No. 1). Adopting PGW Exception No. 1 would reduce the total amount of the "refund" from \$584,805.78 to \$389,870.52.<sup>14</sup> Second, the ID directed PGW to remove the entire 18% lien interest from SBG's "accounts." Since these amounts are the subject of filed liens (which the Supreme Court decreed had to be treated as civil judgments) the Commission does not have the jurisdiction to order PGW to wipe out these amounts on SBG's accounts, effectively ordering money damages on non-jurisdictional amounts (as opposed to removal from current bills to the extent that they remain there) (Exception No. 2).<sup>15</sup> Third, the ID included vacated liens in its

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<sup>14</sup> See Appendix A. If vacated liens are excluded (per PGW Exception No. 3), the amount would be lower. The lower amounts are calculated and shown on Appendix A.

<sup>15</sup> PGW is also excepting to the beginning date used by ID for consideration of the 12% difference (PGW Exception No. 5). Details on the duplicative liens are in Appendices A, B and C.

calculation even though a vacated lien is no longer a judgment once it is vacated and was not actually paid by SBG (PGW Exception No. 3). Granting PGW Exceptions Nos. 1 and 3 would further reduce the total amount of the “refund” to \$283,748.52.<sup>16</sup>

### **Fairmount Court**

PGW excepts (Exception No. 4) to the ID’s improper recommendation that a non-party to the complaints – began in 2012 and 2015 – Fairmount Court Realty Co. L.P. can be unilaterally joined as an indispensable party complainant to the complaint filed by a separate entity – Fairmount Manor Realty Co. L.P.’s. This holding flaunts both the clear direction of *PGW III*<sup>17</sup> as to the parties to which the Supreme Court decision was to apply, and black letter, legal standards for joining indispensable parties in matters before the Commission.<sup>18</sup> The ID arbitrarily granted a non-party, separate legal entity monetary relief without any formal pleadings or process in violation of PGW’s due process rights. Eliminating “refunds” or recalculations for Fairmount Court would reduce the overall award by \$12,927.12.<sup>19</sup>

### **Recalculated Partial Payments**

PGW’s prior order of applying partial payments was litigated in the 2012 Complaints.<sup>20</sup> In response to the Commission’s direction, PGW changed the way it applies partial payments by

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<sup>16</sup> See Appendix A.

<sup>17</sup> *PGW III* limited the application of *PGW II*. The Commonwealth Court’s decision (in *PGW III*) provides that Supreme Court’s holding 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 on April 29, 2021.” *PGW III* at \*1, \*13; *PGW III* at Ordering Paragraph 1; See also *PGW III* at \*6-\*7 (for discussion of retroactivity). The parties to the “litigation” were Colonial Garden and Simon Garden. *Id.* See also *PGW II* and Appendix B. Complainants with proceedings pending before the Commission are those listed in footnote 4 as filing complaints in 2015. Fairmount Court did not have a pending proceeding as explained in PGW Exception No. 4.

<sup>18</sup> See footnote 71.

<sup>19</sup> \$12,493.04 (Appendix A) plus \$434.08 (Appendix D) equals \$12,927.12.

<sup>20</sup> See footnote 5.

customers.<sup>21</sup> That change was effective on January 24, 2020.<sup>22</sup> PGW reported the change to the Commission,<sup>23</sup> as explained in the ID.<sup>24</sup> The prior order/method of application resulted in certain “overpayments” being made by certain customers like SBG, based on the Commission’s later interpretation of its regulations involved.<sup>25</sup>

SBG is seeking a refund of amounts that it overpaid to PGW prior to PGW’s change in methodology, effective January 24, 2020.

As PGW did not appeal the partial payment issue, PGW does not dispute that some amounts are owed to SBG for partial payment recalculations stemming from the 2012 and the 2015 complaints.<sup>26</sup> However, the 2012 Complaints were already litigated before the Commission and PGW paid SBG the amounts ordered by the Commission, with interest.<sup>27</sup> Therefore, it was important to calculate the remaining refunds to avoid the potential for “double recovery” on the same payments ordered by the Commission previously. While the ID generally accepted PGW’s calculations in this regard, as noted below in PGW Exceptions Nos. 6 and 7, clarification is needed on minor details of the ID’s recommendations. PGW’s clarifications would increase the total “refund” by \$434.08.<sup>28</sup>

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<sup>21</sup> ID at 30 (FOF 53-55); ID at 8, 43-45. The change was necessitated because the Commission held that PGW’s prior method of applying partial payments contravened the Commission’s regulations. *See* footnote 5.

<sup>22</sup> ID at 30 (FOF 53-55); ID at 8, 43-45.

<sup>23</sup> The implementation date was reported to the Commission in a letter dated February 5, 2020. PGW St. 1 at 5-6, <https://www.puc.pa.gov/pcdocs/1653635.pdf>

<sup>24</sup> ID at 8, fn 6.

<sup>25</sup> *See* footnote 5.

<sup>26</sup> PGW notes that, after the record was closed in this proceeding, PGW paid to SBG both the partial payment amounts (with interest) representing the amounts that the PUC initially determined were owing for some of the periods at issue, <https://www.puc.pa.gov/pcdocs/1832103.pdf>, as well as the civil penalties, as directed under Commission’s Orders of August 23, 2018 and September 20, 2018.

<sup>27</sup> *See* footnote 5.

<sup>28</sup> *See* Appendix D.

Overall, if the Commission decides to grant “refunds” to SBG, PGW respectfully requests that that any “refunds” for Commission-jurisdictional overpayments should be made by the Commission<sup>29</sup> as credits to SBG’s accounts so as to offset SBG’s large outstanding balances for gas service.<sup>30</sup> Credits help PGW maintain cash flow, which is important since PGW must secure every dollar it needs to operate from its ratepayers.<sup>31</sup> SBG’s outstanding balances prompted PGW to file a Petition for Declaratory Order at Docket No. P-2024-3050535 requesting the PUC to declare that PGW has the right and obligation to pursue collection action, including termination of service for nonpayment of undisputed gas bills by landlord ratepayers, including SBG. Making any award here a credit against outstanding SBG bills would serve to mitigate SBG’s existing large arrearage balance.

## II. EXCEPTIONS

### A. CALCULATION OF THE LIEN INTEREST RATE DIFFERENCE

**EXCEPTION NO. 1 - THE ID ERRS BY NOT CALCULATING THE 12% DIFFERENCE IN INTEREST RATES CONSISTENT WITH THE HOLDING OF THE PENNSYLVANIA SUPREME COURT (IN *PGW II*) AND REMAND BY THE COMMONWEALTH COURT (IN *PGW III*) (ID at 49-83; FOF 28, 38, 64, 68, 72, 76, 80, 84; COL 8-14; Ordering Paragraphs 4, 14-21).**

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<sup>29</sup> PGW maintains its position that refunds for non-jurisdictional overpayments must be obtained in the Court. *See* footnote 47.

<sup>30</sup> *See* PGW Exhibit BLC-14 (outstanding balances as of December 2023), which shows that (as of December 2023) SBG’s total outstanding balances were more than \$1.7 million. SBG generally disagrees with PGW Exhibit BLC-14, but did not indicate how much SBG owes to PGW. Summaries of billing and payment information were provided by PGW. *See* PGW Exhibits BLC-18 (Colonial Garden), BLC-19 (Elrae Garden), BLC-22 (Fairmount Manor), BLC-25 (Fairmount Court), BLC-27 (Fern Rock), BLC-30 (Marchwood), BLC-32 (Marshall Square), BLC-34 (Oak Lane) and BLC-36 (Simon Garden).

<sup>31</sup> PGW St. 1- Supp. R at 4 (cash would come from “PGW’s existing ratepayers as PGW is a cash-basis utility”). PGW which is a municipally owned utility operating on a cash-flow ratemaking basis. 66 Pa. C.S. § 2212(e); 52 Pa. Code § 69.2703 (ratemaking procedures and considerations for PGW). This means that PGW has no shareholders, does not earn a return on equity, and must secure every dollar it needs to operate from its ratepayers. *See, e.g., PUC v. PGW*, Docket No. R-2023-3037933, Opinion and Order at 2-3, 16 (entered November 9, 2023) (PGW has no shareholders and does not pay a dividend or a rate of return (ROR) to its owners.).

In *PGW II*, the Pennsylvania Supreme Court held that liens docketed by PGW are judgments.<sup>32</sup> The Supreme Court held that PGW is entitled to 6% statutory interest on the liens/judgments.<sup>33</sup> Consistent with those holdings, SBG is only entitled to the 12% difference between the 18% interest that was paid on the liens/judgments and the 6% interest that should have been paid on the liens/judgments. Subsequently, the Commonwealth Court, in *PGW III*, ordered a limited remand to the Commission solely for the calculation by the Commission of the correct amount of any refunds.<sup>34</sup> Specifically, it stated:

As agreed by the parties, we remand to the Commission 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.<sup>35</sup>

The correct amount of any refund is the 12% difference.

The ID only calculates the entire amount of interest (18%) assessed on the docketed liens (judgments).<sup>36</sup> This is error because it disregards both the Supreme Court’s holding that PGW is entitled to 6% interest and the instructions from the Commonwealth Court to calculate the 12%

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<sup>32</sup> See footnote 10. The Pennsylvania Supreme Court held that municipal liens docketed on behalf of PGW are “the equivalent of a final resolution of a claim between parties,” and are “treated in the same manner as a judgment that has been rendered following an adjudicative process,” *PGW II*, 249 A.3d at 974.

<sup>33</sup> See footnote 11.

<sup>34</sup> ID at 5-6; ID at 23 (FOF 15-17); ID at 53-55; *PGW III* at 13; *PGW III* at Ordering Paragraph 2.

<sup>35</sup> *PGW III* at \*13; *PGW III* at Ordering Paragraph 2 (“As agreed by the parties, this matter is REMANDED to the Pennsylvania Public Utility Commission (Commission) in part, solely for the presentation of evidence by the parties and a determination by the Commission concerning the correct amounts of any refunds owed by PGW to SBG Management Services, Inc., Colonial Garden Realty Company and Simon Garden Realty Company (collectively, Intervenors) relating to late fees charged on docketed municipal liens against Intervenors for unpaid natural gas charges prior to April 29, 2021.”). Agreement or consent by the parties does not confer jurisdiction upon the Commission that would not otherwise exist. See footnote 6.

<sup>36</sup> ID at 57-58, 68-82. The ID continues the prior erroneous holdings in the Order dated December 19, 2022 on PGW’s Partial Motion To Dismiss, <https://www.puc.pa.gov/pcdocs/1768069.docx>; and, Order dated January 20, 2023 on PGW Motion in Limine, <https://www.puc.pa.gov/pcdocs/1771215.docx>. PGW Exception No. 1 should be read as excepting to those prior Orders as well as the ID.

difference. In the evidentiary record on remand, both PGW and SBG presented calculations and testimony on the 12% difference.<sup>37</sup>

Granting relief to remove the entire 18% interest charged by PGW from SBG's accounts is wrong. By refusing to calculate the 12% difference paid by SBG as directed by *PGW III*, the ID creates a windfall for SBG contravening the holding of *PGW II*. Based on *PGW II*, SBG should not have paid 18% late payment charge interest on a docketed lien. It is equally clear, however, that the Pennsylvania Supreme Court ruled PGW is entitled to 6% statutory interest. That adjustment would reduce the amount of "refund" from \$584,805.78 to \$389,870.52.<sup>38</sup> As noted in PGW Exception No. 2, SBG must attempt to pursue any such refund in common pleas court<sup>39</sup> as the Commission does not have the legal authority to order PGW to make refunds on judgments.<sup>40</sup>

**EXCEPTION NO. 2 - THE ID ERRS BY DIRECTING PGW TO REMOVE ALL OF THE INTEREST (18%) FROM SBG'S GAS ACCOUNTS (ID at 49-83; FOF 28, 38, 64, 68, 72, 76, 80, 84; COL 8-14; Ordering Paragraphs 4, 14-21).**

The ID directs PGW to remove the 18% interest that accrued on the liens/judgments from SBG's "accounts."<sup>41</sup> For example, Ordering Paragraph 14 states: "That Philadelphia Gas Works shall remove the amount of \$96,385.30 from the accounts of Colonial Garden Realty Co., L.P. "

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<sup>37</sup> PGW Exhibit BLC-5 (as of October 2022), SBG Exhibit CEH-3 (as of January 2023) and PGW Exhibit BLC-16 (as of January 2024).

<sup>38</sup> See Appendix A. If vacated liens are excluded (per PGW Exception No. 3), the amount would be lower, The lower amount is shown on Appendix A.

<sup>39</sup> SBG has already filed in the Philadelphia Court of Common Pleas. ID at 14, 36, 57.

<sup>40</sup> *Gasparro v. PUC*, 814 A.2d 1282, 1285 (Pa.Cmwlth. 2003), which is discussed in footnote 42.

<sup>41</sup> See ID at Ordering Paragraphs 14-21. The ID continues the prior erroneous holdings in the Order dated December 19, 2022 on PGW's Partial Motion To Dismiss, <https://www.puc.pa.gov/pdocs/1768069.docx>; and, Order dated January 20, 2023 on PGW Motion in Limine, <https://www.puc.pa.gov/pdocs/1771215.docx>. PGW Exception No. 2 should be read as excepting to those prior Orders as well as the ID.

But the Commission is not legally authorized to direct the removal either of the 18% interest, or 18% less the legally permissible interest of 6% from SBG’s utility accounts. It is hornbook law that the Commission lacks power to the review, modify, and adjust judgments<sup>42</sup> or award damages.<sup>43</sup> Consistent with *PGW II*, the SBG gas accounts at issue were subject to a lien/judgment at the time that the interest was charged. The amounts in those accounts are non-jurisdictional once the account is subject to a lien/judgment.<sup>44</sup> The interest accruing on those non-jurisdictional accounts/amounts – as directed by the Supreme Court – is 6%. If it wants refunds, SBG must file with the common pleas court for refunds of the 18% verses 6% difference.

For clarity, PGW is *not* arguing that the PUC is without power to direct PGW to *remove from SBG’s current regulated statement of account* the excess interest (i.e., the difference between 18% and 6%), if any, that continue to appear on their regulated bill.<sup>45</sup> However, as noted above, PGW has removed from its regulated bills any amounts of excess interest, in keeping with the Supreme Court decision.<sup>46</sup>

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<sup>42</sup> *Gasparro v. PUC*, 814 A.2d 1282, 1285 (Pa.Cmwlth. 2003) (PUC lacks jurisdiction after a judgment exists). The Commission refused to review the merits of Gasparro’s utility bills that were subject to the judgment. *See Robert P. Gasparro v. PECO Energy Company*, Docket No. C-00015482, Opinion and Order entered April 22, 2002. <https://www.puc.pa.gov/PcDocs/315750.doc>. The Commonwealth Court affirmed. 814 A.2d 1282, 128.

<sup>43</sup> The Commission’s statutory authority does not include the power to award monetary damages. *See, e.g., Elkin v. Bell Telephone of Pennsylvania*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa.

<sup>44</sup> *PGW II* explains that doctrine of merger applies to docketed liens which extinguishes the ability for the Commission to alter or adjust an underlying charge that was liened, since docketed municipal liens are judgments. *PGW II*, 249 A. 3d at 974. Under the doctrine of merger, the amounts due in the underlying utility accounts/bills are merged into the judgments and can no longer provide an independent basis for determining the obligations of the parties before the Commission. *See, e.g., In re Stendardo*, 991 F.2d 1089, 1094-1095 (3d Cir. 1993).

<sup>45</sup> The ALJ (previously) agreed that this proceeding matched the bifurcated procedure promoted by SBG. ALJ Order on PGW Partial Motion To Dismiss (dated December 19, 2022) at 20, <https://www.puc.pa.gov/pcdocs/1768069.docx> “Each tribunal has its own functions, and what the PUC decides in this instance can and will inform and guide the Common Pleas Court in its determinations in [SBG’s civil action].” SBG Response at 11, <https://www.puc.pa.gov/pcdocs/1763406.pdf> The Commission is to make calculations. ALJ Order on PGW Partial Motion To Dismiss (dated December 19, 2022) at 9-10; SBG Response at 11 (The PUC is tasked with determining the rate issue and calculating how much PGW overcharged SBG). “[A]ny relief lies within the authority of the Common Pleas Court.” SBG Response at 11.

<sup>46</sup> *See* footnotes 12 to 13 and the accompanying text.

The foregoing recognizes that the Commission may act *in aid of the Courts – not in place of them* in a civil action involving a docketed lien/judgment.<sup>47</sup> Specifically, the Commission may, as the remand in *PGW III* made clear, simply calculate the correct refund (i.e., the 12% difference) owed to a customer/complainant for the subsequent recovery of that amount in court proceedings. This was not done by the ID, and inconsistent with these clear legal limitations, the ID directed PGW to remove all interest (18%) from SBG’s accounts. PGW interprets this directive as reducing the amount owed by SBG in any context, thereby awarding SBG damages, which the Commission cannot do.<sup>48</sup> As noted, such claims must be heard before the Courts of Common Pleas where, as correctly noted by the ID, SBG has brought litigation<sup>49,50</sup> related to these proceedings against PGW for breach of contract and unjust enrichment to recover monetary damages, including the 12% difference in interest rate paid by SBG.<sup>51</sup>

Alternatively, to the extent that Commission disagrees with PGW Exception No. 2, PGW requests that ID be modified so as to clarify that “removal” of amounts “from the accounts” actually means that PGW should issue a credit to SBG’s accounts.

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<sup>47</sup> The Commission has held that when unpaid utility service is placed in the civil collection process with the Courts, it is, concomitantly, removed from Commission adjudication. Docket Nos. C-2012-2304183, et al., Opinion and Order of the Commission issued December 8, 2016 (“December 2016 Order”), at 73-74, 91, <https://www.puc.pa.gov/pcdocs/1491938.docx>. “This is so, unless the jurisdiction of the Court is appropriately relinquished in recognition of the principles of primary jurisdiction as between administrative tribunals and the Courts.” *Id.* at 91. Here, the ID properly finds that SBG filed a 2021 civil action in Philadelphia Court of Common Pleas. ID at 14, 36, 57. Yet, nothing in record indicates that the Philadelphia Court of Common Pleas has relinquished jurisdiction over the identical issues to this Commission.

<sup>48</sup> See footnote 43.

<sup>49</sup> See footnote 39.

<sup>50</sup> ALJ Order on PGW Partial Motion To Dismiss (dated December 19, 2022) at 19, <https://www.puc.pa.gov/pcdocs/1768069.docx>

<sup>51</sup> By making this argument, PGW expressly does not waive any legal arguments that it may be able to assert in Common Pleas Court when SBG attempts to obtain refunds of the amounts calculated by the PUC.

**EXCEPTION NO. 3 – THE ID IMPROPERLY TREATS VACATED LIENS THE SAME AS SATISFIED LIENS (ID at 61-62; 68-88; Ordering Paragraphs 14-21)**

In calculating the amount of “refunds” resulting from the Supreme Court Order, the ID erred by treating vacated liens the same as satisfied liens.<sup>52</sup> This is error for two reasons. First, Pennsylvania law does not treat vacated liens the same as satisfied liens. As a matter of law, when a lien is correctly vacated,<sup>53</sup> the lien amounts are not and never were paid by the customer.<sup>54</sup> When a lien/judgment is vacated, the effect is to nullify or cancel, make void, or invalidate the lien/judgment.<sup>55</sup> This means that the rights of the parties are left as though no lien/judgment had ever been entered<sup>56</sup> and never existed. Satisfied liens, on the other hand, are paid (in full) by the customer to satisfy/remove the judgment.<sup>57</sup>

The Pennsylvania Supreme Court held that the unpaid amounts subject to liens/judgments are subject to 6% statutory interest (as opposed to 18% interest under PGW’s Tariff). The change in the interest rate (from 18% to 6%) is based on the existence of the judgment.<sup>58</sup> When a lien/judgment is vacated and thus the lien/judgment never existed, there was never any

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<sup>52</sup> ID at 61-62; 68-88; Ordering Paragraphs 14-21. ID at 30-34 (FOF 57, 60, 63, 71, 75, 79, 83). PGW St. 1 at 18. PGW accepted certain vacated liens as being paid. ID at 16, fn 12. Certain liens were marked vacated and other liens were marked satisfied. The status of each lien is shown on as shown on PGW Exhibit BLC-5 (as of October 2022), SBG Exhibit CEH-3 (as of January 2023) and PGW Exhibit BLC-16 (as of January 2024). *See* PGW St. 1-Supp R; PGW St. 1-SR at 14-15.

<sup>53</sup> *See* PGW St. 1-Supp R; PGW St. 1-SR at 14-15 (noting that 38 liens marked “vacated” should have in-fact been marked “satisfied”; and that the remaining 90 vacated liens were correctly and properly vacated before the Courts).

<sup>54</sup> PGW St. 1 at 18. PGW accepted certain vacated liens as being paid. ID at 16, fn 12; PGW St. 1-Supp R; PGW St. 1-SR; TR. 137 (“... it’s not the lien being removed from the system that pays the debt.”).

<sup>55</sup> *Higbee Estate*, 93 A.2d 467 (Pa. 1953) (Where a judgment is vacated, it is entirely destroyed, and the rights of the parties are left as though no such judgment had ever been entered. Where a judgment is properly vacated, it has no more future effect than if it had never existed); *Commonwealth v. Wilson*, 934 A.2d 1191 (Pa. 2007) (The term “vacate” means to nullify or cancel; make void; invalidate); *Mitchell v. Milburn*, 199 A.3d 501 (Pa.Cmwlth. 2018) (same); *First Seneca Bank v. Greenville Distributing Co.*, 533 A.2d 157 (Pa.Super. 1987)(Void judgment was to be treated as having never existed).

<sup>56</sup> *Id.*

<sup>57</sup> ID at 61. PGW St. 1 at 16.

<sup>58</sup> *PGW II; Equitable Gas v. Wade*, 812 A.2d 715 (Pa.Super. 2002). In *Equitable Gas*, the Superior Court made it clear that Equitable Gas “was certainly entitled to charge 18% per year pursuant to the tariff until and unless it obtained a final judgment in the Court of Common Pleas. At that point, the doctrine of merger applies.” *Equitable Gas*, 812 A.2d at 718-719. This made it clear that held that a judgment preempts both the Commission’s regulation on late payment charges, 52 Pa.Code § 56.22, and Equitable Gas’ tariff on same.

preemption of the Commission’s jurisdiction in the first place and the unpaid utility bills were correctly and legally subject to 18% interest for late-payment charges under PGW’s Tariff.<sup>59</sup> The ID ignored this simple principle, electing to award SBG monetary relief where PGW had properly and legally charged 18% interest on unpaid balances consistent with PGW’s Tariff.

Second, it must be emphasized that, except for a handful (38) of the vacated liens at issue, there is no evidence of record that any of the remaining vacated liens were actually paid by SBG.<sup>60</sup> PGW agreed with SBG that a few liens marked “vacated” should have been marked “satisfied” because they were paid by SBG at or around the time of vacation. Those liens were included in PGW’s calculations of the 12% difference. No evidence was presented by SBG that any of the 90 remaining liens were actually paid by SBG. Awarding a refund on amounts not paid by SBG would constitute a windfall to SBG and is obviously incorrect. Therefore, the Commission should modify the ID, including (but not limited to) Ordering Paragraphs 14 through 21, so as to exclude consideration of any and all claims based on vacated liens.

**B. THE ADDITION OF NON-PARTY FAIRMOUNT COURT REALTY CO., LP., AS A COMPLAINANT.**

**EXCEPTION NO. 4 - THE ID IMPROPERLY JOINS A NON-COMPLAINANT - FAIRMOUNT COURT REALTY CO., LP. AS AN INDISPENSABLE PARTY (COMPLAINANT) CONTRARY TO THE LAW AND IN VIOLATION OF PGW’S DUE PROCESS. (ID at 21, 25-26, 46-49, 75-77, 82, 85, 87-88; FOF 1, 21; Ordering Paragraphs 2, 4, 13, 18-21).**

The ID, *sua sponte*, directed that another SBG-owned property, Fairmount Court Realty Co., LP (“Fairmount Court”), be added as an “indispensable party” and share in the remedies that the ID proposes.

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<sup>59</sup> *Id.*

<sup>60</sup> *See* footnote 53.

PGW excepts to the late addition of Fairmount Court. As explained below, Fairmount Court is as a new party complainant and is legally and physically different from Fairmount Manor Realty Co. L.P.'s ("Fairmount Manor") which is a 2015 Complainant (Docket No. C-2015-2486664).<sup>61</sup> It is indisputable that Fairmount Court isa separate legal entity not a party to these proceedings that has never to date filed a complaint against PGW regarding the utility service provided to Fairmount Court's properties.<sup>62</sup> Importantly, the ID correctly found that "SBG did not disclose that in 2011, [Fairmount] Manor had transferred the properties at 700-08 N. Marshall St. and 711-19 N. 7th St. to a separate legal entity, [Fairmount] Court Realty Co. L.P." until SBG's May 2, 2023 testimony.<sup>63</sup> Despite this, the ID went on to hold that SBG's failure to disclose the existence of, or file complaints on behalf of a separate legal entity should be overlooked and should not preclude this Commission from granting relief to that separate non-party, as doing so would somehow be "inequitable and confusing."<sup>64</sup> This error not only flaunts the direction of the Commonwealth Court on remand, but also contradicts black letter law, and must be reversed.

First, the Commonwealth Court's remand made clear that the Commission's review "applies retroactively only as to parties to this litigation and to other proceedings pending at the time the *PGW II* decision was issued on April 29, 2021."<sup>65</sup> Fairmount Court indisputably was not a party to the litigation and did not have any proceedings pending as of April 29, 2021. Neither

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<sup>61</sup> ID at 21, 25, 46-47, 75-77, 82, 85, 87-88; FOF 1, 21; Ordering Paragraph 2, 4, 13, 18-21.

<sup>62</sup> The ID acknowledges that Fairmount Court did not file a complaint seeking relief in its own behalf. The ID acknowledges that complaints were filed by Fairmount Manor against PGW. ID at 29-30 (FOF 18, 51). The ID uses the terms "Fairmount" or "Fairmount Manor" to refer to Fairmount Manor Realty Co., LP. ID at 24, 29-30 (FOF 18, 51); ID at 46-47. The use of either term should not be confused with the separate corporate entity, Fairmount Court Realty Co. L.P. The ID uses the term "Fairmount Court" to refer Fairmount Court Realty Co. L.P. ID at 25 (FOF 21); ID at 26.

<sup>63</sup> ID at 25 (FOF 21). (emphasis added).

<sup>64</sup> ID at 47.

<sup>65</sup> See *PGW III*.

factor of the Commonwealth Court’s ruling applies to Fairmount Court. The Commission must summarily overrule the ID’s plain disregard for the direction of *PGW III* as adding a non-party litigant to this proceeding for the first time on July 26, 2024 is not within this Commission’s discretion on remand.

Second, black letter law precludes the Commission from granting any relief in favor of a non-party, Fairmount Court. Before the Commission, complainants do not have standing to assert the rights of other customers.<sup>66</sup> Fairmount Manor’s 2015 Complaint (Docket No. C-2015-2486664), on its face, purports to assert claims by Fairmount Manor against PGW for Fairmount Manor’s own properties and gas accounts. After seven years,<sup>67</sup> SBG disclosed for the first time that certain claims made by the Complainant Fairmount Manor improperly included claims that could only be raised by Fairmount Court for certain properties and gas accounts where Fairmount Court was both the customer of PGW and the legal owner of the real estate responsible for paying PGW’s bills for utility service to those properties.<sup>68</sup> The mere late “disclosure” by SBG does not and cannot cure the fact that Fairmount Court has never filed a complaint with the Commission against PGW, nor has it intervened in these cases to date. The ID explains that SBG alleged “claims” concerning gas accounts and liens placed on certain properties owned by Fairmount Court.<sup>69</sup> The ID acknowledges that those claims were not made

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<sup>66</sup> See *George v. PUC*, 735 A.2d 1282, 1286 (Pa.Cmwlth. 1999); *James E. Coggins v. PPL Electric Utilities Corporation*, Docket No. C-2012-2312785, Initial Decision dated April 22, 2013, modified by Opinion and Order entered July 18, 2013.

<sup>67</sup> May 29, 2015 to May 23, 2023. See footnote 79 (filing date for 2015 Complaints) and 63 (date of disclosure).

<sup>68</sup> PGW St. 1-SR at 45; PGW Exhibit BLC-24; PGW Exhibit BLC-25; PGW St. 1-SR, Appendix at 57-72 (Section D).

<sup>69</sup> ID at 46-47.

by Fairmount Court, which is the “real party in interest”<sup>70</sup> (i.e., the gas customer and property owner) for those claims.

Worse, under no circumstances is Fairmount Court an “indispensable party” to Fairmount Manor’s 2015 Complaint.<sup>71</sup> Indeed, Fairmount Court is not an indispensable party as the lack of a complaint by Fairmount Court only impacts Fairmount Court’s claims, since Fairmount Court did not seek relief on its own behalf. An indispensable party is one whose rights are so connected with the claims of the litigants that no relief can be granted without impairing or infringing upon those rights. The failure to join an indispensable party deprives a court of subject matter jurisdiction and renders null any subsequent judgment.<sup>72</sup> Relief to Fairmount Manor is not dependent upon the presence of Fairmount Court in this proceeding, since relief can be granted by the Commission on Fairmount Manor’s claims for Fairmount Manor’s properties (and gas accounts) without impairing or infringing upon Fairmount Court’s claims for Fairmount Court’s properties (and gas accounts). This means that the refusal to add Fairmount Court, as a complainant, to Fairmount Manor’s 2015 Complaint would not deprive the Commission of subject matter jurisdiction over Fairmount Manor’s 2015 Complaint.<sup>73</sup> So, the participation of Fairmount Court is not indispensable to the Commission’s jurisdiction over Fairmount Manor’s 2015 Complaint. At the very least, SBG has not met its burden to show that Fairmount Court is

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<sup>70</sup> “[A] real party in interest is a [p]erson who will be entitled to benefits of an action if successful. . . . [A] party is a real party in interest if it has the legal right under the applicable substantive law to enforce the claim in question.” *CitiMortgage, Inc. v. Barbezat*, 131 A.3d 65, 68 (Pa.Super. 2016) (citation omitted).

<sup>71</sup> An indispensable party is one whose rights are so connected with the claims of the litigants that no relief can be granted without impairing or infringing upon those rights. The failure to join an indispensable party deprives a court of subject matter jurisdiction and renders null any subsequent judgment. An issue concerning the absence of an indispensable party may be raised at any time and may also be raised *sua sponte*. *Church of Lord Jesus Christ of the Apostolic Faith, Inc. v. Shelton*, 740 A.2d 751 (Pa.Cmwlth. 1999).

<sup>72</sup> *Id.*

<sup>73</sup> The failure to join an indispensable party deprives an adjudicatory body of subject matter jurisdiction. *Id.*; *Pa. Game Commission v. K.D. Lumber Co., Inc.*, 654 A.2d 6, 9 (Pa.Cmwlth. 2001).

an indispensable party to the Fairmount Manor complaint resolution since it never made this claim at all!

Lastly, any “confusion” noted in the ID was created only because Fairmount Court failed to assert claims on its own behalf. Precedent requires Fairmount Court to assert claims in its own behalf as no other party has a direct, immediate, or substantial interest over Fairmount Court’s claims, as discussed above. Adherence to black-letter law is not inequitable in this case,<sup>74</sup> given the more than 7-year delay in disclosure that Fairmount Court should have submitted a separate complaint to the Commission years ago. Further, the Commission lacks power to grant equitable remedies.<sup>75</sup>

To the extent that Fairmount Court is added as a complainant to Fairmount Manor’s 2015 Complaint, PGW requests that (y) Ordering Paragraph 18 should be modified so as to provide for separate relief for Fairmount Manor and Fairmount Court; and, (z) Ordering Paragraphs 19, 20, 21 should be modified to remove any relief for Fairmount Court (since Fairmount Court is not a party to the separate complaints filed by Oak Lane, Marchwood and/or Marshall Square).

### C. OTHER EXCEPTIONS BY PGW

**EXCEPTION NO. 5 – THE ID RECOMMENDS A BEGINNING DATE FOR THE CONSIDERATION OF DOCKETED LIENS IN SBG’S 2015 COMPLAINTS THAT RELITIGATES AND DUPLICATES CLAIMS THAT WERE, OR SHOULD HAVE BEEN, BROUGHT AS PART OF SBG’S 2012 COMPLAINTS. (ID at 49-83; FOF 28, 38, 64, 68, 72, 76, 80, 84; COL 8-14; Ordering Paragraphs 4, 14-21)**

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<sup>74</sup> The Commission must follow, distinguish or overrule its own precedent. *See, e.g., PECO Energy Co. v. PUC*, 791 A.2d 1155 (Pa. 2002).

<sup>75</sup> *Commonwealth of Pennsylvania et al v. IDT Energy, Inc.*, Docket No. C-2014-2427657, Order entered December 18, 2014, at 25-27, 2014 WL 7339557 (Pa.P.U.C.).

SBG cannot relitigate or duplicate<sup>76</sup> claims as part of SBG's 2015 Complaints that were, or should have been,<sup>77</sup> litigated as part of SBG's 2012 Complaints. For Colonial Garden's and Simon Garden's 2012 Complaints, the statute of limitations for the remanded lien claims extends back three-years to May 11, 2009.<sup>78</sup> For each of SBG's 2015 Complaints, the statute of limitations for lien claims extends back three-years to May 29, 2012.<sup>79</sup> The date for the 2015 Complaints precedes the filing date of the amended complaints in SBG's 2012 Complaints.<sup>80</sup> It also precedes the final evidentiary hearings on SBG's 2012 Complaints.<sup>81</sup>

The ID properly concluded that reviewing all of SBG's claims for liens would be duplicative<sup>82</sup> of the Commission's prior review of SBG's claims for liens in SBG's 2012 Complaints.<sup>83</sup> SBG's Exhibit CEH-1 shows claims/calculations for liens beginning in December 2007 and ending in January 2022. The vast majority of those claims/calculations duplicate claims made as part of SBG's 2012 Complaints, as shown in Appendices A and C. The ID properly concluded that reviewing the liens back to May 29, 2012 (as part of SBG's 2015 Complaints) would be duplicative of the Commission's prior review of the liens in SBG's 2012 Complaints.

However, the ID improperly set the beginning date for consideration of SBG's lien claims. To attempt to avoid re-litigation and duplicative claims, the ALJ set December 11, 2012

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<sup>76</sup> A complaint is prohibited by Section 316 of the Public Utility Code from raising issues previously decided. 66 Pa.C.S. § 316. The doctrine of collateral estoppel bars re-litigation of an issue of fact or law between the same parties upon a different claim or demand.

<sup>77</sup> Res judicata precludes litigation on claims that were already, or could have been, litigated and therefore, should not be litigated again.

<sup>78</sup> 66 Pa.C.S. § 3314(a). ID at 69, 70.

<sup>79</sup> 66 Pa.C.S. § 3314(a). ID at 72-81. SBG argues that the statute of limitations extends back four years to May 29, 2011. *See, e.g.*, Tr at 1327-1328. Going back four years (instead of three years) would increase the re-litigation and duplication of claims.

<sup>80</sup> SBG's amended complaints were filed on December 10, 2012. *See* Appendices B and C.

<sup>81</sup> *See* Appendices B and C.

<sup>82</sup> ID at 64-68.

<sup>83</sup> The ID explains that, as part of SBG's 2012 Complaints, the Commission reviewed and ruled upon specified docketed liens. The dates used in the ID do not correspond to the liens that were actually litigated in SBG's 2012 Complaints, as explained in Appendices B and C.

as the beginning date for the lien claims in SBG's 2015 Complaints.<sup>84</sup> That date is based upon the filing date (December 10, 2012) for amended complaints in SBG's 2012 Complaints.<sup>85</sup> In setting this date, the ALJ assumed that no liens filed after December 10, 2012 were in-fact litigated as part of SBG's 2012 Complaints.<sup>86</sup> That assumption is wrong,<sup>87</sup> as shown by PGW's Exhibit BLC-5 and BLC-16 which categorize the liens shown on SBG's prior 2012 hearing exhibits entered into the record before this Commission from subsequent/additional liens. Appendix A shows that nearly all of liens identified by the ALJ (ID at 68 to 82) were litigated, or should have been litigated, as part of the 2012 Complaints and cannot be considered again in SBG's 2015 Complaints.

The Commission should modify the ID, including (but not limited to) Ordering Paragraphs 14 through 21, so as to exclude consideration of claims that were, or should have been, litigated as part of SBG's 2012 Complaints.

**EXCEPTION NO. 6 - THE ID ERRED BY OVERLOOKING EVIDENCE  
CALCULATING THE PARTIAL PAYMENT CREDIT OWED BY PGW  
TO FAIRMOUNT COURT (ID at 48-49, 87; Ordering Paragraph 13)**

PGW excepts to the direction<sup>88</sup> that PGW "shall calculate the credit owed to the accounts of Fairmount Court Realty Co., L.P. in connection with its improper application of partial payments ... [plus interest]."<sup>89</sup> First, as noted above, Fairmount Court should not be found to be

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<sup>84</sup> ID at 64-68.

<sup>85</sup> ID at 21 (FOF 4); ID at 24 (FOF 19); ID at 27 (FOF 35); ID at 2, 6-7, 9, 69, 70.

<sup>86</sup> This assumption contradicts the established practice of addressing issues through the date of hearing. *See 2601 Parkway Associates v. The Philadelphia Electric Company*, Docket No. C-861095, Opinion and Order entered November 15, 1988, 0088 WL 1535051, 1988 Pa. PUC LEXIS 503.

<sup>87</sup> PGW St. 1-R at 12-13.

<sup>88</sup> Regarding partial payments, PGW excepts to ID at 29-49 and Ordering Paragraph Nos. 4 through 13 to the extent that they are not supported by findings of fact or conclusions of law. 2 Pa.C.S. § 507 ("All adjudications of a Commonwealth agency shall be in writing, shall contain findings and the reasons for the adjudication."). Without any findings, it is difficult to take specific exceptions other than to refer to the ALJ's discussions in the body of the ID. *See* 52 Pa. Code § 5.533(b).

<sup>89</sup> ID at 48-49, 87 (Ordering Paragraph 13).

a proper complainant in this proceeding because they are not properly deemed an “indispensable party”<sup>90</sup> Second, the amount of credit that PGW would owe Fairmount Court - \$434.08 – is already in the record. BG’s Exhibit CEH-1 contains SBG’s calculations of the partial payment amounts for Fairmount Court.<sup>91</sup> Those calculations must be, as noted above, be adjusted for the proper beginning and ending dates. For the gas accounts at 702 N. Marshall Street, SBG Exhibit CEH-1 shows the partial payment amount of \$434.08.<sup>92</sup> That is based on partial payments made by or on behalf of Fairmount Court in 2013 and 2018.<sup>93</sup> The amount for the gas accounts at 700 N. Marshall Street (\$0.60) and 704 N. Marshall Street (\$25.01) should be excluded from consideration because they are based on payments made before December 2012.<sup>94</sup>

If the Commission permits Fairmount Court to be added as a party to Fairmount Manor’s Complaint (which it should not, see Exception 4 above), the Commission should modify the ID, including (but not limited to) Ordering Paragraph 13, to clarify: That Philadelphia Gas Works shall credit the of Fairmount Court Realty Co., L.P.’s accounts the amount of \$434.08, plus interest ...”.

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<sup>90</sup> Fairmount Court’s status as a complainant (party) to this proceeding is the subject of PGW’s Exception No. 4.

<sup>91</sup> Fairmount Court owned certain properties known as 700-08 N. Marshall St. and 711-19 N. 7th St. ID at 46. SBG Exhibit CEH-1 contains calculations for 700 N. Marshall St., 702 N. Marshall St. and 704 N. Marshall Street. No claim was made for the other properties owned by Fairmount Court on SBG Exhibit CEH-1.

<sup>92</sup> SBG’s Exhibit CEH-1 .

<sup>93</sup> PGW Exhibit BLC-25 (Page 4 of 6); PGW Exhibit BLC-4 (Page 12 of 24)

<sup>94</sup> The last partial payment made by or on behalf of 700 N. Marshall Street occurred in July 2010. PGW Exhibit BLC-25 (Page 3 of 6). The last partial payment made by or on behalf of 704 N. Marshall Street occurred in May 2008. PGW Exhibit BLC-25 (Page 6 of 6).

**EXCEPTION NO. 7 - THE ID ERRED BY PROVIDING UNCLEAR  
INSTRUCTIONS FOR ACCRUAL OF INTEREST ON THE PARTIAL  
PAYMENT AMOUNTS (ID at 48-49, 86-87; Ordering Paragraphs 5-13)**

PGW is not excepting to the direction to credit the accounts for the partial payment amounts plus interest (at the legal rate).<sup>95</sup> That has been PGW's position in this proceeding.<sup>96</sup> In fact, part of PGW's surrebuttal testimony in January 2024 contained an exhibit projecting interest through December 31, 2023.<sup>97</sup>

However, PGW is excepting to, and seeking clarity on, the contradictory instructions in the ID regarding the accrual of interest upon the partial payment amounts. The ID provides one beginning date for interest from "the date each improper bill was issued."<sup>98</sup> However, the ID gives two different dates for the end of interest. First, the body of the ID provides that the "end date for calculation of interest should be ... the date of interest of the entry of [the] Commission Order in [this proceeding]."<sup>99</sup> Second, each of the Ordering Paragraphs provides a different instruction for the end of interest. Those Paragraphs provide interest should be paid by PGW from "the date each improper bill was issued until January 14, 2020."<sup>100</sup>

The Commission should modify the ID to clarify, consistent with both SBG and PGW's position, that the interest to be paid by PGW will end "upon the entry of a Commission Opinion and Order in this proceeding."

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<sup>95</sup> ID at 48-49; ID at 86-87 (Ordering Paragraphs 5 to 13).

<sup>96</sup> PGW St. 1-R at 9 ("PGW agrees that § 1312 Interest is applicable to the unpaid gas balance charge and late payment charges, since those amounts are determined by PGW's Commission approved tariff and are subject to the Commission's jurisdiction.").

<sup>97</sup> ID at 49; PGW Exhibit BLC-5. Part of PGW's rebuttal testimony in February 2023 contained an exhibit projecting interest through December 31, 2022. PGW St. 1-R at 9; PGW Exhibit BLC-16.

<sup>98</sup> ID at 86-87 (Ordering Paragraphs 5 to 13).

<sup>99</sup> ID at 49.

<sup>100</sup> ID at 86-87 (Ordering Paragraphs 5 to 13).

### III. CONCLUSION

For all the foregoing reasons, PGW respectfully requests that the Commission grant the above Exceptions and adopt the Initial Decision with the modifications described herein.

Respectfully submitted,

*/s/ Daniel Clearfield*

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Date: August 15, 2024

## Difference in Lien Interest

Table of Calculations

## Table of Calculations (ID at 73 to 82), including Vacated Liens

Complainant	18% Interest		6% Statutory Interest <sup>1</sup>	12% Difference <sup>2</sup>
Colonial Garden	\$96,385.30		\$32,128.43	\$64,256.87
Elrea Garden	\$2,982.00		\$994.00	\$1,988.00
<b>Fairmount Court *</b>	<b>\$12,493.04</b>	◆	<b>\$4,164.35</b>	<b>\$8,328.69</b>
<b>Fairmount Manor</b>	\$100.23	◆	\$33.41	\$66.82
Fern Rock	\$42,167.00		\$14,055.67	\$28,111.33
Marchwood	\$4,241.14		\$1,413.71	\$2,827.43
Marshall Square	\$18,313.41		\$6,104.47	\$12,208.94
Oak Lane	\$4,315.08		\$1,438.36	\$2,876.72
Simon Garden	\$403,808.58		\$134,602.86	\$269,205.72
<b>Total</b>	<b>\$584,805.78</b>		<b>\$194,935.26</b>	<b>\$389,870.52</b>

\* Fairmount Court is listed subject to PGW's Exceptions as explained the notes in Appendix D.

◆ The total of \$6,923 in the table on pages 76-77 is incorrect. The correct total is \$12,593.27.

## Table of Calculations (ID at 73 to 82), EXCLUDING Vacated Liens

Complainant	18% Interest		6% Statutory Interest <sup>3</sup>	12% Difference <sup>4</sup>
Colonial Garden	\$66,229.30		\$22,076.43	\$44,152.87
Elrea Garden	\$2,943.00		\$981.00	\$1,962.00
<b>Fairmount Court *</b>	<b>\$675.04</b>		<b>\$225.01</b>	<b>\$450.03</b>
<b>Fairmount Manor</b>	\$100.23		\$33.41	\$66.82
Fern Rock	\$6,338.00		\$2,112.67	\$4,225.33
Marchwood	\$4,241.14		\$1,413.71	\$2,827.43
Marshall Square	\$18,313.41		\$6,104.47	\$12,208.94
Oak Lane	\$2,319.08		\$773.03	\$1,546.05
Simon Garden	\$324,463.58		\$108,154.53	\$216,309.05
<b>Total</b>	<b>\$425,622.78</b>		<b>\$141,874.26</b>	<b>\$283,748.52</b>

\* Fairmount Court is listed subject to PGW's Exceptions as explained the notes in Appendix D.

<sup>1</sup> Calculated by multiplying 18% Interest by one-third (1/3).

<sup>2</sup> Calculated by multiplying 18% Interest by two-thirds (2/3).

<sup>3</sup> Calculated by multiplying 18% Interest by one-third (1/3).

<sup>4</sup> Calculated by multiplying 18% Interest by two-thirds (2/3).

**Allocation Between Fairmount Court and Fairmount Manor**

PGW Exhibits BLC-5 and BLC-16 and SBG Exhibit CEH-3 show the following allocation of liens (Nos. 133 to 162) as between Fairmount Court and Fairmont Mannor:

<b>Fairmount Court *</b>	<b>Fairmount Manor</b>
Lien No. 133-139, 142-162	Lien No. 140-141

**\* Fairmount Court is listed subject to PGW’s Exceptions as explained the notes in Appendix D.**

**Liens Considered As Part Of SBG’s 2012 Complaints**

PGW’s Exhibits BLC-5 and BLC-16 show the liens that were considered as part of SBG’s prior hearing exhibits. Those designations were not denied by SBG.

**Elrae Garden** (Table, ID at 73)

The liens reviewed in Elrae Garden’s 2012 Complaints covered the period until April 23, 2014 (not until October 23, 2012). The total amount of lien interest (at 18%) for the liens until April 23, 2024 corresponds with the amount of lien interest (at 18%) calculated by the Commission in its September 2018 Order, as shown in Appendix B. The total does correspond if the Commission only considered liens until October 23, 2012, so FOF 28 and 76 are wrong.

Number		Lien Date		Lien Status		1.50%	
87	...	6/4/2013	...	<b>Vacated</b>	...	<b>\$39.00</b>	←
88	...	7/11/2013	...	Satisfied	...	\$24.81	←
89	...	7/11/2013	...	Satisfied	...	\$33.30	←
90	...	10/8/2013	...	Satisfied	...	\$198.70	←
91	...	10/8/2013	...	Satisfied	...	\$315.41	←
92	...	2/4/2014	...	Satisfied	...	\$81.71	←
93	...	2/4/2014	...	Satisfied	...	\$82.96	←
94	...	4/23/2014	...	Satisfied	...	\$1,073.72	←
95	...	4/23/2014	...	Satisfied	...	\$1,132.27	←

← Each of these liens were litigated as part of the 2012 Complaints, since it is SBG’s Hearing Exhibits.<sup>5</sup> PGW St. 1-R at 12-13; PGW Exhibit BLC-5.

The final evidentiary hearing on the 2012 Complaints was held on February 12, 2015.<sup>6</sup>

<sup>5</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756094.pdf> (Pages 1 to 4)

<sup>6</sup> Initial Decision of Administrative Law Judge (ALJ) Eranda Vero, dated October 21, 2015 and issued November 23, 2015 ,at 10, 13 <https://www.puc.pa.gov/pcdocs/1396456.docx>

**Fern Rock**

Table, ID at 74-75

The liens reviewed in Fern Rock’s 2012 Complaints covered the period until July 21, 2012. The total amount of lien interest (at 18%) for the liens until July 21, 2012 corresponds with the amount of lien interest (at 18%) calculated by the Commission in its October 2018 Order, as shown in Appendix C. This means that FOF 38 and 72 are correct.

Number		Lien Date		Lien Status		1.50%	
35	...	7/21/2012 <sup>7</sup>	...	Vacated	...	\$959	← This lien was litigated as part of the 2012 Complaints, since it is SBG’s Hearing Exhibits. <sup>8</sup> PGW St. 1-R at 12-13; PGW Exhibit BLC-5.
36	...	7/11/2013	...	Satisfied	...	\$253.91	◇
37	...	7/11/2013	...	Satisfied	...	\$214.73	◇
38	...	7/11/2013	...	Satisfied	...	\$355.09	◇
39	...	7/23/2014	...	Satisfied	...	\$5,374.17	◇
40	...	7/23/2014	...	Satisfied	...	\$159.62	◇
41	...	7/23/2014	...	Vacated	...	\$34,870	◇
42	...	7/23/2014	...	Closed Acct	...	--	◇
The final evidentiary hearing on the 2012 Complaints was held on March 25, 2015 <sup>9</sup>							

**Fairmount Manor**

Table, ID at 76-77

The liens reviewed in Fairmount Manor’s 2012 Complaints covered the period until August 1, 2014 (not until October 22, 2012). The total amount of lien interest (at 18%) for the liens until August 1, 2014 corresponds with the amount of lien interest (at 18%) calculated by the Commission in its September 2018 Order, as shown in Appendix C. The total does correspond if the Commission only considered liens until October 22, 2012, so FOF 28 and 80 are wrong.

Number		Lien Date		Lien Status		1.50%	
140	...	7/11/2023	...	Satisfied	...	\$49.42	← Each of these liens
141	...	7/11/2023	...	Satisfied	...	\$50.81	← were litigated as part of the 2012 Complaints, since it is SBG’s Hearing Exhibits. <sup>10</sup>

<sup>7</sup> This date is incorrectly shown in the Fern Rock Table, Table, ID at 74-75. The date is July 21, not July 31.

<sup>8</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756074.pdf> (Pages 168 to 170)

<sup>9</sup> Initial Decision of Administrative Law Judge (ALJ) Eranda Vero, dated January 13, 2016 and issued February 4, 2016, at 5, 7; <https://www.puc.pa.gov/pcdocs/1412759.docx>

<sup>10</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756094.pdf> (Pages 7 to 11)

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PGW St. 1-R at 12-13;  
PGW Exhibit BLC-5.

The final evidentiary hearing on the 2012 Complaints was held on February 12, 2015.<sup>11</sup>

**Fairmount Court \*** Table, ID at 76-77

The liens reviewed in Fairmount Manor’s 2012 Complaints covered the period until August 1, 2014 (not until October 22, 2012). The total amount of lien interest (at 18%) for the liens until August 1, 2014 corresponds with the amount of lien interest (at 18%) calculated by the Commission in its September 2018 Order, as shown in Appendix C. The total does correspond if the Commission only considered liens until October 22, 2012, so FOF 28 and 80 are wrong.

Number		Lien Date		Lien Status		1.50%
133	...	7/11/2013		Satisfied	...	\$39.30
134	...	7/11/2013		Satisfied	...	\$42.99
135	...	7/11/2013		Satisfied	...	\$45.05
136	...	7/11/2013		Vacated	...	\$44.24
137	...	7/11/2013		Vacated	...	\$44.82
138	...	7/11/2013		Vacated	...	\$65.84
139	...	7/11/2013	...	Vacated	...	\$83.98
142	...	7/11/2013	...	Satisfied	...	\$49.42
143	...	7/17/2023	...	Satisfied	...	\$50.81
144	...	10/8/2013	...	Satisfied	...	\$47.96
145	...	4/5/2014	...	Satisfied	...	\$65.50
146	...	4/7/2014	...	Satisfied	...	\$110.15
147	...	4/23/2014	...	[Unknown]	...	\$41.79
148	...	4/23/2014	...	[Unknown]	...	\$43.42
149	...	7/23/2014	...	Closed Acct	...	--
150	...	7/23/2014	...	Closed Acct	...	--
151	...	7/23/2014	...	Vacated	...	\$2,546.00

← This lien was litigated as part of the 2012 Complaints, since it is SBG’s Hearing Exhibits.<sup>12</sup> PGW St. 1-R at 12-13; PGW Exhibit BLC-5.

◇ Each of these liens should have been litigated as part of the 2012 Complaints, since they were filed before the final evidentiary hearing.

<sup>11</sup> Initial Decision of Administrative Law Judge (ALJ) Eranda Vero, dated October 21, 2015 and issued November 23, 2015 ,at 10, 13 <https://www.puc.pa.gov/pcdocs/1396456.docx>

<sup>12</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756094.pdf> (Pages 7 to 11)

152	...	7/23/2014	...	Closed Acct	...	--	◇
153	...	7/23/2014	...	Closed Acct	...	--	◇
154	...	7/23/2014	...	Closed Acct	...	--	◇
155	...	8/1/2014	...	[Unknown]	...	--	◇
156	...	9/9/2014	...	Vacated	...	\$1,905.00	◇
157	...	9/9/2014	...	Vacated	...	\$2,207.00	◇
158	...	9/9/2014	...	Vacated	...	\$523.00	◇
The final evidentiary hearing on the 2012 Complaints was held on February 12, 2015. <sup>13</sup>							
159	...	6/5/2015	...	Vacated	...	\$831.00	
160	...	8/4/2015	...	Vacated	...	\$3,347.00	
161	...	3/24/2016	...	Vacated	...	\$416.00	
162	...	4/19/2016	...	Vacated	...	\$43.00	

**\* Fairmount Court is listed subject to PGW’s Exceptions as explained the notes in Appendix D.**

**Oak Lane**                      Table, ID at 79

The liens reviewed in Oak Lane’s 2012 Complaints covered the period until August 29, 2012 (not until August 19, 2012). The total amount of lien interest (at 18%) for the liens until August 29, 2012 corresponds with the amount of lien interest (at 18%) calculated by the Commission in its October 2018 Order, as shown in Appendix C. The total does correspond if the Commission only considered liens until August 19, 2012, so FOF 38 and 68 are wrong.

Number		Lien Date		Lien Status		1.50%
21	...	8/29/2012	...	Satisfied	...	\$226.38
22	...	2/13/2013	...	Satisfied	...	\$284.97
23	...	4/23/2013	...	Satisfied	...	\$1,288.64
24	...	6/18/2013	...	Vacated	...	\$1,004.00
25	...	6/29/2013	...	Satisfied	...	\$380.19
26	...	7/17/2013	...	Satisfied	...	\$138.90
27	...	10/19/2013	...	Vacated	...	\$544.00
28	...	12/30/2013	...	Vacated	...	\$144.00

← This lien was litigated as part of the 2012 Complaints, since it is SBG’s Hearing Exhibits.<sup>14</sup> PGW St. 1-R at 12-13; PGW Exhibit BLC-5.

◇ Each of these liens should have been litigated as part of the 2012 Complaints, since they were filed before the final evidentiary hearing.

<sup>13</sup> Initial Decision of Administrative Law Judge (ALJ) Eranda Vero, dated October 21, 2015 and issued November 23, 2015 ,at 10, 13 <https://www.puc.pa.gov/pcdocs/1396456.docx>

<sup>14</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756074.pdf> (Pages 174 to 175)

29	...	3/22/2014	...	Vacated	...	\$304.00	◇
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The final evidentiary hearing on the 2012 Complaints was held on March 25, 2015<sup>15</sup>

**Marchwood** Table, ID at 80

The liens reviewed in Marchwood’s 2012 Complaints covered the period until July 23, 2014 (not until November 2, 2012). The total amount of lien interest (at 18%) for the liens until July 23, 2014 corresponds with the amount of lien interest (at 18%) calculated by the Commission in its October 2018 Order, as shown in Appendix C. The total does correspond if the Commission only considered liens until November 2, 2012, so FOF 38 and 64 are wrong.

Number		Lien Date		Lien Status		1.50%
26	...	6/17/2023	...	Satisfied	...	\$6.82
27	...	6/29/2013	...	Satisfied	...	\$1,811.51
28	...	6/29/2013	...	Satisfied	...	\$64.05
29	...	6/29/2013	...	Satisfied	...	\$48.55
30	...	7/19/2013	...	Satisfied	...	\$3.31
31	...	7/23/2014	...	Satisfied	...	\$2,141.26
32	...	7/23/2014	...	Satisfied	...	\$78.62
33	...	7/23/2014	...	Satisfied	...	\$87.02

← Each of these liens were litigated as part of the 2012 Complaints, since it is SBG’s Hearing Exhibits.<sup>16</sup> PGW St. 1-R at 12-13; PGW Exhibit BLC-5.

The final evidentiary hearing on the 2012 Complaints was held on March 25, 2015<sup>17</sup>

**Marshal Square** Table, ID at 81-82

The liens reviewed in Marshall Square’s 2012 Complaints covered the period until July 23, 2014 (not until October 22, 2012). The total amount of lien interest (at 18%) for the liens until July 23, 2014 corresponds with the amount of lien interest (at 18%) calculated by the Commission in its September 2018 Order, as shown in Appendix C. The total does correspond if the Commission only considered liens until October 22, 2012, so FOF 28 and 84 are wrong.

Number		Lien Date		Lien Status		1.50%
11	...	7/11/2013	...	Satisfied	...	\$307.55
12	...	7/11/2013	...	Satisfied	...	\$447.96
13	...	10/7/2013	...	Satisfied	...	\$267.59
14	...	4/7/2013	...	Satisfied	...	\$163.12

← Each of these liens were litigated as part of the 2012 Complaints, since it is SBG’s Hearing Exhibits.<sup>18</sup> PGW St.

<sup>15</sup> Initial Decision of Administrative Law Judge (ALJ) Eranda Vero, dated January 13, 2016 and issued February 4, 2016, at 5, 7; <https://www.puc.pa.gov/pcdocs/1412759.docx>

<sup>16</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756074.pdf> (Pages 171 to 172) (incomplete)

<sup>17</sup> Initial Decision of Administrative Law Judge (ALJ) Eranda Vero, dated January 13, 2016 and issued February 4, 2016, at 5, 7; <https://www.puc.pa.gov/pcdocs/1412759.docx>

<sup>18</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756094.pdf> (Pages 16 to 17)

15	...	7/23/2014	...	Satisfied	...	\$579.44	← 1-R at 12-13; PGW Exhibit
16	...	7/23/2014	...	Satisfied	...	\$16,547.75	← BLC-5.
The final evidentiary hearing on the 2012 Complaints was held on Feb 12, 2015 <sup>19</sup>							

[End Appendix A]

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<sup>19</sup> Initial Decision of Administrative Law Judge (ALJ) Eranda Vero, dated October 21, 2015 and issued November 23, 2015 ,at 10, 13; <https://www.puc.pa.gov/pdocs/1396456.docx>

### Status of SBG's 2012 PUC Complaints

Eight complaints were filed by landlords and by SBG Management Services, Inc. Those complaints are divided into 3 groups:

<b>2012 PUC Complaints: (Group 1)</b>	<b>2012 PUC Complaints: (Group 2)</b>	<b>2012 PUC Complaints: (Group 3)</b>
Colonial Garden, C-2012-2304183	Elrea Garden, C-2012-2304167	Marchwood, C-2012-2308454
Simon Garden, C-2012-2304324	Fairmount Manor, C-2012-2304215	Oak Lane, C-2012-2308462
	Marshall Square, C-2012-2304303	Fern Rock, C-2012-2308465

Those complaints were filed on

May 11, 2012 <sup>1</sup>	May 11, 2012 <sup>2</sup>	June 6, 2012 <sup>3</sup>
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Amended complaints were filed on:

December 10, 2012 <sup>4</sup>	December 10, 2012 <sup>5</sup>	December 10, 2012 <sup>6</sup>
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The final evidentiary hearing held on:

Aug 30, 2013	Feb 12, 2015 <sup>7</sup>	March 25, 2015 <sup>8</sup>
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All issues prior to the final evidentiary hearing were or should have been litigated under the preclusion doctrines (*res judicata*<sup>9</sup> and collateral estoppel).

<sup>1</sup> See Daily Actions at <https://www.puc.pa.gov/docket/C-2012-2304183>

<sup>2</sup> See Daily Actions at <https://www.puc.pa.gov/docket/C-2012-2304167>

<sup>3</sup> See Daily Actions at <https://www.puc.pa.gov/docket/C-2012-2308454>

<sup>4</sup> See Daily Actions at <https://www.puc.pa.gov/docket/C-2012-2304183>

<sup>5</sup> See Daily Actions at <https://www.puc.pa.gov/docket/C-2012-2304167>

<sup>6</sup> See Daily Actions at <https://www.puc.pa.gov/docket/C-2012-2308454>

<sup>7</sup> Initial Decision of Administrative Law Judge (ALJ) Eranda Vero, dated October 21, 2015 and issued November 23, 2015, at 10, 13; <https://www.puc.pa.gov/pcdocs/1396456.docx>

<sup>8</sup> Initial Decision of Administrative Law Judge (ALJ) Eranda Vero, dated January 13, 2016 and issued February 4, 2016, at 5, 7; <https://www.puc.pa.gov/pcdocs/1412759.docx>

<sup>9</sup> *Res judicata* is raised when a party thinks that a particular claim was already, or could have been, litigated and therefore, should not be litigated again.

SBG argued that it should have paid 6% interest on amounts subject to docketed liens, not 18%.<sup>10</sup>

SBG submits hearing exhibits stating claims for:	SBG submits hearing exhibits stating claims for:	SBG submits hearing exhibits stating claims for:
Colonial Garden: <sup>11</sup>  16 Liens from July 9, 2009 to May 23, 2012  18% Interest: \$94,626.23 12% Difference: \$65,957.73  Simon Garden: <sup>14</sup>  34 Liens from Jan 22, 2010 to July 10, 2012  18% Interest: \$471,351.38 12% Difference: \$329,768.91	Elrea Garden: <sup>12</sup>  95 Liens from Dec 7, 2007 to April 23, 2014  18% Interest: \$65,269.40 12% Difference: \$46,205.56  Fairmont Manor: <sup>15</sup>  155 Liens from Dec 7, 2007 to August 1, 2014  18% Interest: \$159,566.09 12% Difference: \$112,691.36  Marshall Square: <sup>17</sup>  16 Liens From Feb 12, 2010 to July 23, 2014  18% Interest: \$95,899.03 12% Difference: \$67,167.50	Marchwood: <sup>13</sup>  25 Liens from June 7, 2010 to Nov 2, 2012  18% Interest: \$35,915.42 12% Difference: \$24,708.23  Oak Lane: <sup>16</sup>  21 Liens from Jan 12, 2010 to Aug 29, 2012  18% Interest: \$8,379.72 12% Difference: \$4,419.35  Fern Rock: <sup>18</sup>  35 Liens from Feb 1, 2010 to July 21, 2012  18% Interest: \$113,406.71 12% Difference: \$81,616.73

The ALJ directs removal of 18% interest on amounts subject to the docketed liens because the PUC lacks jurisdiction to determine the correct interest rate.

<sup>10</sup> “During her testimony at the initial hearings, Ms. Treadwell challenged the application of the 18% annual or 1.5% monthly late payment charges that PGW applies to outstanding balances on which PGW has filed a lien. Tr. 206-207. Ms. Treadwell testified that because the lien is a judgement it should accumulate the legal rate of interest of 6% annual as opposed to the PGW’s tariffed rate of 18% annual. Id.

<sup>11</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756116.pdf> (Page 18)

<sup>12</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756094.pdf> (Pages 1 to 4)

<sup>13</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756074.pdf> (Pages 171 to 172) (incomplete)

<sup>14</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756116.pdf> (Pages 19 to 20)

<sup>15</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756094.pdf> (Pages 7 to 11)

<sup>16</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756074.pdf> (Pages 174 to 175)

<sup>17</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756094.pdf> (Pages 16 to 17)

<sup>18</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756074.pdf> (Pages 168 to 170)

<b>ALJ Initial Decision<sup>19</sup></b> (Sep 17, 2015)	<b>ALJ Initial Decision<sup>20</sup></b> (Oct 21, 2015)	<b>ALJ Initial Decision<sup>21</sup></b> (Jan 13, 2016)
Colonial Garden:  <i>Ordering Paragraph 5:</i> \$94,626.23	Elrae Garden:  <i>Ordering Paragraph 18:</i> \$58,655.68	Marchwood:  <i>Ordering Paragraph 7:</i> \$35,915.42
Simon Garden:  <i>Ordering Paragraph 6:</i> \$471,351.38	Fairmount Manor:  <i>Ordering Paragraph 19:</i> \$157,238.79	Oak Lane:  <i>Ordering Paragraph 8:</i> \$8,379.72
	Marshall Square  <i>Ordering Paragraph 20:</i> \$94,557.67	Fern Rock:  <i>Ordering Paragraph 6:</i> \$113,403.71

All of the liens shown on SBG’s hearing exhibits were litigated. The amounts removed by the ALJ correspond to the late payment charge (of 18%) calculated (by SBG, with changes by the Administrative Law Judge) for all of perfected liens on SBG’s hearing exhibits. SBG St. 1-R at 12-13.

The PUC directed removal of the 18% interest on amounts subject to the docketed liens because the PUC lacks jurisdiction to determine the correct interest rate.

The PUC says recovery must proceed through the Courts.

<b>PUC December 2016 Order<sup>22</sup></b>	<b>PUC September 2018 Order<sup>25</sup></b>	<b>PUC October 2018 Order<sup>26</sup></b>
<b>Reconsideration denied in May 2018<sup>23</sup> and in August 2018<sup>24</sup></b>		

<sup>19</sup> Initial Decision of Administrative Law Judge (ALJ) Eranda Vero, dated August 21, 2015 and issued September 17, 2015, <https://www.puc.pa.gov/pcdocs/1382333.docx>

<sup>20</sup> Initial Decision of Administrative Law Judge (ALJ) Eranda Vero, dated October 21, 2015 and issued November 23, 2015, <https://www.puc.pa.gov/pcdocs/1396456.docx>

<sup>21</sup> Initial Decision of Administrative Law Judge (ALJ) Eranda Vero, dated January 13, 2016 and issued February 4, 2016, <https://www.puc.pa.gov/pcdocs/1412759.docx>

<sup>22</sup> Opinion and Order of the Commission issued December 8, 2016 (“December 2016 Order”), <https://www.puc.pa.gov/pcdocs/1491938.docx>

<sup>23</sup> Opinion and Order of the Commission issued May 18, 2018, <https://www.puc.pa.gov/pcdocs/1567452.docx>

<sup>24</sup> Opinion and Order of the Commission issued August 23, 2018, <https://www.puc.pa.gov/pcdocs/1582761.docx>

<sup>25</sup> Opinion and Order of the Commission issued September 20, 2018 (“September 2018 Order”), <https://www.puc.pa.gov/pcdocs/1586418.docx>

<sup>26</sup> Opinion and Order of the Commission issued October 4, 2018 (“October 2018 Order”) <https://www.puc.pa.gov/pcdocs/1588477.docx>

Colonial Garden: <i>Ordering Paragraph 6:</i> \$94,626.23	Elrae Garden: <i>Ordering Paragraph 19:</i> \$58,655.68	Marchwood: <i>Ordering Paragraph 8:</i> \$35,915.42
Simon Garden: <i>Ordering Paragraph 7:</i> \$471,351.38	Fairmount Manor: <i>Ordering Paragraph 20:</i> \$157,238.79	Oak Lane: <i>Ordering Paragraph 9:</i> \$8,379.72
	Marshall Square <i>Ordering Paragraph 21:</i> \$94,557.67	Fern Rock: <i>Ordering Paragraph 7:</i> \$113,403.71

<b>PUC Final Order is reversed by Commonwealth Court:</b> <b>(Dec 9, 2019); PGW I<sup>27</sup></b>	<b>PUC Final Order is reversed by Commonwealth Court</b> <b>(Dec 9, 2019); Unpublished<sup>28</sup></b>	<b>PUC Final Order is reversed by Commonwealth Court</b> <b>(Dec 9, 2019); Unpublished<sup>29</sup></b>
<b>Appealed to PA Supreme Court, 14 EAP 2020</b>	<b>No appeal to PA Supreme Court</b> <b>The Commonwealth Court's 2019 Opinion is final.</b>	<b>No appeal to PA Supreme Court</b> <b>The Commonwealth Court's 2019 Opinion is final.</b>
<b>PA Supreme Court reverses and remands to Commonwealth Court:</b> <b>PGW II<sup>30</sup></b>		
<b>Commonwealth Court remands to PUC: PGW III<sup>31</sup></b> for calculation of lien interest		
<b>PUC Remand Proceedings</b> for Colonial Garden, C-2012-2304183 and Simon Garden, C-2012-2304324 are consolidated with 2015 PUC Complaints		

[End Appendix B]

<sup>27</sup> 222 A.3d 1218; 2019 Pa. Commw. LEXIS 1081; 2019 WL 6690588 (Pa.Cmwlt. Dec 9 2019)

<sup>28</sup> 221 A.3d 765 (Table), 2019 Pa. Commw. Unpub. LEXIS 664, 2019 WL 6698105 (Pa.Cmwlt. Dec 9, 2019)

<sup>29</sup> 221 A.3d 765 (Table), 2019 Pa. Commw. Unpub. LEXIS 666 , 2019 WL 6698103 (Pa.Cmwlt. Dec 9, 2019)

<sup>30</sup> 249 A.3d 963 (Pa. 2021), 2021 Pa. LEXIS 1878, Rehearing granted by, in part, Rehearing denied by, in part, Remanded, 256 A.3d 1092 (Table) , 2021 Pa. LEXIS 2905, 2021 WL 2697432 (Pa., June 15, 2021)

<sup>31</sup> 2022 Pa. Commw. Unpub. LEXIS 92, 2022 WL 793332 (Pa.Cmwlt. Mar. 16, 2022)

**Duplicative Claims for Lien Interest**

PGW Exhibit BLC-5 separates the lien litigated in the 2012 PUC Complaints and identifies the additional liens raised by the 2015 PUC Complaints.

	2012 PUC Complaints	2015 PUC Complaints
<b>SBG Claims are based on</b>		
	SBG’s Hearing Exhibits	SBG Exhibit CEH-3
<b>For the following liens</b>		
Colonial Garden <sup>1</sup>	16 Liens Liens from July 9, 2009 to May 23, 2012	16 Liens Liens from July 9, 2009 to May 23, 2012
Simon Garden <sup>2</sup>	34 Liens Liens from Jan 22, 2010 to July 10, 2012	34 Liens Liens from Jan 22, 2010 to July 10, 2012
Elrea Garden <sup>3</sup>	95 Liens Liens from Dec 7, 2007 to April 23, 2014	95 Liens Liens from Dec 7, 2007 to April 23, 2014
Fairmount Manor <sup>4</sup>	155 Liens Liens from Dec 7, 2007 to August 1, 2014	155 Liens Liens from Dec 7, 2007 to August 1, 2014
Marshall Square <sup>5</sup>	16 Liens Liens from Feb 12, 2010 to July 23, 2014	16 Liens Liens from Feb 12, 2010 to July 23, 2014
Marchwood <sup>6</sup>	25 Liens Liens from June 7, 2010 to Nov 2, 2012	25 Liens Liens from June 7, 2010 to Nov 2, 2012
Oak Lane <sup>7</sup>	21 Liens Liens from Jan 12, 2010 to Aug 29, 2012	21 Liens Liens from Jan 12, 2010 to Aug 29, 2012
Fern Rock <sup>8</sup>	35 Liens Liens from Feb 1, 2010 to July 21, 2012	35 Liens Liens from Feb 1, 2010 to July 21, 2012
		<b>As well as the following 42 liens</b>
Colonial Garden		6 Liens Liens from May 24, 2012 to July 23, 2014
Simon Garden		6 Liens Liens from July 11, 2012 to July 23, 2014
Elrea Garden		0 Liens
Fairmount Manor		7 Liens Liens from Aug 2, 2014 to April 19, 2016
Marshall Square		0 Liens
Marchwood		8 Liens Liens from Nov 3, 2012 to July 23, 2014

<sup>1</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756116.pdf> (Page 18)

<sup>2</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756116.pdf> (Pages 19 to 20)

<sup>3</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756094.pdf> (Pages 1 to 4)

<sup>4</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756094.pdf> (Pages 7 to 11)

<sup>5</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756094.pdf> (Pages 16 to 17)

<sup>6</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756074.pdf> (Pages 171 to 172) (incomplete)

<sup>7</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756074.pdf> (Pages 174 to 175)

<sup>8</sup> SBG Hearing Exhibits on Liens, <https://www.puc.pa.gov/pcdocs/1756074.pdf> (Pages 168 to 170)

Oak Lane		8 Liens Liens from Aug 30, 2012 to Mar 22, 2014
Fern Rock		7 Liens Liens from July 22, 2012 to July 23, 2014
	<b>For a total of 397 liens</b>	<b>For a total of 439 liens</b>

[End Appendix C]

**Credits for Partial Payments  
Table of Calculations (ID at 47-48)**

<b>Complainant</b>	<b>Credit Due</b>
Colonial Garden	\$2,720.08
Elrea Garden	\$780.36
<b><i>Fairmount Court *</i></b>	<b><i>\$434.08</i></b> *
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><i>\$59,679.29</i></b>

*Updated total, subject to the footnote in this Appendix*

\* The inclusion of Fairmount Court assumes that the PGW Exception No. 4 is denied. That Exception provides that the ID mproperty recommends that Fairmount Court be joined as an indispensable party (complainant) to Fairmount Manor’s compliant at Docket No. C-2015-2486664. In addition, as discussed in PGW Exception No. 6, the credit owed by PGW to Fairmount Court is already part of the record. The table should be amended, if PGW Exception No. 4 is denied, the table should be amended to specify the credit owed by PGW to Fairmount Court shown in the record.

[End Appendix D]