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August 26, 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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Replies to 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/lww

Enclosure

cc: Hon. Eranda Vero w/enc.
pmcneal@pa.gov
Office of Special Assistants (ra-osa@pa.gov)
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this date I served a copy of Philadelphia Gas Works' Replies to 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 26, 2024

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PHILADELPHIA GAS WORKS' REPLIES TO EXCEPTIONS

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. PGW’S REPLIES TO SBG’S EXCEPTIONS	2
A. CALCULATION OF THE LIEN INTEREST RATE DIFFERENCE	2
1. REPLIES TO SBG EXCEPTION NO. 1 – THE ID PROPERLY CONCLUDED THAT THE THREE-YEAR LIMITATION PERIOD IS APPLICABLE TO SBG’S CLAIMS OF OVERPAYMENTS OF INTEREST LIENS/JUDGMENTS	2
2. REPLIES TO SBG EXCEPTION NO. 4 - THE ID PROPERLY DETERMINED THAT CERTAIN LIEN DIFFERENCE CLAIMS ARE NOT BEFORE THE COMMISSION BECAUSE THEY WERE NOT APPEALED BY SBG TO THE PENNSYLVANIA SUPREME COURT (PGW II) AND REMANDED BY THE COMMONWEALTH COURT (PGW III)	6
3. REPLIES TO SBG EXCEPTION NO. 3 – THE COMMISSION SHOULD NOT RESTATE THE AMOUNTS PREVIOUSLY AWARDED TO SBG FOR THE LIEN DIFFERENCE IN THE 2012 COMPLAINTS	10
4. REPLIES TO SBG EXCEPTION NO. 2 – SHOULD THE COMMISSION GO BEYOND THE SCOPE OF THE REMAND IN PGW III, THE USE OF CREDITS IS REASONABLE, UNDER THESE CIRCUMSTANCES, TO “REFUND” THE OVERPAYMENTS OF NON-JURISDICTIONAL INTEREST MADE BY SBG	12
III. CONCLUSION	14

Philadelphia Gas Works (“PGW” or “Company”) files these Replies to the Exceptions of SBG¹ to the Initial Decision on Remand (“ID”) of Administrative Law Judge (“ALJ”) Eranda Vero issued on July 26, 2024.

I. INTRODUCTION

Each of SBG’s four Exceptions are focused on just one of the two core issues addressed by the Initial Decision: SBG’s recovery of the 12% difference between the 18% interest that was paid and the 6% interest that should have been paid on liens/judgments (in accordance with the Pennsylvania Supreme Court Decision in *PGW II*). SBG did not raise any exceptions regarding the second core issue: the partial payment credits owed to SBG based on PGW’s prior method of applying partial payments.

None of SBG’s Exceptions should be granted by this Commission because, as discussed in greater detail herein, they are not supported by the record, by the decisions of the appellate courts in *PGW II* and *PGW III*, and/or by other precedent.

¹ The terms “Complainants” or “SBG” — as well as other terms — are defined in PGW’s Exceptions at 1, fn 1 to 4. Capitalized terms and case citations not defined herein are defined/provided in PGW’s Exceptions.

II. PGW'S REPLIES TO SBG'S EXCEPTIONS

A. CALCULATION OF THE LIEN INTEREST RATE DIFFERENCE

1. REPLIES TO SBG EXCEPTION NO. 1 – THE ID PROPERLY CONCLUDED THAT THE THREE-YEAR LIMITATION PERIOD IS APPLICABLE TO SBG'S CLAIMS OF OVERPAYMENTS OF INTEREST LIENS/JUDGMENTS

For the reasons stated below and in PGW's Exceptions,² the Commission must deny SBG Exception No. 1 — which disputes the ID's application of the three-year limitations period under Section 3314.³ SBG argues that their claims of overpaying non-jurisdictional interest on non-jurisdictional liens/judgments are subject to the Commission's four-year limitations period under Section 1312(a) of the Public Utility Code.⁴ This is wrong, and SBG Exception No. 1 must be denied for the following reasons:

First, Section 1312(a) does not apply to SBG's claims for overpayment of non-jurisdictional interest.

Section 1312(a) provides:⁵

If ... the Commission shall determine that any **rate** received by a public utility [1] was unjust or unreasonable, or [2] was in violation of any regulation or order of the commission, or [3] 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

² PGW Exception No. 5.

³ ID at 83-84; COL 6; ID at 68-82. SBG's argument that the ID applied a four-year limitation period for the lien difference claims in the 2012 Complaints by Colonial Garden and Simon Garden is unavailing for the following reasons: First, the use of a four-year period is immaterial to the claims by Colonial Garden and Simon Garden. The four-year period does not change the result, since no liens were filed in the period between May 11, 2008 (four-years before filing) and May 11, 2009 (three-years before filing) for either Colonial Garden or Simon Garden. In fact, SBG Exhibit CEH-3 does not list any liens for Colonial Garden that predate July 2009 or any liens for Simon Garden that predate January 2010. Second, the use of the four-year limitation period for the remanded claims Colonial Garden and Simon Garden does not, in and of itself, mean that the four-year limitation period is appropriate for SBG's other lien difference claims. It could simply mean that the ID applied the wrong limitation period to lien difference claims in the 2012 Complaints by Colonial Garden and Simon Garden. That is what happened, but as explained (above) the use of the wrong limitation period for Colonial Garden and Simon Garden is immaterial — because it did not change the lien difference amounts for Colonial Garden and/or Simon Garden.

⁴ 66 Pa. C.S. § 1312(a).

⁵ 66 Pa. C.S. § 1312(a) (emphasis and brackets added).

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

The interest paid on liens/judgments is not a jurisdictional/tariffed “rate” received by PGW. Under the Public Utility Code, the term **rate** means “any compensation ... received for any service within this Part [i.e., the Public Utility Code].”⁶ Tariffs must show all of rates established by the Commission⁷ that may be collected or enforced by a utility.⁸ The Pennsylvania Supreme Court unambiguously held that the interest on liens/judgments is statutory.⁹ The statutory interest accrues when the liens/judgments remain unpaid by SBG.¹⁰ According to *PGW II* therefore: (i) statutory interest is not subject to a Commission-approved tariff; and (ii) the amounts due in the underlying utility accounts/bills are merged into the judgments.¹¹ It is, therefore, clear that overpayment of non-jurisdictional interest is different from overpayment of a Commission-approved tariffed rate. That point is discussed below, in pages 17-18 of PGW’s Brief in Support of its Partial Motion to Dismiss,¹² and in the pages 63-64 of the ID.¹³

⁶ 66 Pa. C.S. § 102 (definition of rate). The term “service” is broadly defined in the Public Utility Code. 66 Pa. C.S. § 102 (definition of service). “Service” includes “... any and all acts done ... by public utilities ... in the performance of their duties under [the Public Utility Code] to their patrons ...” *Id.*

⁷ 66 Pa. C.S. § 1301 (rates must be just and reasonable).

⁸ 66 Pa. C.S. §§ 1302 (Tariffs; filing and inspection), 1303 (adherence to Tariffs).

⁹ PGW is entitled to statutory interest (of 6% per annum) on the liens/judgments. *PGW II*; PGW Exceptions at 3, fn 11.

¹⁰ PGW is entitled to statutory interest (of 6% per annum) on the liens/judgments. *PGW II*; PGW Exceptions at 3, fn 11. The statutory interest accruing because **SBG has not paid a lien/judgment** before the Courts is not an act done by PGW in performing its duties under the Public Utility Code. *See* footnote 6.

¹¹ *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 Exceptions at 10, fn 44.

¹² <https://www.puc.pa.gov/pcdocs/1766023.pdf>.

¹³ The ID correctly explains that the Commission rejected the application of Section 1312 to SBG’s lien difference claims in the 2012 Complaints. ID at 63-64. There is less reason to apply Section 1312 to SBG’s lien difference claims in the 2015 Complaints because it is clear that the liens/judgments are beyond the Commission’s jurisdiction.

Moreover, refunds are available pursuant to Section 1312 only if the Commission determines that **rates** received by the utility: [1] were unjust or unreasonable; [2] were unlawful because they violated a Commission regulation or Order; or [3] were in excess of the rates contained in the utility's applicable tariff filing.¹⁴ The Commission's purview does not extend to determining if statutory interest (of 6%) is "unjust or unreasonable."¹⁵ No such regulation, order or tariff provision is cited by SBG to satisfy the remaining conditions in Section 1312. Nor could there be, since the statutory nature of the interest on liens/judgments means that there is: (a) no regulation or order of the Commission establishing interest for liens/judgments; and, (b) no tariff provision establishing the interest rate for liens/judgments.

Simply put, without a jurisdictional/tariffed rate¹⁶ being overpaid¹⁷ by a ratepayer, no recovery/relief is available under Section 1312.¹⁸ Here, the liens/judgments themselves are governed by the Municipal Claims and Tax Lien Law, 53 P.S. § 7106(b), and are not jurisdictional. In addition, under *PGW II*, any interest charged or accruing on the liens/judgments are not jurisdictional. This means that the legal rate of interest on liens/judgments is **not a rate** subject to the Commission's jurisdiction. It also means that the 12% difference overcharged is **not a rate** subject to the Commission's jurisdiction. So, while SBG did overpay non-

¹⁴ *National Fuel Gas Distribution Corporation v. PUC*, 464 A.2d 546, 564 (Pa.Cmwlth. 1983).

¹⁵ To be clear, the PUC has the jurisdiction to calculate the amount of SBG payments at 18% that should have been at 6% because Commonwealth Court ordered that calculation of those amounts. See PGW Exception Nos. 1 and 2.

¹⁶ SBG implies that a "rate" exists because the 18% late-payment charge was applied to the non-jurisdictional liens/judgments. That implication is wrong. PGW's now-disproven belief (that interest on liens/judgments was jurisdictional) is not enough to actually confer jurisdiction upon the Commission over the accrual of interest on a non-jurisdictional lien/judgment. See PGW Exceptions at 2, fn 6.

¹⁷ See footnote 61.

¹⁸ If the non-jurisdictional interest is somehow determined to be a rate, nothing shows that SBG paid the non-jurisdictional interest for vacated liens. On its face, Section 1312 requires that the rate be received by the utility. 66 Pa.C.S. § 1312(a). To be received, the rate must have been paid by the ratepayer. PGW did not dispute payments for satisfied liens. However, PGW did dispute payments for 90 vacated liens. PGW Exceptions at 11-13. The record does not show any payments for those 90 vacated liens, so the record does not support providing any relief as to those 90 vacated liens.

jurisdictional interest on liens/judgments (in some circumstances),¹⁹ it cannot be said that SBG overpaid a Commission approved tariff **rate** so as to justify recovery/relief under Section 1312.

Second, recovery/refunds of overpayments of non-jurisdictional interest as damages on non-jurisdictional liens/judgments is within the jurisdiction of the Courts, not the Commission. This point is discussed above and in PGW's Exceptions.²⁰

Third, SBG's demand for a longer, four-year limitation period is stated without acknowledging that using such a time period would result in SBG double recovering on the same claims as part of SBG's 2012 Complaints. The existence of re-litigation and overlapping claims is apparent on the record. SBG's 2015 Complaints were filed in May 2015. Three years before May 2015 goes back to May 2012. That date is well before the 2013/2015 evidentiary hearings on SBG's 2012 Complaints.²¹ Appendix B to PGW's Exceptions shows that applying the three-year limitation period would relitigate and duplicate the claims that were, or should have been, brought as part of SBG's 2012 Complaints.²² This would result in a double-recovery on the same lien difference claims. The overlap, re-litigation, duplication and double-recovery **would increase** if the Commission uses the four-year limitation period in Section 1312, as opposed to the three-year limitation period under Section 3314.

PGW argued that using a limitation period — without any regard for the re-litigation/double-recovery of the same claims — conflicts with Commission precedent and the Commonwealth Court's 2019 decisions.²³ Adopting PGW's argument means that, whether a three-year or four-year limitations period is applied, as discussed in PGW Exception No. 5, there

¹⁹ See footnotes 18 and 61.

²⁰ PGW Exceptions at 9-11.

²¹ PGW Exceptions at Appendix B.

²² PGW Exception No. 5; PGW Exceptions at Appendix B.

²³ Commission precedent provides that SBG cannot relitigate or duplicate claims as part of SBG's 2015 Complaints that were, or should have been, litigated as part of SBG's 2012 Complaints. See PGW Exception No. 5.

should be no re-litigation, overlapping, duplication or double-recovery for lien difference claims that were, or should have been, litigated as part of SBG’s 2012 Complaints. Simply stated, this means that claims within the limitations period can be properly barred from consideration – if those claims would result in re-litigation, overlapping, duplication or double-recovery.

2. REPLIES TO SBG EXCEPTION NO. 4 - THE ID PROPERLY DETERMINED THAT CERTAIN LIEN DIFFERENCE CLAIMS ARE NOT BEFORE THE COMMISSION BECAUSE THEY WERE NOT APPEALED BY SBG TO THE PENNSYLVANIA SUPREME COURT (PGW II) AND REMANDED BY THE COMMONWEALTH COURT (PGW III).

In SBG Exception No. 4, they argue that all of lien difference claims made in all eight of the 2012 Complaints should somehow be considered in this remand proceeding.

The Commission must deny SBG Exception No. 4, since it is obvious that the 2012 Complaints by Elrae Garden, Fairmont Manor, Fern Rock, Marchwood, Marshall Square and Oak Lane: (a) were not “active matters” before the Commission after the Commission’s final orders in 2018; (b) were not “pending” before the Courts or the Commission after the Commonwealth Court’s reversal in 2019; and (c) are properly foreclosed from further consideration in this proceeding and otherwise before the Commission.

By way of background, the lien interest difference claims raised by SBG’s 2012 Complaints were fully litigated before the Commission, as explained in the ID.²⁴ The Commission entered three final orders on the eight 2012 complaints.²⁵ PGW appealed each of

²⁴ ID at 1-12.

²⁵ ID at 1-12. PGW Exceptions at 2, fn 5. *See* PGW Exceptions at Appendix B: (1) 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”); (2) Docket Nos. C-2012-2304167, et al., Opinion and Order of the Commission issued September 20, 2018 (“September 2018 Order”); (3) Docket Nos. C-2012-2308454, et al., Opinion and Order of the Commission issued October 4, 2018 (“October 2018 Order”).

those Commission Orders.²⁶ In 2019, the Commonwealth Court agreed with PGW and reversed the Commission’s decisions.²⁷ That was done in three decisions,²⁸ one for each of the Commission’s Orders.

Only one of the Commonwealth Court’s 2019 decisions was appealed by SBG to the Pennsylvania Supreme Court (which made its decision, *PGW II*, in April 2021) and then remanded by the Commonwealth Court (*PGW III*) in 2022.²⁹ The remand was specific to determining the correct refund (i.e., the 12% difference) for the 2012 Complaints by Colonial Garden and Simon Garden.³⁰

The other two 2019 Commonwealth Court decisions³¹ were not appealed by SBG to the Supreme Court.³² Those 2019 Commonwealth Court decisions — for the lien difference claims in 2012 Complaints by Elrae Garden, Fairmont Manor, Fern Rock, Marchwood, Marshall Square and Oak Lane — remain **reversed**. They were not considered in *PGW II*, and were not remanded by *PGW III*.

²⁶ ID at 1-12; PGW Exceptions at 2-3.

²⁷ ID at 1-12; PGW Exceptions at 3, fn 9. (1) *PGW v. PUC*, 222 A.3d 1218; 2019 Pa. Commw. LEXIS 1081; 2019 WL 6690588 (Pa.Cmwlth. Dec 9 2019) (“*PGW I*”), reversing, *inter alia*, the PUC’s August 2018 Order; (2) *PGW v. PUC*, 221 A.3d 765 (Table), 2019 Pa. Commw. Unpub. LEXIS 664, 2019 WL 6698105 (Pa.Cmwlth. Dec 9, 2019), reversing the PUC’s September 2018 Order; (3) *PGW v. PUC*, 221 A.3d 765 (Table), 2019 Pa. Commw. Unpub. LEXIS 666, 2019 WL 6698103 (Pa.Cmwlth. Dec 9, 2019), reversing the PUC’s October 2018 Order.

²⁸ ID at 1-12. 66-48. PGW Exceptions at 3, fn 9.

²⁹ ID at 1-12. 66-48. PGW Exceptions at 3; PGW Exceptions at Appendix B.

³⁰ *PGW III* at *13; *PGW III* at Ordering Paragraph 2; PGW Exceptions at 8.

³¹ Specifically, (2) *PGW v. PUC*, 221 A.3d 765 (Table), 2019 Pa. Commw. Unpub. LEXIS 664, 2019 WL 6698105 (Pa.Cmwlth. Dec 9, 2019), reversing the PUC’s September 2018 Order; (3) *PGW v. PUC*, 221 A.3d 765 (Table), 2019 Pa. Commw. Unpub. LEXIS 666, 2019 WL 6698103 (Pa.Cmwlth. Dec 9, 2019), reversing the PUC’s October 2018 Order.

³² Precedent does not allow a single appeal in a “lead case” to operate as an undisclosed appeal from other cases. The general rule is that when orders are entered on more than one docket, separate notices of appeal must be filed for each case (docket). This was explained on pages 14-15 of PGW’s Brief in Support of its Partial Motion to Dismiss, <https://www.puc.pa.gov/pdocs/1766023.pdf>.

In both the ID and the December 2022 Order on the Partial Motion to Dismiss,³³ the ALJ made the factually and legally correct determination regarding the lien difference claims in the 2012 Complaints. First, the ID determined that the lien difference claims in the 2012 Complaints by Colonial Garden and Simon Garden would be considered as part of this proceeding.³⁴ Second, the ID determined that the lien difference claims in the 2012 Complaints by Elrae Garden, Fairmont Manor, Fern Rock, Marchwood, Marshall Square and Oak Lane were foreclosed from further consideration by the Commission as part of this proceeding.³⁵

As noted, SBG excepts (in SBG Exception No. 4) to the ID excluding “some of the 2012 Complaints” from consideration in this proceeding.³⁶ SBG argues that all of lien difference claims made in all eight of the 2012 Complaints were somehow “pending” on April 29, 2021 and should be considered in this proceeding.³⁷ SBG’s argument defies logic and common sense and is factually and legally wrong. For a matter to be “pending,” there must be action required by the Commission or the Courts. That is not case for the lien difference claims in the 2012 Complaints by Elrae Garden, Fairmont Manor, Fern Rock, Marchwood, Marshall Square and Oak Lane.³⁸ Those claims were not “pending” in any forum whatsoever on April 29, 2021 because they had already been the subject of evidentiary hearings (in 2015) before the Commission³⁹ and the subject of a final Commission Order in (in 2018)⁴⁰ and a final Commonwealth Court Order (in

³³ The ALJ’s Order dated December 19, 2022 on PGW’s Partial Motion To Dismiss is available at: <https://www.puc.pa.gov/pcdocs/1768069.docx>.

³⁴ ID at 66-48. ALJ’s Order dated December 19, 2022 at 11-17.

³⁵ ID at 66-48. ALJ’s Order dated December 19, 2022 at 11-17.

³⁶ SBG Exceptions at 7-11.

³⁷ SBG Exceptions at 7-11.

³⁸ In contrast, the lien difference claims in the 2012 Complaints by Colonial Garden and Simon Garden were pending in April 2021, as explicitly noted by Ordering Paragraph 2 in *PGW III*. See footnote 34.

³⁹ PGW Exceptions at Appendix B.

⁴⁰ See footnote 29.

2019).⁴¹ It follows that, on April 29, 2021, nothing was “active” or “pending” for those lien difference claims by Elrae Garden, Fairmont Manor, Fern Rock, Marchwood, Marshall Square and Oak Lane.

In sum, the Commission must deny SBG Exception No. 4, since it is obvious that the 2012 Complaints by Elrae Garden, Fairmont Manor, Fern Rock, Marchwood, Marshall Square and Oak Lane were not “active matters” “pending” before the Courts or the Commission and are properly foreclosed from further consideration in this proceeding.

To support their position that the 2012 Complaints were still “active matters,” SBG states that the 2012 Complaints were stayed pending PGW’s appeals.⁴² That is legally incorrect. While the 2015 Complaints were stayed pending the outcome of PGW’s appeals of the 2012 Complaints,⁴³ there was no stay on the 2012 Complaints (which were fully litigated) pending PGW’s appeals of the 2012 Complaints. In fact, PGW’s request to stay the complaint order was rejected by the PUC.⁴⁴ SBG also claims that PGW conceded that all of the 2012 Complaints were active and/or pending.⁴⁵ That is also untrue. In October 2022, PGW filed a motion to dismiss⁴⁶ SBG’s position arguing that six of the 2012 Complaints were reversed and could not be

⁴¹ See footnote 31. The Commonwealth Court’s (unpublished) 2019 Orders became final, since no appeal was filed therefrom within thirty days. 42 Pa.C.S. § 5505. See *Miller Elec. Co. v. DeWeese*, 907 A.2d 1051, 1054 (Pa. 2006) (“A trial court’s jurisdiction generally extends for thirty days after the entry of a final order”); *Upper Moreland Twp. Sch. Dist. v. Crisafi*, 86 A.3d 950, 954 (Pa.Cmwlth. 2014) (quoting *Miller Elec. Co.* and denying the petition to set aside under Lien Law where trial court lost jurisdiction two months earlier).

⁴² SBG Exceptions at 5, 6.

⁴³ See SBG Letter to ALJ Vero dated March 3, 2020, <https://www.puc.pa.gov/pdocs/1657834.pdf>.

⁴⁴ PGW’s Petition for Stay was denied by the Commission. See Docket Nos. C-2012-2304183 and C-2012-2304324, PUC Opinion and Order entered March 19, 2019, <https://www.puc.pa.gov/pdocs/1612400.docx>. It defies credulity for SBG to argue that stay was in place for the 2012 Complaints, since SBG expressly opposed that Petition for Stay (<https://www.puc.pa.gov/pdocs/1593953.pdf>).

⁴⁵ SBG Exceptions at 6. The July 2021 status report referenced by SBG, SBG Exception at 6-7, explained that the ALJ should refrain from taking action until the Commonwealth Court’s review (from the remand by the Supreme Court) was complete. <https://www.puc.pa.gov/pdocs/1710697.pdf>. That review resulted in *PGW III*. That being said, it is clear that PGW’s beliefs or statements cannot confer jurisdiction upon the Commission. See PGW Exceptions at 2, fn 6.

⁴⁶ <https://www.puc.pa.gov/pdocs/1761321.pdf>. See also PGW’s Brief in Support of its Motion to Dismiss, <https://www.puc.pa.gov/pdocs/1766023.pdf>. SBG’s statements that PGW raised the “foreclosure” issue for the

acted upon by the Commission. The ALJ agreed with PGW in December 2022.⁴⁷ That holding was repeated in the ID.⁴⁸

At bottom, SBG Exception No. 4 is a thinly-veiled attempt by SBG to avoid the consequences of SBG’s blatant and unexplained failure to appeal all of the Commonwealth Court’s 2019 decisions. The consequence of this failure is that lien difference claims in 2012 Complaints by Elrae Garden, Fairmont Manor, Fern Rock, Marchwood, Marshall Square and Oak Lane were reversed (in 2019) — well before the holdings of *PGW II* (in 2021) and *PGW III* (in 2022) — and are properly foreclosed from further consideration in this proceeding. SBG’s argument holds no water and should be seen for what it is – a flimsy attempt without legal basis to avoid the consequences of SBG’s legally binding failure/in-action to appeal two of the three Commonwealth Court’s 2019 decisions under the Pennsylvania Appellate Rules and Procedures.

3. REPLIES TO SBG EXCEPTION NO. 3 – THE COMMISSION SHOULD NOT RESTATE THE AMOUNTS PREVIOUSLY AWARDED TO SBG FOR THE LIEN DIFFERENCE IN THE 2012 COMPLAINTS

In SBG Exception No. 3, SBG argues, without citation to the record or any legal authority, that the Commission should modify the ID so as to refund the “amounts previously awarded” by the Commission to SBG for the lien difference in the 2012 Complaints **together with** the amounts being awarded by the Commission to SBG for the lien difference in the 2015 Complaints. SBG states that this should be done because they believed both amounts would be included in the evidentiary record on remand.⁴⁹

“first time” on November 8th are wrong, since PGW Motion was filed (in October 2022) a mere six months after the issuance of *PGW III*.

⁴⁷ See Order dated December 19, 2022 on PGW’s Partial Motion To Dismiss, at Ordering Paragraph 2, <https://www.puc.pa.gov/pdocs/1768069.docx>.

⁴⁸ ID at 64-68.

⁴⁹ SBG Exceptions at 5. SBG’s belief was soundly rejected by the ALJ in December 2022, see ALJ’s Order dated December 19, 2022 at 11-17 — as discussed (above) in Section II.A.2 (PGW’s Replies to SBG Exception No. 4). That being said, neither SBG’s beliefs nor PGW’s beliefs confer jurisdiction upon the Commission to act. See PGW Exceptions at 2, fn 6.

PGW urges the Commission to deny SBG Exception No. 3 for the two reasons that follow:

First, none of the lien difference “amounts previously awarded” by the Commission to SBG are enforceable, since the “amounts previously awarded to” SBG in the Commission’s 2018 decisions were either remanded or reversed by the appellate courts — as explained in Section II.A.2, above, and PGW’s Exceptions.

The lien difference amounts in the 2012 Complaints for Colonial Garden and Simon Garden are not enforceable because the holdings of *PGW II* and *PGW III* require the **calculation** of correct amount of any refund (12% difference). It defies reason to claim that the prior amounts of refunds determined by the Commission’s original order for Colonial Garden and Simon Garden, are still in place, since the Commonwealth Court directed (in *PGW III*) the Commission to receive evidence and **calculate** the correct amount of the refunds (12% difference) for Colonial Garden and Simon Garden.⁵⁰

Further, as noted in Section II.A.2, above, the lien difference amounts in 2012 Complaints by Elrae Garden, Fairmont Manor, Fern Rock, Marchwood, Marshall Square and Oak Lane are not enforceable because the Commission’s 2018 decisions were **reversed** by the Commonwealth Court’s 2019 decisions. Those decisions were not appealed and are final, *supra*. SBG cannot seek this Commission to enforce an order that has been reversed on appeal.

Second, the combination of amounts from prior complaint proceedings (removal of 18%) with current complaints proceedings (12% lien difference) would result in overlapping and

⁵⁰ PGW Exception No. 1. *PGW III* is unquestionably unambiguous in directing **calculations**. *Id.* See also Section II.A.4 (PGW’s Replies to SBG Exception No. 2), below. That is different from directing the reinstatement of the Commission’s order for Colonial Garden and Simon Garden, which was not done by the Commonwealth Court. The directed calculations should be the 12% difference, as opposed to the removal of all 18% of the late payment charge.

double counting of claims⁵¹ for the same liens/judgments. This would create a windfall for SBG to the detriment of PGW's other ratepayers who are PGW's only source of revenue/cash.⁵²

Therefore, the Commission must not restate the amounts previously awarded to SBG and deny SBG Exception No. 3.

4. REPLIES TO SBG EXCEPTION NO. 2 – SHOULD THE COMMISSION GO BEYOND THE SCOPE OF THE REMAND IN PGW III, THE USE OF CREDITS IS REASONABLE, UNDER THESE CIRCUMSTANCES, TO “REFUND” THE OVERPAYMENTS OF NON-JURISDICTIONAL INTEREST MADE BY SBG.

If the Commission decides that it has jurisdiction to do more than calculate that the 12% difference as an aid for the Courts as directed in *PGW III* (which it should not), the use of credits is reasonable for the amounts of non-jurisdictional interest that SBG overpaid (i.e., the 12% difference).⁵³ PGW explained that credits would be applied to SBG's active accounts to offset past, current and future gas charges.⁵⁴ PGW further explained that PGW would pay money owed by check or wire transfer — if the gas accounts were closed.⁵⁵

SBG excepts (in SBG Exception No. 2) to the ID's direction that credits be issued to SBG⁵⁶ and argues that they are entitled to cash for the amounts of non-jurisdictional interest that they overpaid.⁵⁷

⁵¹ The Commission precludes claims that a re-litigating prior claims and/or are duplicative of prior claims. ID at 63-64, 68-82; PGW Exception No. 5.

⁵² Refunds/cash would come from PGW's existing ratepayers as PGW is a cash-basis utility. See PGW Exceptions at 7, fn 31.

⁵³ PGW believes that Commission may act *in aid of the Courts – not in place of them* in a civil action involving a docketed lien/judgment. See PGW Exception No. 2.

⁵⁴ PGW St. 1 at 12; PGW St. 1-SR at 40. Accounts were closed when properties were sold. See PGW St. 1-SR; SBG St. 2.

⁵⁵ PGW St. 1 at 12; PGW St. 1-SR at 40. Accounts were closed when properties were sold. See PGW St. 1-SR; SBG St. 2.

⁵⁶ ID at 87-88; Ordering Paragraphs 14 to 21.

⁵⁷ Before the Commission, prior payment would be required for refunds by cash payment. See 66 Pa.C.S. § 1312(a); See footnote 18. SBG's Exceptions speak in terms of being "overcharged" See SBG Exceptions at 4, 5, 8.

Overcharges would result in the removal of the excess charge leaving the lawful charge. SBG's Exceptions do not speak in terms of speak in terms of having overpaid. It would be a windfall to SBG for SBG to receive cash payments for amounts that SBG never paid in the first instance.

The Commission must deny SBG Exception No. 2 for the two reasons discussed below:

First, a refund “award” of cash by the Commission is the equivalent of awarding monetary damages, which the Commission cannot do,⁵⁸ because the Commission would be **improperly acting in place of the Courts**⁵⁹ by making an award of damages on non-jurisdictional interest that accrued on the liens/judgments that are within the Court’s jurisdiction. The holdings of *PGW II* and *PGW III* directed the receipt of evidence and **calculations** of the correct amount of any refund (i.e., the 12% difference).⁶⁰ Those holdings do not direct the Commission to provide a full and complete remedy for the 12% difference, since those holdings recognize that the neither the liens/judgments themselves nor the 6% interest thereon are within the Commission’s jurisdiction.⁶¹

Second, it would be a windfall to SBG to the detriment of PGW’s other ratepayers⁶² for SBG to receive cash for all (18%) of the non-jurisdictional interest charged by PGW, since PGW is entitled to charge and retain 6% interest on non-jurisdictional liens/judgments. Stated otherwise, SBG is not entitled to a refund of all of 18% interest. SBG is only entitled to a refund of the 12% difference between the 18% interest that was paid and the 6% interest that should

⁵⁸ See, e.g., *Elkin; Feingold*. PGW Exceptions at 10, fn 43.

⁵⁹ As discussed in footnote 64, SBG’s argument that this proceeding is complementary of SBG’s civil action is premised on the Commission performing calculations and the recovery/award being made by the Courts. See SBG Answer dated November 2, 2022, which is available at: <https://www.puc.pa.gov/pcdocs/1763406.pdf>. That premise is negated if the Commission is acting in place of the Courts by making an award of damages on the liens/judgments.

⁶⁰ *PGW III*; PGW Exception No. 1. See also ALJ’s Order dated December 19, 2022 at 8-11; ALJ’s Order dated December 19, 2022 at 9 (*PGW III* “clearly and unambiguously remanded the case to the Commission for the calculation of the refund.” (emphasis added). In fact, before the ALJ, SBG framed the issue of the “refund” as a mere calculation of the amount of overcharges. ALJ’s Order dated December 19, 2022 at 4; SBG Answer dated November 2, 2022 at 5 (“Recouping the overcharged amount is an effort that will require enforcement in the Court of Common Pleas”) at 11 (“The PUC is tasked with determining the rate issue and calculating how much PGW overcharged SBG. The PUC cannot order or compel relief for SBG with respect to the municipal lien amounts that reflect PGW’s overcharges and that were docketed by PGW. That is the bailiwick of the Court of Common Pleas.”) (emphasis added). SBG’s Answer is available at: <https://www.puc.pa.gov/pcdocs/1763406.pdf>.

⁶¹ See Section II.A.1 (PGW’s Replies to SBG Exception No. 1), above.

⁶² See footnote 56.

have been paid – which must be pursued before the courts as non-jurisdictional to this Commission. Also, SBG is not entitled to receive cash amounts of non-jurisdictional interest that that SBG *never paid in the first instance*. The record does not show that SBG paid any non-jurisdictional interest for 90 vacated liens.⁶³ Yet, the ID awards all (18%) of the non-jurisdictional interest on those vacated liens.

Therefore, the Commission must deny SBG Exception No. 2.

III. CONCLUSION

For all the foregoing reasons, PGW respectfully requests that the Commission reject the Exceptions filed by SBG; grant PGW’s Exceptions; and adopt the Initial Decision on Remand with the modifications described in PGW’s Exceptions.

Respectfully submitted,

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⁶³ See footnotes 18 and 61.