

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held January 23, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair  
Kathryn L. Zerfuss  
John F. Coleman, Jr.  
Ralph V. Yanora

SBG Management Services, Inc., *et al.*

v.

Philadelphia Gas Works

C-2012-2304183  
C-2012-2304324  
C-2015-2486618  
C-2015-2486642  
C-2015-2486648  
C-2015-2486655  
C-2015-2486664  
C-2015-2486670  
C-2015-2486674  
C-2015-2486677

**OPINION AND ORDER**

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## **BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by SBG Management Services, Inc., *et al.* (collectively, Complainants or SBG)<sup>1</sup> on August 15, 2024, to the Initial Decision on Remand (I.D.R.) of Administrative Law Judge (ALJ) Eranda Vero, issued on July 26, 2024, in the above-captioned proceeding. On August 26, 2024, Philadelphia Gas Works (PGW or Respondent) filed Replies to the Exceptions of the Complainants. Also before the Commission are the Exceptions filed by PGW on August 15, 2024. No replies to PGW's Exceptions were filed. For the reasons stated below, we will deny the Exceptions of SBG, grant, in part, and deny, in part, the Exceptions of PGW, and adopt the Initial Decision on Remand, as modified, consistent with this Opinion and Order.

### **I. Background**

This proceeding involving billing disputes over PGW's accrual of late fees on unpaid gas bills has a long history before the Commission. It stems from PGW's practice of imposing its regulatory tariff rates on municipal liens arising from delinquent customer accounts after electing to record those liens.

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<sup>1</sup> The pending Formal Complaints (Complaints) are as follows: SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. PGW (SBG/Colonial Garden) at Docket No. C-2012-2304183 and SBG Management Services, Inc./Simon Garden Realty Co., L.P. (SBG/Simon Garden) at Docket No. C-2012-2304183, which were consolidated with the Complaints of SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. PGW at Docket No. C-2015-2486618, SBG Management Services, Inc./Simon Garden Realty Co., L.P. v. PGW at Docket No. C-2015-2486642, 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; SBG Management Services, Inc./Marshall Square Realty Co., L.P. v. PGW, Docket No. C-2015-2486618.

PGW is owned by the City of Philadelphia (City) and functions as a public utility providing natural gas to customers in the City. PGW is subject to the authority of the Commission. 66 Pa.C.S. §§ 102, 2122. Under Section 56.22 of our Regulations, 52 Pa. Code § 56.22, and PGW's approved tariff, PGW has the authority to charge a late fee of 1.5% per month on all overdue gas bills, not to exceed 18% simple interest per year. Additionally, the City, as PGW's owner, has statutory rights under the Municipal Claims and Tax Lien Law (Lien Act) to apply municipal liens as further security for the collection of overdue gas bill payments. 53 P.S. § 7106.

Pursuant to the Lien Act, a municipal lien arises automatically, by operation of law, as soon as a charge for service is assessed. That is, after PGW provides gas service to a customer, the amount charged immediately becomes a lien on the property serviced. After payment of the charge, the lien is extinguished. However, if the charge is not paid and the account becomes delinquent, the lien remains. Under the Lien Act, liens may be docketed with the prothonotary of the Court of Common Pleas. *See Phila. Gas Works v. Pa. PUC*, 249 A.3d 963, 965 (Pa. 2021) (*PGW II*) (citing 53 P.S. § 7106(b)).<sup>2</sup>

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<sup>2</sup> With the exception of those claims which have been assigned, any municipal claim, municipal lien, tax, tax claim or tax lien, including interest, penalty and costs, imposed by a city of the first or second class or by a county of the second class or by a municipality therein, shall be a judgment only against the said property when the lien has been docketed by the prothonotary. The docketing of the lien shall be given the effect of a judgment against the said property only with respect to which the claim is filed as a lien. The prothonotary shall maintain an in rem index, the form and location of which shall be within the prothonotary's discretion. All tax claims, water rents or rates, lighting rates, power rates and sewer rates heretofore filed are hereby ratified, confirmed and made valid subsisting liens as of the date of their original filing.

53 P.S. § 7106(b).

SBG is a real estate management company which operates residential buildings owned by the individual Complainants in this consolidated proceeding. PGW supplies gas service to the Complainants. In their billing disputes with PGW, the Complainants challenged PGW's assessment of interest on overdue accounts. Historically, PGW assessed its tariff rate on delinquent accounts, regardless of whether it docketed the lien on the account with the prothonotary until the delinquent bill was paid in full. *PGW II*, 249 A.3d at 965.

In their various Complaints filed with the Commission, the Complainants alleged that PGW improperly charged its tariff rate against amounts contained in docketed municipal liens. The Complainants argued, in part, that because a docketed lien acts as a judgment against the subject property, only the statutory post-judgment rate of 6% per year could apply to those amounts. In its decision issued in 2016, the Commission agreed with the Complainants' arguments pertaining to the application of its tariff and directed that PGW refund all improperly billed amounts. *See SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Phila. Gas Works, et al.*, Docket Nos. C-2012-2304183 and C-2012-2304324 (Opinion and Order entered December 8, 2016) (*December 2016 Order*).

Equating a docketed lien with a final judgment, the Commission determined that once a lien is docketed, the Commission lacks jurisdiction to determine the amount of a debt owed. As a result of losing jurisdiction over the amount owed on those accounts, the Commission reasoned that PGW's regulatory tariff rate could no longer apply and only the statutory post-judgment interest rate could be assessed on those accounts. For relief, the Commission ordered PGW to refund years of late fees and to

reorganize its billing operations within ninety days, and also imposed a financial penalty for improperly imposing the tariff fees. *December 2016 Order* at 109.<sup>3</sup>

PGW filed a petition for review with the Commonwealth Court which reversed the Commission's determination in the *December 2016 Order* and related orders. *Phila. Gas Works v. Pa. PUC*, 222 A.3d 1218 (Pa. Cmwlth. 2019) (*PGW I*). The Commonwealth Court held that, as a matter of first impression, PGW had the authority to continue to impose late fees on delinquent accounts after the City had docketed its municipal liens relating to those accounts. Thus, the Commonwealth Court concluded that the Commission erred in ordering refunds of the late fees, imposing financial penalties, and directing PGW to revise its billing system in relation to the late fees and docketed liens. *PGW I*, 222 A.3d at 1224.

SBG/Colonial Garden and SBG/Simon Garden appealed the decision, and the Pennsylvania Supreme Court reversed the Commonwealth Court. *PGW II*, 249 A.3d at 965. The Pennsylvania Supreme Court held that a lien docketed by the City constitutes a judgment pursuant to the Lien Act such that interest on any past due amounts secured by the docketed lien will accrue at the 6% per year legal rate of interest applicable to judgments, rather than the 18% per year tariff rate. *Id.* at 974.

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<sup>3</sup> As set forth in the History of the Proceeding, below, PGW filed various petitions for post-order relief which were denied. Thereafter, PGW filed a petition for review of the *December 2016 Order* with the Commonwealth Court which was limited to the Complaints of SBG/Colonial Garden at Docket No. C-2012-2304183 and SBG/Simon Garden at Docket No. C-2012-2304324. The Commission's Orders pertaining to the other Complaints and the subsequent petitions for review by PGW are summarized in the History of the Proceeding.

Following the ruling, the matter was remanded to the Commonwealth Court for consideration of the remaining issues. There, the Commonwealth Court, in an unreported opinion, concluded that:

(1) our Supreme Court's decision in *PGW II* applies retroactively only as to parties to this litigation and to other proceedings pending at the time the *PGW II* decision was issued in April 2021; (2) as agreed by the parties, a remand is necessary for presentation of evidence and a determination by the [Commission] concerning the correct amounts of any refunds owed by [PGW]; (3) based on due process principles, the Commission acted arbitrarily and capriciously and abused its discretion by imposing a \$25,000 monetary sanction against PGW for past violations of the statute governing municipal liens, where the Commission's decision applying the statute fundamentally altered longstanding practice regarding PGW's docketing of municipal liens arising from unpaid gas bills; (4) the Commission's mandated changes to PGW's payment crediting system were not arbitrary or capricious and did not constitute an abuse of discretion; (5) PGW's challenge to the timetable for compliance with the Commission's order regarding billing changes has become moot due to the passage of time, and PGW is not entitled to a further extension of time to comply with the Commission's order; and (6) the Commission did not err in imposing a \$2,000 penalty against PGW for violating the Commission's regulation governing the application of partial payments.

*Phila. Gas Works v. Pa. PUC*, 276 A.3d 1219 (Table), 2022 WL 793332 (Pa. Cmwlth. 2022) (*PGW III*).

This matter is now before us on remand to determine the correct amounts of any refunds owed by PGW to the Complainants relating to late fees charged on docketed municipal liens for unpaid gas charges. On remand, we must also rule on the application of partial payments, as determined in our *December 2016 Order* and addressed in the Initial Decision on Remand. See I.D.R. at 37-49.

## II. History of Proceeding

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

On May 11, 2012, SBG filed separate Complaints on behalf of Colonial Garden and Simon Garden. Both Complaints alleged improper billing on the part of PGW and raised quality of service issues.

On June 4, 2012, PGW filed Answers and New Matters to each of these Complaints, along with Preliminary Objections challenging the Commission's jurisdiction over municipal liens and requesting that impertinent matters be stricken in both Complaints. An Order, dated July 6, 2012, consolidated the two Complaints at Docket Nos. C-2012-2304183 and C-2012-2304324.

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

On December 10, 2012, SBG filed Amended Complaints at Docket Nos. C-2012-2304183, and C-2012-2304324. On January 2, 2013, PGW filed Answers to each of SBG's Amended Complaints denying the material allegations of each Complaint. The evidentiary hearings were held on August 29-30, 2013. Further hearings were held on January 29-30, 2015.

On September 17, 2015, the Commission issued ALJ Vero's Initial Decision (*September 2015 Initial Decision*) which: (1) dismissed the high billing disputes raised in these consolidated Complaints due to the running of the statute of

limitations on the claims that predated May 11, 2009, and the Complainants' failure to carry the burden of proof on the remainder; (2) sustained the consolidated Complaints regarding their challenge of the Respondent's application of partial payments as it pertains to late payment charges; and (3) sustained the consolidated Complaints regarding their challenge of the Respondent's application of tariff sanctioned late payment charges to outstanding balances which have been the subject of municipal liens. The *September 2015 Initial Decision* also imposed a civil penalty in the amount of \$27,000 against PGW for the violation of 66 Pa.C.S. § 1501 and 52 Pa. Code § 56.22 (\$2,000 regarding PGW's application of partial payments out of order so that the most recent late payment charges are paid before the gas charges due for prior service, and \$25,000 in connection with PGW's application of its tariff and rates to lien-ed indebted amounts).

On October 7, 2015, PGW filed Exceptions to the *September 2015 Initial Decision*. In its Exceptions, PGW challenged the Commission's jurisdiction to review and rule upon the tariffed interest rate applied as late payment charges to an outstanding balance which is the subject of a municipal lien (see Exceptions 1 and 2); challenged the calculations of credit or refund of late payment charges for each Complainant (Exception 3); challenged the ruling on the order of the application of partial payments (Exception 4); and challenged the assessment of the civil penalties (Exception 5). On October 19, 2015, SBG/Colonial Garden and SBG/Simon Garden filed Replies to Exceptions.

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

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

On June 4, 2018, PGW filed a Petition for Reconsideration, Clarification and/or Rehearing, this time of the Commission's *May 2018 Order*. By Opinion and Order entered August 23, 2018 (*August 2018 Order*), the Commission denied PGW's Petition and ordered that the proceedings be marked closed.

On September 25, 2018, PGW filed a Petition to Stay the Proceedings pending the Commonwealth Court's consideration of PGW's Petition for Review filed in response to the *December 2016 Order*, the *May 2018 Order*, and the *August 2018 Order*. On March 28, 2019, the Commission entered an Opinion and Order (*March 2019 Order*) denying PGW's Petition to Stay the Proceedings and ordered PGW to comply with the Commission's prior Orders. On April 12, 2019, PGW filed a Petition for Reconsideration of the Commission's *March 2019 Order*. By Opinion and Order entered on May 9, 2019 (*May 2019 Order*), the Commission denied PGW's Petition.

As discussed above, PGW successfully challenged the Commission's determination before the Commonwealth Court. In *PGW I*, the Commonwealth Court reversed the Commission's *December 2016 Order*, the *May 2018 Order*, and the *August 2018 Order*. Thereafter, SBG, Colonial Garden, and Simon Garden successfully appealed the ruling of the Commonwealth Court in *PGW I*. In *PGW II*, the Supreme Court of Pennsylvania reversed the order of the Commonwealth Court. Additionally, on June 15, 2021, the Supreme Court granted, in part, PGW's Application for Reargument to the extent it sought that the case be remanded to the Commonwealth Court for consideration of any outstanding issues. *Phila. Gas Works v. Pa. PUC*, 256 A.3d 1092 (Pa. 2021).

On remand, as summarized above, the Commonwealth Court in *PGW III*, resolved some of the issues and remanded the remainder of the issues to the Commission. Specifically, the Commonwealth Court directed the Commission on remand to determine the correct amounts of any refunds owed by PGW to SBG, Colonial Garden, and Simon Garden relating to late fees charged on docketed municipal liens for unpaid natural gas charges prior to April 29, 2021, the decision date of *PGW II*.

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

On May 11, 2012, SBG filed three Complaints on behalf of Elrea Garden Realty Co., L.P. at Docket No. C-2012-2304167 (SBG/Elrea Garden), Fairmount Manor Realty Co., L.P., at Docket No. C-2012-2304215 (SBG/Fairmount Manor), and Marshall Square Realty Co., L.P. at Docket No. C-2012-2304303 (SBG/Marshall Square). On December 10, 2012, SBG filed Amended Complaints at the same dockets on behalf of the same Complainants.

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

Initial hearings took place on August 26-28, 2013, and further hearings convened on February 10-12, 2015. On November 23, 2015, the Commission issued ALJ Vero's Initial Decision (*November 2015 Initial Decision*), in which she sustained the consolidated Complaints for SBG/Elrea Garden, SBG/Fairmont Manor, and SBG/Marshall Square with regard to their challenge of the Respondent's application of partial payments as it pertained to late payment charges, and directed PGW to credit the Complainants' various accounts in the total amount of \$2,705.69. ALJ Vero also sustained the consolidated Complaints regarding their challenges to the Respondent's

application of tariff-sanctioned late payment charges to outstanding balances which have been the subject of municipal liens. ALJ Vero further directed PGW to refund Fairmount Manor, Elrea Garden, and Marshall Square the amounts of \$58,655.68, \$157,238.79, and \$94,557.67, respectively, plus interest at the legal rate from the date of each excessive payment.

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

On December 14, 2015, PGW filed Exceptions to the *November 2015 Initial Decision*. On January 8, 2016, the Complainants filed Replies to Exceptions. By Order entered September 20, 2018 (*September 2018 Order*), the Commission denied PGW's Exceptions and adopted the *November 2015 Initial Decision*.

PGW appealed the *September 2018 Order* to the Commonwealth Court. In an unreported Opinion, dated December 9, 2019, the Commonwealth Court reversed the Commission's *September 2018 Order* for the reasons set forth in its legal analysis in *PGW I*. See *Phila. Gas Works v. Pa. PUC*, 1405 C.D. 2018, 2019 WL 6698105 (Pa. Cmwlth. 2019) (*Commonwealth Court Opinion – SBG/Elrea Garden, et al.*). There was no further appeal of *Commonwealth Court Opinion – SBG/Elrea Garden, et al.*

**C. 2012 Complaints – SBG on behalf of Marchwood, Oak Lane and Fern Rock  
Docket Nos. C-2012-2308454, C-2012-2308462, and C-2012-2308465**

On June 6, 2012, SBG filed three Complaints on behalf of Marchwood Realty Co., L.P. at Docket No. C-2012-2308454 (SBG/Marchwood), Oak Lane Court Realty Co., L.P. at Docket No. C-2012-2308462 (SBG/Oak Lane), and Fern Rock Realty Co., L.P. at Docket No. C-2012-2308465 (SBG/Fern Rock).

On December 10, 2012, SBG filed Amended Complaints at the same dockets. On January 2, 2013, PGW filed Answers to each of SBG's Amended Complaints denying the material allegations of each Complaint.

An initial hearing was convened on March 25, 2015.

On February 4, 2016, the Commission issued ALJ Vero's Initial Decision (*February 2016 Initial Decision*). Therein, ALJ Vero granted, in part, and denied, in part, the consolidated Complaints regarding their challenges to the Respondent's application of partial payments pertaining to late payment charges. The ALJ directed PGW to recalculate the Complainants' outstanding balance for the four years from June 2008 to June 2012 pursuant to 52 Pa. Code § 56.24 and submit the calculations to the Commission's Bureau of Technical Utility Services (TUS) for verification. After verification by TUS, PGW was ordered to bill the Complainants appropriately.

The ALJ also granted the consolidated Complaints regarding the challenge to the Respondent's application of tariff-sanctioned late payment charges to outstanding balances which were the subject of municipal liens. In this regard, PGW was ordered to refund \$113,403.71 to Fern Rock, \$35,915.42 to Marchwood, and \$8,379.72 to Oak Lane, plus interest at the legal rate from the date of each excessive payment.

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

On February 24, 2016, PGW filed Exceptions to the *February 2016 Initial Decision*. On March 7, 2016, the Complainants filed Replies to Exceptions.

By Opinion and Order entered October 4, 2018 (*October 2018 Order*), the Commission granted, in part, and denied, in part, PGW's Exceptions. In part, the *October 2018 Order* directed PGW to recalculate the Complainants' outstanding balance for the four years of June 2008 to June 2012 in accordance with the provisions of 52 Pa. Code § 56.24 and to provide verification to TUS within 60 days and thereafter bill the Complainants appropriately within 30 days of the issuance of the approval of the calculations.

Lastly, in the *October 2018 Order*, the Commission adopted the *February 2016 Initial Decision* regarding the refund of the tariff-sanctioned late payment charges to outstanding balances which were the subject of municipal liens. Although no civil penalty was imposed, PGW was instructed to cease and desist from further violations of the Public Utility Code (Code) and our Regulations.

PGW appealed the *October 2018 Order* to the Commonwealth Court. In an unreported opinion dated December 9, 2019, the Commonwealth Court reversed the Commission's *October 2018 Order* for the reasons set forth in its legal analysis in *PGW I*. See *Phila. Gas Works v. Pa. PUC*, 1404 C.D. 2018, 2019 WL 6698103 (Pa. Cmwlth. 2019) (*Commonwealth Court Opinion – SBG/Marchwood, et al.*). There was no further appeal of the *Commonwealth Court Opinion – SBG/Marchwood, et al.*

#### **D. 2015 Complaints**

On May 29, 2015, SBG filed eight separate Complaints on behalf of Marshall Square, Simon Garden, Marchwood, Oak Lane, Fairmount Manor, Fern Rock, Elrea Garden, and Colonial Garden at Docket Nos. C-2015-2486618, C-2015-2486642, C-2015-2486648, C-2015-2486655, C-2015-2486664, C-2015-2486674, and C-2015-2486677, respectively (collectively, 2015 Complaints). The 2015 Complainants alleged that PGW was threatening to shut off its gas service, that there are incorrect charges in its gas bills from PGW, and that the Complainants were experiencing reliability, safety, or quality problems with their gas service.

On June 29, 2015, PGW filed Answers to each of the 2015 Complaints denying the material allegations of the Complaints and asserting New Matter alleging that the Complainants failed to pay the undisputed portion of their gas bills.

On July 15, 2015, the Complainants filed their Replies to PGW's New Matter. During the course of the proceedings, the parties acknowledged that some of the issues raised in the present Complaint are similar, if not identical, to the issues raised in other proceedings pending before the Commission at Docket Nos. C-2012-2304183, C-2012-2304215, C-2012-2304324, C-2012-2304167, C-2012-2304303, C-2012-2308454, C-2012-2308462, and C-2012-2308465. The parties requested that the 2015 Complaints be stayed pending the Commission's final determination in the eight 2012 Complaints listed above. By Orders dated July 5, 2016, the proceedings in the 2015 Complaints were stayed pending the Commission's final determination in the eight complaints docketed at Docket Nos. C-2012-2304183, C-2012-2304215, C-2012-2304324, C-2012-2304167, C-2012-2304303, C-2012-2308454, C-2012-2308462, and C-2012-2308465.

## E. 2012 Complaints on Remand and 2015 Complaints

During a subsequent prehearing conference, the parties agreed to consolidate the 2012 Complaints on Remand with the stayed 2015 Complaints in order to avoid unnecessary costs and expenses. Tr. at 947-48.

On October 14, 2022, PGW filed a Partial Motion to Dismiss (Motion to Dismiss), in which it argued that: (1) the Commission lacks subject matter jurisdiction to adjudicate the claims of the Complainants having to do with interest charged on docketed municipal liens/judgments; (2) even if it is determined that the Commission has jurisdiction to adjudicate the claims of the Complainants having to do with docketed municipal lien/judgment interest, several of the Complainants have waived their right to such consideration for the 2009-2012 period because the retroactivity of the Pennsylvania Supreme Court's opinion in *PGW II* is limited only to parties that appealed to the Supreme Court and to proceedings pending at the time *PGW II* was issued on April 28, 2021; and (3) the Complainants have filed a 2021 civil action in Philadelphia Court of Common Pleas raising issues identical to those before this Commission.

On November 2, 2022, SBG filed a Response to the Motion to Dismiss. SBG argued that: (1) the Commission has jurisdiction to determine the amounts that PGW overcharged the Complainants by improperly using the 18% tariff rate and has responsibility to make this determination pursuant to the Code; (2) the SBG parties' claims have not been foreclosed because all eight of the 2012 Complaints were pending before the Commission in April of 2021; and (3) this matter and the 2021 civil action in front of the Court of Common Pleas are not duplicative, but are complementary of each other.

On December 19, 2022, ALJ Vero issued an Order (*Motion to Dismiss Order*) which granted the Motion to Dismiss, in part, and denied it, in part. In particular,

the ALJ approved the Motion to Dismiss only to the extent that the Commonwealth Court's ruling in *PGW III* foreclosed claims related to the 18% tariff rate in the 2012 Complaints filed by Fairmont Manor (Docket No. C-2012-2304215), Elrea Garden (Docket No. C-2012-2304167), Marshall Square (Docket No. C-2012-2304303) Marchwood (Docket No. C-2012-2308454), Oak Lane (Docket No. C-2012-2308462), and Fern Rock (Docket No. C-2012-2308465).

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

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

An evidentiary hearing on remand was held as scheduled on April 25, 2023. During the hearing, the parties stipulated that all the "vacated" liens were collecting an interest rate of 18% per year (in accordance with PGW's Commission approved tariff rate for late-payment charges) between the date they were filed with the Municipal Court of Philadelphia and the date they were marked as "vacated." *See* Tr. at 1192-94.

A further evidentiary hearing on remand was held as scheduled on March 26, 2024. At the further evidentiary hearing on remand, counsel for SBG was asked to define, the scope of and relief sought in the 2015 Complaints. Tr. at 1338. Counsel for SBG narrowed down the issues raised in the 2015 Complaints to essentially a dispute of the application of partial payments and a dispute of the application of the tariffed 18% interest rate as late payment charges to outstanding debt that was the subject of a municipal lien. Tr. at 1347-49. Later, counsel for the parties clarified that they are not asking the Commission to determine the correct outstanding balance of SBG with PGW, only the credits and/or refunds due with regard to the two issues identified above. *Id.* at 1350-52.

On April 26, 2024, the record in these matters was closed upon receipt of the further hearing transcript.

By Initial Decision on Remand issued on July 26, 2024, ALJ Vero granted the consolidated 2012 Complaints on Remand and granted the 2015 Complaints on the remaining issues of improper application of partial payments and improper application of Commission-approved late payment charges on municipal liens. I.D.R. at 86. Additionally, ALJ Vero noted that PGW did not pay the \$2,000 civil penalty upheld by the Commonwealth Court in *PGW III*. Thus, the ALJ ordered the Commission's Bureau of Administrative Services to refer this matter to the Pennsylvania Office of Attorney General (OAG) for collection and appropriate action. *Id.* at 82-83.

On August 6, 2024, PGW paid the \$2,000 civil penalty upheld in *PGW III*.

Both SBG and PGW filed their respective Exceptions on August 15, 2024. On August 26, 2024, PGW filed Replies to the Complainant's Exceptions. No Replies to PGW's Exceptions were filed.

### III. Discussion

#### A. Legal Standards

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant, as the party seeking relief, must show that PGW is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by PGW. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, to rebut the evidence of the Complainant, shifts to PGW. If the evidence presented by PGW is of co-equal weight, the Complainant has not satisfied their burden of proof. The Complainant now has to provide some additional evidence to rebut that of PGW. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

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

## **B. ALJ's Initial Decision on Remand**

In the Initial Decision on Remand, the ALJ made eighty-nine (89) Findings of Fact and reached fifteen (15) Conclusions of Law. *See*, I.D.R. at 21-35, 83-85. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In the Initial Decision on Remand, the ALJ addressed two outstanding issues on the remaining Complaints: (1) the order of the application of partial payments, I.D.R. at 37-57; and (2) the late payment charges that were the subject of municipal liens, *Id.* at 57-82.

### **1. The Order of Application of Partial Payments**

As background, a “partial payment” occurs when a utility receives a payment insufficient to pay a balance due both for prior service and service billed during a current period. The issue of the application of partial payments arose in the Complaint proceedings herein due to PGW’s practice of applying partial payments so that the most recent late payment charges were paid before the gas charges due for prior service, resulting in the accumulation of interest-bearing charges. In the *December 2016 Order*, the Commission determined that PGW violated the clear and unambiguous language in our Regulation at 52 Pa. Code § 56.24 when it applied partial payments on past due bills

to address security deposits and late payment charges prior to reducing the outstanding charges for past due gas distribution service.<sup>4</sup> *December 2016 Order* at 97-98.

**a. Scope of Calculations**

In her analysis of the application of the partial payments, ALJ Vero first addressed the scope of the calculations as to the various Complaints filed in this proceeding. I.D.R. at 37-44.

Beginning with the 2012 Complaints of SBG/Simon Garden and SBG/Colonial Garden, the ALJ referenced the Commission's decision in the *December 2016 Order* upholding the determination that PGW had violated the Commission's Regulation as to partial payments. In the *December 2016 Order*, the Commission ordered PGW to credit two of the accounts of SBG/Colonial Garden.<sup>5</sup> The ALJ explained that PGW did not appeal the Commission's ruling as to partial payments in its appeal to the Commonwealth Court in *PGWI*. Thus, the ALJ concluded that the Commission's ruling on this issue remains final. The ALJ further noted that PGW had admitted to not complying with the Commission's *December 2016 Order* and to not crediting the stated amounts, together with the legal rate of interest. I.D.R. at 37 (citing PGW Post-Hearing Exhibit dated May 2, 2023).

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<sup>4</sup> Section 56.24 of our Regulations provides:

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

52 Pa. Code § 56.24

<sup>5</sup> The Commission ordered credits of \$348.40 and \$218.96 to SBG/Colonial Garden for the improper processing of partial payments. *December 2016 Order* at 110.

Next, the ALJ referenced the 2012 Complaints of SBG/Elrea Garden, SBG/Fairmount Manor, and SBG/Marshall Square. The ALJ stated that the Commission in the *September 2018 Order* found that PGW had applied partial payments in violation of the Commission's Regulation as to each of these Complainants.<sup>6</sup> However, the ALJ explained, PGW did not include the Commission's ruling on the application of partial payments in its appeal of the *September 2018 Order* to the Commonwealth Court in *Commonwealth Court Opinion – SBG/Elrea Garden, et al.* Accordingly, the ALJ concluded that the Commission's ruling on this issue remains final. The ALJ also noted that PGW admitted to not complying with the *September 2018 Order* and to not crediting the Complainants' accounts as stated. I.D.R. at 39 (citing PGW Post Hearing Exhibit dated May 2, 2023).

Moving to the 2012 Complaints of SBG/Marchwood, SBG/Oak Lane, and SBG/Fern Rock, the ALJ referenced the Commission's *October 2018 Order* which directed PGW to recalculate the Complainants' outstanding balances in accordance with 52 Pa. Code § 56.24 and to provide the calculation to TUS for verification. The *October 2018 Order* further required PGW to bill the Complainants appropriately within 30 days of approval of the recalculations. *October 2018 Order* at 20-21.

The ALJ explained that PGW did not include the Commission's ruling on the application of partial payments in PGW's appeal of the Commission's *October 2018 Order* to the Commonwealth Court in *Commonwealth Court Opinion – SBG/Marchwood, et al.* Thus, the ALJ concluded that the Commission's ruling on this issue remains final. Additionally, the ALJ acknowledged PGW's admission of not complying with the

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<sup>6</sup> Therein, the Commission ordered the crediting of the accounts of SBG/Elrea Garden in the amounts of \$126.36, \$160.96, and \$144.52; of SBG/Fairmount Manor in the amounts of \$123.20, \$128.00, \$174.48, \$85.84, \$152.32, \$274.16, \$145.12, \$103.76, \$99.28, and \$154.08; and of SBG/Marshall Square in the amounts of \$633.20 and \$77.21. *September 2018 Order* at 36-38.

*October 2018 Order* and of crediting the Complainants as directed. I.D.R. at 40 (citing PGW Post Hearing Exhibit dated May 2, 2023).

Regarding the 2012 Complaints, the ALJ noted SBG's argument that because PGW never credited the amounts as ordered, the issue of partial payments from the eight 2012 Complaints was pending as of the time of the Commonwealth Court's ruling in *PGW III*. In addition, the ALJ acknowledged PGW's inclusion of these amounts in the present consolidated matters regarding the improper calculation of partial payments. However, the ALJ stated that she disagreed with both of the parties as to this matter. I.D.R. at 40 (citing 66 Pa.C.S. § 1312(b)).<sup>7</sup>

The ALJ reasoned that PGW has failed to make the refunds ordered by the Commission in the *December 2016 Order*, the *September 2018 Order*, and the

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<sup>7</sup> **If the public utility fails to make refunds within the time for payment fixed by any final order of the commission or court, any patron entitled to any refund may sue therefor and the findings and order made by the commission shall be prima facie evidence of the facts therein stated, and that the amount awarded is justly due the plaintiff in such suit, and the defendant public utility shall not be permitted to avail itself of the defense that the service was, in fact, rendered to the plaintiff at the rate contained in its tariffs in force at the time payment was made and received, nor shall the defendant public utility be permitted to avail itself of the defense that the rate was reasonable. Any patron entitled to any refund shall be entitled to recover, in addition to the amount of refund, a penalty of 50% of the amount of such refund, together with all court costs and reasonable attorney fees. No suit may be maintained for a refund unless instituted within one year from the date of the order of the commission or court. Any number of patrons entitled to such refund may join as plaintiffs and recover their several claims in a single action, in which action the court shall render a judgment severally for each plaintiff as his interest may appear.**

66 Pa.C.S. § 1312(b) (emphasis added).

*October 2018 Order.* According to the ALJ, it is the Complainants' responsibility to take the matter up in a court of appropriate jurisdiction, pursuant to Section 1312(b) of the Code. Thus, the ALJ concluded, the calculation and refund of money in connection with PGW's improper application of partial payments for the eight 2012 Complaints is outside the scope of the present matters. *Id.* at 41.

Moving to the eight Complaints filed by SBG in 2015 on behalf of Marshall Square, Simon Garden, Marchwood, Oak Lane, Fairmount Manor, Fern Rock, Elrea Garden, and Colonial Garden, the ALJ explained that they involve not only the same parties and properties but also raise the same issues as the eight 2012 Complaints. Regarding PGW's improper application of partial payments as it pertained to the eight 2015 Complaints, the ALJ referenced her prior rulings that the review would begin on December 11, 2012. The ALJ explained that the reason for selecting the December 11, 2012 date as the beginning date for the review of the issues raised in the 2015 Complaints is the fact that each of the eight 2012 Complaints (which correspond to the 2015 Complaints) was amended on December 10, 2012, and that the proceedings in the 2012 Complaints had reviewed and ruled upon transactions up until that date. I.D.R. at 42-43.

Although Section 1312(a) of the Code, 66 Pa.C.S. § 1312(a), would allow for a refund of the excess amount charged to the Complainants in consequence of PGW's unlawful application of the partial payments, within four years prior to May 29, 2015, (which is the filing date of the 2015 Complaints), the ALJ reasoned that the review of the transactions that occurred between May 29, 2011 and December 10, 2012, would be duplicative of the review that took place during the proceedings on the 2012 Complaints before this Commission. According to the ALJ, such a review and subsequent refund would represent an improper windfall or "double dipping" on the part of the Complainants. I.D.R. at 43.

Additionally, the ALJ stated that PGW's improper application of partial payments became a part of PGW's base rate case in 2017 at Docket No. R-2017-2586783. By Opinion and Order entered on June 28, 2019, the Commission approved a settlement agreement reached between the Office of Consumer Advocate and PGW on this issue, with PGW agreeing to make the changes to its billing system in accordance with the Commission's Orders entered on the 2012 Complaints (*2019 Settlement*). The ALJ noted that the changes to PGW's billing system were completed on January 24, 2020, and that PGW presented testimony that the changes to its billing system comply with the Commission's Orders entered on the 2012 Complaints as well as the *2019 Settlement*. According to the ALJ, SBG did not present evidence to refute that testimony and it stands to reason that the end date of the partial payment review of the 2015 Complaints is January 24, 2020. I.D.R. at 43.

In summary, the ALJ determined that the calculation of refunds in connection with PGW's improper application of partial payments for the 2015 Complaints will cover the period of December 11, 2012, to January 25, 2020. *Id.* at 44.

**b. Methodology of Calculation**

In the next step of analyzing the application of partial payments, the ALJ determined the method of calculating refunds for the period of December 11, 2012, to January 25, 2020. Here, she noted the conceptual agreement between SBG and PGW on the use of the first-in-first-out (FIFO) method of accounting for recalculating the partial payments at issue. However, the Parties disagreed on the specific methodology under FIFO principles used to compare the recalculated amounts. Ultimately, the ALJ agreed with PGW that a "true-up method" of recalculating the partial payments is the correct

approach, finding it consistent with prior Commission Orders and the terms of the 2019 *Settlement*. I.D.R. at 45.<sup>8</sup>

**c. Fairmount Manor Realty Co. – Fairmount Court Realty Co.**

Next, the ALJ addressed a dispute about the applicability of relief for a legal entity that received property transferred from Fairmount Manor. I.D.R. at 46-47.

SBG provided testimony that Fairmount Manor and Fairmount Court Realty Co. L.P. (Fairmount Court) are entirely separate legal entities. According to SBG, Fairmount Manor transferred certain properties known as 700-08 N. Marshall St. and 711-19 N. 7<sup>th</sup> St. to a separate legal entity, Fairmount Court. Fairmount Manor continued to own the properties known as 650 Fairmount Ave., and 601-43 N. Marshall St. I.D.R. at 46 (citing SBG Surrebuttal Testimony of Ms. Samantha Pulley, Esq., at 4, 10). The ALJ stated that this decision was made before the 2012 Complaint by Fairmount Manor at Docket No. C-2012-2304215 was filed, and before the 2015 Complaint was filed by Fairmount Manor at Docket No. C-2015-2486664. I.D.R. at 46.

In response, PGW argued that Fairmount Court is not a party to the consolidated Complaints and has not at any time filed a separate complaint against PGW that is pending or consolidated with the Complaints of Simon Garden, Elrea Garden, Fairmount Manor, Fern Rock, Marchwood, Marshall Square, and Oak Lane. The ALJ noted PGW's contention that Fairmount Court's failure to file or join a complaint against

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<sup>8</sup> Essentially, the "true-up method" would exhaust the oldest principal gas charge and then apply payments to the oldest late payment charge before moving to the next principal gas payment. I.D.R. at 45 (citing Tr. at 1221-22). For a summary of the methodology differences advanced by the parties, see pages 44 to 45 of the Initial Decision on Remand. However, we note that the ALJ's determination of the methodology of calculation is not being directly challenged in the Exceptions.

PGW precludes the Commission from granting relief in favor of Fairmount Court. I.D.R. at 46 (citing PGW St. 1-SR).

The ALJ disagreed with PGW's argument. Here, the ALJ considered the pleadings filed in 2012 and 2015 and reasoned that SBG filed the consolidated Complaints as the managing company of the properties owned by the various realty companies involved in these Complaints: Simon Garden, Colonial Garden, Fern Rock, Marchwood, Marshall Square, Elea Garden, Oak Lane, and Fairmount Manor. The ALJ stated that for each of these realty companies, SBG listed the address of the properties they owned, as well as the gas accounts in dispute. I.D.R. at 46-47.

The ALJ explained that in the 2012 Complaint proceedings, SBG maintained that Fairmount Manor is the owner of the apartment complex located at 650 Fairmount Avenue, Philadelphia, PA 19123, 601-643 N. Marshall Street, Philadelphia, PA 19123, and 700-708 Marshall Street, Philadelphia, PA 19123 and proceeded to dispute gas charges on PGW accounts connected to those properties. The ALJ noted that, thereafter, the 2015 Complaints and the present consolidated proceedings continued the review of the claims first presented in the 2012 Complaints. I.D.R. at 47.

According to the ALJ, it was not until May 2, 2023, that SBG made, for the first time, the distinction between Fairmount Manor and Fairmount Court as part of Ms. Pulley's analysis of the Complainants' present outstanding balances with PGW. The ALJ stated that Ms. Pulley's analysis and related claim were later largely withdrawn by the Complainants. I.D.R. at 47 (citing Tr. at 1350-52).

The ALJ found PGW's argument – that the gas accounts related to properties that were transferred to Fairmount Court (700-08 N. Marshall St. and 711-19 N. 7<sup>th</sup> St.) are not part of these consolidated proceedings because SBG failed to name the correct realty company in its pleadings – to be inequitable and confusing. Accordingly,

the ALJ found that the appropriate action in this case is to join Fairmount Court as an indispensable party in the 2015 Complaint at Docket No. C-2015-2486664. I.D.R. at 47.

**d. Calculation of Refunds**

Regarding the refunds due to the Complainants for improper application of partial payments, the ALJ found PGW’s calculations, which are noted in Table 1, below, to be correct:

**Table 1: ALJ’s Summary of PGW’s Calculation of Refunds for Improper Application of Partial Payments**

<b>Complainant</b>	<b>Credit Due</b>
Colonial Garden	\$2,720.08
Elrea Garden	\$780.36
Fairmount Manor	\$11,520.28
Fern Rock	\$21,296.24
Marchwood	\$7,751.55
Marshall Square	\$7,403.98
Oak Lane	\$2,126.75
Simon Garden	\$5,645.97
<b>Total</b>	<b>\$59,245.21</b>

I.D.R. at 47-48 (citing PGW Exh. BLC-15). The ALJ explained, however, that this calculation excludes the credit due to Fairmount Court. In accordance with her discussion above, the ALJ directed PGW to also calculate the refund due to Fairmount Court and credit its accounts. I.D.R. at 48.

e. **Interest**

As to the legal rate of interest owed on the credits related to the improper application of partial payments, the ALJ cited Section 1312(a) of the Code.<sup>9</sup> The ALJ also stated that the legal rate of interest is fixed by law at six percent. I.D.R. at 48 (citing 41 P.S. § 202; and *Elec. Materials Co. v. N.E. Heat & Light Co.*, Docket No. C-00913544 (Opinion and Order entered June 28, 1994)).

The ALJ next noted PGW's recalculation of the interest owed on the refunds due to the Complainants, which is reproduced in Table 2, as follows:

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<sup>9</sup> If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was ... in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility **to refund the amount of any excess paid by any patron ... within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment....**

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

**Table 2: ALJ’s Summary of PGW’s Recalculation of the Interest Owed on the Refunds due to the Complainants**

<b>Complainant</b>	<b>Interest on Credit</b>
Colonial Garden	\$659.17
Elrea Garden	\$189.89
Fairmount Manor	\$2,791.75 <sup>10</sup>
Fern Rock	\$5,157.24
Marchwood	\$1,877.17
Marshall Square	\$1,794.23
Oak Lane	\$510.07
Simon Garden	\$1,371.03
<b>Total</b>	<b>\$14,350.43</b>

I.D.R. at 49 (citing PGW Exh. BLC-15).

The ALJ emphasized PGW’s explanation that the start date for the calculation of interest varies based on the PGW bills issued before January 14, 2020, whereas the end date for the calculation of interest is December 31, 2023 (date of preparation of PGW Exhibit BLC-15). Upon consideration, the ALJ found that the end date for the calculation of interest should be extended to the date of the entry of the Commission Order in these matters. I.D.R. at 49.

**2. Late Payment Charges on Balances Subject to Municipal Liens**

The second main issue on remand is the determination of the correct amounts of any refunds owed by PGW to the Complainants relating to late fees charged

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<sup>10</sup> The ALJ stated that this calculation considers the distinction between Fairmount Manor and Fairmount Court. I.D.R. at 49.

on docketed municipal liens for unpaid gas charges. In analyzing this issue, the ALJ addressed the following sub-issues: (1) the jurisdiction of the Commission over customer debts converted to municipal liens; (2) the applicable interest rate to be applied on late payment charges on municipal liens; (3) the statute of limitations for refunds of improperly assessed municipal liens; (4) the applicability of late payment charges on vacated vs. satisfied liens; (5) the assessment of interest on any bill adjustment credits owed to SBG by PGW; (6) the scope of the proceeding considering the foreclosed claims; and (7) the calculation of the amounts to be removed from the Complainants' accounts. I.D.R. at 49-82.

**a. Jurisdiction**

The ALJ began her analysis with an overview of the cases evaluating the Commission's jurisdiction over PGW's assessment of the 18% interest rate as late payment charges on outstanding balances docketed as municipal liens. Beginning with Commission Orders dating back to 2012, the ALJ summarized her rulings and the Commission's determinations as well as the related appellate decisions stemming from this proceeding.<sup>11</sup> In summary, the ALJ concluded that the Commission's historical position in these matters, as reinforced by the Commonwealth Court in *PGW III*, is that the Commission lacks jurisdiction to decide the correct interest rate of late payment charges applied on municipal liens. However, the ALJ determined that it is well within the authority of the Commission to order the removal of all non-Commission jurisdictional charges from the Complainants' bills. I.D.R. at 55.

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<sup>11</sup> See pages 49 to 57 of the Initial Decision on Remand for a historical overview of this jurisdictional issue.

In support, the ALJ referenced the following holding of the Commission in the *December 2016 Order*:

[O]ur conclusion that removing amounts represented by a municipal lien in applying a Commission-approved tariff based on their non-jurisdictional status before this agency accords with the long-standing policy of “recourse” pertaining to non-jurisdictional charges included in telephone utility billing statements. *See Bruce Kaczmarczyk v. Lakewood Telephone Company*, Docket No. F-00162260 (Initial Decision issued December 9, 1992) citing, *M. Dan Jones v. The Bell Telephone Company of Pennsylvania*, 1991 Pa. PUC LEXIS 181 (Order entered October 7, 1991).

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

\* \* \*

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

**authorized by a Commission-approved tariff is contrary to law.**

I.D.R. at 55-56 (citing *December 2016 Order* at 80-81 (footnote omitted) (emphasis added by ALJ)).

The ALJ also quoted from the following Commission ruling in the *September 2018 Order*:

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

I.D.R. at 56-57 (citing *September 2018 Order* at 34-35 (emphasis added by ALJ)).

Additionally, the ALJ cited to the same ruling reiterated in a subsequent Commission Order. I.D.R. at 57 (citing *October 2018 Order* at 19).

**b. Applicable Interest Rate to be Applied as Late Payment Charges on Municipal Liens**

Next, the ALJ referenced the positions of the parties who engaged in calculating the correct interest rate to be applied as a late payment charge on municipal

liens. She explained that those discussions revolved around calculating the difference between the Commission-approved late-payment tariff charges of 18% per year, and the 6% interest rate for late payments of municipal liens. I.D.R. at 57 (citing Tr. at 1097, 1345, 1365, 1367; SBG Exh. CEH-3; and PGW Exh. BLC-5).

Based on the analysis of the jurisdiction of the Commission discussed above, the ALJ determined that these calculations are irrelevant and improperly presented in these proceedings. I.D.R. at 58 (citing *September 2018 Order* at 34-35 and *October 2018 Order* at 19). Accordingly, the ALJ concluded that the only calculation properly presented before this Commission is that of the removal of all late payment charges improperly assessed on municipal liens on the basis of PGW's Commission-approved tariff. *Id.*

**c. Statute of Limitations – Period of Review**

Regarding the statute of limitations arguments, the ALJ noted SBG's position that the calculation of the refund owed to the Complainants because of PGW's improper application of a Commission-approved tariff on a municipal lien should be based on the four-year period established pursuant to 66 Pa.C.S. § 1312(a). The ALJ also acknowledged PGW's argument that because such amounts are not based on Commission jurisdictional charges, the appropriate period for calculating the amounts to be refunded should be the three-year statute of limitations under 66 Pa.C.S. § 3314.<sup>12</sup> I.D.R. at 58-59.

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<sup>12</sup> No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

66 Pa.C.S. § 3314(a)

The ALJ agreed with the arguments of PGW, citing the Commission’s guidance on the issue of statutory authority over non-jurisdictional charges by examining telecommunications and electric generation supplier (EGS) company cases. For example the ALJ explained that, in the EGS context, the Commission stated:

In *Commonwealth of Pa., et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Order entered December 18, 2014) (*IDT Order*), **we concluded that we lacked authority to direct an EGS company to refund charges for electric generation supply service pursuant to 66 Pa.C.S. § 1312**, as this provision of the Code applied to “rates” charged by “public utilities” and EGS companies were not “public utilities” under the Code, except for the limited purposes of Sections 2809 and 2810, 66 Pa.C.S. §§ 2809 and 2810. **In the *IDT Order*, we expressly acknowledged our ability to exercise general authority over EGS companies pursuant to Section 501 of the Code, 66 Pa.C.S. § 501, to direct an EGS company to adjust a bill to an EGS patron based on a finding of, *inter alia*, a violation of the Code, Commission Regulation, or other provision over which we have authority to administer.**

I.D.R. at 59-60 (citing *December 2016 Order* at 81 (emphasis added by ALJ)).

Referencing further analysis by the Commission, the ALJ emphasized the following:

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

**modify the recommendation in the Initial Decision only to the extent that our directive for PGW to issue a billing adjustment credit/refund to Complainants is made pursuant to our authority found at Section 501 of the Code, and not pursuant to Section 1312. See 66 Pa.C.S. §§ 501, 1312.**

I.D.R. at 60 (citing *December 2016 Order* at 88-89) (emphasis added by ALJ)).

The ALJ reasoned that because the billing adjustment credit to the Complainants would be made pursuant to the Commission’s authority under Section 501 of the Code,<sup>13</sup> and not pursuant to Section 1312, the general three-year statute of

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<sup>13</sup> (a) Enforcement of provisions of part. — In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.

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

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

66 Pa.C.S. § 501.

limitations under 66 Pa.C.S. § 3314 should apply to the period of review. Thus, the ALJ found that the calculation of the amount to be removed from the Complainants' accounts should begin three years prior to the filing of the Complaints. I.D.R. at 60-61.

**d. Vacated vs. Satisfied Liens**

Moving to the applicability of late payment charges on vacated vs. satisfied liens, the ALJ noted SBG's identification of 439 municipal liens filed by PGW against the Complainants dating back to December 2007. The ALJ also stated that SBG calculated the number of billing periods each municipal lien remained in the dockets of the municipal court and computed the amount it was improperly charged in late payment charges by PGW. I.D.R. at 61 (citing SBG Exh. CEH-3 and PGW Exh. BLC-5).

In summarizing PGW's arguments, the ALJ stated that PGW drew a strong distinction between satisfied and vacated municipal liens. The ALJ explained PGW's contention that "satisfied" liens are liens which the customer has paid off, whereas "vacated" liens are liens which have been removed from the docket for reasons other than payment, like administrative error or duplication. Additionally, the ALJ noted PGW's arguments that vacated liens should be treated as if the judgement never existed and that to be entitled to a credit or refund of the interest that accrued on the docketed liens after filing of the liens on the properties owned by the Complainants, interest must have actually been paid by the Complainants. I.D.R. at 61 (citing PGW St. 1 at 18; PGW St. 1-SR at 13, 15; and Tr. at 1363-65).

As to the position of SBG, the ALJ noted that SBG challenged the veracity of PGW's claim that the vacated liens were not paid by the Complainants. In support, SBG cited the testimony of its witness, Mr. Christopher E. Hanson, who identified several cases which, SBG argued, supported a conclusion that vacated liens were possibly satisfied. The ALJ acknowledged SBG's contention that on the basis of this information,

all vacated liens were included in the calculations of the amount to be returned to the Complainants. I.D.R. at 62 (citing SBG St. 1 at 7). Additionally, the ALJ noted the Surrebuttal Testimony of a PGW witness who corrected the original classification of 38 liens filed against the Complainants which were originally marked as vacated but should have been listed as satisfied. I.D.R. at 62 (citing PGW St. 1-SR at 14, 17).

In her disposition of this issue, the ALJ disagreed with both Parties' positions. The ALJ reiterated the determination that the removal of the late payment charges assessed on municipal liens based on PGW's Commission-approved tariff is grounded on such charges being non-jurisdictional charges, improperly assessed on the Complainants in violation of the provisions of 66 Pa.C.S. § 501 (and not of the provisions of 66 Pa.C.S. § 1312(a), which govern refunds). As such, the ALJ reasoned that the status of the municipal liens as "satisfied" or "vacated," "paid" or "unpaid," is irrelevant to the relief sought by the Complainants. According to the ALJ, the liens should not have been collecting a Commission-approved interest rate during the period they were judgments from or with the Municipal Court of Philadelphia -- regardless of whether they were designated "satisfied" or "vacated" -- especially when it was PGW who made the choice to remove the debt from the Commission's jurisdiction and turn it into a municipal lien and a judgment. I.D.R. at 62.

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

**e. Assessment of Interest on Bill Adjustment Credits**

The ALJ explained that throughout these proceedings, SBG requested that the amounts to be refunded to the Complainants in connection with the illegal application of a Commission-approved tariff on municipal liens carry the 6% legal rate in accordance with the provisions of Section 1312(a) of the Code. I.D.R. at 63 (citing SBG St. 1 at 8).

The ALJ also summarized PGW's response argument that the municipal liens are not subject to the provisions of Section 1312(a) of the Code; thus, Section 1312(a) does not apply to the amount owed to the Complainants. I.D.R. at 63 (citing PGW St. 1-R at 17).

In her disposition, the ALJ agreed with PGW's argument that Section 1312(a) of the Code does not apply to the amounts to be removed from the Complainants' accounts. As to her rationale, the ALJ cited the holding in her prior *September 2015 Initial Decision* which stated that amounts representing late payment charges improperly assessed within the statute of limitations period were to be refunded to the Complainants in accordance with the provisions of Section 1312(a) of the Code, which governs refunds. However, she acknowledged that the Commission modified this holding in the *December 2016 Order*, as follows:

We shall modify the recommendation in the Initial Decision only to the extent that our directive for PGW to issue a billing adjustment credit/refund to Complainants is made pursuant to our authority found at Section 501 of the Code, and not pursuant to Section 1312. *See* 66 Pa. C.S. §§ 501, 1312.

I.D.R. at 64 (citing *December 2016 Order* at 89). Specifically, the ALJ explained that the Commission ordered the amounts to be credited without any mention of the legal rate under Section 1312(a). *Id.*

In conclusion, the ALJ determined that in accordance with her discussion of the statute of limitations above, interest at the legal rate of 6% will not be assessed upon the bill adjustment credits owed to SBG by PGW. I.D.R. at 64.

**f. Scope of Proceedings – Foreclosed Claims**

The ALJ explained that the scope of these proceedings on remand has been the topic of several legal discussions and pleadings. In particular, the ALJ noted PGW’s argument that the Commonwealth Court expressly held in *PGW III* that the Pennsylvania Supreme Court’s decision in *PGW II* applies retroactively only to the parties of *PGW II*, as well as other proceedings pending at the time *PGW II* was decided on April 28, 2021. Therefore, it was PGW’s position that the Supreme Court’s decision in *PGW II* retroactively extends only to the 2012 Complaints by Colonial Garden and Simon Garden. I.D.R. at 64-65.

The ALJ referenced PGW’s argument that Colonial Garden and Simon Garden were the only parties that filed an appeal of *PGW I* and were the parties to *PGW II*. The other 2012 Complainants, Elrea Garden, Fairmount Manor, Marshall Square, Marchwood, Oak Lane, and Fern Rock, did not appeal the Commonwealth Court rulings in their respective cases, nor did they join the appeal of Colonial Garden and Simon Garden. Thus, according to PGW, the Commonwealth Court’s clear statement that *PGW II* applies only to parties of *PGW II* forecloses any further consideration or retroactive application of *PGW II* with respect to the 2012 Complaints of these Complainants.<sup>14</sup> In summarizing this position, the ALJ stated that PGW maintains that those parties who did not appeal are therefore not entitled to any relief based on docketed

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<sup>14</sup> The ALJ further explained PGW’s argument that because *PGW II* only applies retroactively to complainants whose complaints were pending as of the time of the Supreme Court’s decision, there is no basis on which the Commission could award them the relief they are seeking – *i.e.* a determination that PGW did not have authority to bill them late payment charges on arrearages. I.D.R. at 65.

municipal liens (which have become judgements per *PGW II*) for the period of time covered by their 2012 Complaints. I.D.R. at 65.

In the responses, the ALJ noted SBG's claim that *PGW II* should apply retroactively to the Complainants who did not intervene in the appeal culminating in *PGW II* (Elrea Garden, Fairmount Manor, and Marshall Square as well as Marchwood, Oak Lane, and Fern Rock) because they were parties to proceedings pending before the Commission. I.D.R. at 65-66.

In addressing these contentions, the ALJ stated that in the *December 2016 Order* pertaining to the 2012 Complaints of Simon Garden and Colonial Garden, the Commission ruled on two issues: (1) PGW's methodology for applying partial payments; and (2) PGW's assessment of a tariff-based 18% interest rate as a late payment charge on outstanding balances that had already been docketed as municipal liens. The ALJ also noted that the Commission issued its *May 2018 Order* (denying PGW's Petition for Reconsideration of the *December 2016 Order*) and the *August 2018 Order* (granting, in part, and denying, in part, PGW's Petition for Reconsideration of the *May 2018 Order*). I.D.R. at 66.

The ALJ reasoned that it was only the Commission's ruling on the 18% interest rate that was appealed by PGW to the Commonwealth Court in *PGW I*, with the Court reversing the Commission's Orders in its ruling of December 9, 2019. In turn, the ALJ continued, Simon Garden and Colonial Garden: successfully appealed the Commonwealth Court's ruling in *PGW I* resulting in *PGW II*; the Supreme Court granted PGW's request for partial rehearing and remand; and the Commonwealth Court heard *PGW III* on remand and issued a ruling. The ALJ further noted that in its Opinion dated March 16, 2022, in *PGW III*, the Commonwealth Court concluded, *inter alia*, that "the Supreme Court's decision in *PGW II* applies retroactively only as to parties to this

litigation and to other proceedings pending at the time the *PGW II* decision was issued.” I.D.R. at 66 (citing *PGW III* at \*13).

Regarding the 2012 Complaints of Elrea Garden, Fairmount Manor, and Marshall Square, the ALJ referenced the *September 2018 Order* of the Commission which addressed two issues: (1) PGW’s methodology for applying partial payments; and (2) PGW’s assessment of the tariff-based 18% interest rate as a late payment charge on outstanding balances that had already been docketed as municipal liens. The ALJ noted that PGW only appealed the Commission’s ruling in the *September 2018 Order* as to the 18% interest rate. The ALJ noted that in its unpublished Opinion of December 9, 2019, the Commonwealth Court reversed the *September 2018 Order* regarding PGW’s assessment of a tariff-based 18% interest rate on outstanding balances that had already been docketed as municipal liens. I.D.R. at 66-67 (citing *Commonwealth Court Opinion – SBG/Elrea Garden, et al.*).

However, the ALJ emphasized that, unlike Simon Garden and Colonial Garden, the Complainants in Elrea Garden, Fairmount Manor, and Marshall Square did not appeal the Commonwealth Court’s ruling applicable to them. As such, the ALJ reasoned that the issue of the tariff-based 18% interest rate in the 2012 Complaints of Elrea Garden, Fairmount Manor, and Marshall Square is neither pending nor stayed with the Commission. Consequently, the ALJ determined that the ruling in *Commonwealth Court Opinion – SBG/Elrea Garden, et al.* on this issue stands. I.D.R. at 67.

Similarly, the ALJ described the Commission’s *October 2018 Order* on the 2012 Complaints of Fern Rock, Marchwood, and Oak Lane. The ALJ noted that it was this Commission Order that PGW appealed to the Commonwealth Court only on the issue related to the 18% interest rate on outstanding balances that were docketed as municipal liens. The ALJ noted that in its unpublished Opinion of December 9, 2019, the

Commonwealth Court reversed the *October 2018 Order*. I.D.R. at 67 (citing *Commonwealth Court Opinion – SBG/Marchwood, et al.*)

Again, the ALJ emphasized that, unlike Simon Garden and Colonial Garden, the Complainants in Fern Rock, Marchwood, and Oak Lane did not appeal the Commonwealth Court’s ruling applicable to them. Consequently, the ALJ reasoned that the 2012 Complaints of Fern Rock, Marchwood, and Oak Lane are neither pending nor stayed with the Commission, and the ruling in *Commonwealth Court Opinion – SBG/Marchwood, et al.* as to this issue stands. I.D.R. at 67.

The ALJ explained that this issue as to the scope of the proceeding was further clarified in subsequent rulings on remand. For example, the ALJ cited to the *Motion to Dismiss Order* issued on December 19, 2022, which approved PGW’s Partial Motion to Dismiss, only to the extent that it held that the Commonwealth Court’s ruling in *PGW III* foreclosed the claims related to the 18% tariff rate (for late payment charges on municipal liens) in the 2012 Complaints filed by Fairmont Manor, Elrea Garden, Marshall Square, Marchwood, Oak Lane, and Fern Rock. The ALJ added that this ruling was reiterated in the *January 2023 Motion in Limine Order*. Finally, the ALJ emphasized that the issue was again addressed in an Order issued on October 10, 2023, pertaining to PGW’s Motion in Limine and Objections to the Testimony of S. Pulley, Esq. (*October 2023 Motion in Limine Order*). The ALJ explained that this Order stated, in pertinent part, as follows:

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

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

I.D.R. at 68 (citing *October 2023 Motion in Limine Order* at Ordering Paragraph Nos. 5, 6 (emphasis in the original)).

**g. Calculations**

In applying the determinations, above, regarding the Commission's jurisdiction, the application of interest, the period of review, the issue of foreclosed claims, and the question of vacated liens, the ALJ calculated the amounts to be removed from the Complainants' accounts. Specifically, the ALJ determined the amounts to be removed pertaining to the remaining 2012 and 2015 Complaints of Colonial Garden and Simon Garden and the 2015 Complaints of the remaining Complainants. I.D.R. at 69-82.

*Colonial Garden – 2012 Complaint and 2015 Complaint*

The ALJ explained that the 2012 Complaint for Colonial Garden was filed on May 11, 2012, and was later amended on December 10, 2012. The 2015 Complaint for Colonial Garden was filed on May 29, 2015. In light of the prior discussion of issues, the ALJ concluded that the review for these Complaints should cover the period May 11, 2009, to the present. I.D.R. at 69.

The ALJ stated that PGW had identified a total of 22 liens placed against Colonial Garden between May 11, 2009, and July 23, 2014. *Id.* at 69 (citing PGW

Exh. BLC-5 at 5 of 16).<sup>15</sup> According to the ALJ, 6 of those 22 liens were marked as “vacated” and not included in the calculation of the bill adjustment credits, consistent with PGW’s position that the vacated liens were not paid and should be treated as if they never existed. The ALJ added that 16 of the 22 liens were filed between May 11, 2009, and May 23, 2012, and that PGW calculated the amount of late payment charges illegally assessed on them as \$58,360.20. Additionally, the ALJ stated that 6 of the 22 liens were filed during the period between May 23, 2012 and July 23, 2014, and that PGW calculated the amount of late payment charges illegally assessed on these six liens as \$7,869.10. I.D.R. at 69.

Moving to SBG’s calculations, the ALJ noted that SBG identified the same 22 liens placed against Colonial Garden between May 11, 2009 and July 23, 2014, but added the calculation of late payment charges improperly assessed on the six vacated liens. SBG’s calculations are set forth in Table 3, as follows:

**Table 3: ALJ’s Summary of SBG’s Calculation of the Late Payment Charges Assessed on the Six Vacated Liens Against Colonial Garden**

No.	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50% per month
1	90635842	7/9/2009	\$131,983.18	Vacated	8/26/2009	1.60	\$3,168
2	91231033	12/17/2009	\$66,062.14	Vacated	8/4/2011	19.83	\$19,650
5	100531545	5/14/2010	\$74,368.76	Vacated	11/22/2010	6.40	\$7,139
6	101135001	11/22/2010	\$30,183.76	Vacated	11/22/2010	--	--
17	130632893	6/29/2013	\$12,771.74	Vacated	7/16/2013	0.57	\$109
18	130632840	6/26/2013	\$10,508.68	Vacated	7/16/2013	0.57	\$90
<b>Total</b>							<b>\$30,156</b>

*Id.* at 69-70 (citing SBG Exh. CEH-3 at 11; and PGW Exh. BLC-11 at 2).

<sup>15</sup> The ALJ clarified that no municipal liens were filed against Colonial Garden by PGW after July 23, 2014. *Id.*

In examining these calculations, the ALJ determined that the total amount to be removed from the account of Colonial Garden should be \$96,385.30. I.D.R. at 70.<sup>16</sup>

*Simon Garden – 2012 Complaint and 2015 Complaint*

The ALJ noted that the 2012 Complaint for Simon Garden was filed on May 11, 2012, and was amended on December 10, 2012. The 2015 Complaint for Simon Garden was filed on May 29, 2015. Consistent with her prior discussion of the issues, the ALJ concluded that the review of these Complaints should cover the period of May 11, 2009, to the present. I.D.R. at 70.

Next, the ALJ referenced in PGW Exhibit BLC-5 (page 16 of 16) PGW's identification of 40 liens placed against Simon Garden between May 11, 2009, and July 23, 2014. *Id.* (citing PGW Exh. BLC-5 at 16 of 16).<sup>17</sup> She stated that 7 of those 40 liens were marked as "vacated" and were not included in the calculation of the bill adjustment credits, consistent with PGW's position that the vacated liens were not paid and should be treated as if they never existed. The ALJ added that 34 of the 40 liens were filed between May 11, 2009, and July 10, 2012, and that PGW calculated the amount of late payment charges illegally assessed on those liens as \$321,786.37. The ALJ also noted that 6 of the 40 liens were filed during the period July 10, 2012, and July 23, 2014, and that PGW calculated the amount of late payment charges illegally assessed on these additional liens as \$2,677.21. I.D.R. at 70.

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<sup>16</sup> The ALJ calculated this amount by adding the amounts identified, *supra*, for the illegally assessed late payment charges identified by PGW of \$58,360.20 and \$7,869.10 for the 16 satisfied liens; and the illegally assessed late payment charges identified by SBG of \$30,156 for the 6 vacated liens. [ $\$58,360.20 + \$7,869.10 + \$30,156 = \$96,385.30$ ]. *Id.*

<sup>17</sup> Upon review, no municipal liens were filed against Simon Garden by PGW after July 23, 2014. PGW Exhibit BLC-5 at 2.

According to the ALJ, SBG identified the same 40 liens placed against Simon Garden between January 22, 2010, and October 4, 2022, but added the calculation of late payment charges improperly assessed on the six vacated liens. SBG’s calculations are set forth in Table 4, below:

**Table 4: ALJ’s Summary of SBG’s Calculation of the Late Payment Charges Assessed on the Six Vacated Liens Against Simon Garden**

No.	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50% per month
1	100130873	1/22/2010	\$38,493.85	Vacated	10/7/2011	20.77	\$11,993
2	100130871	1/22/2010	\$38,493.86	Vacated	8/20/2010	7.00	\$4,042
3	100130875	1/22/2010	\$99,384.21	Vacated	10/7/2011	20.77	\$30,963
4	100130876	1/22/2010	\$99,384.21	Vacated	8/20/2010	7.00	\$10,435
5	100531541	5/14/2010	\$75,968.05	Vacated	8/4/2011	14.90	\$16,979
8	100632366	6/19/2010	\$75,968.05	Vacated	8/20/2010	2.07	\$2,359
9	100632367	6/19/2010	\$82,896.78	Vacated	8/20/2010	2.07	\$2,574
<b>Total</b>							<b>\$79,345</b>

I.D.R. at 71 (citing SBG Exh. CEH-3 at 1).

In view of these calculations, the ALJ determined that the total amount to be removed from the account of Simon Garden is \$403,808.58. I.D.R. at 71.<sup>18</sup>

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<sup>18</sup> The ALJ calculated this amount by adding the amounts identified, *supra*, for the illegally assessed late payment charges identified by PGW of \$321,786.37 and \$2,677.21 for the 34 satisfied liens; and the illegally assessed late payment charges identified by SBG of \$79,345 for the 6 vacated liens, as follows: [\$321,786.37+\$2,677.21+\$79,345=\$403,808.58]. *Id.*

## 2015 Complaints

Next, the ALJ addressed the remaining six Complaints filed in 2015, noting that they were pending before the Commission at the time the Commonwealth Court issued its ruling in *PGW III*. Thus, the ALJ concluded that the ruling of *PGW II*, which held that once a lien is recorded, the Commission-approved tariff rate no longer applies, is applicable to all the remaining 2015 Complaint cases. I.D.R. at 72 (citing *PGW II* at 965).

For each of the remaining 2015 Complaints, the ALJ also referenced the statute of limitations at Section 3314 of the Code. Based on the three-year period set forth in Section 3314 and the filing date for each Complaint, the ALJ stated that the calculation of the billing adjustment credit owed to each Complainant could cover the period May 29, 2012, to the present. However, the ALJ noted PGW's argument that some of the liens filed during this period for each of the 2015 Complaints were included in the hearing exhibits submitted by SBG in the 2012 Complaints. PGW asserted that to avoid overlap and any double counting, any liens regarding the 2015 Complaints that were previously litigated and contained in the prior hearing exhibits must be excluded from the present calculation of the amount to be removed. I.D.R. at 72-75, 78-79, 81 (citing PGW St. 1-R at 12-13).

Upon review of the record from the 2012 Complaint proceedings, the ALJ stated that she agreed with PGW's argument. Accordingly, the ALJ reviewed the municipal liens filed by PGW against the Complainants in the 2012 proceedings to determine the period for calculating the billing adjustments owed to the Complainants in the 2015 Complaints as follows:

- *Elrea Garden* – The 2012 Complaint proceeding covered the period until October 23, 2012. In support, the ALJ cited to her Initial Decision addressing Elrea Garden's 2012 Complaint. I.D.R. at 72 (citing

*November 2015 Initial Decision* at 33 (between January 1, 2010, and October 23, 2012, PGW docketed 94 separate municipal liens against the property owned by Elrea Garden)). Thus, the ALJ reasoned that, in the present proceedings, the calculation of the billing adjustment credit owed to Elrea Garden should cover the period of October 24, 2012, to the present. However, she noted that no municipal liens were filed against Elrea Garden after April 23, 2014. I.D.R. at 72 (citing PGW Exh. BLC-5 at 1).

- *Fern Rock* – The 2012 Complaint proceeding covered the period until July 21, 2012. In support, the ALJ cited to her Initial Decision addressing Fern Rock’s 2012 Complaint. I.D.R. at 74 (citing *February 2016 Initial Decision* at 10 (between February 1, 2010, and July 21, 2012, 35 separate municipal liens were docketed against property owned by Fern Rock)). Thus, the ALJ stated that in the present proceedings, the calculation of the billing adjustment should cover the period of July 22, 2012, to the present. However, she noted that no municipal liens were filed against Fern Rock after July 23, 2014. I.D.R. at 74 (citing PGW Exh. BLC-5 at 1).
- *Fairmount Manor and Fairmount Court* – The 2012 Complaint proceeding covered the period until October 22, 2012. In support, the ALJ cited to her Initial Decision addressing Fairmount Manor’s 2012 Complaint. I.D.R. at 75 (citing *November 2015 Initial Decision* at 33 (between January 1, 2010, and October 22, 2012, 130 separate municipal liens were docketed against the property owned by Fairmount Manor)). Thus, the ALJ reasoned that in the present proceeding the calculation of the billing adjustment should cover the period of October 23, 2012, to the present. However, she noted that no municipal liens were filed against Fairmount Manor or Fairmount Court after April 19, 2016. I.D.R. at 76 (citing PGW Exh. BLC-5 at 11).
- *Oak Lane* – The 2012 Complaint proceeding covered the period until August 19, 2012. In support, the ALJ cited to her Initial Decision addressing Oak Lane’s 2012 Complaint. I.D.R. at 78 (citing *February 2016 Initial Decision* at 10 (between January 12, 2010, and August 19, 2012, 21 separate municipal liens were docketed against the property owned by Oak Lane)). Thus, the ALJ stated that in the present proceedings, the calculation of the billing adjustment should cover the period of July 22, 2012, to the present. However, she noted that no municipal liens were filed against Oak Lane after March 22, 2014. I.D.R. at 74 (citing PGW Exh. BLC-5 at 15).
- *Marchwood* – The 2012 Complaint proceeding covered the period until November 3, 2012. In support, the ALJ cited to her Initial Decision

addressing Marchwood’s 2012 Complaint. I.D.R. at 80 (citing *February 2016 Initial Decision* at 10 (between June 17, 2010, and November 2, 2012, 35 separate municipal liens were docketed against the property owned by Marchwood). Thus, the ALJ stated that in the present proceedings, the calculation of the billing adjustment should cover the period of November 3, 2012, to the present. However, she noted that no municipal liens were filed against Marchwood after July 23, 2014. I.D.R. at 80 (citing PGW Exh. BLC-5 at 13).

- *Marshall Square* – The 2012 Complaint proceeding covered the period until October 22, 2012. In support, the ALJ cited to her Initial Decision addressing Marshall Square’s 2012 Complaint. I.D.R. at 81 (citing *November 2015 Initial Decision* at 33 (between February 12, 2010, and October 22, 2012, 9 separate municipal liens were docketed against the property owned by Marshall Square). Thus, the ALJ reasoned that in the present proceeding the calculation of the billing adjustment should cover the period of October 23, 2012, to the present. However, she noted that no municipal liens were filed against Marshall Square after July 23, 2014. I.D.R. at 81 (citing PGW Exh. BLC-5 at 14).

Based on these applicable period determinations, the ALJ proceeded to calculate the amount to be removed from the accounts of each of the remaining 2015 Complainants.

#### *Elrea Garden – 2015 Complaint*

The ALJ noted that PGW identified nine liens filed against Elrea Garden between October 24, 2012, and April 23, 2014. According to the ALJ, four of those nine liens were marked as “vacated” and were not included in the calculation of the bill adjustment credits, consistent with PGW’s position that the vacated liens were not paid and should be treated as if they never existed. Additionally, the ALJ stated that SBG identified the same nine liens placed against Elrea Garden between October 24, 2012, and April 23, 2014, but added the calculation of late payment charges improperly assessed on the four vacated liens. The ALJ explained that this information reveals the following, as set forth in Table 5, below:

**Table 5: ALJ’s Summary of the Late Payment Charges to be Removed From the Accounts of Elrea Garden**

No.	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50% per month
87	130630431	6/4/2013	\$905.82	Vacated	8/30/2013	2.90	\$39
88	130730632	7/11/2013	\$1,154.00	Satisfied	8/23/2013	1.43	\$24.81
89	130730633	7/11/2013	\$1,549.00	Satisfied	8/23/2013	1.43	\$33.30
90	131030114	10/8/2013	\$1,277.82	Satisfied	8/15/2014	10.37	\$198.70
91	131030115	10/8/2013	\$2,028.33	Satisfied	8/15/2014	10.37	\$315.41
92	140230146	2/4/2014	\$851.11	Satisfied	8/15/2014	6.40	\$81.71
93	140230145	2/4/2014	\$864.14	Satisfied	8/15/2014	6.40	\$82.96
94	140732929	4/23/2014	\$4,036.56	Satisfied	10/7/2015	17.73	\$1,073.72
95	140732999	4/23/2014	\$4,256.64	Satisfied	10/7/2015	17.73	\$1,132.27
<b>Total</b>							<b>\$2,982</b>

I.D.R. at 73 (citing PGW Exh. BLC-5 at 7 and SBG Exh. CEH-3 at 7).<sup>19</sup>

Considering these calculations, the ALJ determined that the total amount to be removed from the accounts of Elrea Garden should be \$2,982. I.D.R. at 73.

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<sup>19</sup> Although the ALJ stated that four of the nine liens filed against Elrea Garden between October 24, 2012 and April 23, 2014 were marked as “vacated,” our review of the record indicates that only one of the liens during this time period was marked as “vacated.” The record further indicates that all other liens against Elrea Garden, and marked as “vacated,” were filed against Elrea Garden prior to October 24, 2012. See PGW Exh. BLC-5 at 7 and SBG Exh. CEH-3 at 7. We further note that Table 5, *supra*, and the identical table set forth on Page 73 of the I.D.R., accurately indicate that only one lien filed against Elrea Garden between October 24, 2012 and April 23, 2014 was marked as “vacated.”

Fern Rock – 2015 Complaint

The ALJ noted that PGW identified eight liens filed against Fern Rock between July 22, 2012, and July 23, 2014. According to the ALJ, five of those nine liens were marked as vacated and one was marked as a closed account. These were not included in the calculation of the bill adjustment credits, consistent with PGW’s position that the vacated liens were not paid and should be treated as if they never existed. Additionally, the ALJ stated that SBG identified the same eight liens placed against Fern Rock during the same time period, but added the calculation of late payment charges improperly assessed on the five vacated liens. The ALJ indicated that neither PGW nor SBG included calculations of late payment charges on the lien marked as a closed account. In summary, the ALJ listed the following, as noted in Table 6:

**Table 6: ALJ’s Summary of Lien Amounts to be Removed From the Accounts of Fern Rock**

No.	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50% per month
35	120731965	7/31/2012	\$2,896.95	Vacated	5/14/2014	22.07	\$959
36	130730622	7/11/2013	\$11,809.69	Satisfied	8/23/2014	1.43	\$253.91
37	130730623	7/11/2013	\$9,987.32	Satisfied	8/23/2014	1.43	\$214.73
38	130730631	7/11/2013	\$15,585.79	Satisfied	8/23/2014	1.43	\$335.09
39	140732940	7/23/2014	\$5,851.03	Satisfied	8/3/2019	61.23	\$5,374.17
40	140732941	7/23/2014	\$4,911.49	Satisfied	9/26/2014	2.17	\$159.62
41	140732997	7/23/2014	\$23,370.37	Vacated	9/23/2022	99.47	\$34,870
42	140732998	7/23/2014	\$11,080.94	Closed Acct	5/15/2020	--	--
<b>Total</b>							<b>\$42,167</b>

I.D.R. at 73 (citing PGW Exh. BLC-5 at 7 and SBG Exh. CEH-3 at 7).

Considering these calculations, the ALJ determined that the total amount to be removed from the accounts of Fern Rock should be \$42,167. I.D.R. at 73.

*Fairmount Manor and Fairmount Court – 2015 Complaint*

The ALJ noted that PGW identified 30 liens filed against Fairmount Manor and Fairmount Court (collectively, Fairmount) between October 23, 2012, and April 19, 2016. According to the ALJ, 13 of those 30 liens were marked as vacated, 5 were marked as closed accounts, and 3 were marked as unknown. One was marked as a closed account. The 13 vacated liens were not included in the calculation of the bill adjustment credits, consistent with PGW’s position that the vacated liens were not paid and should be treated as if they never existed. Additionally, the ALJ stated that SBG identified the same 30 liens placed against Fairmount during the same time period, but added the calculation of late payment charges improperly assessed on the 13 vacated liens. The ALJ indicated that neither PGW nor SBG included calculations of late payment charges on the liens marked as closed accounts or as unknown. In summary, the ALJ listed the following, as Shown in Table 7:

**Table 7: ALJ’s Summary of Lien Amounts to be Removed From the Accounts of Fairmount**

No.	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50% per month
133	130730657	7/11/2013	\$1,827.76	Satisfied	8/23/2013	1.43	\$39.30
134	130730658	7/11/2013	\$1,999.55	Satisfied	8/23/2013	1.43	\$42.99
135	130730662	7/11/2013	\$2,095.53	Satisfied	8/23/2013	1.43	\$45.05
136	130730649	7/11/2013	\$2,106.80	Vacated	8/22/2013	1.40	\$44.24
137	130730660	7/11/2013	\$2,134.45	Vacated	8/22/2013	1.40	\$44.82
138	130730650	7/11/2013	\$3,065.55	Vacated	8/23/2013	1.43	\$65.84

No.	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50% per month
139	130730661	7/11/2013	\$3,906.26	Vacated	8/23/2013	1.43	\$83.98
140	130730659	7/11/2013	\$2,298.76	Satisfied	8/23/2013	1.43	\$49.42
141	130730651	7/11/2013	\$2,363.09	Satisfied	8/23/2013	1.43	\$50.81
142	1330731298	7/17/2013	\$2,664.69	Satisfied	8/22/2013	1.20	\$47.96
143	130731297	7/17/2013	\$3,540.63	Satisfied	8/23/2013	1.23	\$65.50
144	131030112	10/8/2013	\$708.35	Satisfied	8/15/2014	10.37	\$110.15
145	140430342	4/5/2014	\$633.22	Satisfied	8/15/2014	4.40	\$41.79
146	140430343	4/7/2014	\$723.67	Satisfied	8/5/2014	4.00	\$43.42
147	Unknown	4/23/2014	\$3,246.76	--	--	--	--
148	Unknown	4/23/2014	\$3,526.91	--	--	--	--
149	140733008	7/23/2014	\$2,563.12	Closed Acct	9/22/2021	--	--
150	140733007	7/23/2014	\$2,729.90	Closed Acct	9/22/2021	--	--
151	140733016	7/23/2014	\$3,137.81	Vacated	1/1/2019	54.10	\$2,546
152	140733015	7/23/2014	\$3,683.34	Closed Acct	9/22/2021	--	--
153	140732953	7/23/2014	\$3,763.89	Closed Acct	9/22/2021	--	--
154	140732990	7/23/2014	\$4,866.36	Closed Acct	9/22/2021	--	--
155	Unknown	8/1/2014	\$355.93	--	--	--	--
156	14093605	9/9/2014	\$1,297.54	Vacated	9/23/2022	97.87	\$1,905
157	140930614	9/9/2014	\$1,503.19	Vacated	9/23/2022	97.87	\$2,207
158	140930613	9/9/2014	\$355.93	Vacated	9/23/2022	97.87	\$523
159	150630313	6/5/2015	\$623.30	Vacated	9/23/2022	88.90	\$831

No.	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50% per month
160	150830021	8/4/2015	\$6,112.33	Vacated	8/3/2018	36.50	\$3,347
161	160331623	3/24/2016	\$965.30	Vacated	8/3/2018	28.73	\$416
162	160430856	4/19/2016	\$2,023.87	Vacated	6/1/2016	1.43	\$43
<b>Total</b>							<b>\$6,923<sup>20</sup></b>

I.D.R. at 76-77 (citing PGW Exh. BLC-5 at 10-11 and SBG Exh. CEH-3 at 9-10).

In view of these calculations, the ALJ concluded that the total amount to be removed from the accounts of Fairmount should be \$6,923. I.D.R. at 77.

*Oak Lane – 2015 Complaint*

The ALJ stated that PGW identified nine liens filed against Oak Lane between August 20, 2012, and March 22, 2014. According to the ALJ, five of those nine liens were marked as vacated and were not included in the calculation of the bill adjustment credits, consistent with PGW’s position that the vacated liens were not paid and should be treated as if they never existed. Additionally, the ALJ noted that SBG identified the same nine liens placed against Oak Lane during the same time period, but added the calculation of late payment charges improperly assessed on the five vacated liens. In summary, the ALJ listed the following, as shown in Table 8:

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<sup>20</sup> PGW noted that the total of \$6,923 in the table is incorrect; the correct total should be \$12,593.27. PGW Exc. at A-1, Appendix A. We agree that this is an apparent error and that the correct amount for purposes of this chart should be \$12,593.27.

**Table 8: ALJ’s Summary of Lien Amounts to be Removed From the Accounts of Oak Lane**

No.	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50% per month
21	120832190	8/29/2012	\$1,264.70	Satisfied	8/22/2013	11.93	\$226.38
22	130231538	2/13/2013	\$2,984.00	Satisfied	8/23/2013	6.37	\$284.97
23	130431975	4/23/2013	\$6,240.40	Satisfied	6/10/2014	13.77	\$1,288.64
24	130631730	6/18/2013	\$5,625.49	Vacated	6/10/2014	11.90	\$1,004
25	130632841	6/29/2013	\$13,824.96	Satisfied	8/23/2013	1.83	\$380.19
26	130731293	7/17/2013	\$7,508.08	Satisfied	8/23/2013	1.23	\$138.90
27	131031098	10/19/2013	\$4,633.89	Vacated	6/11/2014/	7.83	\$544
28	131231368	12/30/2013	\$1,763.43	Vacated	6/11/2014	5.43	\$144
29	140331377	3/22/2014	\$7,497.07	Vacated	6/11/20014	2.70	\$304
<b>Total</b>							<b>\$4,315.08</b>

I.D.R. at 78-79 (citing PGW Exh. BLC-5 at 13 and SBG Exh. CEH-3 at 5).

In consideration of these calculations, the ALJ determined that the total amount to be removed from the accounts of Oak Lane should be \$4,315.08. I.D.R. at 79.

Marchwood – 2015 Complaint

The ALJ stated that PGW identified eight liens filed against Marchwood between November 3, 2012, and July 23, 2014. Further, the ALJ explained that SBG identified the same eight liens placed against Marchwood as being marked as satisfied. In summary, the ALJ listed the following, as shown in Table 9:

**Table 9: ALJ’s Summary of Lien Amounts to be Removed From the Accounts of Marchwood**

No.	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50% per month
26	130731294	6/17/2013	\$203.49	Satisfied	8/23/2013	2.23	\$6.82
27	130632842	6/29/2013	\$65,873.21	Satisfied	8/23/2013	1.83	\$1,811.51
28	130632843	6/29/2013	\$2,329.20	Satisfied	8/23/2013	1.83	\$64.05
29	130632844	6/29/2013	\$1,765.37	Satisfied	8/23/2013	1.83	\$48.55
30	130731384	7/19/2013	\$189.27	Satisfied	8/23/2013	1.17	\$3.31
31	140732964	7/23/2014	\$65,885.03	Satisfied	9/26/2014	2.17	\$2,141.26
32	140732965	7/23/2014	\$2,419.16	Satisfied	9/26/2014	2.17	\$78.62
33	140732966	7/23/2014	\$2,677.49	Satisfied	9/26/2014	2.17	\$87.02
<b>Total</b>							<b>\$4,241.14</b>

I.D.R. at 79-80 (citing PGW Exh. BLC-5 at 13 and SBG Exh. CEH-3 at 5).

The ALJ concluded that the total amount to be removed from the account of Marchwood should be \$4,241.14. I.D.R. at 80.

*Marshall Square – 2015 Complaint*

The ALJ stated that PGW identified six liens filed against Marshall Square between October 23, 2012, and July 23, 2014. Also, the ALJ noted that SBG identified the same six liens placed against Marshall Square during the same time period as being marked as satisfied. In summary, the ALJ listed the following, which is reproduced in Table 10:

**Table 10: ALJ’s Summary of Lien Amounts to be Removed From the Accounts of Marshall Square**

No.	Municipal Docket	Lien Date	Amount	Lien Status	Lien Status Details	Billing Periods	1.50% per month
11	130730656	7/11/2013	\$14,304.78	Satisfied	8/23/2013	1.43	\$307.55
12	130730655	7/11/2013	\$20,835.58	Satisfied	8/23/2013	1.43	\$447.96
13	131030113	10/7/2013	\$1,715.33	Satisfied	8/15/2014	10.40	\$267.59
14	140430344	4/7/2013	\$2,861.67	Satisfied	7/30/2014	3.80	\$163.12
15	140732960	7/23/2014	\$17,828.92	Satisfied	9/26/2014	2.17	\$579.44
16	140733006	7/23/2014	\$17,976.92	Satisfied	8/7/2019	61.37	\$16,547.75
<b>Total</b>							<b>\$18,313.41</b>

I.D.R. at 81-82 (citing PGW Exh. BLC-5 at 14 and SBG Exh. CEH-3 at 3).

The ALJ concluded that the total amount to be removed from the account of Marshall Square should be \$18,313.41. I.D.R. at 82.

As shown in Table 11, the ALJ determined that PGW is required to adjust the Complainants’ accounts by removing the amounts as follows:

**Table 11: Summary of the Amounts the ALJ Required PGW to Remove from the Complainants' Accounts**

Colonial Garden	\$96,385.3
Simon Garden	\$403,808.58
Elrea Garden	\$2,982
Fern Rock	\$42,167
Fairmount Manor/ Fairmount Court	\$6,923
Oak Lane	\$4,315.08
Marchwood	\$4,241.14
Marshall Square	\$18,313.41
<b>Total</b>	<b>\$579,135.51<sup>21</sup></b>

I.D.R. at 82.

### 3. Civil Penalty

As a final matter, the ALJ addressed the outstanding civil penalty owed by PGW, as upheld in *PGW III*. The ALJ explained that the Commonwealth Court, in part, upheld the Commission's imposition of a \$2,000 civil penalty against PGW for violating the Commission Regulation pertaining to partial payments. I.D.R. at 82.

The ALJ stated that at the time of the issuance of the Initial Decision on Remand, there was no indication that PGW ever paid the \$2,000 penalty to the Commission. Accordingly, the ALJ ordered the Commission's Bureau of Administrative

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<sup>21</sup> We note that by using the revised amount of \$12,593.27 for Fairmount Manor/Fairmount Court, *see* n.19 above, the correct total of adjustments as determined by the ALJ should have been **\$584,805.78**.

Services, Assessment Section, to refer the matter to the OAG for collection of the outstanding amount and for appropriate action. *Id.* at 83.<sup>22</sup>

### **C. Exceptions, Replies, and Dispositions**

As we proceed in our review of the various positions of the Parties in this proceeding, we are reminded that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Exceptions that we do not specifically address shall be deemed to have been duly considered and denied without further discussion.

#### **1. SBG Exceptions, Replies, and Dispositions**

##### **a. SBG Exception No. 1: Application of Three-Year Statute of Limitations**

###### **(1) SBG Exception No. 1**

In its Exception No. 1, SBG argues that the ALJ wrongly applied the three-year statute of limitations to the 2015 Complaints. SBG argues that the ALJ should have applied the four-year statute of limitations under Section 1312(a) of the Code for the 2015 Complaints beginning on May 29, 2011, four years before the filing of the 2015 Complaints. SBG Exc. at 2-3.

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<sup>22</sup> As indicated above, thereafter, on August 6, 2024, PGW paid the \$2,000 civil penalty upheld in *PGW III*. Accordingly, we shall modify the Initial Decision on Remand to remove the ordering paragraph directing referral of the matter to the OAG.

Citing to a litigation scheduling order, SBG contends that the ALJ applied the four-year statute of limitations to the 2012 Complaints of Colonial Garden and Simon Garden with a review period to cover the period of May 11, 2008, to December 10, 2012. SBG Exc. at 2 (citing Order Extending Litigation Schedule, dated November 15, 2023, at 2 (Scheduling Order)).<sup>23</sup> SBG argues, however, that the ALJ failed to similarly apply the four-year statute of limitations to the 2015 Complaints by designating a review period to begin on December 11, 2012. According to SBG, the date specified in the Scheduling Order, from which refunds may be calculated for the 2015 Complaints, eliminates the period between May 29, 2011, through December 11, 2012, or approximately 18 months. SBG Exc. at 2.

SBG submits that there is not a complete identity of the parties in the 2012 and 2015 Complaints and that only Colonial Garden and Simon Garden would be fully compensated using the dates in the Scheduling Order. For relief, SBG requests that the Commission apply the four-year statute of limitations for all the 2015 Complaints. SBG Exc. at 3.

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<sup>23</sup> The Scheduling Order provided, in relevant part:

3. That the 2012 Complaints at Docket Nos. C-2012-2304324 and C-2012-2304183 have been remanded **only** for the purpose calculating the refunds due to the Complainants because of Philadelphia Gas Works' improper assessment of 18% tariffed interest rate as late payment charge on outstanding balances that had already been filed as municipal liens. **The review will cover the period May 11, 2008, to December 10, 2012.**

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

Scheduling Order at 2 (emphasis added).

## (2) PGW's Replies

In its reply to SBG Exception No. 1, PGW argues that the ALJ properly concluded that the three-year statute of limitations under Section 3314 of the Code is applicable to SBG's claims of overpayments of interest on liens and judgments. R. Exc. at 2.

As an initial matter, PGW addresses the contention of SBG that the ALJ applied the four-year statute of limitations for the lien claims in the 2012 Complaints filed by Colonial Garden and Simon Garden with two arguments. First, PGW asserts that the use of the four-year period is immaterial to the claims by Colonial Garden and Simon Garden because it would not change the result. According to PGW, 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. R. Exc. at 2 (citing SBG Exh. CEH-3).

Second, PGW asserts the use of the four-year limitation period for the remanded claims of Colonial Garden and Simon Garden does not mean that the use of the four-year limitation period is appropriate for SBG's other lien difference claims. Rather, PGW proffers that the ALJ used the wrong limitation period in the 2012 Complaints by Colonial Garden and Simon Garden but that such an error was immaterial because it did not change the lien difference amounts. R. Exc. at 2.

In addressing SBG's overall assertions that the ALJ should have applied the four-year statute of limitation period to all the claims, PGW raises three arguments. In its first argument, PGW contends that Section 1312(a) does not apply to claims for overpayment of non-jurisdictional interest. Rather, PGW proffers that Section 1312(a) pertains to rates, which refers to any compensation received for regulated utility service as set forth in a utility's tariff. According to PGW, the Pennsylvania Supreme Court in

*PGW II* determined that the interest paid on liens and judgments is statutory and is not subject to a Commission-approved tariff. Further, PGW states that the Court in *PGW II* found that the amounts due in the underlying utility accounts and bills are merged into the judgments. Therefore, PGW contends that the overpayment of non-jurisdictional interest is different from overpayment of a Commission-approved tariffed rate. R. Exc. at 3.

In further support, PGW argues that without a jurisdictional or tariffed rate being overpaid by a ratepayer, no recovery is available under Section 1312 of the Code. Instead, PGW asserts that the liens and judgments are governed by the Municipal Claims and Liens Law, 53 P.S. § 7106(b), and are not jurisdictional. Additionally, PGW proffers that, under *PGW II*, any interest charged on liens and judgments are not jurisdictional, which means that the legal rate of interest on them is not a rate subject to the Commission's jurisdiction. R. Exc. at 4-5.

In its second argument, PGW contends that recovery or refunds of overpayments of non-jurisdictional interest as damages on non-jurisdictional liens and judgments are within the jurisdiction of the Courts and not the Commission. In support, PGW cites to its own Exception No. 2, discussed, *infra*. R. Exc. at 4-5 (citing PGW Exc. at 9-11).

Regarding its third argument, PGW states that applying the four-year limitations period would result in SBG double recovering on the same claims as part of SBG's 2012 Complaints. PGW contends that SBG's 2015 Complaints were filed in May 2015, and that three years before this date goes back to May 2012. According to PGW, the May 2012 date is well before the 2013 and 2015 evidentiary hearings on SBG's 2012 Complaints. PGW asserts 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 resulting in double recovery on the same lien difference claims.

R. Exc. at 5 (citing PGW Exception No. 5, Appendix B, discussed, *infra*). PGW proffers that such an overlap, re-litigation, and double recovery would only increase if the Commission were to use the four-year limitation period in Section 1312 as opposed to the four-year limitation period under Section 3314. R. Exc. at 5.

PGW argues that using a limitation period without any regard for the re-litigation or double-recovery of the same claims would conflict with Commission precedent and the Commonwealth Court’s 2019 decisions, *supra*. However, regardless of whether a three-year or four-year limitations period is applied, PGW adds, claims within the limitations period can be properly barred from consideration if those claims would result in re-litigation, duplication or double recovery. R. Exc. at 5-6 (citing PGW Exception No. 5).

### **(3) Disposition**

Upon review, we find that the ALJ correctly reasoned that because the billing adjustment credits to the Complainants would be made pursuant to the Commission’s authority under Section 501 of the Code, and not pursuant to Section 1312, the general three-year statute of limitations under 66 Pa.C.S. § 3314 should apply to the period of review.

The ALJ’s analysis was consistent with our reasoning in the *December 2016 Order* in which we addressed the issue of statutory authority over non-jurisdictional charges. Therein, we recognized that we lacked authority to direct an EGS to refund charges for EGS services pursuant to Section 1312 of the Code. *December 2016 Order* (citing *IDT Order*). In doing so, we acknowledged that Section 1312 applied to “rates” charged by a “public utility” and that EGSs were not public utilities under the Code except under other limited circumstances. As such, we determined that our general authority over an EGS rested with Section 501 which

pertains to our general authority to address violations of the Code, Commission Regulations, or other provisions over which we have authority to administer. *See* R.D. at 59-61.

More recently, the Pennsylvania Supreme Court confirmed in *PGW II* that the docketed municipal liens at issue in this proceeding are non-jurisdictional because they are given the effect of judgments. Thus, any billing adjustments related to the imposition of such judgments and the interest charges pertaining to them are not considered jurisdictional rates for purposes of the Commission's authority under Section 1312 of the Code. Rather, to the extent that any adjustment is required, the Commission's authority to address the dispute must rest with Section 501 of the Code. As such, the appropriate statute of limitations for addressing Section 501 matters is the general, three-year limitations period set forth in Section 3314 of the Code.

Regarding SBG's argument that the ALJ, in the Scheduling Order, contained a four-year period for considering the 2012 Complaints filed by Colonial Garden and Simon Garden, we find such a reference by the ALJ to be a harmless error. It is evident from the record that 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. *See* SBG Exh. CEH-3. Moreover, we are not constrained to apply the limitation period set forth in the litigation schedule order when such a period is at odds with the Code and relevant case law.

Finding that the calculation of the amounts to be removed from the Complainants' accounts should begin three years prior to the filing of the Complaints, we shall deny SBG's Exception No. 1.

**b. SBG Exception No. 2: Award of Credits Instead of Cash Refunds**

**(1) SBG Exception No. 2**

In its SBG Exception No. 2, SBG argues that the ALJ improperly awarded credits to the SBG parties instead of cash refunds for amounts overcharged by PGW. SBG contends that the ALJ erred by relying on outstanding balances owed by the SBG parties. According to SBG, PGW presented unauthenticated and unverified information to establish that the Complainants owed past due balances on their gas accounts. SBG contends that these past due balances were not part of the litigation before the Commission and that PGW has never filed any action with the Commission or the Court of Common Pleas to collect on the amounts allegedly owed. SBG Exc. at 4. Thus, SBG contends that past amounts owed should not have been considered in the Initial Decision on Remand and that the Complainants are entitled to cash refunds on the amounts owed. *Id.* at 5.

**(2) PGW's Replies**

In its reply to SBG Exception No. 2, PGW argues that the Commission's jurisdiction is limited to calculating the 12% difference of the statutory interest owed as an aid to the Courts as directed in *PGW III*. PGW adds, however, that if the Commission decides it has jurisdiction to do more than calculate the difference of the statutory interest owed, the use of credits is reasonable for the amounts of non-jurisdictional interest that SBG overpaid (*i.e.*, the 12% difference). In such a scenario, PGW states that credits would be applied to SBG's active accounts to offset past, current, or future gas charges. PGW also explains that if the gas accounts of the Complainants are closed, PGW would pay money owed by check or wire transfer. R. Exc. at 12 (citing PGW St. 1 at 12).

PGW further argues that SBG's Exception No. 2 should be denied for two reasons. First, PGW contends that a refund of cash by the Commission would be equivalent to an award of monetary damages, which is prohibited. According to PGW, the Commission would be improperly acting in the place of the Courts by making an award of damages of non-jurisdictional interest that accrued on the liens and judgments that are within the Court's jurisdiction. R. Exc. at 13 (citing *Elkin v. Bell Telephone of Pa.*, 420 A.2d 371 (Pa. 1980) (*Elkin*); and *Feingold v. Bell Telephone of Pa.*, 383 A.2d 791 (Pa. 1977) (*Feingold*). PGW also contends that both *PGW II* and *PGW III* directed the calculations of the correct amount of any refund (*i.e.*, the 12% difference); they did not order the Commission to provide a complete remedy for the 12% difference because the Court holdings recognize that the Commission lacks jurisdiction over the liens and judgments, as well as the statutory interest applied to them. R. Exc. at 13.

Second, PGW argues that a cash award for all the non-jurisdictional interest charged by PGW (18%) would result in a windfall for SBG to the detriment of PGW's other ratepayers. PGW proffers that SBG is not entitled to a refund of the full 18% interest because PGW is authorized to retain the 6% interest on non-jurisdictional liens and judgments but that such a refund must be pursued before the Courts with jurisdiction over such matters. Moreover, PGW contends that SBG is not entitled to receive cash amounts of non-jurisdictional interest that SBG never paid in the first instance. In support, PGW notes that SBG did not pay non-jurisdictional interest for 90 vacated liens. However, PGW argues, the Initial Decision on Remand improperly awarded all 18% of the non-jurisdictional interest for the 90 vacated liens. R. Exc. at 14 (citing *PGW St. No. 1-R* at 14-15).

### (3) Disposition

Upon review, we shall deny SBG's Exception No. 2. SBG's requested remedy of cash refunds in lieu of credits effectively amounts to a demand for post-judgment damages. The Commission is not empowered to award such a remedy.

It is well-established that the Commission is a creature of statute and may only exercise those powers expressly conferred upon it by the General Assembly and those powers which arise by necessary implication. *Feingold*, 383 A.2d at 794. Although the remedial and enforcement powers vested in the Commission by the Code were designed to allow enforcement of its orders and regulations, the Code does not empower the Commission to award damages. *Id.* at 795.

In this proceeding, the Pennsylvania Supreme Court in *PGW II* held that liens docketed by PGW must be treated as judgments and given the same force and effect of a judgment. Specifically, the Supreme Court determined that municipal liens docketed on behalf of PGW are the equivalent of a final resolution of a claim between the parties and "are treated in the same manner as a final resolution between the parties." *PGW II*, 249 A.3d at 974. As it is clear that the Commission lacks jurisdiction to weigh the merits of a judgment, *Gasparro v. Pa. PUC*, 814 A.2d 1282, 1285 (Pa. Cmwlth. 2003) (*Gasparro*), it follows that the Commission is without authority to craft the remedy after the final resolution of a claim. *See also, Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002). That is, the Commission lacks jurisdiction to mold the requested relief to grant a post judgment award of cash refunds as requested by SBG. Consistent with established appellate caselaw, such monetary relief would need to be pursued in the courts.

Moreover, there is nothing in either the Supreme Court's opinion in *PGW II* or the Commonwealth Court's opinion in *PGW III* to suggest that the Commission is

authorized to do anything but calculate the amount of remedy owed to the Complainants. Indeed, the Commonwealth Court noted that the parties agreed to a remand “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.” *PGW III* at \*13. Thus, it is evident that the purpose of the remand is to act in aid of the courts to calculate the correct refund owed to the Complainants for the subsequent recovery of that amount in court proceedings.

In the *Motion to Dismiss Order*, the ALJ described the “bifurcated proceeding” process approved by the Pennsylvania Supreme Court in certain situations involving complaint proceedings against a public utility seeking monetary damages resulting from violations of the Code (*i.e.*, failure to provide safe, adequate, reasonable, or efficient service). *Motion to Dismiss Order* at 20 (citing *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595 (Pa. 1982) (*DeFrancesco*)). The ALJ explained that service and billing issues are first decided by the Commission, and then a court of common pleas may consider the issue of damages. *Motion to Dismiss Order* at 20.

This is precisely our responsibility in this proceeding – to calculate the amount of the refund owed and thereby assist the courts with competent jurisdiction to order the payment of the amounts owed. Accordingly, we shall deny SBG’s Exception No. 2 and its associated request to order cash refunds in this proceeding.

**c. SBG Exception No. 3: Exclusion of Prior Amounts Awarded to SBG Parties**

**(1) SBG Exception No. 3**

In its Exception No. 3, SBG argues that the ALJ improperly excluded prior amounts that were previously awarded to SBG parties prior to the original appeal to the

Commonwealth Court in *PGW I*. SBG asserts that the ALJ had directed PGW to pay the SBG Parties cash amounts related to the overcharges. According to SBG, PGW appealed the Commission decisions upholding the ALJ's directive on refund awards and PGW appealed the decisions to the Commonwealth Court, which were ostensibly stayed pending the appeals. SBG submits that on remand following *PGW II*, the refund amounts awarded by the Commission in the prior orders should have ultimately been included in the Initial Decision on Remand. SBG Exc. at 5.

SBG further contends that no execution on the Commission's prior orders could have occurred while the appeals were pending, and additional amounts have accrued to the SBG parties. Thus, SBG requests that the Commission direct the inclusion of amounts previously awarded to the SBG parties in prior orders and that "those amounts be updated to reflect the passage of time." *Id.*

## **(2) PGW's Replies**

In its response to SBG's Exception No. 3, PGW argues that the lien difference amounts previously awarded by the Commission are unenforceable because the Commission's orders were either remanded or reversed by the appellate courts. PGW asserts that the lien difference amounts in the 2012 Complaints for Colonial Garden are not enforceable because the holdings in *PGW II* and *PGW III* require the calculation of the correct amount of any refund. According to PGW, it defies reason to claim that the prior amounts of refunds owed to Colonial Garden and Simon Garden are still in place when the Commonwealth Court in *PGW III* ordered the receipt of evidence and the calculation of the correct amount of any refund owed to Colonial Garden and Simon Garden. R. Exc. at 11.

Additionally, PGW argues that the lien difference amounts in the 2012 Complaints by Elrea Garden, Fairmount Manor, Fern Rock, Marchwood, Marshall

Square, and Oak Lane are not enforceable because the Commission's decisions relating to them were reversed by the Commonwealth Court's 2019 decisions. PGW states that those decisions were not appealed and are final, and that the Commission cannot enforce an order that has been reversed on appeal. *Id.*

PGW further asserts that the Commission must not restate the amounts previously awarded to SBG because it would result in a double counting of claims. Specifically, PGW argues that combining amounts from prior complaint proceedings, pertaining to the removal of the 18% interest, with the current complaint proceedings, regarding the 12% lien interest difference, would result in overlapping claims for the same liens and judgments. PGW contends that this would create a windfall for SBG to the detriment of PGW's other ratepayers who are the only source of revenue to the utility. *Id.* at 11-12.

### **(3) Disposition**

We shall deny SBG's Exception No. 3. SGB provides no authority for its proposition that it is entitled to refund amounts previously awarded in prior Commission orders which were either remanded or reversed by the appellate courts.

In this consolidated proceeding, PGW appealed the Commission's *December 2016 Order*, the *May 2018 Order*, and the *August 2018 Order*. Each of these Orders pertained to the 2012 Complaints filed by SBG on behalf of Colonial Garden and Simon Garden. All of these Orders were the subject of *PGW I*, *PGW II*, and *PGW III*. Ultimately, the Commonwealth Court in *PGW III* remanded the proceedings to the Commission to determine the correct amount of any refunds owed by PGW to SBG/Colonial Garden and SBG/Simon Garden. Under this procedural posture, any prior amounts of refunds authorized under the prior Commission Orders are no longer

operative or enforceable. Instead, the Commission is directed to now calculate the correct amount of any refunds owed to SBG/Colonial Garden and SBG/Simon Garden.

Additionally, as discussed above, the Commission granted the 2012 Complaints of Elrea Garden, Fairmount Manor, and Marshall Square in the Commission's *September 2018 Order*. On appeal, the Commonwealth Court reversed the *September 2018 Order*. See *Commonwealth Court Opinion – SBG/Elrea Garden, et al.* However, SBG did not appeal it. Likewise, the Commission granted the 2012 Complaints of Marchwood, Oak Lane, and Fern Rock in the *October 2018 Order*, but the Commonwealth Court reversed the *October 2018 Order*. See *Commonwealth Court Opinion – SBG/Marchwood, et al.* Again, SBG did not appeal the appellate order. Thus, the decisions applicable to these Complainants are deemed final. Accordingly, there is no legal basis for SBG to seek the recoupment of any refunds by virtue of the enforcement of Commission Orders that have been reversed on appeal. As such, SBG's argument and its associated Exceptions must be denied.

**d. SBG Exception No. 4: Lien Difference Claims Pending before the Commission**

**(1) SBG Exception No. 4**

In its Exception No. 4, SBG argues that the ALJ improperly excluded some of the 2012 Complaints from consideration, concluding that they were not pending when the Supreme Court issued its decision in *PGW II*. SBG contends that the Commonwealth Court in *PGW III* did not limit the application of its retroactivity to the 2012 Complaints of Simon Garden and Colonial Garden. Rather, SBG asserts that the language of the Commonwealth Court's opinion was broader: "we conclude that our Supreme Court's decision in *PGW II* applies retroactively only as to parties to this litigation **and to other**

**proceedings pending at the time the *PGW II* decision was issued in April 2021.”**  
SBG Exc. at 6 (citing *PGW III* at \*13 (emphasis added by SBG)).

According to SBG, the question as to which parties had pending proceedings in April of 2021 was fleshed out during the prehearing conference. SBG asserts that it is evident that all Complaints filed by SBG parties in 2012 and in 2015 remain pending and had been stayed awaiting the outcome of the appellate courts. Also, SBG states that PGW already conceded this issue. SBG Exc. at 6.

SBG proffers that all of the 2012 and 2015 Complaints were pending when the Supreme Court issued *PGW II* in April 2021. Referencing status reports and statements at prehearing conferences by PGW, SBG alleges that PGW has acknowledged this fact since March 2020. However, SBG submits that only recently, at a prehearing conference, PGW changed its position and stated that the other 2012 Complaints were not included in the remand currently before the Commission. SBG Exc. at 6-9.

SBG argues that each of the 2012 and 2015 Complaints remain active matters before the Commission. According to SBG, the Commonwealth Court remitted each docket number to the Commission following its disposition and the Commission has not entered final decisions on them. SBG also states that each of the 2015 Complaints has been stayed since 2016, and remains pending without final resolution. SBG submits that the plain language of *PGW III* leads to the plain conclusion that all of the 2012 and 2015 Complaints are included in the Court’s decision on retroactivity. Moreover, SBG contends that the Commission proceedings in the pending captioned cases presented identical issues to those raised by the intervenors before the Supreme Court in *PGW II*. SBG Exc. at 10.

## (2) PGW Replies

In response, PGW argues that SBG Exception No. 4 must be denied because the 2012 Complaints by Elrea Garden, Fairmount Manor, Fern Rock, Marchwood, Marshall Square, and Oak Lane were not active matters pending before the Courts or the Commission at the time of *PGW II* and are properly foreclosed from further consideration in this proceeding. R. Exc. 6-9.

PGW explains that only one of the Commonwealth Court's decisions in 2019, *PGW I*, was appealed by SBG to the Pennsylvania Supreme Court, which made its decision in *PGW II* in April 2021 and was then remanded by the Commonwealth Court in *PGW III* in 2022. The other two 2019 Commonwealth Court decisions were not appealed by SBG to the Supreme Court. PGW asserts that those unappealed Commonwealth Court decisions – pertaining to the lien difference claims in the 2012 Complaints by Elrea Garden, Fairmount Manor, Fern Rock, Marchwood, Marshall Square, and Oak Lane – remain reversed. PGW adds that they were not considered in *PGW II* and were not remanded by *PGW III*. R. Exc. at 7 (citing *Commonwealth Court Opinion – SBG/Elrea Garden, et al.*, and *Commonwealth Court Opinion – SBG/Marchwood, et al.*).

PGW argues that SBG's Exception No. 4 is a thinly-veiled attempt to avoid the consequences of SBG's unexplained failure to appeal all of the Commonwealth Court's 2019 decisions. PGW submits that the consequence of this failure is that lien difference claims in the 2012 Complaints by Elrea Garden, Fairmount 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. Arguing that there is no legal basis to avoid the consequences of SBG's failure to appeal two of the three Commonwealth Court's 2019 decisions, PGW proffers that SBG Exception No. 4 must be denied. R. Exc. at 10.

### (3) Disposition

Upon review, we find that the ALJ appropriately applied the Commonwealth Court's ruling in *PGW III*. There is no legal basis to conclude that the 2012 Complaints of Elrea Garden, Fairmount Manor, Fern Rock, Marchwood, Marshall Square and Oak Lane were pending before the courts or the Commission at the time of the Supreme Court's decision in *PGW II*. As discussed above, all of these Complaints were deemed final when SBG failed to appeal the 2019 Commonwealth Court decisions applicable to them.

Moreover, the record does not support SBG's contention that the 2012 Complaints of Elrea Garden, Fairmount Manor, Fern Rock, Marchwood, Marshall Square and Oak Lane were stayed pending their appeals to Commonwealth Court or that those proceedings have somehow remained active. Accordingly, we find that SBG's arguments lack merit and shall deny SBG's Exception No. 4.

## 2. PGW Exceptions and Dispositions<sup>24</sup>

### a. PGW Exception No. 1: Calculating the Difference in Interest Rates on Docketed Municipal Liens

In its Exception No. 1, PGW argues that the ALJ erred by not calculating the 12% difference in interest rates owed on docketed liens consistent with the holdings in *PGW II* and *PGW III*. PGW contends that in the Initial Decision on Remand, the ALJ only calculated the entire amount of interest of 18% assessed on the docketed liens or judgments. According to PGW, this was in error because it disregarded both the Supreme Court's holding in *PGW II* that, PGW is entitled to 6% interest, and the

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<sup>24</sup> As noted above, SBG did not file replies to PGW's Exceptions.

instruction of the Commonwealth Court in *PGW III* to calculate the 12% difference. PGW Exc. at 8-9.

PGW argues that granting relief to remove the entire 18% interest charged by PGW from SBG's accounts is wrong because it creates a windfall for SBG. Rather, PGW asserts that pursuant to *PGW II*, it is entitled to 6% interest which would result in a reduction of the amount of any refund amount from \$584,805.78 to \$389,870.52. However, PGW adds that SBG must pursue any such refund in the Court of Common Pleas because the Commission lacks legal authority to order PGW to provide refunds on judgments. PGW Exc. at 9.

**b. PGW Exception No. 2: Removal of All Interest from SBG's Gas Accounts**

In its Exception No. 2, PGW argues that the ALJ erred by directing the removal of all the 18% interest that accrued on the liens and judgments from SBG's accounts. Because these interest amounts are the subject of filed liens, which the Supreme Court in *PGW II* said must be treated as civil judgments, PGW contends that the Commission lacks jurisdiction to order these amounts to be wiped out. Doing so, PGW continues, would effectively be ordering money damages on non-jurisdictional amounts. PGW Exc. at 9-10.

PGW asserts that it is hornbook law that the Commission lacks the power to review, modify, and adjust judgments, or award damages. *Id.* at 10 (citing *Gasparro*, 814 A.2d at 1285 (Commission lacks jurisdiction after a judgment exists)). Consistent with *PGW II*, PGW proffers that each of the SBG gas accounts at issue were subject to a lien and judgment at the time that interest was charged. Specifically, PGW states that the amounts in those accounts are non-jurisdictional once the account is subject to a lien and judgment. According to PGW, the interest accruing on those non-jurisdictional accounts

and amounts – as directed by the Supreme Court – is 6% and that if SBG wants refunds, it must file with the Common Pleas Court for refunds of the 18% versus 6% difference. PGW Exc. at 10.

For clarity, PGW acknowledges that the Commission has the 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. However, PGW asserts that it has removed from its regulated bills any amounts of excess interest, in keeping with the Supreme Court decision. In recognition of this, PGW argues that the Commission may act in aid of the Courts – not in place of them in a civil action involving a docketed lien and judgment. Here, PGW recognizes that 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. PGW submits that this was not done by the ALJ when she directed PGW to remove all interest (18%) from SBG’s accounts. PGW Exc. at 11. Alternatively, PGW requests that, to the extent the Commission disagrees with this analysis, it clarify that the “removal” of amounts “from the accounts” actually means that PGW should issue a credit to SBG’s accounts. *Id.*

**c. PGW Exception No. 3: Treatment of Vacated Liens**

Regarding its Exception No. 3, PGW argues that in calculating the amount of refunds resulting from the Supreme Court’s decision in *PGW II*, the ALJ incorrectly treated vacated liens the same as satisfied liens. PGW contends that this is in error for two reasons. First, PGW asserts that as a matter of law, when a lien is correctly vacated, the lien amounts are not considered paid by the customer. Rather, PGW continues, when a lien or judgment is vacated, the effect is to nullify or cancel, make void, or invalidate the lien or judgment. According to PGW, this means that the rights of the parties are left as though no lien or judgment had ever been entered; in contrast, satisfied liens, are

considered paid in full by the customer to satisfy or remove the judgment. PGW Exc. at 12.<sup>25</sup>

Applying this legal principle, PGW contends that when a lien or judgment is vacated, it never existed; and, thus, there was never any preemption of the Commission's jurisdiction in the first place. In such a circumstance, PGW argues that the unpaid utility bills were correctly and legally subject to 18% interest for late-payment charges under PGW's tariff. PGW asserts that the ALJ 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. PGW Exc. at 12-13.

In its second argument, PGW emphasizes that except for a handful of the vacated liens at issue (38 liens), there is no evidence of record that any of the remaining vacated liens were actually paid by SBG. PGW explains that it 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 and those liens were included in PGW's calculations of the 12% difference. However, PGW argues that no evidence was presented by SBG that any of the 90 remaining liens were actually paid by SBG. Thus, PGW proffers that awarding a refund on amounts not paid by SBG would constitute a windfall to SBG and should be corrected. *Id.* at 13.

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<sup>25</sup> In support, PGW cites *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. Cmwlt. 2018); *First Seneca Bank v. Greenville Distributing Co.*, 533 A.2d 157 (Pa. Super. 1987)(Void judgment treated as having never existed). PGW Exc. at 12, n.55.

**d. PGW Exception No. 4: Addition of Non-Party Fairmount Court**

In PGW’s Exception No. 4, PGW objects to the ALJ’s determination that Fairmount Court, which is a non-party to the complaint proceedings, should be unilaterally joined as an indispensable party complainant to the complaint filed by a separate entity – Fairmount Manor. PGW argues that this holding flaunts both the clear direction of *PGW III*, as to the parties to which the Supreme Court decision was to apply, and the legal standards for joining indispensable parties in matters before the Commission. According to PGW, the ALJ arbitrarily granted a non-party, separate legal entity monetary relief without any formal pleadings or process, in violation of PGW’s due process rights. PGW Exc. at 5, 13-17.

PGW excepts to the late addition of Fairmount Court because it is as a new party complainant and is legally and physically different from Fairmount Manor, which is a 2015 Complainant. According to PGW, the ALJ 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 Reality Co. L.P.” until SBG’s May 2, 2023, testimony. PGW Exc. at 14 (citing I.D.R. at 25). PGW asserts that despite this, the ALJ held 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 be inequitable and confusing. PGW Exc. at 14.

In support of its Exception to reverse the ALJ’s determination, PGW proffers three main arguments. First, PGW explains that the Commonwealth Court’s remand in *PGW III* made clear that the Commission’s review applies retroactively only to the parties to this litigation and to other proceedings pending at the time of *PGW II*. PGW asserts that Fairmount Court was indisputably not a party to this litigation and did not have any proceedings pending as of April 29, 2021. PGW Exc. at 14.

Second, PGW argues that black letter law precludes the Commission from granting any relief in favor of a non-party such as Fairmount Court. PGW adds that complainants before the Commission do not have standing to assert the rights of other customers. *Id.* at 15 (citing *George v. Pa. PUC*, 735 A.2d 1282, 1286 (Pa. Cmwlth. 1999); *James E. Coggins v. PPL Electric Utilities Corporation*, Docket No. C-2012-2312785 (Opinion and Order entered July 18, 2013)). Here, PGW contends that seven years after the filing of Fairmount Manor's 2015 Complaint, SBG disclosed for the first time that certain claims made by Fairmount Manor included claims that could only be raised by Fairmount Court for certain properties and gas accounts where Fairmount Court was both the customer and the legal owner responsible for paying the gas service. According to PGW, the ALJ acknowledged that the claims relevant to Fairmount Court were not made by Fairmount Court, which was the real party in interest. PGW Exc. at 15-16.

Moreover, PGW argues that Fairmount Court cannot be an indispensable party to Fairmount Manor's 2015 Complaint because 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. PGW Exc. at 16 (citing *Church of Lord Jesus Christ of the Apostolic Faith Inc. v. Shelton*, 740 A.2d 751 (Pa. Cmwlth. 1999)). PGW notes that Fairmount Court did not seek relief on its own behalf and relief to Fairmount Manor is not dependent on the presence of Fairmount Court in this proceeding. That is, PGW continues, the Commission can grant relief 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). PGW Exc. at 16.

In its third argument, PGW submits that any confusion as noted in the Initial Decision on Remand was created only because Fairmount Court failed to assert claims on its own behalf. PGW argues that adherence to black letter law in rejecting the

finding of Fairmount Court as an indispensable party is not inequitable given the seven-year delay in disclosing the claims. Furthermore, PGW notes that the Commission lacks power to grant equitable remedies. PGW Exc. at 17 (citing *Com. of Pa., et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Opinion and Order entered December 18, 2014) at 25-27).

PGW asserts that in granting this Exception, the Commission should require recalculations for Fairmount Court, thereby reducing the overall award by \$12,927.12. PGW Exc. at 5, Appendix A and D. Alternatively, PGW requests that if Fairmount Court is added as a complainant to Fairmount Manor's 2015 Complaint, that the Ordering Paragraphs be modified to clarify the distinctive relief applicable to it. PGW Exc. at 17.

**e. PGW Exception No. 5: Beginning Date for Docketed Liens in 2015 Complaints**

In PGW's Exception No. 5, PGW argues that the ALJ's beginning date for the consideration of docketed liens in SBG's 2015 Complaints relitigates and duplicates claims that were, or should have been, brought as part of SBG's 2012 Complaints. PGW Exc. at 17-18.

PGW explains that the ALJ attempted to avoid re-litigating and duplicating claims by setting December 11, 2012, as the beginning date for the lien claims in SBG's 2015 Complaints. This date is based on the filing date of December 10, 2012, for the amended complaints in SBG's 2012 Complaints, PGW states. However, PGW contends that the ALJ, in setting this date, assumed that no liens filed after December 10, 2012 were litigated as part of the SBG's 2012 Complaints. According to PGW, the ALJ's assumption was wrong because the evidence shows that nearly all the liens identified by the ALJ in the Initial Decision on Remand at pages 68-82 were litigated, or should have

been litigated, as part of the 2012 Complaints and cannot be considered again in SBG's 2015 Complaints. PGW Exc. at 19 and Appendix A (citing PGW St. 1-R at 12-13, PGW Exh. BLC-5 and PGW Exh. BLC-16).

Thus, PGW requests that the Commission modify the Initial Decision on Remand to exclude consideration of claims that were, or should have been, litigated as part of SBG's 2012 Complaints. PGW Exc. at 19.

**f. PGW Exception No. 6: Partial Payment Credit Owed to Fairmount Court**

In its Exception No. 6, PGW argues that the ALJ erred by overlooking evidence calculating the partial payment credit owed by PGW to Fairmount Court. PGW Exc. at 19 (citing I.D.R. at 48-49, 87; OP No. 13).

Initially, PGW contends that consistent with its arguments set forth in PGW Exception No. 4, above, Fairmount Court should not be found to be a proper complainant in this proceeding because it cannot be properly deemed an indispensable party. PGW Exc. at 19-20.

Alternatively, PGW asserts that the amount of credit that PGW would owe Fairmount Court - \$434.08 – is already in the record. Here, PGW states that Fairmount Court owned certain properties known as 700-08 N. Marshall St. and 711-19 N. 7th St. PGW Exc. at 20 (citing I.D.R. at 46). PGW notes further that SBG Exhibit CEH-1 contains calculations for 700 N. Marshall St., 702 N. Marshall St. and 704 N. Marshall Street but that no claim was made for the other properties owned by Fairmount Court on SBG Exhibit CEH-1. PGW Exc. at 20.

For the gas accounts at 702 N. Marshall Street, PGW posits that SBG Exhibit CEH-1 shows the partial payment amount of \$434.08. According to PGW this amount is based on partial payments made by or on behalf of Fairmount Court in 2013 and 2018. PGW Exc. at 20 (citing PGW Exh. BLC-25 at 4; PGW Exh. BLC-4 at 12). PGW submits that 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. PGW Exc. at 20.<sup>26</sup>

PGW proffers that if the Commission permits Fairmount Court to be added as a party to Fairmount Manor's 2015 Complaint, the Commission should modify any credit owed to Fairmount Court in the amount of \$432.08 plus interest. *Id.*

**g. PGW Exception No. 7: Accrual of Interest on Partial Payment Amounts**

In its Exception No. 7, PGW argues that the ALJ erred in providing unclear instructions for accrual of interest on the partial payment amounts. Here, PGW clarifies that it does not object to the ALJ's direction to credit the accounts for the partial payment amounts plus the legal rate of interest. However, PGW excepts to, and seeks clarity on, the contradictory instructions regarding the accrual of interest upon the partial payment amounts. PGW Exc. at 21.

According to PGW, the ALJ provides one beginning date for interest – from “the date each improper bill was issued” – but gives different dates for the end of interest. PGW Exc. at 21 (citing I.D.R. at 86-87; OP Nos. 5-13). PGW notes that one of the different dates is found in the body of the decision which provides that the

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<sup>26</sup> PGW asserts that 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. *Id.* (citing PGW Exh. BLC-25 at 3; PGW Exh. BLC-25 at 6).

“end date for calculation of interest should be ... the date of interest of the entry of [the] Commission Order in [this proceeding].” PGW Exc. at 21 (citing I.D.R. at 49). As to the other different dates, PGW states that each of the Ordering Paragraphs provides a different instruction for the end of interest. PGW notes that those Ordering Paragraphs provide interest should be paid by PGW from “the date each improper bill was issued until January 14, 2020.” PGW Exc. at 21 (citing I.D.R. at 86-87; Ordering Paragraph Nos. 5-13).

PGW requests that the Commission modify the Ordering Paragraphs 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.” PGW Exc. at 21.

#### **h. Disposition of PGW’s Exceptions**

Based upon our review of the record and the applicable law, we shall grant PGW Exception Nos. 1 and 2, which are related. In these Exceptions, PGW argues that the ALJ incorrectly failed to calculate the 12% difference in interest rates consistent with the Supreme Court’s holding in *PGW II*. Likewise, PGW contends that the ALJ improperly directed PGW to remove the entire 18% interest from SBG’s gas accounts without accounting for the 6% statutory interest authorized in *PGW II* (i.e., the 12% difference in interest rates). We agree.

Pursuant to the directive in *PGW III* to calculate the correct amount of any refunds owed, we believe that the Commonwealth Court intended for the Commission to assist the courts with appropriate jurisdiction to order the payment of the amounts owed. Accordingly, we shall act pursuant to the bifurcated process referenced in *DeFrancesco*, discussed above, and shall incorporate the amounts owed in reference to *PGW II*, e.g., PGW’s entitlement to the 6% statutory interest owed on the docketed municipal liens. In

doing so, we acknowledge the limits of our jurisdiction – that is, we are without jurisdictional authority to order the payment of the refunds which incorporates the 6% statutory interest amounts. Thus, to the extent that SBG seeks an order directing the payment of such refunds, it will need to do so with the Court of Common Pleas or other court of competent jurisdiction.

In granting PGW Exceptions No. 1 and 2, we shall modify the appropriate Ordering Paragraphs set forth in the Initial Decision on Remand – Ordering Paragraph Nos. 14-21 – to clarify the inclusion of the 6% interest owed.

Regarding PGW Exception No. 3, PGW argues that liens which were vacated and not actually paid by SBG should not be included in the calculation of refund amounts.

PGW cites to various Pennsylvania appellate cases for the proposition that a vacated lien is operatively canceled and should be deemed as having never existed. *See e.g., Higbee's Estate*, 93 A.2d at 469 (“Where a judgment is vacated or set aside by valid order or judgment, it is entirely destroyed and the rights of the parties are left as though no such judgment had ever been entered.”) (Internal quotations omitted); *Mitchell*, 199 A.3d at 507 (“[W]hen a judgment is vacated, the effect is to nullify or cancel, make void, or invalidate the judgment.”) (Internal quotations and citations omitted); and *First Seneca Bank*, 533 A.2d at 162 (“The effect of a void judgment is that it must be treated as having never existed.... It has no legal or binding force or efficacy for any purpose or at any place. It cannot affect, impair, or create rights, nor can any rights be based thereon.”) (Internal quotations omitted).

The flaw in PGW’s argument, however, is that the vacated liens at issue began as docketed municipal liens, which are extra-jurisdictional to the Commission pursuant to *PGW II*. That is, the Commission does not have the jurisdiction to evaluate

whether the docketed municipal liens, which are considered judgments, that are subsequently marked “vacated” can be deemed void as per the cases cited by PGW. Such an evaluation of the legal status of the originally docketed municipal liens and any modifications to them must be taken up with the Court of Common Pleas.

The ALJ’s disposition as to this point was instructive:

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

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

I.D.R. at 62.

Indeed, in its other arguments, PGW appears to agree with the ALJ’s analysis that the Commission lacks the authority to modify such judgments.

*See* PGW Exc. at 10 (“It is hornbook law that the Commission lacks power to ... review, modify, and adjust judgments or award damages.”) (citing in part, *Gasparro*, 814 A.2d at 1285)).

Accordingly, we shall deny PGW Exception No. 3. In doing so, we shall adopt the ALJ’s findings pertaining to the vacated liens.

Regarding PGW Exception No. 4, PGW argues that the ALJ erred by including Fairmount Court as an indispensable party to this proceeding and sharing in the proposed refund calculations. We agree with PGW.

As a non-party to the Complaint proceedings, Fairmount Court should not have been unilaterally joined as an indispensable party complainant to the Complaint filed by a separate entity – Fairmount Manor. Such a determination conflicts with the direction of *PGW III*, as to the parties to which the Supreme Court decision was to apply. Notably, Fairmount Court was indisputably not a party to this litigation and did not have any proceedings pending as of April 29, 2021.

Additionally, we agree with the arguments set forth in PGW’s Exceptions that the ALJ’s ruling conflicts with the legal standards for joining indispensable parties in matters before the Commission. Moreover, it potentially violates PGW’s due process rights by calculating refund amounts to a non-party, separate legal entity without any formal pleadings or process.

Accordingly, we shall grant PGW's Exception No. 4 and modify the Initial Decision on Remand to remove the calculations pertaining to Fairmount Court.<sup>27</sup>

Regarding PGW's Exception No. 5, we agree with PGW that the ALJ's use of the recommended beginning date for the consideration of liens in SBG's 2015 Complaints operates to relitigate and duplicate claims that should have been brought as part of SBG's 2012 Complaints.

Recognizing the problem of relitigating claims, the ALJ 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. To resolve this, the ALJ set December 11, 2012, as the beginning date for the lien claims in SBG's 2015 Complaint. According to the ALJ, that date was based on the filing date of the amended Complaints – December 10, 2012 – for SBG's 2012 Complaints.

I.D.R. at 68.

In calculating the amounts to be removed from the Complainants' accounts, the ALJ acknowledged and agreed with PGW's arguments that any liens that were previously litigated and contained in the prior hearing exhibits for the 2012 Complaints must be excluded from the calculation of the amounts to be removed from the 2015 Complaints. I.D.R. at 72, 74-75, 78-79, and 81. According to PGW, however, the record evidence establishes that nearly all of the liens identified by the ALJ in the Initial Decision on Remand at pages 68-82 were litigated, or should have been litigated, as part of the 2012 Complaint proceedings. PGW Exc. at 19 and Appendix A (citing PGW Exhs. BLC-5 and BLC-16).

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<sup>27</sup> Consistent with this determination finding that Fairmount Court is not an indispensable party to the proceeding, we shall also grant PGW's Exception No. 6 pertaining to the partial payment credit owed to Fairmount Court. Accordingly, we shall modify the Initial Decision on Remand to exclude the calculation of partial payment credits owed by PGW pertaining to Fairmount Court.

Specifically, PGW asserts that all issues prior to the final evidentiary hearings in the 2012 Complaint proceedings should have been litigated as part of the 2012 Complaints and cannot be considered again in SBG's 2015 Complaints. In support, PGW argues that the doctrines of res judicata and collateral estoppel preclude the consideration of liens in the 2015 Complaint proceedings that were filed prior to the evidentiary hearings in the 2012 Complaints.<sup>28</sup> Moreover, PGW contends that it is the established practice of the Commission to address issues through the date of the evidentiary hearing. PGW Exc. at 19 (citing *Parkway Associates v. The Philadelphia Electric Company*, 68 Pa. P.U.C. 459, 0088 WL 1535051 (Opinion and Order entered November 15, 1988)).

Upon review of the uncontested filing dates of the docketed liens, we agree with PGW that nearly all of the liens identified by the ALJ pertaining to the 2015 Complaints were litigated, or should have been litigated, as part of the 2012 Complaints. Under the circumstances, we will not consider these liens when SBG had a full and fair

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<sup>28</sup> According to PGW, “[r]es judicata is raised when a party thinks that a particular claim was already, or could have been, litigated and therefor, should not be litigated again.” PGW Exc. at B-1, Appendix B. Res judicata is appropriately raised as a defense if all the issues between the parties in the current proceeding have been previously decided in a prior proceeding, where the parties had an opportunity to appear and be heard. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983) (*Day*). For the doctrine of res judicata to prevail, four conditions must exist: (1) identity of issues; (2) identity of causes of action; (3) identity of persons and parties to the action; and (4) identity of the quality and capacity of the parties suing or sued. *Day*, A.2d at 1316-17. Moreover, the doctrine applies not only to matters that were litigated, but also to matters which should have been litigated in the first proceeding if they were part of the same cause of action. See, *A. Raymond Kochis v. Duquesne Light Co.*, Docket No. C-2019-3012955, 2022 WL 143177 (Opinion and Order entered January 13, 2022) (*Kochis*) at \*5 (citing *Andersen v. Workmen’s Compensation Appeal Bd. (National Forge Co.)*, 537 A.2d 971, 973 (Pa. Cmwlth. 1988)). The four conditions for the application of the doctrine appear to have been satisfied as to the docketed municipal liens at issue here. That is, with respect to the consideration of these liens, it is apparent that the identities of the issues, the causes of action, the persons and parties to the action, and the quality and capacity of the parties as to the 2012 Complaints when compared with the 2015 Complaints are all the same.

opportunity to litigate them in the context of the 2012 Complaint proceedings. *See Kochis* at \*5.

PGW provides a detailed analysis of the liens considered as part of SBG’s 2012 Complaints. PGW Exc. at A-2 to A-7, Appendix A. For each of the 2015 Complaints, PGW compares the filing dates of the liens with the dates of the final evidentiary hearings in the 2012 Complaint proceedings.

*Elrea Garden - 2015 Complaint*

No.	Lien Date	Lien Status	1.50% per mo.	
87	6/4/2013	Vacated	\$39	← Each of these liens was litigated as part of the 2012 Complaints and were included in SBG’s Hearing Exhibits. PGW St. 1-R at 12-13; PGW Exh. BLC-5.
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	←
<b>Total</b>			<b>\$2,982</b>	

PGW Exc. Appendix A at A-2.

The final evidentiary hearing on the 2012 Complaint for Elrea Garden was held on February 12, 2015. *See, November 2015 Initial Decision.* As SBG had the full opportunity to address these liens in the 2012 Complaint proceeding prior to or by the time of the final evidentiary hearing, we will not consider them for purposes of calculating the amounts to be removed in the context of the 2015 Complaint of Elrea Garden. Thus, we shall modify the Initial Decision on Remand to remove the total amounts of the lien interest from the calculation applicable to Elrea Garden.

*Fern Rock – 2015 Complaint*

No.	Lien Date	Lien Status	1.50% per month	
35	7/31/2012	Vacated	\$959	← This lien was litigated as part of the 2012 Complaints and was included in SBG's Hearing Exhibits. PGW St. 1-R at 12-13; PGW Exh. BLC-5.
36	7/11/2013	Satisfied	\$253.91	◇ These liens should have been litigated as part of the 2012 Complaints because they were filed before the final evidentiary hearing.
37	7/11/2013	Satisfied	\$214.73	◇
38	7/11/2013	Satisfied	\$335.09	◇
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	--	◇
<b>Total</b>			<b>\$42,167</b>	

PGW Exc. Appendix A at A-3.

The final evidentiary hearing on the 2012 Complaint for Fern Rock was held on March 25, 2015. *See, February 2016 Initial Decision.* As SBG had the full opportunity to address these liens in the 2012 Complaint proceeding prior to or by the time of the final evidentiary hearing, we will not consider them for purposes of calculating the amounts to be removed in the context of the 2015 Complaint of Fern Rock. Thus, we shall modify the Initial Decision on Remand to remove the total amounts of the lien interest from the calculation applicable to Fern Rock.

Fairmount Manor – 2015 Complaint

No.	Lien Date	Lien Status	1.50% per month	
140	7/11/2013	Satisfied	\$49.42	← Each of these liens was litigated as part of the 2012 Complaints and was included in SBG’s Hearing Exhibits. PGW St. 1-R at 12-13; PGW Exh. BLC-5.
141	7/11/2013	Satisfied	\$50.81	
<b>Total</b>			<b>\$100.23</b>	

PGW Exc. Appendix A at A-3.

The final evidentiary hearing on the 2012 Complaint for Fairmount Manor was held on February 12, 2015. *See, November 2015 Initial Decision.* As SBG had the full opportunity to address these liens in the 2012 Complaint proceeding prior to or by the time of the final evidentiary hearing, we will not consider them for purposes of calculating the amounts to be removed in the context of the 2015 Complaint of Fairmount

Manor. Thus, we shall modify the Initial Decision on Remand to remove the total amounts of the lien interest from the calculation applicable to Fairmount Manor.<sup>29</sup>

Oak Lane – 2015 Complaint

No.	Lien Date	Lien Status	1.50% per month	
21	8/29/2012	Satisfied	\$226.38	← This lien was litigated as part of the 2012 Complaints and was included in SBG's Hearing Exhibits. PGW St. 1-R at 12-13; PGW Exh. BLC-5.
22	2/13/2013	Satisfied	\$284.97	◇ These liens should have been litigated as part of the 2012 Complaints because they were filed before the final evidentiary hearing.
23	4/23/2013	Satisfied	\$1,288.64	◇
24	6/18/2013	Vacated	\$1,004	◇
25	6/29/2013	Satisfied	\$380.19	◇
26	7/17/2013	Satisfied	\$138.90	◇
27	10/19/2013	Vacated	\$544	◇
28	12/30/2013	Vacated	\$144	◇
29	3/22/2014	Vacated	\$304	◇
<b>Total</b>			<b>\$4,315.08</b>	

PGW Exc. Appendix A at A-5 to A-6.

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<sup>29</sup> Only lien numbers 140 and 141 pertain to Fairmount Manor. The remaining lien numbers – 133 to 139 and 142 to 162 – pertain to Fairmount Court. See I.D.R. at 76-77 (citing PGW Exh. BLC-5 at 10-11 and SBG Exh CEH-3 at 9-10), and reproduced above. The total amount of the lien interest applicable to Fairmount Court (lien numbers 133-139 and 142-162) is \$12,493.04 (\$12,593.27 - \$100.23 = \$12,493.04). As a result of our determination, above, that Fairmount Court was incorrectly added as an indispensable party to this proceeding, we shall also modify the Initial Decision on Remand to remove the total amounts of the lien interest applicable to Fairmount Court.

The final evidentiary hearing on the 2012 Complaint for Oak Lane was held on March 25, 2015. *See, February 2016 Initial Decision.* As SBG had the full opportunity to address these liens in the 2012 Complaint proceeding prior to or by the time of the final evidentiary hearing, we will not consider them for purposes of calculating the amounts to be removed in the context of the 2015 Complaint of Oak Lane. Thus, we shall modify the Initial Decision on Remand to remove the total amounts of the lien interest from the calculation applicable to Oak Lane.

Marchwood – 2015 Complaint

No.	Lien Date	Lien Status	1.50% per month	
26	6/17/2013	Satisfied	\$6.82	← Each of these liens was litigated as part of the 2012 Complaints and was included in SBG's Hearing Exhibits. PGW St. 1-R at 12-13; PGW Exh. BLC-5.
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	←
<b>Total</b>			<b>\$4,241.14</b>	

The final evidentiary hearing on the 2012 Complaint for Marchwood was held on March 25, 2015. *See, February 2016 Initial Decision.* As SBG had the full opportunity to address these liens in the 2012 Complaint proceeding prior to or by the time of the final evidentiary hearing, we will not consider them for purposes of

calculating the amounts to be removed in the context of the 2015 Complaint of Marchwood. Thus, we shall modify the Initial Decision on Remand to remove the total amounts of the lien interest from the calculation applicable to Marchwood.

Marshall Square – 2015 Complaint

No.	Lien Date	Lien Status	1.50% per month	
11	7/11/2013	Satisfied	\$307.55	← Each of these liens was litigated as part of the 2012 Complaints and was included in SBG’s Hearing Exhibits. PGW St. 1-R at 12-13; PGW Exh. BLC-5.
12	7/11/2013	Satisfied	\$447.96	←
13	10/7/2013	Satisfied	\$267.59	←
14	4/7/2013	Satisfied	\$163.12	←
15	7/23/2014	Satisfied	\$579.44	←
16	7/23/2014	Satisfied	\$16,547.75	←
<b>Total</b>			<b>\$18,313.41</b>	

The final evidentiary hearing on the 2012 Complaint for Marshall Square was held on February 12, 2015. *See, November 2015 Initial Decision.* As SBG had the full opportunity to address these liens in the 2012 Complaint proceeding prior to, or by the time of the final evidentiary hearing, we will not consider them for purposes of calculating the amounts to be removed in the context of the 2015 Complaint of Marshall Square. Thus, we shall modify the Initial Decision on Remand to remove the total amounts of the lien interest from the calculation applicable to Marshall Square.

Summary of Calculations

By granting PGW Exception Nos. 1-2, 4, and 5 and denying PGW Exception No. 3, we calculate the following adjustments to the Complainants' accounts, which is summarized in Table 12, as follows:

**Table 12: Commission Adjustments to Amounts the ALJ Required PGW to Remove from the Complainants' Accounts**

	<b>Initial Decision on Remand</b>	<b>Opinion and Order</b>
Colonial Garden	\$96,385.30	\$64,256.87
Simon Garden	\$403,808.58	\$269,205.72
Elrea Garden	\$2,982	-
Fern Rock	\$42,167	-
Fairmount Manor/ Fairmount Court	\$12,593.27*	-
Oak Lane	\$4,315.08	-
Marchwood	\$4,241.14	-
Marshall Square	\$18,313.41	-
<b>Total</b>	<b>\$584,805.78</b>	<b>\$333,462.59</b>

\*Using the corrected amount for Fairmount Manor and Fairmount Court, as discussed above.

We further adopt the ALJ's calculations regarding refunds due to the Complainants for improper application of partial payments, as discussed above. *See*, I.D.R. at 47-48; Table 1, *supra*.

As a final matter, we shall address PGW's Exception No. 7 in which PGW argues that the ALJ erred by providing unclear instructions for the accrual of interest on the partial payment amounts. PGW Exc. at 21 (citing I.D.R. at 48-49, 86-87; Ordering Paragraph Nos. 5-13).

Indeed, there are apparent inconsistent end dates for the calculation of interest in the body of the Initial Decision on Remand – which indicates an end date at the time of entry of a Commission order in the proceeding – and in the relevant ordering paragraphs – which specify an end date for each bill until January 14, 2020. PGW argues that, consistent with both the positions of SBG and PGW, the Commission should clarify the proper interest period end date as “upon the entry of a Commission Opinion and Order in this proceeding.” PGW Exc. at 21. We agree that the appropriate end date for the calculation of the legal rate of interest should be the entry date of this Opinion and Order and shall modify the Initial Decision on Remand accordingly.

#### **IV. Conclusion**

Based on the foregoing discussion, we shall: (1) deny the Exceptions of SBG; (2) grant the Exceptions of PGW, in part, and deny them, in part; and (3) adopt the Initial Decision on Remand as modified, consistent with this Opinion and Order.

**THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exceptions filed by SBG Management Services, Inc., *et al.*, on August 15, 2024, are denied.
2. That the Exceptions filed by Philadelphia Gas Works on August 15, 2024, are granted, in part, and denied, in part.
3. That the Initial Decision on Remand of Administrative Law Judge Eranda Vero, issued on July 26, 2024, is adopted, as modified, consistent with this Opinion and Order.

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

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

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

7. That Philadelphia Gas Works shall credit the Colonial Garden Realty Co., L.P.'s accounts the amount of \$2,720.08, plus interest at the legal rate of 6%

calculated from the date each improper bill was issued until the entry date of this Opinion and Order.

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

9. That Philadelphia Gas Works shall credit the Elrea Garden Realty Co., L.P.'s accounts the amount of \$780.36, plus interest at the legal rate of 6% calculated from the date each improper bill was issued until the entry date of this Opinion and Order.

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

11. That Philadelphia Gas Works shall credit the Marchwood Realty Co., L.P.'s accounts the amount of \$7,751.55, plus interest at the legal rate of 6% calculated from the date each improper bill was issued until the entry date of this Opinion and Order.

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

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

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

15. That the amounts calculated for the removal from the accounts of Colonial Garden Realty Co., L.P., by the Philadelphia Gas Works as directed by *Phila. Gas Works v. Pa. PUC*, 276 A.3d 1219 (Table) (Pa. Cmwlth. 2022) is \$64,256.87.

16. That the amounts calculated for the removal from the accounts of Simon Garden Realty Co., L.P., by the Philadelphia Gas Works as directed by *Phila. Gas Works v. Pa. PUC*, 276 A.3d 1219 (Table) (Pa. Cmwlth. 2022) is \$269,205.72.

17. That these consolidated proceedings on remand be marked closed.

**BY THE COMMISSION**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: January 9, 2025

ORDER ENTERED: January 23, 2025