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May 8, 2015

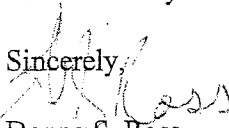
The Honorable Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, 2<sup>nd</sup> FL  
400 North Street  
Harrisburg, PA 17105-3265

Re: Filing of Complainants Reply Briefs; In the Matters of SBG Management Services, Inc. et al. v. PGW: Docket Nos. C-2012-2304324; C-2012-02304183, C-2012-2304303, C-2012-2304167, C-2012-2304215, C-2012-2308465, C-2012-2308462, C-2012-2308454

Dear Secretary Chiavetta:

Kindly, accept for filing with the Commission, Complainants' Reply Briefs in the above-referenced consolidated matters. I certify that copies have been served upon Respondent and the presiding officer, ALJ Eranda Vero in accordance with the service requirements of the Commission. Please contact me if you have any questions or concerns at 215-938-6665 or on my mobile at 484-888-9578.

Sincerely,

  
Donna S. Ross

Counsel for Complainants

Cc: ALJ Eranda Vero ✓

Mr. Laureto Farinas, Esq. for Respondent



Equal Housing Opportunity  
Equal Opportunity Employer

"SBG Management and the owner of the property in question do not discriminate on the basis of handicap status in the admission to, or treatment of employment in its federally assisted programs and activities."

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**SBG MANAGEMENT SERVICES, INC./  
FERN ROCK REALTY CO., L.P.** : **DOCKET NO. C-2012-2308465**  
*Complainant*

**V.** :

**PHILADELPHIA GAS WORKS** :  
*Respondent*

**SBG MANAGEMENT SERVICES, INC./  
MARCHWOOD REALTY CO., L.P.** : **DOCKET NO. C-2012-2308462**  
*Complainant*

**V.** :

**PHILADELPHIA GAS WORKS** :  
*Respondent*

**SBG MANAGEMENT SERVICES, INC./  
OAKLANE REALTY CO., L.P.** : **DOCKET NO. C-2012-2308454**  
*Complainant*

**V.** :

**PHILADELPHIA GAS WORKS** :  
*Respondent*

**REPLY BRIEF  
OF  
COMPLAINANTS' SBG MANAGEMENT SERVICES, INC., agent acting  
on behalf and in the interest of FERN ROCK REALTY CO. L.P.,  
MARCHWOOD REALTY CO. L.P., OAK LANE REALTY CO., L.P.**

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DATED: May 11, 2015

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## **STATEMENT OF THE QUESTIONS PRESENTED & REPLY ARGUMENT**

### **a) Statute of Limitation**

- *Should the statute of limitations be tolled for Complainants' claims which fall outside the three-year general limitation period contained in 66 Pa. C.S. § 3314 and 1312? Why? List the legal grounds (legal doctrine, statute, case law or regulation) for your position. Provide the transcript page and exhibit references to show where the evidence appears in the record. Remember that some of the original transactions disputed in the Complaints have been withdrawn by the Complainants.*

SUGGESTED ANSWER: Yes. Complainants claims outside of the limitations period should be tolled based upon the equitable legal remedies upheld under the Continuing Violations Doctrine, the Discovery Rule and Estoppel.

1. Respondent does not provide any credible testimony, legal authority or evidence to dispute Complainants' claims that PGW maintains a continuing pattern, practice and process of re-ordering Complainants payments such that PGW's imposition and collection of late payment fees and finance charges results in compounded annual interest rate of 19.562% in excess of the 18% annual simple interest rate authorized by the PGW Gas Tariff, the Commissions' regulations at 52 Pa.Code § 56.1 et seq. and violates various provisions of the Pennsylvania Public Utility Code 66 Pa.Code § 1301, 1303, 1304, 1309, 1504 et seq. These statements are supported by the record. (Exh. PGW Corr 0070, SBG SG-CG No. 7 Allcorrespondence 00422-00423-00424), (Tr. 1/29/2015 Hearing Test. Jeremy G. Gabell, CPA, pg. 592, lines 6 -25, pg. 594, lines 3 - 25, pg. 595, lines 1 - 11, pg. 605, lines 2 - 23, pg. 606, lines 1 - 24, pg. 608, lines, 10 -19). (Tr. Hearing 1/29/2015, Hearing Test. Roger C. Colton, pgs. 623 - 625) (Tr. 1/29/2015 Hearing Test. Roger C. Colton, Esq., pg. 626, lines 2 - 25, pg. 627, lines 1 -24, pg. 628, lines 1 - 19, pg. 631, lines 20 -25, pg. 632, lines 1 -25, pg.633, lines 1 -25, pg. 636, lines 1-25, pg. 634, 1-25, pg. 635, lines 1 - 25, pg. 636, lines 1 - 25, pg. 637, lines 1 - 25, pg. 638, lines 4 - 23, pg. 644, lines 2 - 25, pg. 645, lines 1 -25, pgs. 646, 647, 648, lines 1 -25, pg. 651, lines 4 - 25, pg. 659, lines 6 -25, pg. 660, lines 1 - 25, pgs. 661 - 677). The court in Waterman v. Jurupa Community Services, 53 Cal.App.4th 1550, 1556, 1996 Cal. App. LEXIS 1228, strictly prohibited this type of payment posting finding that it resulted in penalties not afforded under the statute and compounded interest charges paid by the customer.

Where plaintiff's prove violations have occurred and defendants maintain a pattern and practice of violations that have continued into the limitations period, the courts have held plaintiff's claims outside of the limitation period are included and toll the statute of limitations estopping defendants from barring claims beyond the limitations period. **West v. Philadelphia Electric Company**, 45 F.3d 744, 1995 U.S. App. LEXIS 1070; In **National Railroad Passenger Corp. v. Morgan**, 536 U.S. 101, 122 S.Ct. 2061, 2002 U.S. LEXIS 4214, the plaintiff was able to bring claims outside of the statute of limitations period, provided that an act contributing to the claim occurred within the filing period, the entire time period of the hostile environment may be considered by a court for purposes of determining liability. Applying the discovery rule, in **Merck & Co., Inc. v Reynolds**, 559 U.S. 633; 2010 U.S. LEXIS 3671, the court reasoned the limitations period begins to run once the plaintiff did discover, or a reasonably diligent plaintiff would have discovered, the facts constituting the violation - whichever comes first. *Id.* at 653. The court also held that facts constituting the violation include, but not solely, the fact of defendant's scienter, a mental state embracing intent to deceive, manipulate, or defraud. See also, **In Re Providian Financial Corporation Securities Litigation**, 152 F. Supp.2d 814, 2001 U.S. Dist. LEXIS 9084; **Nesbitt v. Erie Coach Co.**, 416 Pa. 89, 96. (1964). **In Re: Michael L. Jones v. Wells Fargo**, 2012 Bankr. LEXIS 1450. Testimony is un-refuted that Complainants were unaware of the payment posting scheme until the year 2014. PGW's pattern and practice has occurred for over 30 years and still continues to this day. But for Complainants' lawsuits, PGW would not have disclosed its practice to the Complainants or even to the Commission. It is in the public interest that the Commission fully comprehend the detrimental affect this practice has on customer accounts. The Commission must consider PGW's motivations in refusing to disclose the scheme because it generates significant revenue for the company. The lack of transparency regarding this type of accounting misleads customers, and misrepresents the Complainants' rates, either directly or indirectly, which is an unjust and unreasonable practice chiefly designed to invoke a penalty and/or allow for the collection of sums to which PGW is not legally entitled. PGW's practice violates 66 Pa.C.S. §§ 1301, 1303, public utility regulations and State Law, and serves the company as a pricing decision that is an indirect means of charging

more than 18% simple interest for finance charges which maximizes billed revenue to the utility company. (Tr. 1/29/2015, Hearing Test. Roger C. Colton, Esq., pgs. 616 - 620).

Furthermore, where Complainants have proven through their evidence that PGW's accounting practices result in over-collections, which is tantamount to an unauthorized rate increase, *under 66 Pa.C.S. § 315(d) the burden then shifts to the public utility to justify their accounting entries and the Commission on its own motion may so inquire.*<sup>1</sup>(*emphasis added*).

2. Respondent does not provide any legal authority or credible testimony or evidence to dispute Complainants' claims that PGW's imposition of 18% compounded interest is inapplicable to amounts docketed as lien judgments and insists upon continuing pattern, practice and process of re-ordering Complainants' payments such that PGW's imposition and collection of late payment fees and finance charges results in a compounded annual interest rate of 19.562% in excess of the 18% annual simple rate authorized by the Tariff, the Commission's regulations and violates various provisions of the Pennsylvania Public Utility Code 66 Pa. Code § 1303 et seq. and State Law.

With respect to liens and charging post-judgment interest to Complainants account, Respondent's provide no justification for ignoring the Commission's regulations under 52 Pa. Code § 56.22, statutory law ( 42 Pa.C.S. § 8101 or even 53 Pa.C.S. § 7143 (10% maximum interest for liens)) and caselaw, **Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002)**. PGW, on *their own authority*, using the Municipal Claims Act as their shield, continues to charge and collect pre-judgment interest at the compounded rate of 19.562%. Under 66 Pa.C.S.

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<sup>1</sup>Pursuant to 66 Pa.C.S. § 315. Burden of proof.

(a) **Reasonableness of rates.**--In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

(b) **Compliance with commission determinations and orders.**--In any case involving any alleged violation by a public utility, . . . the burden of proof shall be upon the public utility . . . to show that the determination or order of the commission has been complied with.

(c) **Adequacy of services and facilities.**--In any proceeding upon the motion of the commission, involving the service or facilities of any public utility, the burden of proof to show that the service and facilities involved are adequate, efficient, safe, and reasonable shall be upon the public utility.

(d) **Justification of accounting entries.**--**The burden of proof to justify every accounting entry questioned by the commission shall be upon the public utility making, authorizing, or requiring such entry, and the commission may suspend any charge or credit pending submission of such proof by such public utility. (*emphasis added*).**



§315, the burden now shifts to PGW to justify their practice and prove that it is just and reasonable and does not violate the Tariff, the Commission's regulations and Pennsylvania State Law.

Other courts have found that similar re-ordering processes like that of PGW's re-ordering process results in compounded interest penalties/finance charges and negative amortization by both the public utility industry, mortgage and credit card industries; and the courts have concluded similar accounting practices are illegal. The payment re-ordering process of applying payments made to cumulative late fees first before principle has the effective *of charging late fees upon late fees is called "pyramiding" and it is an illegal practice under 12 C.F.R. §227.15.* The accounting practice was evaluated by the court in **Waterman v. Jurupa Community Services**, 53 Cal.App.4th 1550, 62 Cal.Rptr.2d 264, 1996 Cal. App. LEXIS 1228, a public utility, a water company and perfectly illustrates PGW's reordering process and determined it to be invalid. The court plainly holding that the manner in which the water company applied payments and computed penalties, late fees and charges to customer's water bill account resulted in compound interest in violation of public utility statute. **In Re: Michael L. Jones v. Wells Fargo, 2012 Bankr. LEXIS 1450.** (The court held the improper amortization resulted in the assessment of additional interest, default fees and costs against the loan).

3. Respondent does not provide any legal argument, authority, testimony or evidence to justify their accounting practice, methodology and payment re-ordering scheme, nor does PGW offer any proofs the scheme was, or has been, disclosed to its patrons, approved by the Commission and conforms to the Tariff, Commission Regulations and the statutory provisions of the Pennsylvania Public Utility Code and State Law. **In Re Providian Financial Corporation Securities Litigation**, 152 F. Supp.2d 814, 2001 U.S. Dist. LEXIS 9084, the court denied defendant's motion for summary judgment and plaintiffs had proven facts sufficient for fraud in a securities case where high level managers scienter gave way to a strong inference of knowledge or recklessness in failing to disclose material information to investors on revenues collected from finance charges was based upon unscrupulous revenue generating tactics to customers, by delaying posting customer payments to generate late fees, and absent customer complaints, the company strongly discourage reversal of erroneous late fees. A duty to disclose

arises whenever secret information renders public statements materially misleading, not merely when that information completely negates the public statement. *See also* **Gutierrez v. Wells Fargo**, 730 F.Supp. 2d 1080, 2010 U.S. LEXIS 85123, where the court held that banks high-low posting order was systematically imposed unbeknownst to account holders which increased the number of fees generated by bank overdrafts. Wells Fargo's practice was deemed deceptive and initially ordered to pay \$203 million for restitution and costs.

Reiterating the findings of the court in **Merck & Co., Inc. v Reynolds**, 559 U.S. 633; 2010 U.S. LEXIS 3671, the limitations period was tolled based upon the discovery rule where facts giving rise to the violation included facts showing proofs of defendant's scienter, a mental state embracing intent to deceive, manipulate, or defraud. *See also*, **In Re Providian Financial Corporation Securities Litigation**, 152 F. Supp.2d 814, 2001 U.S. Dist. LEXIS 9084; And while mere negotiations will not give rise to estoppel, where there is concealment, omissions of material facts, or unintentional deception by the defendant, he may be estopped from barring Complainants claims. **Nesbitt v. Erie Coach Co.**, 416 Pa. 89, 96. (1964). **In Re: Michael L. Jones v. Wells Fargo**, 2012 Bankr. LEXIS 1450.

4. Respondent does not provide any legal argument, authority, testimony or evidence that proves that prior to Complainants' initiating its lawsuits in 2012, and only in response to discovery in 2014, Respondent turned over substantially material evidence regarding its reordering process accounting scheme and methodology, which was otherwise unknown and undiscovered by Complainants. The testimony by both Complainants and PGW's witnesses proved that PGW's reordering process is not clearly conspicuous, evident or apparent in plain language on the face of the billing statements and statement of accounts. The scheme is not readily evident in the PGW Tariff or noted on its website. Complainants were only gained access to the information through the litigation's discovery process. (Tr. Hearing Test. Bernard Cummings, V.P., PGW 2/12/2015, pgs. 1204 -1210, lines, 3 - 10, pg. 1214, lines 2 - 14).(Tr. Hearing 1/29/2015, Hearing Test. Roger C. Colton, pgs. 623 - 625). (Tr. 8/26/2013 Hearing Test. Dan McCaffery, Esq. pg. 196, lines 4 -12, 18 - 25, pg. 197, lines 1-25, pg. 198, lines, 1-20); (Tr. 8/28/15 Hearing Test. Ralph T. Savage, pg. 552, lines 24-25; pgs. 553 - 554, lines 1-25); (Tr. 8/29/2013 Hearing Test. Kathy Downs - Treadwell, pg. 183, lines 16-24); (Tr. January 29, 2015

Hearing Test. Ms. Kathy Downs- Treadwell, pg. 490 - 562 and Direct Testimony 3/4/2015). ; (Tr. 3/25/2015 Hearing Test. Diane Rizzo, pg. 53, lines 11-25, pg. 54, lines 1-4). Furthermore, Mr. Colton concluded that there is no way for the customer to derive PGW's re-sequencing scheme from the bill or the statement of accounts. Stating that the bill actually affirmatively misleads people into forming an opinion about how payments are applied and not even the most sophisticated customer would be able to discern the re-ordering process as to a customer's payment application. (Tr. 2/10/2015 Hearing Test. Roger C. Colton, Esq., pg. 873, lines 3 -25, pg. 874 - 878).

PGW did not disclose and Complainants did not discover the payment reordering process accounting scheme that shows PGW's continued policy, pattern and practice of over-collecting finance charges and late fees on commingled balances (both leined and unliened debt), until two years after the filing of Complainants lawsuits.

Where there is concealment, omissions of material facts, or unintentional deception, the defendant may be estopped from barring Complainants claims. Nesbitt v. Erie Coach Co., 416 Pa. 89, 96. (1964). In Re: Michael L. Jones v. Wells Fargo, 2012 Bankr. LEXIS 1450. Mary Esther Battle v. PECO Energy Co., C-00003804 (Order entered July 16, 2001).

5. Respondent cannot in good faith argue that they were without sufficient knowledge of Complainants disputes and complaints. PGW ignored Complainants claims and failed to conduct a sufficient investigation for years. Complainants concerns, disputes and were clearly articulated in their requests for explanations and information related to payments made to and applied to its accounts. The numerous communications, dialogues, between PGW and Complainants prior to filing suit, the allegations averred in its Complaints and thereafter throughout the discovery process are evident in the record. (Tr. 8/26/13 -Hearing Test. Phil Pulley, pg. 60, lines 2 - 22); (Tr. 8/26/13 Hearing Test. Dan McCaffery, Esq., pg. 187, lines 4 - 16, pg. 196, lines 4 - 12, 18 - 25, pg. 197, lines 20 - 25, pg. 198 lines 1 - 20, pg. 199, lines 8 - 25, pg. 200, lines 1- 25, pg. 201, lines 1 - 19, pg. 202, lines 2 - 6, pg. 216, lines 1 - 20). . (Tr. 8/26/13 Hearing Test. Phil Pulley, pg. 60, lines 2 - 22, pg. 61 lines 10-24, pg. 62 lines 19-25, pg. 63 lines 1 - 10, pg. 65 lines 14 -25, pg. 66 line 1, pg. 95, lines 3 - 16, pg. 99, lines 7 - 24 , pg. 100, lines 1-25, 106 lines 3 - 25, pg.107 lines 2 - 15, pg. 112 lines 1 - 25, pg. 113, lines 1 -2, pg.116, lines 14 - 25, pg. 130 ,lines 7 - 25,

pg. 159, pg. 167, lines 4 - 25, pg.168 lines 1 -23, pg.169, lines 4 - 11); (Tr. 8/26/2013 Hearing Test. Eric Lampert,, pg. 225, lines 1 -24; pg. 229, lines 5 -12, pg. 230, lines 17 -25, pg. 232, lines 8 25, pg., 233 lines 4 - 25, pg. 234, lines 1 -25, pg. 236, lines 18 -24, pg. 237, lines 1 -25, pg. 258 lines 2 - 25, pg. 263, lines 5 -25, pg. 264, lines 1 -25, pg. 265 , lines 1 -7, pgs. 266 - 268.); (Tr. 8/27/2013 Hear. Test. John Dunn, pg. 420, lines 9 -20). (Tr. 8/27/2013 Hearing Test. John Dunn, pgs.277 - 428). (Tr. 8/27/2013 Hearing Test. John Dunn, pg. 374, lines 22-25, pg. 375, lines 1-24, pg 385, lines 1-3, 15 -24; pg. 390, lines 18-25, pg. 391, lines 21 -25, pg. 392, lines 3 - 21, pg. 420, lines 9-20). (Tr. 3/25/2015 Hearing Test. Ralph T. Savage, pg.134, lines, 2-8; pgs. 141 -142, lines 1-25). (Exh. SBG AllCorres\_binder pgs 00150, 00153, 00157, 00190 -00192, 00243, 00249, 00309, 00316, PGW.Corr0007, 0012).

6. Respondent offers no credible argument that Complainants claims should not be considered in their entirety. Respondent ignores the testimony and evidence presented in the record and documented throughout Complainants' Main briefs. Respondent characterizes the 'communications between PGW and the Complainants were in the nature of inquiry concerning the general understanding of various PGW accounts.' (Respondent Brief pg. 10). This dubious and self-serving characterization belies the history established at the hearings and evidence in the record. This assertion is dispelled by the competent evidence presented and further rebutted by Complainants' expert witness testimony by Roger C. Colton, Esq., a regulatory financial economist and expert in public utility regulatory matters. (Tr. 1/29/2015 Hearing Test. Roger C. Colton, pgs 643 - 649); (Tr. 2/10/2015 Hearing Test. Roger C. Colton, pgs. 905 - 909).

Respondent had a duty to respond to Complainants inquiries<sup>2</sup> and knowing that Complainants were not satisfied, PGW had an affirmative duty to label their concerns and

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<sup>2</sup> **56.2 Initial inquiry**—A concern or question of an applicant, customer or occupant about a public utility's application of a provision covered by this chapter, including, but not limited to, . . . the accuracy of meter readings or bill amounts or the proper party to be charged. If a public utility, with the consent of the applicant, customer or occupant, offers to review pertinent records and call back the applicant, customer or occupant within 3 business days with a response, the contact will be considered an initial inquiry pending a determination of satisfaction by the applicant, customer or occupant with the company's response. If the company cannot reach the customer to convey the information obtained through a review of company records, a letter shall be sent which summarizes the information and informs the customer to contact the company within 5 business days if the customer disagrees with the company position, or has additional questions or concerns about the matter.

questions as a dispute<sup>3</sup> and file a public utility report pursuant to 52 Pa.Code §56.151 and 56.152 to preserve their claims.<sup>4</sup> PGW speciously states throughout the proceedings that Complainants claims never rose to the level of a dispute until filing a complaint with the PUC. (Tr. 3/25/2015 Hearing Test. Ralph Savage, pgs. 147 - 148). Respondent's promises to investigate Complainants' claims is well-documented. Respondent's admissions by PGW's Directors of Commercial Resource Center, John Dunn and Ralph T. Savage that their department was working with Complainants regarding billing issues is exhibited throughout the record. ( Tr. 8/27/13 Hearing Test. John Dunn, III, pg. 346, lines 5 - 10, pg. 360, lines 2 - 24). (Tr. 8/28/2013 Hearing Test. Ralph T. Savage, PGW Director of Commercial Resources Center, pg. 516, lines 3 -5, pg. 521, lines 20 -25, pg. 522, lines 1-5, pg. 523, lines 10 - 25, pg. 524, lines 1 - 25, pg. 525, lines 1-25, pg. 526, lines 1 17, pg. 548 , lines 1 25, pg. 549, lines 1 -25, pg., 550, lines,1 -25, pg. 551, lines, 1 -25, pg. 552, lines 1-25, pg. 553, lines 1 -25, pg. 554, lines 1 -25, pg. 555, lines 1 -18, pg. 566, lines, 4 - 10, pg.609, lines 12 - 25, pg. 610, lines 1-3, pg. 615, lines 1 -25, pg. 617, lines 19 25, pg. 618, lines 6 - 8, pg. 619, lines 15 - 25, pg. 620, lines 1 - 6); (Tr. January 20, 2015, Hearing Test. Ralph T. Savage, PGW, Director of Commercial Resources Center, pg. 897, lines 13 -25, pg. 898, lines 1 - 17, pg.900, 2 - 25, pg. 901, lines 1 -23, pg. 902, lines 1 - 14, pg. 909, lines 20 -25, pg. 910, lines 1 -9, pg. 913, lines 2 - 25). No inquiry is ongoing for over a decade. PGW's actions were unjust, unreasonable and violate the duty to deal fairly and in good faith with its patrons. The Regulations codified at 52 Pa.Code §§56.1 et seq. are clear,

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<sup>3</sup> 56.2 *Dispute*—A grievance of an applicant, customer or occupant about a public utility's application of a provision covered by this chapter, including, but not limited to, subjects such as credit determinations, deposit requirements, the accuracy of meter readings or bill amounts or the proper party to be charged. If, at the conclusion of an initial contact or, when applicable, a follow-up response, the applicant, customer or occupant indicates satisfaction with the resulting resolution or explanation of the subject of the grievance, the contact will not be considered a dispute.

<sup>4</sup> §56.140. **Follow-up response to inquiry.**

When a customer is waiting for a follow-up response to an initial inquiry under § 56.2 (relating to definitions), termination or threatening termination of service for the subject matter relating to the inquiry in question shall be prohibited until the follow-up response and, when applicable, subsequent dispute resolution is completed by the public utility.

§ 56.141. **Dispute procedures.**

A notice of dispute, including termination disputes, must proceed, according to this section:

(1) *Attempted resolution.* If, at any time prior to the actual termination of service, a customer advises the public utility that the customer disputes any matter covered by this chapter, including, but not limited to . . . the accuracy of public utility metering or billing or the proper party to be charged, the public utility shall attempt to resolve the dispute in accordance with § 56.151 (relating to general rule).

(2) *Termination stayed.* Except as otherwise provided in this chapter, when a termination dispute or complaint has been properly filed in accordance with this subchapter, termination shall be prohibited until resolution of the dispute or complaint. However, the disputing party shall pay undisputed portions of the bill.

conspicuous and set forth PGW's affirmative duties related to service as codified at 66 Pa.C.S.A. § 1501 et seq. The Commissions' inquiry and dispute and the public utilities rules and procedures regarding such are set forth by footnote.<sup>5</sup>

Respondent never filed public utility reports with the Commission, nor notified Complainants that such a report was available and, thus, breached their duty to apprise Complainants of such ensuring the preservation of Complainants claims. 52 Pa.Code § 56.152(4).

Respondent's affirmative actions, representations and claims to Complainants that they were investigating affirmatively misled Complainants. PGW's representations and assurances to investigate Complainants' claim was nothing more than a pretense. PGW's Ralph Savage, in

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**56.151. General rule.**

Upon initiation of a dispute covered by this section, the public utility shall:

- (1) Not issue a termination notice based on the disputed subject matter.
- (2) Investigate the matter using methods reasonable under the circumstances, which may include telephone or personal conferences, or both, with the customer or occupant.
- (3) Make a diligent attempt to negotiate a reasonable payment agreement if the customer or occupant is eligible for a payment agreement and claims a temporary inability to pay an undisputed bill.
- (4) Provide the customer or occupant with the information necessary for an informed judgment, including, but not limited to, relevant portions of tariffs, statements of account and results of meter tests.
- (5) Within 30 days of the initiation of the dispute, issue its report to the complaining party. The public utility shall inform the complaining party that the report is available upon request.
  - (i) If the complainant is not satisfied with the dispute resolution, the utility company report must be in writing and conform to § 56.152 (relating to contents of the public utility company report). Further, in these instances, the written report shall be sent to the complaining party if requested or if the public utility deems it necessary.
  - (ii) If the complaining party is satisfied with the orally conveyed dispute resolution, the written utility company report may be limited to the information in § 56.152(1), (2) and, when applicable, § 56.152(7)(ii) or (8)(ii).
  - (iii) The information and documents required under this subsection may be electronically provided to the complaining party as long as the complaining party has the ability to accept electronic documents and consents to receiving them electronically.

**§ 56.152. Contents of the public utility company report.**

A utility company report must include the following:

- (1) A statement of the claim or dispute of the customer and a copy thereof if the claim or notice of dispute was made in writing.
- (2) The position of the public utility regarding that claim.
- (3) A statement that service will not be terminated pending completion of the dispute process, including both informal and formal complaints, so long as there is compliance with all requirements of the Commission.
- (4) A statement that if the complaining party does not agree with the utility company report, an informal complaint shall be filed with the Commission to ensure the preservation of all of the complaining party's rights.
- (5) The office where payment may be made or information obtained listing the appropriate telephone number and address of the public utility.
- (6) A full and complete explanation of procedures for filing an informal complaint with the Commission (see § 56.162 (relating to informal complaint filing procedures)). If a written report is not requested by the complaining party or is not deemed necessary by the public utility, the public utility shall provide the information in § 56.162(1), (2) and (5). In addition, the public utility shall always provide the telephone number and address of the office of the Commission where an informal complaint may be filed.
- (7) If the matter in dispute involves a billing dispute, the utility company report must include the following:
  - (i) An itemized statement of the account of the complaining customer specifying the amount of credit, if any, and the proper amount due.
  - (ii) The date on or after which the account will become delinquent unless a payment agreement is entered into or an informal complaint is filed with the Commission. This date may not be earlier than the due date of the bill or 15 days after the issuance of a utility company report, whichever is later.

conjunction with PGW's management had concluded that Complainants' claims had no merit and that Complainants could discern the substantially material information they sought to explain the transactions and how payments were applied simply from viewing the billing statements and limited statement of accounts PGW provided. (Tr. 3/25/2015 Hearing Test. Ralph Savage, pg. 136, lines 8-25; pg. 138, lines 7 -25); (Tr. 8/28/2013 Hearing Test. Ralph T. Savage, PGW Director of Commercial Resources Center, pg. 516, lines 3 -5, pg. 521, lines 20 -25, pg. 522, lines 1-5, pg. 523, lines 10 - 25, pg. 524, lines 1 - 25, pg. 525, lines 1-25, pg. 526, lines 1- 17, pg. 548 , lines 1 - 25, pg. 549, lines 1 -25, pg., 550, lines,1 -25, pg. 551, lines, 1 -25, pg. 552, lines 1-25, pg. 553, lines 1 -25, pg. 554, lines 1 -25, pgs. 558 - 559, line 1 -25, pg. 564, lines 17 -25 and pg. 565, lines 1-10).

The PUC has found a violation exists when a public utility breaches its duty to investigate. Coger v Duquesne Light Co., 2013 Pa. PUC LEXIS 701. A public utility shall make a full and prompt investigation of complaints made by its customers either directly to it or through the Commission. PGW made a determination that Complainants' claims were invalid. PGW had no incentive to resolve the claims expeditiously because PGW had the safe harbor of the Municipal Lien and Tax Claim Law to fall back on to extract payment and they could continue to charge compounded interest and finance charges by not labelling Complainants' claims a dispute. PGW benefitted by delaying action to resolve the claims satisfactorily, Complainant's made large payments on all of its accounts through multiple refinancinings and the liens process, despite not receiving an accounting from PGW, therefore, PGW could continue to conceal its payment reordering process scheme so long as PGW made representations and kept Complainants on the hook by assuring them there was an ongoing investigation.

PGW asserts that Complainants' claims have evolved and specific disputes were not articulated until after the filing of the complaints. Complainants maintain all along they sought explanations on the manner in which Respondent applied their payments and imposed late fees to their accounts for many years. Complainants averred this in both its original and amended Complaints. Complainants were forced to initiate suit to obtain discovery which ultimately revealed the Respondent's scheme and accounting practice of re-ordering payments processed, which shows PGW over-collects finance charges in excess of 18% simple interest, and the

interest rate is compounded to an annual APR of 19.562%. Respondent does not refute the accounting re-ordering process scheme, nor do they provide any competent evidence that the practice does not result in negative amortization of Complainants' accounts and an over-collection of late fees, such that they serve as a penalty. (Tr. 8/29/2013, Hearing Test. Ralph Savage, pg. 91, lines 4 -25, pg. 92, lines 1 -25, Exhs. PGW Corres 70, SBG-FMO All Cores.binder 000494, 000422 - 000424).

Respondent's pattern and practice was not disclosed to Complainants until two years after litigation was initiated, in 2014, when PGW was forced to turn over its methodology pursuant to a discovery order. PGW's pattern and practice has existed for thirty years. Respondents could have made this information available and explained its practice long ago, but refused to do so. When Complainants asked to sit down with PGW accountants, PGW ceased its communications with Complainants and advised them to file a PUC Complaint, without supplying any additional information, documentation, statements, notice or writing as to PGW's explanation or resolutions regarding Complainants complaints. PGW, in effect, just cut off communications with Complainants. PGW never defends or justifies why it failed to provide a timely, comprehensive response to Complainants disputes on how its payments were applied to PGW's billings, charges and collections regarding gas usage, distribution, late fees, penalties, etc. PGW's actions to cut off dialogue are clandestine and suspect, and reminiscent of Wells Fargo's conduct discussed in **In Re: Michael L. Jones v. Wells Fargo**, 2012 Bankr. LEXIS 1450.

PGW did not want the Complainants to know the full extent of their injuries. PGW deliberately misled Complainants that they were pursuing a complete investigation. PGW withheld substantially material information from Complainants. The result is that Complainants continued to accrue large arrearages awaiting responses from PGW. PGW lulled the Complainants into a false security from 2006 until 2012 under the guise of working together to resolve Complainants complaints pursuant to an agreement started by John Dunn and maintained by Ralph Savage, with the approval of PGW's upper management. (Tr. 3/25/2015 Hearing Test. Ralph T. Savage, pg. 119 -120, lines 1 -25); (Tr. 8/28/2013 Hearing Test. Ralph Savage, pgs 526 - 548).(Tr. January 20, 2015, Hearing Test. Ralph T. Savage, PGW, Director of Commercial



Resources Center, pg. 897, lines 13 -25, pg. 898, lines 1 - 17, pg.900, 2 - 25, pg. 901, lines 1 -23, pg. 902, lines 1 - 14, pg. 909, lines 20 -25, pg. 910, lines 1 -9, pg. 913, lines 2 - 25).

Based upon the facts, references to the record testimony, evidence presented, the Complainants have proven by substantial evidence that PGW's conduct, continued pattern and practices constitute numerous violations regarding PGW's unjust and unreasonable accounting methods that results in Complainants paying excessive late fees, finance charges and penalties on their accounts. PGW's failure to disclose this practice until forced through litigation and discovery, shows that Complainants had no way to discern their injuries prior to filing suit, that the practice occurred outside of the limitations period, was not discovered until 2014 and continues today. Based upon the equitable legal principles as set forth in the Continuing Violations Doctrine, the Discovery Rule and Estoppel which are discussed in the Main Briefs in detail and supported by numerous cases on the issue, Complainants claims should be examined beyond the limitations period. The law as applied to the facts warrants tolling the statute of limitations. Mary Esther Battle v. PECO Energy Co., C-00003804 (Order entered July 16, 2001).

b) **Late payment charges on outstanding balances which have been the subject of municipal liens for unpaid gas service.**

- *Does the Commission have jurisdiction to determine whether PGW has applied the correct interest rate in late payment charges to the portion of an outstanding balance that is also the subject of a lien filed by the City of Philadelphia? Provide legal grounds for your position.*

SUGGESTED ANSWER YES. The Commission not only has jurisdiction to examine PGW's application of the interest rate applied to outstanding balances that are the subject of liens, it has a compelling interest to act in the public interest to ensure PGW's accounting practices are just and reasonable and comport with the regulations and Pennsylvania State law.

The Pennsylvania legislature has granted the Commission the express authority to regulate municipally owned public utilities, such as PGW, pursuant to 66 Pa.C.S. §2212 . "City natural gas distribution operations.(a) **Application.**--The provisions of this section shall apply only to city natural gas distribution operations. (b) **Commission jurisdiction.**--Subject to the provisions of this section, commencing July 1, 2000, public utility service being furnished or rendered by a city natural gas distribution operation within its municipal limits shall be subject to regulation

and control by the commission with the same force as if the service were rendered by a public utility.”

Under 66 Pa.C. S. §508, **Power of commission to vary, reform and revise contracts.** The commission shall have power and authority to vary, reform, or revise, upon a fair, reasonable, and equitable basis, any obligations, terms, or conditions of any contract heretofore or hereafter entered into between any public utility and any person, corporation, or municipal corporation, which embrace or concern a public right, benefit, privilege, duty, or franchise, or the grant thereof, or are otherwise affected or concerned with the public interest and the general well-being of this Commonwealth. Whenever the commission shall determine, after reasonable notice and hearing, upon its own motion or upon complaint, that any such obligations, terms, or conditions are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth, the commission shall determine and prescribe, by findings and order, the just, reasonable, and equitable obligations, terms, and conditions of such contract. Such contract, as modified by the order of the commission, shall become effective 30 days after service of such order upon the parties to such contract. The Commission has ‘broad and flexible authority to find that a contract’s terms are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest.”(Quoting **PPL Electric Utilities Corporation v. Pennsylvania Public Utility Commission**, 912 A.2d 386; 2006 Pa. Commw., LEXIS 665); *See also*, **Kentucky West Virginia Gas v. Pennsylvania Public Utility Commission**, 837 F.2d 600; 1988 U.S. App. LEXIS 463; 92 P.U.R.4th 542; and **LP Water and Sewer Co. v. Pennsylvania Public Utility Commission**, 722 A.2d 733; 1998 Pa. Commw. LEXIS 912.)

This authority is further reiterated by the statutory language found in 66 Pa.C.S. §315(d), whereby PGW has the burden to prove to the Commission that PGW’s underlying accounting practices, methods and payment reordering processes comport with the Commission’s billing and collection regulations, comply with the authorized Tariff, and produce just, reasonable and the most advantageous rates for the consumer in accordance with provisions proscribed at 66 Pa.C.S. §1303 et seq., the Commission’s regulations and Pennsylvania State Law.

1. PGW abuses the safe harbor of the Act of 1923, May 16, P.L. 207, Municipal Claims and Tax Lien Law at 53 Pa.C.S. §7101 et seq., and argues that the Act is sacrosanct and beyond the purview of the Commission. While the Commission may not have the authority to adjudicate the validity of the lien imposed, PGW is bound by the Commission's regulations pursuant to 66 Pa.C.S. §2212. Moreover, the Commission has direct authority over public utility rates, billing and collections practices and ensuring that a public utility does not usurp its bounds and exceed its Tariffs.

Pursuant to 52 Pa.Code § 56.1. **Statement of purpose and policy.** (a) This chapter establishes and enforces uniform, fair and equitable residential public utility service standards governing credit and deposit practices, and account billing, termination and customer complaint procedures. This chapter assures adequate provision of residential public utility service, to restrict unreasonable termination of or refusal to provide that service and to provide functional alternatives to termination or refusal to provide that service while eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills and protecting against rate increases for timely paying customers resulting from other customers' delinquencies. Public utilities shall utilize the procedures in this chapter to effectively manage customer accounts to prevent the accumulation of large, unmanageable arrearages. Every privilege conferred or duty required under this chapter imposes an obligation of good faith, honesty and fair dealing in its performance. This chapter will be liberally construed to fulfill its purpose and policy and to insure justice for all concerned.

In **Delores Asencio v. Philadelphia Gas Works**, 2012 Pa.PUC LEXIS 1078, the Commission strongly noted PGW's practice of making up '*unauthorized*' policies, such as instituting fictitious "placeholder" accounts, which continue to accrue charges, and other questionable practices related to service that cause customer accounts to explode and accumulate large, unmanageable arrearages. ALJ Chekis' opinion states, "[w]hile the imposition of a lien is certainly within PGW's rights, ... there must be an indication that the Company acted reasonably prior to imposing the lien in certain circumstances." The Commission found that PGW acted unreasonably by not adequately stopping the flow of gas to an empty property to prevent the accumulation of large arrearages which led to a lien being filed against the property. The

Commission also reduced the amount Complainant owed for gas service due to PGW's negligence and ordered PGW to cease and desist further violations of the Commission's regulations.

Complainants do not suggest that the Commission abrogate PGW's power to collect receivables pursuant to a lien filed as a judgment. However, the Commission's own regulations, under §56.22, citing Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002) and the Pennsylvania statute 42 Pa.C.S. §8101 specifically address post-judgment interest and its direct application to late payment charges. PGW's refusal to consider the Commission's regulations and ignore its implementation is an affront to the authority of the Commission and does a disservice to its customers. To the extent that the regulations reference 42 Pa.C.S. §8101 and the statute orders the legal rate of interest to apply absence another statute, Complainants may concede that the Municipal Lien Act at 53 Pa.C.S. §7143 offers another rate of interest that may be imposed, and that rate is limited to 10% per annum for cities of first class, such as Philadelphia. Imposing the maximum statutory rate of 10% does not conflict with the Commission's authority, any statute or regulation, and in no way abrogates the City's right to collect on outstanding debts owed including the statutory maximum rate of interest.

The underlying accounting goes to service and will be adjusted by the Commission in accordance with the facts. In Re Duquesne Light Co., 1977 Pa. PUC LEXIS 151, Pa. PUC v Philadelphia Electric Co. 1978 Pa PUC LEXIS 42; Grace Scrutching v. Philadelphia Gas Works, 2003 Pa. PUC LEXIS 70; Laura Maisch v. PECO Energy, 2011 Pa.PUC LEXIS 739, (PUC finding that service is broadly construed under 66 Pa.C.S. §1501). Angie's Bar v. Duquesne Light Co., 72Pa. PUC 213 (1990). 1305 Walnut St. Corp. dba Holiday Inn Express v. PGW, 2013 Pa. PUC LEXIS 734.

- Explain whether or not a lien filed by the City of Philadelphia for unpaid gas service is considered a judgement under 42 Pa.C.S. § 8101? If yes, explain when a lien becomes a judgement. Provide legal grounds for your position.

SUGGESTED ANSWER YES: 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 enter the claim in the judgment index.* Pa.Stat.Ann. tit. 53, § 7106(b) (emphasis added)." Pa.Stat.Ann. tit. 53, § 7106(b); Pa.R.C.P. Rule 3021, 3023, 42 Pa.C.S. § 8142(e).

1. Complainants have articulated their position in their main briefs as to why a lien properly docketed with the Court of Common Pleas is a judgment and therefore subject to post-judgment interest under the doctrine of merger under the law. Complainants have fully demonstrated that the Commission's regulations, Pennsylvania statutory law and caselaw all conclude this fact. See **Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002)**.

In **McLean v. City of Philadelphia Water Revenue Bureau Aikens**, 891 F.2d 474, 477, 1989 U.S. App. LEXIS 18496,; Bankr. L. Rep. (CCH) P73,187; 19 Bankr. Ct. Dec. 1783, the court found "[c]harges for water and sewage services are among those that, if unpaid, may be attached as liens. *Id.* In order for such liens to take effect in a municipality of the first class, however, the municipality must docket the lien properly. According to section 7106 of the Pennsylvania Municipal Claims and Lien Law: [A municipal claim] shall be a lien only against the said property after 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 enter the claim in the judgment index.*

Pa.Stat. Ann. tit. 53, § 7106(b) (emphasis added)."

• *What is the correct interest rate in late payment charges that should be applied on that portion of an outstanding balance which is the subject of a municipal lien (or unpaid gas service ) filed by the City of Philadelphia? Provide legal grounds for your position.*

SUGGESTED ANSWER: The legal rate of interest PGW may impose for late payment charges on the portion of an outstanding gas debt subjected to judgment as a lien filed by the City of Philadelphia cannot exceed the statutory maximum of 10% per annum.

1. PGW concedes in its main brief that the Municipal Lien Act sets the legal interest rate at 10% per annum, however, they offer no legal doctrine, compelling rationale or other justifiable reason to suggest that they are entitled to collect more than 10% when they cause a lien to be filed for specific debt. Nevertheless, PGW readily admits they continue to commingle leined debts with current balances and charge 18% (19.562 % compounded) per annum. Complainants have demonstrated the adverse affect this practice has had on its accounts resulting in a substantial over-collection of late fees and penalties by PGW.

With respect to post-judgment interest on municipal liens, there are two cases that offer the Commission exceptional guidance on this issue. **Pollice v. National Tax Funding, L.P.**, 225

F.3d 379 (U.S. 3rd Cir.), 2000 U.S. App. LEXIS 22153, and **PENTLONG Corporation v. GLS Capital et al.**, 573 Pa. 34 (Pa. 2003); 820 A.2d 1240; 2003 Pa. LEXIS 383, both considered the question of the applicable interest rate to municipal lien claims, both of which had been sold and assigned to third parties for collections. In each case the applicable interest rate was determined by the applicable county classification under the Municipal Claims and Tax Lien Act, at 53 Pa.C.S. §7143. As a city of the first class, PGW as a city owned utility and the City of Philadelphia are limited to collecting 10% per annum maximum on its utility liens.

In **Pollice v. National Tax Funding, L.P.**, in determining the legal interest rate for collection on municipal liens sold to a third party assignee debt collector, “the court held the interest rates in excess of those authorized under the statute are not “permitted by law” because they are in excess of the ten percent limit set forth in Pa. Stat. Ann. tit. 53, § 7143. Although the rates charged by the defendants are in a sense authorized by the local ordinances and resolution, we cannot say that they are “permitted by law” as they are in direct violation of a state statute.” **Id.** at 2003 Pa. LEXIS at 407. The court reversed summary judgment for defendants, assignee municipal lien collectors, and allowed plaintiffs’ claims to move forward where defendant’s collection of interest and penalties in excess of the 10% maximum authorized by statute amounted to unjust enrichment. **Id.** at 2003 Pa. LEXIS at 400.

Furthermore, in reading **Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002)**, a case directly on point, and cited in the Commissions’s regulations, the court was crystal clear in rejecting Equitable Gas’ practice of continuing to charge an 18% late charge to an overdue balance, subsequently reduced to a judgment, regardless of the legal rate of post-judgment interest, because the tariff authorizes an 18% rate “until the bill is paid”. The court held once the sum is reduced to a judgment, the doctrine of merger applies once the judgment is docketed [sic] in the Court of Common Pleas. **Id.** at 718. When PGW elects to have a lien filed with the Court for overdue gas debt, the debt lien becomes a judgment subject to post-judgment interest not to exceed the statutory maximum of 10% per annum.

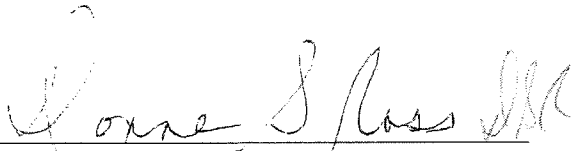
What is clear from the reading of the statutes, regulations and cases on this issue is that the maximum rate of interest that PGW can impose is 10% per annum on unpaid balances that are properly docketed with the Court as liens for gas debt. Furthermore, there are no additional

penalties that may be imposed per the court's holding in Pollice v. National Tax Funding, L.P.  
*Supra.*

Public utilities such as gas, like water rents are a commodity subject to the municipal lien laws, but are not taxes, and therefore collection interest penalties are limited to the statutory interest rates imposed under the Municipal Lien Act. Ibid. See also, In re: Harry C. Adams, 40 B.R. 545, 548, 550; 1984 U.S. Dist. LEXIS 16481).

Wherefore, for the reasons set forth above, Complainants respectfully request that the Commission grant the prayer for relief as set forth in the Complaint and find in favor for Complainants, sustain their complaint, order PGW to refund monies collected erroneously from Complainants as a result of their unjust and unreasonable billing and collection practices, order PGW to cease and desist and reform their payment posting reordering scheme and implement a more just and reasonable accounting practice that charges and collects interest finance charges at the legal rate authorized under the Tariff, the Public Utility Code and Pennsylvania law, which is 18% simple interest per annum for pre-judgment interest and 6% simple interest per annum for post-judgment interest, or institute a rate not to exceed 10% per annum, the maximum rate authorized under the Municipal Lien Act.

Respectfully Submitted By,



Donna S. Ross, Esq. For Complainants

**CONCLUSIONS OF LAW ON ISSUES RAISED IN COMPLAINANTS REPLY BRIEF:**

Notwithstanding arguments previously raised in its Main Briefs, Complainants supplement their arguments as follows:

a) **Statute of Limitation**

- *Should the statute of limitations be tolled for Complainants' claims which fall outside the three-year general limitation period contained in 66 Pa. C.S. § 3314? Why? List the legal grounds (legal doctrine, statute, case law or regulation) for your position. Provide the transcript page and exhibit references to show where the evidence appears in the record.*

SUGGESTED ANSWER: Yes. Complainants claims outside of the limitations period should be tolled and refund ordered based upon the equitable legal remedies upheld under the Continuing Violations Doctrine, the Discovery Rule and Estoppel. Where there is concealment, omissions of material facts, or unintentional deception, the defendant may be estopped from barring Complainants' claims. Nesbitt v. Erie Coach Co., 416 Pa. 89, 96. (1964). In Re: Michael L. Jones v. Wells Fargo, 2012 Bankr. LEXIS 1450. Coger v Duquesne Light Co., 2013 Pa. PUC LEXIS 701; Waterman v. Jurupa Community Services, 53 Cal.App.4th 1550, 62 Cal.Rptr.2d 264, 1996 Cal. App. LEXIS 1228; Merck & Co., Inc. v Reynolds, 559 U.S. 633; 2010 U.S. LEXIS 3671; West v. Philadelphia Electric Company, 45 F.3d 744, 1995 U.S. App. LEXIS 1070; National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 122 S.Ct. 2061, 2002 U.S. LEXIS 4214.

b) **Late payment charges on outstanding balances which have been the subject of municipal liens for unpaid gas service.**

- *Does the Commission have jurisdiction to determine whether PGW has applied the correct interest rate in late payment charges to the portion of an outstanding balance that is also the subject of a lien filed by the City of Philadelphia? Provide legal grounds for your position.*

SUGGESTED ANSWER: Yes. The Commission not only has jurisdiction to examine PGW's application of the interest rate applied to outstanding balances that are the subject of liens, it has a compelling interest to act in the public interest to ensure PGW's accounting practices are just and reasonable and comport with the regulations and Pennsylvania state law. The underlying accounting goes to service and will be adjusted by the Commission in accordance with the facts. Pursuant to 66 Pa.C.S. §315, the burden of proof shifts to the utility to prove that its accounting practices and methods affecting rates are just, reasonable and in accordance with the regulations and Pennsylvania law. 66 Pa.C.S. §508 authorizes to Commission to reform contracts in the public interest. In Re Duquesne Light Co. 1977 Pa. PUC LEXIS 151, Pa. PUC v Philadelphia Electric Co. 1978 Pa PUC LEXIS 42; Grace Scrutching v. Philadelphia Gas Works, 2003 Pa. PUC LEXIS 70; Laura Maisch v. PECO Energy, 2011 Pa.PUC LEXIS 739, (PUC finding that service is broadly construed under 66 Pa.C.S. §1501). Angie's Bar v. Duquesne Light Co., 72Pa. PUC 213 (1990). 1305 Walnut St. Corp. dba Holiday Inn Express v. PGW, 2013 Pa. PUC LEXIS 734.

- *Explain whether or not a lien filed by the City of Philadelphia for unpaid gas service is considered a judgement under 42 Pa.C.S. § 8101? If yes, explain when a lien becomes a judgement. Provide legal grounds for your position.*



SUGGESTED ANSWER: Yes. 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 enter the claim in the judgment index.* Pa.Stat.Ann. tit. 53, § 7106(b) (emphasis added).” Pa.Stat.Ann. tit. 53, § 7106(b); Pa.R.C.P. Rule 3021, 3023, 42 Pa.C.S. § 8142(e). **Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002); McLean v. City of Philadelphia Water Revenue Bureau Aikens**, 891 F.2d 474, 477, 1989 U.S. App. LEXIS 18496,; Bankr. L. Rep. (CCH) P73,187; 19 Bankr. Ct. Dec. 1783.

- What is the correct interest rate in late payment charges that should be applied on that portion of an outstanding balance which is the subject of a municipal lien (or unpaid gas service ) filed by the City of Philadelphia? Provide legal grounds for you position.

SUGGESTED ANSWER: The legal rate of interest PGW may impose for late payment charges on the portion of an outstanding gas debt subjected to judgment as a lien filed by the City of Philadelphia cannot exceed the statutory maximum of 10% per annum. **Pollice v. National Tax Funding, L.P.**, 225 F.3d 379 (U.S. 3rd Cir.), 2000 U.S. App. LEXIS 22153, and **PENTLONG Corporation v. GLS Capital et al.**, 573 Pa. 34 (Pa. 2003); 820 A.2d 1240; 2003 Pa. LEXIS 383.

### Proposed Order

IT IS HEREBY ORDERED:

1. Complainants' Complaint is Sustained.
2. Respondent shall cease and desist from maintaining a billing and collections policy that exceeds collection of prejudgment interest in excess of 18% simple interest.
3. Respondent shall cease and desist from maintaining a billing and collections policy that exceeds the collection of post judgment interest for lien judgments filed and docketed with the Court of Common Pleas in excess of the statutory maximum permissible under the law.
4. Respondent shall refund monies collected from Complainants' in excess of the Tariff in accordance with the sums calculated by the Commission.
5. Respondent shall be limited to collection of post judgment interest in accordance with the holding in **Equitable Gas v. Wade, 812 A.2d 715 (Pa. Super. 2002)**, pursuant to 42 Pa.C.S. 8101, and the legal interest rate of 6% simple interest per annum pursuant to 41 Pa.C.S. § 202 and in the alternative, limit the Respondent's collection of post-judgment interest on unpaid balances reduced to lien judgment to the statutory maximum permissible under the Municipal Claims and Tax Lien Act, not to exceed 10%.
6. Respondent shall reform its payment posting reordering process to conform with 52 Pa.Code § 62.74 and § 56.15 and 66 Pa.C.S. §1303 and §1501.
7. Respondent shall provide customer disclosures explaining in detail the utility's payment posting order, pursuant to 52 Pa.Code § 56.15, § 62.74, and § 62.75 (c)(10).

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**In the Matter of:**

Re: Complainants' Reply Briefs

In the Matters of: SBG Management Services, Inc. et al v. Philadelphia Gas Works, Docket Nos. C-2012-2304183, Docket No. C-2012-2304324, C-2012-2304167; C-2012-2304303; C-2012- 2304215; C-2012-2308454; C-2012-2308460; C-2012-2308462

**Certificate of Service**

I hereby certify that I have served the foregoing instrument in the above referenced matters, upon the parties set forth below, via First Class, U.S. mail/overnight delivery and/or by hand delivery to all parties as listed below, in accordance with the requirements of 52 Pa.Code Section 1.54 and the PA Public Utility Commission Orders.

The Honorable ALJ Eranda Vero  
Pennsylvania Public Utility Commission, Suite 4063,  
801 Market Street, Philadelphia, PA 19107

For Pennsylvania Public Utility Commission  
Via U.S. Mail First Class

Mr. Laureto Farinas, Esquire  
Philadelphia Gas Works  
800 W. Montgomery Avenue, 4th Floor  
Philadelphia, PA 19122

For Respondent PGW  
Via U.S. Mail First Class

Mr. Phil Pulley and Ms. Kathy Treadwell  
SBG Management Services, Inc.  
P.O. Box 459, Abington, PA 19001

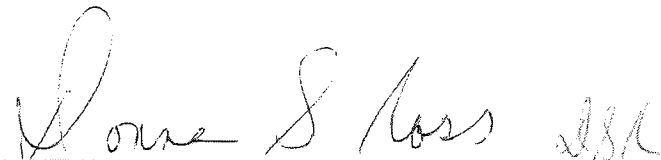
For Complainants  
Via Hand Delivery

The Honorable Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North ST, 2nd Fl, Harrisburg, PA 17105-3265

For Pennsylvania Public Utility Commission  
Via U.S. Mail First Class

Date: 5 / 8 /2015

By: \_\_\_\_\_



DONNA S. ROSS, ESQUIRE  
SBG MANAGEMENT SERVICES, INC.  
P.O. Box 549  
Abington, PA 19001  
Phone: 484-888-9578  
Office: 215-938-6665  
Facsimile: 215-938-6987  
Email: dsross@sbgmanagement.com; dsross90@gmail.com  
Pennsylvania Attorney ID. No. 59747

**APPENDIX & SUPPLEMENTAL REPLY BRIEF EXHIBIT**

10/19/11

**Savage III, Ralph T**  
**From:** Hollman Jr, Randy  
**Sent:** Wednesday, October 19, 2011 12:03 PM  
**To:** Hollman Jr, Randy; Murray, Daniel P.  
**Cc:** Savage III, Ralph T  
**Subject:** RE: Colonial Garden Bill explanation

After the make-up bill was issued on 3/3/05, the customer did pay current bills although consistently late (between 31 and 90 days after due date) up to March 2006.

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**From:** Hollman Jr, Randy  
**Sent:** Wednesday, October 19, 2011 8:43 AM  
**To:** Murray, Daniel P.  
**Cc:** Savage III, Ralph T  
**Subject:** RE: Colonial Garden Bill explanation

According to the BCCS contacts, a bill transaction and meter reading history was faxed and mailed to the customer on 3/21/05. If there was payment arrangement offered for this, it was not documented in BCCS. I also was not able to find any documentation of a proactive communication to the customer regarding this situation. I do think that it is reasonable to guess that the customer was satisfied with the bill/meter read history as there are no BCCS contacts after 3/21/05 initiated by the customer.

---

**From:** Murray, Daniel P.  
**Sent:** Tuesday, October 18, 2011 4:50 PM  
**To:** Hollman Jr, Randy  
**Cc:** Savage III, Ralph T  
**Subject:** RE: Colonial Garden Bill explanation

Ouch....we didn't bill it for almost 2 years? Did we offer a payment arrangement? Do we know how this was communicated to the customer?

---

**From:** Hollman Jr, Randy  
**Sent:** Tuesday, October 18, 2011 4:16 PM  
**To:** Murray, Daniel P.  
**Cc:** Savage III, Ralph T  
**Subject:** FW: Colonial Garden Bill explanation

*Answer to Polley Questions*

Dan,

I initially wrote up the description below based on the discussion Ted and I had regarding this property. I wanted to review this with Ted prior to sending but he had to leave because his son was involved in an accident at his job which required him to be rushed to the hospital. I think it is reasonable to guess that Ted will not return from the hospital in time to review this today. Please see the response to the customer below.

After the by-pass behind the cinder block wall allowing unauthorized usage was found, the meter for SA ID # 1375369694 was removed. When meter # 1987516 was set no bills were generated through the system due to a clerical error, however the meter was recording actual usage. When

this problem was discovered, a bill was generated for the period of 4/19/03 – 2/18/05 in amount of \$13,018.95 for actual usage on this meter.

Based on PGW records a bill transaction and meter reading history was faxed and mailed to the customer on 3/21/05.

As is normal with all PGW accounts, all SA's under one account are billed on the same invoice. Consequently both SA's current bill was combined on the invoice for 3/3/05.

SA ID 4018739567 had a balance of \$1,351.12 as of the prior billing on 2/1/05 and SA ID 1375369694 had a balance of \$13,018.95 which totals \$14,370.07. The adjustments on the invoice of \$215.54 are due to LPC's on each SA. The 3/3/05 bill for each SA (SA ID 1375369694 = \$3762.26 and SA ID 4018739567 = \$3062.12) combines to \$6824.38 which would have brought the total balance due to \$21,409.99.

Please let me know if the description above works for you? If you have any questions, let me know.

Thanks,  
Randy

**Savage III, Ralph T**  
**From:** Hollman Jr, Randy  
**Sent:** Monday, October 24, 2011 10:36 AM  
**To:** Savage III, Ralph T  
**Subject:** Intrest on Colonial Garden lpc

*FORGAVE  
LPC*

Ted,

Since the LPC was assessed in March 2005 and the account last billed on November 4, 2011, there were 79 months of compounded interest. The total bill resulting from the non-payment of this late charge is \$642.60. If you have any questions, please let me know.

Thanks,  
Randy Hollman  
Manager, Commercial Resource Center  
Philadelphia Gas Works  
800-3 W. Montgomery Ave.  
Philadelphia, PA 19122  
Office: 215-684-6450 | Fax: (215) 684-6986